

# GILS

GRATA INTERNATIONAL  
LEGAL SERIES

CORPORATE LAW



The GRATA International Legal Series (the “GILS”) is a distinctive legal handbook, offering essential legal insights and practical tips for conducting business across jurisdictions where GRATA International operates.

Legal experts within the GILS framework provided an overview of the legislative database across different legal environments and presented them in a Q&A format.

The second edition of GILS is dedicated to corporate law and covers key issues of corporate legislation in 15 jurisdictions: Armenia, Azerbaijan, Belarus, Georgia, Cyprus, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russia, Turkey, Turkmenistan, Tajikistan, the United Arab Emirates, Uzbekistan.

This edition of GILS provides an overview of the environment for doing business in each jurisdiction: forms of doing business and establishment of legal entities, general taxation issues, regulatory and other issues.

GRATA International provides a full range of services in the field of corporate law, including advising on topical issues of corporate legislation, structuring and support of M&A, establishment of Joint Ventures, conducting legal Due Diligence, Background Checks, resolution of corporate disputes etc.

*This brochure is provided for informational purposes only and does not constitute legal advice. The information provided herein is not a substitute for professional legal advice tailored to your specific circumstances. Advice of a qualified legal professional is recommended for individual situations and inquiries.*



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# ARMENIA



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The most popular organisational and legal form of organisation in the Republic of Armenia (RA) is a limited liability company. Also, in the case of foreign organisations, separate divisions are practised in the form of branches or representative offices, which, however, are not independent legal entities, and the latter also does not conduct commercial activities but only performs representative functions. It is also possible to establish joint-stock companies, the distinctive feature of which is the maintenance of a register of founders and some management differences compared with LLCs. Other legal forms of organisations are less popular.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

Founding documents vary depending on the number of founders, their status, and the organisational and legal form of the established legal entity. The minimum capital for an LLC is not established by law but is usually stated at AMD 10 000 (equivalent to USD 25).

The standard package of documents includes the following: minutes of the founding meeting (decision of the sole founder), constituent documents of the founder(s) - legal entity(ies), charter(s) and extract(s) from the trade register of the country(s) registration of the founder(s) - legal entity(ies), passport(s) of the founder(s) - individual(s), translations of all specified documents into Armenian. For representatives of countries that are not members of the Minsk (1993) or Chisinau (2002) conventions but are parties to the Hague Convention (1961), it is necessary to submit the specified documents with an apostille.

The standard registration period is 3 business days when registering organisations with a foreign element.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

As a general rule, if business activity involves conducting licensed activities, then the activity can only be carried out upon acquisition of the corresponding licence.

It should also be noted that if business activity is not conducted in accordance with the economic activity codes selected during business registration but does not imply licensed activity, then any restrictions will not apply to this entity.

There are no other special requirements.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

**1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

The most common types of legal entities in the Republic of Armenia are limited liability companies (LLC) and joint stock companies (JSC).

From the point of view of taxation and liability, there are no significant differences. In terms of management, there are several requirements applicable to JSCs and not applicable to LLCs, including requirements for the formation of certain management bodies, the procedure for establishing, changing, and terminating labour relations with the head of the executive body, the procedure for the alienation and transfer of shares in the authorised capital of the company, the requirement to maintain a register of shareholders, as well as several others.

JSCs can be open or closed.

There are no significant differences in the liability of shareholders/participants in trading (commercial) legal entities. The general rule regarding liability for both types of companies is as follows: the company is liable for its obligations with all its property, and the company is not responsible for the obligations of its participants/shareholders.

Among other legal entities, we can mention production and trade cooperatives, public organisations, foundations, etc.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Always different. Example: if we are dealing with an LLC with only one employee and which does not yet have an operating profit, then the main expenses, in addition to the rent for the presence of office space, will include the cost of accounting (reporting and bank payments) in the amount of AMD 50 000 per month, and the salary of the only employee - the head of the executive body - is AMD 104 000 per month.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Monthly, quarterly, and annual tax payments and submission of relevant reports.

### 2.2 What tax and customs incentives are available in a country?

Several customs benefits apply to specific organisations depending on the activity type and other circumstances, including special tax regimes (from 0%), a simplified taxation system, and others.

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Generally, goods imported from the EAEU countries are not subject to customs clearance.

### **2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?**

To maintain accounting records and submit tax reports, as well as carry out other necessary activities within the framework of accounting services through electronic document management with tax authorities, you must have Armenian citizenship since electronic document management with the tax authorities is possible only if you have an identification card with a storage device, which is issued only to citizens RA.

### **2.4. What is the taxation of dividends for foreign investors?**

Payment of dividends to residents and non-residents is taxed at a flat rate of 5%.

### **2.5 What strategies exist for minimising tax liability when conducting international business?**

Strategies developed taking into account the specifics of a particular business and many other components, so there is no single answer to this question.

## **3. Regulatory and miscellaneous**

### **3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?**

Requirements for data protection and confidential information are established at the level of local legislation.

### **3.2 What labour law features should be considered when hiring local and foreign employees?**

There are no special restrictions for hiring local employees. However, employment relations with foreign citizens can be established during the period of residence (residence permit), which is usually issued for a period of up to one year. There are some exceptions to the timing and procedure for obtaining a residence permit and work permit for citizens of EAEU member countries, managers and founders/shareholders of companies, and ethnic Armenians.

### **3.3 What are the requirements for currency regulation and currency control?**

Generally, payments between residents of the Republic of Armenia are made in Armenian drams, the national payment currency. There are some exceptions. Any payments between legal entities are made in non-cash form; in B2C relationships, there are also several restrictions on cash payment for goods and services. Individuals and legal entities are not prohibited from opening bank accounts in foreign currencies. Bank compliance services usually check transfers to and from foreign persons. There are certain restrictions on transfers of currencies other than Armenian drams and Russian rubles to the accounts of persons in the Russian Federation.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

First, it is necessary to consider the applicable norms of the RA Civil Code, the RA Law "On Limited Liability Companies", the RA Law "On Joint Stock Companies", etc.

### **3.5 What are the most efficient mechanics for dispute resolution?**

Through negotiations or judicially – through state courts.



# BELARUS



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The following options for presence in Belarus are possible:

1. Legal entity;
2. Representative office of a foreign organisation;
3. Branch (available for establishment from 19.11.2024).

The most popular option of presence in Belarus is the establishment of a legal entity in the form of a limited liability company (hereinafter - LLC). It is also possible to establish an open joint-stock company (hereinafter - OJSC) or a closed joint-stock company (hereinafter - CJSC).

A unitary enterprise (hereinafter - UE) is used much less frequently.

Questions	Legal entity	Representative office
<b>Engaging in commercial activities</b>	May independently conduct lawful commercial activities.	Representative office of foreign organisation is not a legal entity. According to national legislation, representative offices are not entitled to conduct commercial activities. Permitted activities for a representative office are limited.  The representative office of commercial organisation has the right to carry out in the name of and on behalf of the foreign organisation represented, activities of preparatory and auxiliary nature, for example, studying the markets for goods and services in Belarus, studying opportunities for investment in the territory of Belarus, creating commercial organisations with the participation of foreign investors, as well as other public useful activity.
<b>Conclude agreements</b>	Yes.	Director with Power of Attorney from the central-office company can organise the activities of the representative office and carry out permitted activities.
<b>Promotion and marketing</b>	Yes.	Yes, but with limits.
<b>Public procurements</b>	Yes.	Yes, but with limits.
<b>Interaction with local authorities</b>	Yes.	Yes.
<b>Obtaining licences, permits and registrations</b>	Yes.	Yes.

Minimum authorised fund		
	The authorised capital of LLC is determined by the shareholders.  CJSC - 100 basic units, approximately EUR 1200. OJSC - 400 basic units, approximately EUR 4600.	No requirements.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The registration procedure depends on the form of presence and usually includes the following steps:

1. pre-registration activities (defining the basic conditions, drafting the documents, agreeing on the name (if necessary), etc.)
2. payment of the state fee (depends on the form of presence and can roughly range from EUR 11 to 800);
3. submission of documents to the registration authority;
4. obtaining the registration certificate;
5. post-registration (formalisation of employment relations, opening of bank accounts, registration with tax and other authorities, etc.).

The general list of documents includes:

1. an application of the form set by the law;
2. legalised extract from the commercial register of the country of establishment (for founders from foreign countries);
3. founding document (Articles of Association or regulations on the representative office/branch);
4. document confirming the authorisation of the signee;
5. document confirming payment of the state fee.

Documents drafted in a foreign language must be accompanied by a notarized translation into Belarusian or Russian, and documents issued or certified by a competent authority of a foreign state must be legalised, unless otherwise provided by international treaties of the Republic of Belarus.

The term of state registration for business companies is 1 business day (without consideration of drafting of the necessary documents).

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

In general, establishing a presence does not require obtaining additional authorizations or approvals.

Certain activities require obtaining a licence under certain conditions. A list of such activities can be found at [the link](#).

## 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

The most common types of legal entities in the Republic of Belarus are LLC, JSC, and CJSC. Such forms as additional liability company (ALC), UE are used much less frequently.

There are no significant differences regarding taxation and liability of shareholders.

### 1.4.1. What are the shareholder structures of these types of legal entities?

LLC is a company with no more than 50 shareholders, whose statutory fund is divided into shares of specified sizes determined by the Articles of the company. May be established by 1 person.

JSC is a company whose statutory fund is divided into a certain number of shares. The number of shareholders of a joint stock company is not limited; however, the Articles of Association of a CJSC may set such a limitation. JSC may be established by 1 person.

### 1.4.2. What is the Shareholders' responsibility in these types of legal entities?

Shareholders of LLC are not personally liable for the obligations of the company and bear the risk of losses associated with the company's activities within the value of their contributions to the statutory fund.

Shareholders of JSC are not personally liable for the obligations of the company and bear the risk of losses associated with the company's activities within the value of their stocks.

### 1.4.3. What is the responsibility of the representatives in these types of legal entities?

As a general rule, representatives of legal entities bear the same liability as the shareholders. However, the representatives of the company may be held liable for subsidiary liability if their actions lead the company to insolvency.

### 1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

One distinctive feature of ALC is that its shareholders bear joint and several subsidiary liability for the obligations of the company with their property within the limits determined by the company's Articles, but not less than the amount established by legislative acts, proportionally to the contributions of these shareholders to the share fund of the ALC.

A UE can only be registered by one person (either individual or legal entity), and the right of ownership of the property remains with the founder.

## 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Operating costs can be categorised into one-time and recurring costs:

### 1. One-time costs:

- obtaining a stamp (about EUR 20);
- obtaining an electronic digital signature (about EUR 60);
- obtaining a bank key (token) (about EUR 25).

Additionally, costs for obtaining a licence, trademark registration may also be included as one-time costs.

### 2. Fixed:

- lease of the premises (on average about EUR 10-20 per m<sup>2</sup>);
- bank services (depends on the tariff of a particular bank, about EUR 20 for 1 bank account);
- salary payments;
- tax payments, contribution to the Social Security Fund, Belgosstrakh;
- accounting service (in case of outsourcing, EUR 100-300 per month).

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

There are two taxation systems for legal entities in Belarus: the general taxation system (hereinafter - GTS) and the simplified taxation system (hereinafter - STS).

Under the GTS, a legal entity pays the following taxes on its activity:

- income tax, general rate is 20%;
- value added tax (hereinafter - VAT), general rate is 20%.

Under the STS, a legal entity pays the following taxes on its activity:

- tax under STS, general rate is 6% of revenue.

Depending on the specific type of activity and property of a legal entity, a legal entity may also pay other taxes, e.g. property tax, land tax, income tax for the income of foreign organisations, environmental tax, etc.

Regardless of the taxation system, legal entities pay the following taxes and obligatory payments from the salary:

- income tax for individuals, general rate is 13% (this tax is withheld from an employee's salary and transferred by an employer);

*if the income exceeds BYN 200 000 during the calendar year the tax rate will be 25% for all the income.*

- state social insurance contributions, general rate is 35% (34% is paid by an employer from his own funds, 1% is withheld from an employee's salary and transferred by the employer);

- accident insurance contributions, general rate is 0.6%.

### 2.2 What tax and customs incentives are available in a country?

Tax preferences include reduced tax rates, tax exemption for a certain period of time, and tax deductions.

In Belarus, tax preferences are provided for residents of the High Technology Park, the Chinese-Belarusian Industrial Park 'Great Stone', residents of free economic zones, investors who have concluded investment contracts, enterprises located in rural areas, etc.

Customs preferences are also provided for the persons mentioned above, which can be expressed in the form of exemption from customs duties.

For example, for enterprises located in rural areas, exemption from import customs duty is provided for goods imported as a contribution of a foreign founder to the statutory fund within the terms established by the articles of association for the formation of such a fund.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

Accounting is kept for all business operations in the general order. Business operations are formalised by primary accounting

documents when the business operation is directly performed, and if this is not possible - after it has been performed.

There are annual and interim accounting reports.

## 2.4. What is the taxation of dividends for foreign investors?

### 1. Taxation of dividends for foreign investors - legal entities

The general dividend tax rate for legal entity investors is 15%. Other rates may be established by agreements on avoidance of double taxation (AADT).

### 2. Taxation of dividends for foreign investors - individuals.

The general dividend tax rate for individual investors is 13%. Other rates may be established by AADT.

If a foreign citizen is a tax resident of Belarus and profits were not consistently distributed among the shareholders of a legal entity within 3 preceding calendar years, the tax rate for dividends is 6%. If the profit was not distributed within 5 preceding calendar years consecutively - 0%.

The tax is withheld and transferred to the budget directly by the legal entity who paid dividends to an individual foreign investor.

Preferential taxation of dividends is established for residents of the High Technology Park, the Chinese-Belarusian Industrial Park "Great Stone".

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

Mandatory measures for personal data protection include:

1. appointment of a structural unit or person responsible for internal control over the processing of personal data;
2. issuance of documents defining the policy regarding the processing of personal data (it is necessary to ensure unlimited access, including through the Internet, to such documents before processing begins);
3. familiarisation of employees with the local regulations regarding the processing and protection of personal data;
4. establishment of procedures for access to personal data;
5. ensuring technical and cryptographic protection of information, etc.

In case of non-compliance with the data protection measures by the company and identification of violations of the legislation on personal data during a scheduled or unscheduled inspection, the National Center for Protection of Personal Data issues a written order (prescription) to eliminate the identified violations and (or) suspend (terminate) the processing of personal data in the information resource (system) with an indication of specific actions that must be suspended (terminated), and sets a time frame for such elimination and (or) suspension (termination), not exceeding 6 months.

If the company does not comply (or formally complies) with the above requirements for ensuring the personal data protection in accordance with Article 17 of the Law, there is a risk of being held administratively liable.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

- A foreign employee must obtain a special work permit (except for the employment of citizens of the Russian Federation and the Republic of Kazakhstan).
- A fixed-term employment contract shall be concluded with an immigrant employee, the term of which shall not exceed the term of validity of the special permit.
- The employment of more than 10 foreigners (stateless persons) requires obtaining a licence for attracting the foreign labour.

For more information on employment, see GILS [Employment Law](#).

### 3.3 What are the requirements for currency regulation and currency control?

#### 1. Registration of contracts.

Currency contracts concluded between residents and non-residents, the amount of obligations of which is not determined, reaching or exceeding 2000 basic units for individuals (around EUR 23 000) and 4000 basic units for legal entities and individual entrepreneurs (around EUR 46 000) in equivalent, are subject to registration by the resident in the user's personal account on the web portal of the National Bank of Republic of Belarus.

Subsequently, the execution of such a contract is also reported on the web portal.

#### 2. Repatriation of revenue

Legal entities-residents are obliged to credit to their accounts opened in banks of the Republic of Belarus (hereinafter - repatriation):

- in case of export - Belarusian rubles and/or foreign currency;
- in case of import - Belarusian rubles and/or foreign currency in case of return of funds in case of non-performance or incomplete performance by a non-resident of its obligations.

The period for repatriation is determined by the legal entity based on the conditions and actual terms of fulfilment of contractual obligations by parties under a currency contract. The procedure for determining such a period is established by the National Bank.

The law also establishes periods for which the repatriation period is extended, as well as cases when the obligation to repatriate ceases.

Currency allowed for payments between residents of Belarus is the Belarusian ruble.

### 3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?

Consent of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (MART) for economic concentration (merger clearance).

Merger clearance may be required for the following transactions:

- reorganisation in the form of a merger, acquisition;
- transaction resulting in the alienation of fixed or intangible assets of another organisation representing 20% or more of the book value, including on the basis of a transfer deed (separation balance sheet);
- creation of an association or holding company;
- alienation of 25 or more percent of voting shares (stakes).



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Merger clearance for such transactions is required if one of the following conditions is met:

- the book value of assets of one of the parties or target exceeds 200 thousand basic units (approximately EUR 2.2 million) (from 07.07.2024 - 400 thousand basic units (approximately EUR 4.4 million));
- the amount of revenue of one of the parties or the target exceeds 400 thousand basic units (approx. EUR 4.4 million) (from 07.07.2024 - 800 thousand basic units (approx. EUR 8.8 million));
- one of the parties or the target is included in the State Register of Economic Entities Holding a Dominant Position on Markets or in the State Register of Natural Monopolies.

In the cases described above, consent may not be required if it's an intra-group transaction.

# AZERBAIJAN



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The Civil Code of the Republic of Azerbaijan determines incorporation of the companies by foreign entities in different forms:

1. a Branch Office;
2. a Representative Office;
3. a Cooperative;
4. a Partnership (general and limited);
5. an Additional Liability Company;
6. a Limited Liability Company;
7. a Closed Joint-Stock Company;
8. an Open Joint-Stock Company.

To carry on business operations in Azerbaijan, the most frequently chosen forms by foreign companies are followings:

1. a Limited Liability Company;
2. a Branch Office;
3. a Representative Office.

According to Article 53.3 of the Civil Code, a branch and a representative office are not considered legal entities.

It should be noted that the most suitable option for a non-resident founder is to establish an LLC, since:

1. the founder is liable for all debts only by a share in the charter capital;
2. contribution of any property in the form of shares to the charter capital of an enterprise, except for imported property (unless the contribution of property in the form of shares is directly related to the acquisition of other property in exchange for it) is not subject to VAT (Article 164.1.5 of the Tax Code);
3. LLCs are authorised to carry out any activity not prohibited by the laws of the Republic of Azerbaijan and certain activities after obtaining the appropriate licence. In this regard, it should be noted that
  - a. branches are authorised to perform all or part of the functions of the foreign founder, including business activities, representation and protection of its interests, and
  - b. representative offices are authorised to represent and protect the interests of the founder and are not allowed to engage in profit-making activities in the territory of the Republic of Azerbaijan;
4. may participate in tenders in which an LLC or a company with a legal form other than a branch or representative office is preferred.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

As a matter of practice, the timeframe for setting up both an LLC and a Branch/Representative Office takes up to 5 days after the submission of the necessary documents to the registration authority. State fee for incorporation is AZN 15 for an LLC and AZN 300 for a Branch or Representative Office. The incorporation process consists of following steps:

1. preparation and issuance of necessary documents abroad;
2. translation and notarization of documents received from the founders;
3. preparation of application forms;
4. submission of the entire package of documents to the registration authority;
5. registration;
6. collecting the corporate documents of a new entity;
7. ordering company seal, electronic signature, opening bank accounts.

A foreign company needs the following documents for the establishment of a new entity:

1. corporate documents of the foreign company - extract from the Chamber of Commerce/Registration Certificate, Articles of Association;
2. power of attorney issued by the parent company to the representatives (GRATA team) for representing and registering the new entity in the Republic of Azerbaijan;
3. shareholder resolution to incorporate a new entity in the Republic of Azerbaijan, charter/regulations of the new entity, application forms, receipt approving the payment of the charter capital (there is no threshold defined for the charter capital except for a few cases);
4. scan copy of the passport of the head/director of the new entity;
5. power of attorney issued by the director of the new entity that authorises the representatives to register him/her as a director of the entity;
6. in case the chosen form of the entity is a branch or representative office – a power of attorney issued by the parent company in the name of the director of the new entity.

Depending on a particular type of the company, additional documents may also be needed. Documents issued by a foreign country shall be legalised/apostilled in order to be recognized in the Republic of Azerbaijan. The documents issued by the parent company such as the resolution or power of attorney shall be notarized and legalised/apostilled, the notary must certify both the

identity and the authority of the signee(s). For some of CIS countries, notarized copies are sufficient. Meaning that apostille or legalisation is not required. Shareholder resolution, application form and charter/regulations of the new entity can also be signed here in Azerbaijan based on a PoA issued by the parent company.

As a general rule, there is no requirement for a minimum amount of charter capital in relation to an LLC (except for certain types of activities, such as activities of non-bank credit organisations, etc.). Therefore, any amount may be determined as the company's charter capital if the company is established as an LLC.

If the charter of the entity does not provide for payment of the charter capital within a certain period of time, the shareholders are obliged to pay the charter capital in full before the state registration of the entity. If the charter of the entity does not provide for payment of the charter capital within a certain period of time, this period may not exceed 3 months after the incorporation of the entity.

It should be noted that branches and representative offices do not have charter capital.

### **1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?**

#### **Obtaining a licence.**

Entities such as LLCs, CJSCs and OJSCs may perform any activities not prohibited by the laws of the Azerbaijan Republic. However, performance of certain activities as determined by law subject to holding a special permit (licence). For this purpose, it is necessary to apply with an application and documents to the licensing authority. Licences are issued for an indefinite period of time, except for the licence to perform activities to render cellular (mobile) communication services.

### **1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?**

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

**1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

As mentioned above, to carry on business operations in Azerbaijan, most frequently chosen forms by foreign companies are followings:

1. Limited Liability Company;
2. Branch Office;
3. Representative Office.

#### **Management**

The Head of the Representative Office/Branch is appointed by a foreign legal entity and operates on the basis of the power of attorney and within the powers set forth thereby.

Based on Article 88.1 of the Civil Code and decision of the Constitutional Court (dated 16 December 2011), if the number of shareholders exceeds 50, the company should transform to Open Joint Stock Company.

Day-to-day management of the legal entities' operations is carried out: by its sole executive body – Director (Manager); or by collegial executive body – Managing Board. If a collegial executive body is chosen, the minimum number should not be less than 2 directors.

Depending on scope of business and necessity of control, the General meeting of Participants can establish the Supervisory Board, the minimum number of directors of which is at least 3 and/or inspection committee (auditor) consisting of at least 2 participants, that oversee activities of the executive body.

The common practice for LLCs and Branches: Sole director, without having a Board of Directors.

#### **Liability**

The founders of LLCs jointly bear subsidiary liability for its obligations with their property in the same for all multiples of the value of their contributions, determined by the charter of the company, while the Head Office of Representative Office/Branch is fully liable for the obligations of the Representative Office/Branch.

### **1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?**

While establishing a company in Azerbaijan, it is necessary to take into account such operating costs as administrative costs, rental fees, employee salaries, etc. The amount of operating costs depends on the field of activity of the entity.

## **2. General taxation issues**

### **2.1 What tax obligations are associated with doing business in the country?**

Doing business in the Republic of Azerbaijan entails different tax obligations depending on the tax regime applicable to the company. The following types of tax regimes are applicable to companies:

#### **A. Statutory tax regime.**

Depending on the volume of turnover, the following two types of statutory tax regimes apply to enterprises in the Republic of Azerbaijan:

1. Simplified tax regime (2-8%).

The simplified tax regime provides for lower tax rates. In order to benefit from this regime:

- the organisation must not be a VAT payer; and
- the organisation's turnover should not exceed the threshold of AZN 200 000 for any consecutive 12 month period.

2. Income Tax/VAT regime.

This regime applies if the taxable turnover of the organisation exceeds AZN 200 000 in any month(s) of a consecutive 12 month period. Deductions are allowed under this regime.

The main taxes stipulated by the Tax Code are:

- profit tax;
- tax on personal income;
- value added tax (VAT);
- property tax;
- land tax;
- road tax;
- simplified tax and mineral extraction tax.

Moreover, the municipalities levy land tax and property tax on individuals, and profit tax on enterprises and organisations that are the property of municipalities.

Separate laws address contributions for social insurance, unemployment insurance, and medical insurance.

#### **B. Special tax regime.**

Provides for a special procedure for the calculation and payment of taxes for a certain period of time. More than 20 PSAs have been signed and ratified in the Republic of Azerbaijan. Each PSA has its own special tax regime, however, as a rule, they provide for lower withholding tax rates, VAT exemption and simplified reporting and accounting procedures. The PSA tax regime applies to each contracting party (signatory to the PSA), operating company and subcontractor (including a foreign subcontractor).

### **2.2 What tax and customs incentives are available in a country?**

Tax and customs incentives are applicable to residents of lands liberated from occupation.

Moreover, exemption from customs duties is applied to imports of goods from CIS countries.

In case of compliance with the requirements stipulated by the legislation of the Republic of Azerbaijan, tax exemptions are applied in respect of:

- startups;
- personal income tax on dividends;
- residents of technology parks;
- property tax;
- VAT.

In addition to the above, Azerbaijan has concluded bilateral double taxation treaties with 56 countries.

### **2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?**

A comprehensive set of financial reports comprises the following elements:

- report of financial position;
- report of profit or loss and other comprehensive income;
- report of changes in equity;
- report of cash flows;
- report accounting policies and explanatory notes.

The following types of reports are distinguished by frequency:

- monthly;
- quarterly;
- semi-annual;
- annual.

### **2.4. What is the taxation of dividends for foreign investors?**

Dividends paid by both resident and non-resident enterprises shall be subject to taxation at the source of payment at a rate of 5%.

### **2.5 What strategies exist for minimising tax liability when conducting international business?**

Strategies for minimising the tax liability are developed with consideration of the specifics of each business.

In general, if applicable, the use of bilateral double taxation treaties (DTTs) is recommended.

## **3. Regulatory and miscellaneous**

### **3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?**

The main legislative act regulating the protection of personal data in the Republic of Azerbaijan is the Law "On personal data" #998-IIIQ dated 11 May 2010.

As per the said Law, except for the cases of compulsory collection and processing of personal data in accordance with the procedure established by the legislation, the collection and processing of personal data about any person is allowed only with the written consent of the data subject, including the consent in the form of an electronic document with an enhanced electronic signature, or on the basis of the written data submitted by him/her. During the collection and processing of personal data, it is also necessary to take into account the requirements of the Law on the transfer of personal data to third parties, cross-border transfer, ensuring the rights of the personal data subject, registration of the information system, and etc.

### **3.2 What labour law features should be considered when hiring local and foreign employees?**

In the Republic of Azerbaijan employment matters are regulated by the Labor Code of the Republic of Azerbaijan dated 1 February 1999, according to which labour relations arise after the employment contract concluded between the employer and employee is entered into legal force by registering the notice of it in the electronic information system. The content of the employment contract must comply with the requirements of the Labor Code.

In order to engage foreign nationals in paid labour activity, it is required that they obtain a temporary residence permit and a work permit, except for certain categories of individuals who are exempt from the work permit requirement.

### **3.3 What are the requirements for currency regulation and currency control?**

The Central Bank of the Republic of Azerbaijan is the main financial control body of the country, which carries out general currency regulation in the Republic of Azerbaijan.

The most important regulations related to currency control are the following:

- transfer of funds into the Republic of Azerbaijan is not prohibited and/or subject to any restrictions;
- transfer of funds from the Republic of Azerbaijan without opening a bank account and through a bank account, but for personal purposes, is subject to a number of restrictions related to transaction amounts;
- transfer of funds from the Republic of Azerbaijan through bank accounts not for personal purposes is performed with submission of supporting documents defined by the legislation (such as contract, invoice, customs declaration, etc.) and is subject to no restrictions related to transaction amounts;
- no restrictions are applied to transactions of residents and non-residents in national currency in the territory of Azerbaijan; and
- cash settlements in foreign currency are not allowed in Azerbaijan.

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### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

The relevant provisions of the Civil Code, the Law “On Anti-Monopoly Activities”, “On State Registration and State Register of Legal Entities” should be taken into account.

Before entering into a merger and acquisition (M&A) transaction, the buyer needs to conduct due diligence. In a M&A transaction, due diligence allows the buyer to have clear information about the legal aspects of the target's business, such as: corporate structure, contracts, assets, intellectual property rights, litigation, and labour issues. In other words, by conducting a due diligence, the buyer obtains a complete picture of the business being acquired. Such an audit protects the buyer from potential legal risks that may arise in a M&A transaction.

### **3.5 What are the most efficient mechanics for dispute resolution?**

Depending on the nature of the dispute and the objectives of the parties, each of the three dispute resolution methods (negotiation, mediation, litigation) may be considered to achieve the most favourable result.





## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

Establishing a presence in Cyprus can be advantageous due to its strategic location, favourable tax regime, and business-friendly environment.

Below are the common options for setting up a company's presence in Cyprus, along with their key advantages and limitations:

#### Overseas Branch Office:

Advantages:

- allows the parent company to operate under its own name in Cyprus;
- offers centralised management and control;
- generally easier and quicker to set up compared to incorporating a subsidiary.

Limitations:

- the parent company is fully liable for the debts and obligations of the branch;
- it may be subject to higher taxation compared to subsidiaries;
- not considered a separate legal entity from the parent company.

#### Subsidiary Company:

Advantages:

- provides limited liability, separating the assets and liabilities of the subsidiary from those of the parent company;
- can benefit from Cyprus' favourable tax regime, including double taxation treaties;
- offers flexibility in terms of ownership structure and management.

Limitations:

- requires more time, paperwork, and expense to establish compared to a branch;
- may require compliance with local regulations and reporting requirements;
- requires a minimum share capital.

#### Representative Office:

Advantages:

- allows market research, promotion, and liaison activities without engaging in commercial activities;
- no share capital requirement;
- offers a cost-effective way to establish a presence and test the market.

Limitations:

- restricted in its activities to non-trading and non-profit-generating activities;
- cannot enter into contracts or conduct business transactions;
- limited to representing the interests of the parent company.

#### Limited Liability Company:

Advantages:

- offers limited liability protection to shareholders;
- can be owned by foreign entities or individuals;
- provides flexibility in management and ownership structure.

Limitations:

- requires compliance with local regulations and reporting requirements;
- subject to corporate tax on profits;
- may require a minimum number of shareholders and directors.

#### Partnership:

Advantages:

- simple and flexible business structure;
- partners share profits and losses according to the partnership agreement;
- no minimum share capital requirement.

Limitations:

- partners are personally liable for the debts and obligations of the partnership;
- not suitable for businesses seeking limited liability protection;
- limited ability to raise capital compared to a company structure.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

**(not as a sub-question but please mention the Mandatory Capital Amounts and Their Principles)**

Creating a legal entity or establishing another form of presence in Cyprus involves several steps and legal requirements. Below is a general overview of the process:

#### 1. Choosing the Legal Entity Type:

It is necessary to determine the most suitable legal structure for your business, such as a limited liability company, branch office, representative office, partnership, or other entity types.

#### 2. Name Reservation:

Choose a unique name for the entity and verify its availability with the Cyprus Registrar of Companies. The name must comply with certain criteria outlined in Cyprus company law.

#### 3. Preparation of Documents:

One must prepare the necessary documents depending on the chosen legal entity type. This typically includes:

- memorandum and Articles of Association for companies;
- copies of passports and proof of address for directors and shareholders;
- legalised and apostilled documents if shareholders or directors are foreign entities;
- any additional documents required by specific entity types or activities.

#### 4. Share Capital:

One must determine the share capital requirement when establishing a company. Cyprus does not have a minimum capital requirement for private companies, but certain types of activities may have specific capital requirements.

#### 5. Register with the Registrar of Companies:

Submit the required documents to the Cyprus Registrar of Companies. The registration process varies depending on the entity type but typically involves submitting the documents along with the applicable registration fees.

#### 6. Obtain Tax Identification Number (TIN):

After registration, apply for a Tax Identification Number (TIN) for the entity with the Cyprus Tax Department.

#### 7. Open Bank Account:

Open a bank account for the newly established entity. This usually requires presenting the company's incorporation documents, TIN, and identification documents of authorised signatories.

#### 8. Compliance and Reporting:

Ensure compliance with ongoing reporting and regulatory requirements, including filing annual returns, financial statements, and tax returns as applicable to the entity type. The timeframes and specific requirements for registration may vary depending on the entity type and any specific circumstances of the business.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

In addition to the registration process with the Cyprus Registrar of Companies, establishing a legal entity in Cyprus or starting operations may require additional authorizations or approvals depending on the type of business and its activities. Below are some common additional authorizations/approvals that may be required:

#### 1. Business Licence:

Certain types of businesses or activities may require specific licences or permits from relevant authorities in Cyprus. This could include licences for industries such as banking, insurance, pharmaceuticals, real estate, tourism, and others.

#### 2. Special Permits or Approvals:

Depending on the nature of the business, special permits or approvals may be needed from regulatory bodies or government agencies. For example, businesses involved in import/export, food handling, environmental activities, or construction may require specific permits.

#### 3. Foreign Investment Approval:

In some cases, foreign investment approval may be necessary for companies with non-Cypriot shareholders, particularly if the business involves certain strategic sectors or significant investment amounts. The approval process may involve the Cyprus Investment Promotion Agency (CIPA) or other relevant authorities.

#### 4. Professional Licences:

Professionals such as lawyers, accountants, architects, doctors, and others may need to obtain professional licences or registrations from the relevant professional bodies in Cyprus before practising their professions.

#### 5. Health and Safety Compliance:

Businesses may need to comply with health and safety regulations, which may involve obtaining approvals or certifications related to workplace safety standards, hygiene, and environmental protection.

#### 6. Employment Permits:

If the business plans to hire foreign employees, it may need to obtain employment permits or visas for them from the Cyprus Department of Labour.

#### 7. Customs and Trade Regulations:

Businesses engaged in international trade may need to comply with customs regulations and obtain relevant permits or approvals for importing/exporting goods.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

In Cyprus, below are the most common types of legal entities, which differ in terms of taxation, liability, and management structure, offering businesses flexibility in choosing the most suitable option based on their specific needs, objectives, and preferences.

#### 1. Limited Liability Company characteristics (LLC):

- **Taxation:** Limited liability companies in Cyprus are subject to corporate income tax on their worldwide income at a flat rate of 12.5%. However, Cyprus offers various tax advantages for companies, including a favourable corporate tax rate, participation exemption, and double taxation treaties.
- **Liability:** Shareholders' liability is limited to the amount unpaid on their shares.
- **Management:** Managed by directors appointed by the shareholders. The company is governed by its Memorandum and Articles of Association.

#### 2. Branch Office characteristics:

- **Taxation:** Branch offices of foreign companies in Cyprus are taxed on the profits derived from their Cyprus operations. They are subject to the same corporate tax rate as local companies.
- **Liability:** The branch does not have separate legal status from its parent company. Therefore, the parent company is fully liable for the debts and obligations of the branch.
- **Management:** Managed by the parent company, which retains control over the branch's operations.

#### 3. Partnership characteristics:

- **Taxation:** Partnerships in Cyprus are not subject to separate taxation. Instead, profits are allocated to partners, who are taxed individually on their share of the partnership income.
- **Liability:** In a general partnership, partners have unlimited liability

for the debts and obligations of the partnership. In a limited partnership, there are general partners with unlimited liability and limited partners with liability limited to their contributions.

- Management: Partnerships may be managed by all partners jointly or by designated managing partners.

#### 4. Public Limited Company (PLC) characteristics:

- Taxation: Public limited companies are subject to the same corporate tax regime as private limited companies.
- Liability: Shareholders' liability is limited to the amount unpaid on their shares.
- Management: Managed by directors appointed by the shareholders. PLCs are subject to additional regulatory requirements compared to private limited companies.

#### 5. Representative Office characteristics:

- Taxation: Representative offices are generally not subject to corporate income tax in Cyprus since they are not engaged in commercial activities. However, they may be subject to other taxes such as withholding tax on certain payments.
- Liability: Representative offices do not have separate legal status from their parent companies. Therefore, the parent company is fully liable for the activities and obligations of the representative office.
- Management: Typically engaged in non-commercial activities such as market research, promotion, and liaison, and do not engage in trading activities.

#### 1.4.1. What are the shareholder structures of these types of legal entities?

In Cyprus, companies with limited liability can have various shareholder structures, depending on the specific requirements and preferences of the owners. The below are some common shareholder structures for limited liability companies in Cyprus, but the specific structure adopted by a company depends on various factors such as the nature of the business, ownership preferences, investment considerations, and strategic goals.

##### 1. Single Shareholder (Private Limited Company):

A single individual or entity owns 100% of the shares of the company. This structure is common for small businesses or where one person wants full control over the company's affairs.

##### 2. Multiple Shareholders (Private Limited Company):

Multiple individuals or entities own shares in the company, with each shareholder holding a certain percentage of ownership. The ownership distribution can be equal among shareholders or based on the investment or contribution made by each shareholder.

##### 3. Holding Company/Subsidiary Structure:

A holding company structure involves a parent company (the holding company) owning shares in one or more subsidiary companies. The holding company typically owns a majority stake in the subsidiary companies, allowing it to control their operations and strategic decisions.

##### 4. Joint Venture Structure:

Two or more parties come together to form a joint venture company, with each party holding shares in proportion to their contribution or ownership interest in the joint venture. Joint ventures are common for collaborative projects or business ventures where parties pool resources and expertise.

##### 5. Nominee Shareholder Structure:

In some cases, individuals or entities may hold shares in a company as nominees on behalf of the true beneficial owners. Nominee shareholders are registered as the legal owners of the shares but hold them for the benefit of the beneficial owners, who retain ultimate control and ownership rights.

##### 6. Venture Capital or Investor Structure:

Companies seeking external investment from venture capitalists, angel investors, or other sources may have a shareholder structure that includes both the founding entrepreneurs and external investors. The ownership distribution may be based on the terms of the investment agreement.

#### 1.4.2. What is the Shareholders' responsibility in these types of legal entities?

Shareholders of limited liability companies in Cyprus have certain rights, responsibilities, and obligations, which are defined by Cyprus company law and the company's Memorandum and Articles of Association.

##### 1. Financial Contribution:

Shareholders are responsible for contributing the agreed-upon amount of capital towards the company's share capital. This contribution is typically made during the formation of the company and may be paid in full or in instalments as determined by the company's Articles of Association.

##### 2. Exercise of Voting Rights:

Shareholders have the right to attend general meetings of the company and to vote on matters affecting the company's affairs. This includes decisions such as the appointment of directors, approval of financial statements, and changes to the company's constitution.

##### 3. Compliance with Corporate Governance:

Shareholders are responsible for ensuring that the company adheres to corporate governance standards and complies with applicable laws, regulations, and internal policies. This includes overseeing the conduct of the board of directors and management to ensure that they act in the best interests of the company and its shareholders.

##### 4. Fiduciary Duties:

Shareholders owe fiduciary duties to the company and to other shareholders. This includes acting in good faith, exercising due care and diligence, and avoiding conflicts of interest. Shareholders should not use their position to gain an unfair advantage or to the detriment of the company or other shareholders.

##### 5. Financial Oversight:

Shareholders have a role in overseeing the financial performance of the company and ensuring that appropriate financial controls are in place. They may review financial statements, audit reports, and other financial information to assess the company's financial health and performance.

##### 6. Appointment and Removal of Directors:

Shareholders typically have the authority to appoint and remove directors through resolutions passed at general meetings. Shareholders may exercise this authority to ensure that the company's management reflects their interests and objectives.

##### 7. Decision-Making on Fundamental Changes:

Shareholders have the right to approve fundamental changes to the

company, such as amendments to the Memorandum and Articles of Association, changes to the company's share capital, mergers, and liquidation.

### 1.4.3. What is the responsibility of the representatives in these types of legal entities?

In Cyprus, limited liability companies may appoint representatives to act on their behalf in various capacities. The responsibilities of these representatives depend on their roles within the company and the scope of authority delegated to them. Below are the common types of representatives in Cyprus LLCs and their responsibilities:

#### 1. Directors:

Directors are appointed by the shareholders to manage the day-to-day affairs of the company and make decisions on its behalf. Their responsibilities include:

- formulating and implementing the company's strategic objectives and policies;
- ensuring compliance with legal and regulatory requirements;
- managing the company's operations, finances, and assets;
- representing the company in dealings with third parties, including signing contracts and agreements;
- acting in the best interests of the company and its shareholders.

#### 2. Company Secretary:

A company secretary may be appointed to assist the directors with administrative and compliance duties. Their responsibilities typically include:

- maintaining statutory records and registers;
- organising and attending board and shareholder meetings, preparing minutes, and ensuring compliance with procedural requirements;
- filing statutory returns and other regulatory filings with government authorities;
- advising the directors on corporate governance matters and legal compliance.

#### 3. Authorised Attorneys:

Authorised attorneys are individuals designated by the company to sign documents and contracts on its behalf. Their responsibilities include:

- signing contracts, agreements, and other legal documents in accordance with the company's policies and procedures;
- ensuring that they have the appropriate authority to sign on behalf of the company and that the documents are legally binding;
- exercising due diligence when signing documents to protect the company's interests and minimise legal risks.

#### 4. Legal Representatives:

Legal representatives, such as lawyers or legal advisors, may be engaged by the company to provide legal advice and represent its interests in legal matters. Their responsibilities include:

- providing legal advice on corporate governance, commercial transactions, regulatory compliance, and other legal issues;
- representing the company in negotiations, dispute resolution, and legal proceedings;
- drafting and reviewing contracts, agreements, and other legal

documents to ensure compliance with applicable laws and regulations;

- the responsibilities of representatives in Cyprus LLCs are governed by company law, the company's Memorandum and Articles of Association, and any specific delegation of authority made by the shareholders or the board of directors. It's essential for representatives to act within the scope of their authority and in the best interests of the company, exercising due diligence and care in carrying out their duties.

### 1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

#### 1. Public Limited Company (PLC):

- PLCs are suitable for larger businesses and can offer shares to the public.
- Minimum share capital requirements are higher compared to private limited companies.
- Shares can be freely transferred, and PLCs are subject to additional regulatory requirements.

#### 2. Partnership:

- Partnerships are formed by two or more individuals or entities who agree to carry on a business together.
- Partners have unlimited liability for the debts and obligations of the partnership, except in the case of limited partnerships where some partners have limited liability.
- Profits and losses are shared among partners according to the partnership agreement.

#### 3. General Partnership:

- All partners share equal responsibility and liability for the partnership's debts and obligations.
- Each partner has the authority to manage the business and make decisions on behalf of the partnership.

#### 4. Limited Partnership:

- Consists of one or more general partners with unlimited liability and one or more limited partners with liability limited to their contributions.
- Limited partners typically do not participate in the management of the partnership and are only liable up to the amount they have invested.

#### 5. Branch Office:

- Is an extension of a foreign company's operations in Cyprus.
- The branch does not have separate legal status from its parent company, and the parent company is fully liable for the debts and obligations of the branch.
- Branches are subject to Cyprus taxation on profits derived from Cyprus operations.

#### 6. Representative Office:

- Typically established for non-trading and non-profit-generating activities such as market research, promotion, and liaison.
- Representative offices do not have separate legal status from their parent companies and cannot engage in commercial activities or enter into contracts.

## 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

The operating costs associated with maintaining a legal entity or presence in Cyprus can vary depending on factors such as the type of entity, business activities, size of the company, and specific regulatory requirements. Here are some common operating costs to consider:

#### 1. Corporate Taxation:

Cyprus has a corporate income tax rate at 12.5%, which is applied to the profits generated by the company. The tax rate is currently one of the lowest in the European Union. Additionally, Cyprus offers various tax incentives and exemptions for certain types of income, such as dividends, capital gains, and foreign-source income.

#### 2. Accounting and Audit Fees:

Companies in Cyprus are required to maintain proper accounting records and prepare annual financial statements in accordance with International Financial Reporting Standards (IFRS) or other applicable accounting standards. Hiring accounting and auditing services to ensure compliance with these requirements can incur costs.

#### 3. Legal and Regulatory Compliance:

Companies must comply with various legal and regulatory requirements, including filing annual returns, maintaining statutory registers, and adhering to corporate governance standards. Legal and regulatory compliance may involve costs such as legal fees, regulatory filing fees, and corporate secretarial services.

#### 4. Registered Office and Nominee Services:

Companies in Cyprus are required to have a registered office address where official correspondence and notices can be sent. Some companies may also opt for nominee services, where a professional service provider acts as a nominee director or shareholder on behalf of the company, which incurs additional costs.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Doing business in Cyprus entails various tax obligations, including:

- 1. Corporate Income Tax:** The corporate income tax rate in Cyprus is 12.5%. This tax is levied on the worldwide income of Cyprus tax resident companies.
- 2. Value Added Tax (VAT):** VAT is applicable to the supply of goods and services in Cyprus, as well as the importation of goods. The standard VAT rate is 19%, with reduced rates of 5% and 9% for certain goods and services.
- 3. Employment Taxes:** Businesses must pay social insurance contributions for their employees, as well as make contributions to the national healthcare system. These contributions are deducted from employees' salaries.
- 4. Withholding Taxes:** Cyprus imposes withholding tax on certain types of income paid to non-residents, such as dividends, interest, and royalties. However, Cyprus has an extensive double tax treaty network that often reduces or eliminates withholding taxes on payments to residents of treaty countries.
- 5. Capital Gains Tax:** Capital gains tax is imposed on gains from the disposal of immovable property situated in Cyprus, as well as on gains from the disposal of shares in companies that own immovable property in Cyprus. The rate of capital gains tax varies depending on the nature of the asset and the holding period.
- 6. Special Contribution for Defense:** This is a tax imposed on dividends, interest, and rental income received by Cyprus tax

residents. The rates vary depending on the type of income.

### 2.2 What tax and customs incentives are available in a country?

Cyprus offers various tax and customs incentives to promote economic development and attract investment. Some of these incentives include:

- 1. Double Tax Treaties:** Cyprus has an extensive network of double tax treaties with over 60 countries. These treaties aim to eliminate double taxation on income earned in one country by residents of another country. They often provide reduced withholding tax rates on dividends, interest, and royalties.
- 2. EU Membership Benefits:** As a member of the European Union, Cyprus benefits from EU directives and regulations that promote free movement of goods, services, capital, and people within the EU. This facilitates trade and investment activities.
- 3. Tax Residency Rules:** Cyprus offers an attractive tax residency regime, whereby individuals can become tax residents of Cyprus by spending a certain number of days in the country. As tax residents, individuals can benefit from Cyprus's favourable tax treatment, including the non-taxation of certain types of income, such as dividends and interest.
- 4. Intellectual Property (IP) Regime:** Cyprus has introduced a favourable IP regime, offering tax incentives for companies that hold IP rights. Qualifying IP income may benefit from an 80% exemption from corporate income tax, resulting in an effective tax rate as low as 2.5%.
- 5. Shipping Industry Incentives:** Cyprus provides various incentives to encourage investment in the shipping industry, including tonnage tax system, tax exemptions for ship management and ship financing companies, and VAT exemptions on the sale and leasing of ships.
- 6. Investment Funds Regime:** Cyprus offers a favourable tax regime for investment funds and fund managers, including tax exemptions on profits from the disposal of securities and tax credits for fund management expenses.
- 7. Customs Duties Relief:** Certain industries in Cyprus may benefit from customs duties relief or exemptions on the importation of raw materials, machinery, and equipment used for manufacturing or production purposes.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

In Cyprus, the accounting and reporting requirements vary depending on the type of business presence. Here's an overview:

#### 1. Companies Limited by Shares (Private and Public):

- Annual Financial Statements:** Companies must prepare annual financial statements in accordance with International Financial Reporting Standards (IFRS) or the Cyprus Generally Accepted Accounting Principles (GAAP). The financial statements typically include a balance sheet, income statement, cash flow statement, and notes to the financial statements.
- Annual Return:** Companies are required to file an annual return with the Registrar of Companies, which includes information about the company's shareholders, directors, registered office address, and share capital.
- Annual General Meeting (AGM):** Companies are generally required to hold an AGM within a certain period after the end of the financial year, during which the financial statements are presented to the shareholders for approval.
- Filing Deadline:** The annual financial statements and annual



return must be filed with the Registrar of Companies within 18 months from the end of the financial year.

## 2. Branches of Foreign Companies:

- Similar to companies limited by shares, branches of foreign companies operating in Cyprus are required to prepare annual financial statements in accordance with IFRS or Cyprus GAAP.
- The branch must also submit an annual return to the Registrar of Companies, which includes information about the foreign company, its activities in Cyprus, and its authorised representatives in Cyprus.
- The filing deadline for the annual financial statements and annual return is the same as for companies limited by shares (i.e., within 18 months from the end of the financial year).

## 3. Partnerships and Sole Proprietorships:

- Partnership and sole proprietorship accounts must be maintained in accordance with appropriate accounting standards, either IFRS or Cyprus GAAP.
- Although there is no legal requirement to file annual financial statements with the Registrar of Companies for partnerships and sole proprietorships, they are still required for tax purposes and may need to be submitted to tax authorities.

## 4. Other Entities (e.g., Limited Liability Partnerships):

- Specific accounting and reporting requirements may apply to other types of entities, depending on their legal structure and activities. These requirements would typically be outlined in relevant legislation or regulations governing such entities.

### 2.4. What is the taxation of dividends for foreign investors?

Under Cyprus's domestic tax law, dividends paid by a Cyprus company to non-resident shareholders are generally not subject to withholding tax. This means that foreign investors can receive dividends from Cyprus companies without any tax being deducted at the source.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

When conducting international business from a Cyprus company, there are several strategies available to minimise tax liability. These strategies often involve leveraging Cyprus's favourable tax regime, including its extensive network of double tax treaties and beneficial tax laws.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

In Cyprus, data protection and privacy requirements are primarily governed by the General Data Protection Regulation (GDPR), which became enforceable across the European Union (EU) member states, including Cyprus, in May 2018. The GDPR sets out rules and principles for the processing of personal data, aiming to protect the fundamental rights and freedoms of individuals and ensure the free flow of personal data within the EU.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

When hiring both local and foreign employees in a Cyprus company,

several labour law features should be considered to ensure compliance with local regulations and fair treatment of employees. Here are some key aspects to consider:

1. **Employment Contracts:** Cyprus labour law requires that all employees, both local and foreign, have a written employment contract specifying the terms and conditions of employment. The contract should include details such as job duties, salary, working hours, holiday entitlement, termination procedures, and any other relevant employment terms.
2. **Minimum Employment Standards:** Cyprus has established minimum standards for employment, including minimum wage rates, maximum working hours, rest breaks, annual leave entitlements, and maternity/paternity leave provisions. Employers must ensure compliance with these standards for both local and foreign employees.
3. **Work Permits and Visas:** Employers hiring foreign nationals in Cyprus must ensure that they have the necessary work permits and visas to legally work in the country. Different types of work permits may be required depending on factors such as the duration of employment, the nature of the work, and the nationality of the employee.
4. **Equal Treatment and Non-Discrimination:** Cyprus labour law prohibits discrimination in employment on the basis of factors such as race, gender, age, disability, religion, or sexual orientation. Employers must ensure equal treatment of all employees, regardless of their nationality or background.
5. **Health and Safety Regulations:** Employers have a legal obligation to provide a safe and healthy working environment for their employees. This includes implementing health and safety policies, conducting risk assessments, providing training, and ensuring compliance with relevant health and safety regulations.
6. **Social Security Contributions:** Both employers and employees in Cyprus are required to make social security contributions, which fund various social insurance benefits such as pensions, healthcare, unemployment benefits, and maternity/paternity benefits. Employers must ensure that they deduct and remit the correct amount of social security contributions for both local and foreign employees.
7. **Termination of Employment:** Cyprus labour law governs the procedures and requirements for terminating employment contracts, including notice periods, severance pay, and the grounds for dismissal. Employers must adhere to these legal requirements when terminating the employment of both local and foreign employees.
8. **Trade Union Rights:** Employees in Cyprus have the right to join trade unions and engage in collective bargaining. Employers must respect employees' rights to organise and collectively negotiate terms and conditions of employment.

### 3.3 What are the requirements for currency regulation and currency control?

In Cyprus, currency regulation and currency control are primarily governed by the Central Bank of Cyprus (CBC) and various regulations issued by the European Central Bank (ECB) and the European Union (EU). Cyprus, as a member of the Eurozone, adheres to the regulations and policies set forth by the ECB regarding the euro currency.

### 3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?

Mergers, acquisitions, and company restructuring in Cyprus are primarily governed by the Companies Law, Cap. 113, which sets out the procedures and requirements for such transactions. Additionally,

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other relevant legislation, such as the Competition Law, may apply, especially in the case of mergers and acquisitions that could potentially raise competition concerns.

### **3.5 What are the most efficient mechanics for dispute resolution?**

In Cyprus, several mechanisms are available for resolving disputes efficiently, depending on the nature of the dispute, the parties involved, and their preferences. Here are some of the most common and efficient mechanisms for dispute resolution in Cyprus:

1. **Negotiation and Mediation:** These methods are often preferred for their flexibility, confidentiality, and potential for preserving business relationships.
2. **Arbitration:** Arbitration offers a more formal and structured process than negotiation and mediation and is often used for commercial disputes.
3. **Court Litigation:** While court litigation may be more adversarial and time-consuming than alternative methods, it provides a formal legal process and access to judicial remedies.
4. **Expert Determination:** Expert determination involves appointing an independent expert to resolve a specific issue or dispute based on their expertise in a particular subject matter. This method is often used for technical or specialised disputes where the parties agree to be bound by the expert's decision.
5. **Dispute Resolution Clauses:** Including dispute resolution clauses in contracts can help parties anticipate and manage disputes more effectively by specifying the method and procedures for resolving disputes. Common clauses may require negotiation, mediation, arbitration, or a combination of these methods before resorting to court litigation.
6. **ADR Centers and Institutions:** Cyprus has several alternative dispute resolution (ADR) centres and institutions that offer mediation, arbitration, and other ADR services. These centres provide facilities, administrative support, and qualified mediators or arbitrators to assist parties in resolving their disputes efficiently.
7. **Online Dispute Resolution (ODR):** With advancements in technology, online platforms and tools are increasingly used for resolving disputes, especially in cross-border transactions. ODR platforms provide a convenient and cost-effective means for parties to negotiate, mediate, or arbitrate disputes online.



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The prevailing organisational and legal structure in Georgia is the limited liability company. Additionally, for foreign entities, separate divisions are established in the form of branches or representative offices. However, these divisions are not independent legal entities, and the latter solely fulfil representative functions without engaging in commercial activities. Establishing joint-stock companies is also feasible, characterised by maintaining a register of founders and certain management distinctions compared to LLCs. Other legal forms of organisations are less favoured.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The state body responsible for registering legal entities, both commercial and non-commercial, as well as establishing a company's presence in the country (branch offices, representative offices), is the Register of Entrepreneurial and Non-Entrepreneurial Legal Entities within the State Register managed by the Ministry of Justice of Georgia ("Register").

To register a Commercial Entity in compliance with the Law of Georgia on Entrepreneurs and the Register's procedures, the following documents must be submitted:

- application (available in the registry's provided form);
- copy of the ID or passport of the applicant;
- notarized founding agreement/charter signed by all founders, unless all founders sign the document in the Register, in which case notarization is not required. Standard charter forms were endorsed by Minister of Justice Order #791 and can be accessed on the Register's electronic portal. A hardcopy of the standard charter is not necessary for registration. If the charter deviates from the standard, either the notarized charter or the one signed by the founders in the Register must be submitted along with other registration documents;
- consent from the individual vested with representative powers for their appointment to the relevant position;
- agreement or lease agreement consent from the premises owner or the rightful property holder where the legal entity's registered address is situated.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

When registering in the Register legal entities will be assigned an identification code. Georgian legislation does not require obtaining any prior permission before registering a legal entity. Legal entities are registered for an indefinite period, unless otherwise stipulated by the charter, and there is no need for periodic renewal of their registration.

Registration of a legal entity in the Register implies both state and tax registration. Registration in the Register simultaneously means registration for tax purposes. No special registration or application to the tax office is required.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

Generally, private entrepreneurs and investors tend to establish companies in Georgia as either Limited Liability Companies (LLCs) or Joint Stock Companies (JSCs). Georgian legislation imposes restrictions whereby certain types of businesses can only be registered under specific organisational and legal structures. For instance, a commercial bank must be formed as a joint-stock company. From a legal standpoint, we cannot highlight significant disadvantages or advantages. The choice between establishing a JSC or LLC depends on the entrepreneur's individual goals and objectives. However, a JSC is a more complex form of corporate organisation in terms of the company's management structure.

In practice, the "simplest" form of a commercial structure is an LLC. The Law on Entrepreneurs does not specify a minimum capital requirement for an LLC, and its management structure may comprise two bodies: the general meeting of founders and the Director, who holds representative and executive powers.

#### Comparison of an LLC with a JSC

1. Unlike a JSC, an LLC does not require a minimum authorised capital, whereas establishing a JSC necessitates a minimum capital of GEL 100 000.
2. Unlike a JSC, an LLC is not obligated to maintain a register of shares.
3. The management structure of an LLC can comprise only two entities: a general meeting of founders and individuals authorised to wield management and representative powers.

In terms of taxation and liability, there are no notable distinctions. However, regarding management, there are several requirements specific to JSCs, not applicable to LLCs. These include stipulations for establishing certain management bodies, protocols for the sale and transfer of shares in the company's authorised capital, the necessity of maintaining a shareholder register, among others.

Regarding shareholder or participant liability in commercial entities, there are no significant deviations. The overarching principle governing liability for both entity types remains consistent: the entity is accountable for its obligations using all its assets, while shareholders or participants are not personally liable for the entity's debts.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Always varying. For instance, if we're considering an LLC with just one employee and no operational profit yet, the primary expenditures, apart from office rent, would encompass accounting expenses (reporting and bank payments).

The cost of accounting services is determined by the volume of cash flow or material values, as well as the amount of accounting work, and the financial and economic activities of the enterprise.

Therefore, it is impossible to determine the average price at this stage. The average price for accounting services for a commercial structure, considering that the turnover of the commercial structure does not exceed GEL 1 million, will range from USD 500 to 1000.

The pricing policy is determined by the National Bank of Georgia. The established tariffs are as follows: individual client transfers - GEL 0.2 ; package transfers - GEL 0.2; individual transfer - GEL 0.1. See source: <https://nbg.gov.ge/en/page/working-hours-and-service-fees>.

According to our calculations based on publicly available sources, the average office rental rate is USD 50 per square metre per year. See the source: <https://www.myhome.ge/ka/>.

In major cities, depending on the location of commercial real estate, the rental price per square metre can range from USD 12 to USD 400 per year.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Payment of taxes on a monthly, quarterly, and annual basis, along with the submission of corresponding reports.

### 2.2 What tax and customs incentives are available in a country?

Various customs advantages are applicable to particular organisations based on their activity type and other factors. These benefits encompass special tax regimes (starting from 0%), a simplified taxation system, among others.

As an illustration, refer to the table on the taxation of enterprises with different tax statuses.

Status	Corporate Income Tax	VAT	Dividend Tac	Personal Income Tax	Pension Contributions	Property Tax
Regular enterprises	15%	18%	5%	20%	2% withholding + 2% payable by an employer	1%
Special trading company	0%	18%	5%	20%	4%	1%
Industrial enterprise zone	0%, 4% on revenue from product sales	0%	0%	20% employees income tax	4% employee personally contribute to pensions	0%
International companies	5%	0%	0%	5%	4%	0%

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

The financial reporting is regulated by the Law of Georgia on Accounting, Reporting, and Audit. The competent authority is the Service for Supervision of Accounting, Reporting, and Audit. Commercial Structures are required to submit financial statements to the Service by October 1 of each year following the reporting period, in the form prescribed by Georgian legislation.

### 2.4. What is the taxation of dividends for foreign investors?

The dividends at the source are subject to a tax rate of 5%.

## 2.5 What strategies exist for minimising tax liability when conducting international business?

Georgia has a double taxation avoidance agreement with various countries.

The complete and updatable list of countries that have a double taxation avoidance agreement with Georgia is published on the website of the Ministry of Finance of Georgia: <https://www.mof.ge/en/5128>.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

In Georgia, the Law of Georgia on Personal Data Protection primarily regulates data protection and privacy. Here are the key provisions and their effects on business operations:

Consent: Before collecting, processing, or transferring personal data, companies are required to obtain consent from individuals. This impacts marketing strategies, customer relationship management, and data sharing practices.

Data Security: Companies must adopt adequate technical and organisational safeguards to protect personal data against unauthorised access, disclosure, alteration, or destruction. This influences IT infrastructure, cybersecurity measures, and data management policies.

Data Transfers: Transferring personal data outside of Georgia is permitted only to countries that provide sufficient data protection. If the protection is inadequate, additional measures such as standard contractual clauses or binding corporate rules might be necessary. This is particularly relevant for multinational corporations engaged in cross-border operations or data processing.

Data Subject Rights: Individuals have rights to access, correct, delete, or limit the processing of their personal data. Companies need to develop procedures to support these rights, affecting customer services, internal operations, and compliance initiatives.

Data Processing Limitations: Personal data must be processed in a lawful, fair, and transparent manner and only for specified, legitimate purposes. Companies must review and adjust their data handling practices to adhere to these standards.

Adhering to these data protection and privacy standards in Georgia is crucial for companies to reduce legal risks, maintain consumer trust, and preserve their reputation. Non-compliance can lead to severe fines and damage to the company's reputation, thus prioritising data protection in business practices is essential.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

There are no special restrictions for hiring local employees. When hiring foreign nationals, the company shall ensure compliance with Georgian immigration law regarding work permits and residency permits. Different rules may apply depending on the nationality of the employee and the duration and nature of their employment.

In accordance with the Law of Georgia on the Legal Status of Foreigners and Stateless Persons, a work permit is issued to a foreigner engaged in labour or entrepreneurial activities in the territory of Georgia. Such an applicant must provide the Public Service Hall with information about their monthly income from entrepreneurial or labour activities in Georgia. This income cannot be less than five times the average subsistence minimum established

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in Georgia. The average subsistence minimum in Georgia is GEL 249.7.

### **3.3 What are the requirements for currency regulation and currency control?**

There are no established currency control limits. The Lari is the only currency permitted for transactions within Georgia, except in free industrial zones, duty-free shops, and cases specified by the National Bank of Georgia.

The bank is required to request additional copies of documents confirming the basis of the transfer from the paying economic entity if the amount of the transfer, expressed in foreign currency, exceeds:

1. the equivalent of GEL 100 000 and the transfer is made by a client classified as high risk, or the transaction is related to a high-risk jurisdiction or offshore zone;
2. the equivalent of GEL 150 000 and the transfer is made by a client classified as medium risk.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

When strategizing mergers, acquisitions, and company restructuring in Georgia, it's imperative to take into account several key aspects of corporate law:

Evaluation of Company Structure: Crucial to this process is a thorough assessment of the current corporate frameworks of both the acquiring and target companies. Understanding the various legal entities recognized in Georgia, such as limited liability companies, joint-stock companies, and partnerships, is instrumental in determining the most appropriate course of action for the transaction.

Conducting Due Diligence: Undertaking exhaustive due diligence is paramount to uncover any potential legal, financial, or regulatory obstacles that could impact the transaction. This involves scrutinising corporate governance documentation, financial records, contractual agreements, intellectual property rights, and adherence to local regulations.

Acknowledgment of Shareholder Rights: Throughout the transactional journey, it's essential to recognize and uphold the rights and interests of shareholders.

Navigating Regulatory Approvals: Depending on the scale and nature of the transaction, securing approvals from regulatory bodies such as the Georgian National Competition Agency may be necessary.

Understanding Tax Implications: A thorough comprehension of the tax ramifications associated with mergers, acquisitions, and restructuring endeavours is indispensable for effective tax planning.

By carefully considering these facets of corporate law and seeking expert legal counsel, parties can successfully navigate mergers, acquisitions, and company restructuring initiatives in Georgia while ensuring compliance with relevant regulations.

### **3.5 What are the most efficient mechanics for disputes resolution?**

In Georgia, the most efficient mechanics for dispute resolution typically involve a combination of legal processes and alternative dispute resolution methods. Here are some of the key options:

Litigation: This involves taking the dispute to court. Georgian courts have specialised chambers for commercial disputes, which can expedite the process. However, litigation can be time-consuming and costly.

Arbitration: Arbitration offers a private, out-of-court process for resolving disputes. Parties agree to submit their dispute to an arbitrator or panel of arbitrators, whose decision is binding. The advantage of arbitration is flexibility in procedure and confidentiality.

Mediation: Mediation involves a neutral third party helping parties reach a mutually acceptable resolution. While the mediator facilitates discussions, the parties themselves retain control over the outcome. Mediation can be particularly useful for preserving relationships and is less adversarial than litigation.



# KAZAKHSTAN



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The most popular forms of presence in the common jurisdiction of the Republic of Kazakhstan (the "RoK") are the establishment of a branch or the establishment of a subsidiary in the form of LLP (Limited Liability Partnership) and JSC (Joint Stock Company).

In the jurisdiction of the Astana International Financial Centre ("AIFC"), a branch (so-called "recognised company") may be registered or a subsidiary company (usually in the form of a Private company) (the "PC" or the "Company") may be established.

The main advantages and limitations of these forms:

Form	Advantages	Limitations
LLP	<ul style="list-style-type: none"> <li>Limited liability of participants within the limits of their contribution to the charter capital;</li> <li>The minimum authorised capital requirements are approximately USD 835 (in practice, USD 1 for small businesses);</li> <li>Simple corporate governance and general requirements;</li> <li>LLP is a simpler and more tried and tested form.</li> </ul>	<ul style="list-style-type: none"> <li>It is necessary to comply with the pre-emption rights of other participants in order to sell the participatory interests;</li> <li>Change in the composition of participants requires re-registration (about 3-5 working days);</li> <li>Corporate agreements and options in respect of LLP participatory interests may not work (except for LLPs within venture capital financing);</li> <li>All participatory interests give the same rights (no class division).</li> </ul>
JSC	<ul style="list-style-type: none"> <li>Limited liability of shareholders within the limits of the shares' value;</li> <li>Different classes of shares with different rights, including preference shares, are allowed;</li> <li>Enhanced opportunities in terms of corporate governance, shareholder agreements, options, etc.;</li> <li>IPO opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>The share capital shall not be less than KZT 184,600,000 in 2024 (approximately USD 410,000);</li> <li>The registration procedure is more complex;</li> <li>New shares issue requires registration with a state authority;</li> <li>More complex structure of management bodies and procedures for their meetings and decision making;</li> <li>Higher standards of reporting and disclosure of certain transactions, affiliates, directors.</li> </ul>
PC	<ul style="list-style-type: none"> <li>Limited liability of the shareholder to the extent of the unpaid amount on shares held by the shareholder;</li> <li>Different classes of shares with different rights are allowed, including preferred shares;</li> </ul>	<ul style="list-style-type: none"> <li>The shares of a Private Company can not be publicly traded;</li> <li>In contrast to JSCs and LLPs, the activities of a Private Company are less regulated, so management and other key issues of its activities should be prescribed in the articles of association;</li> </ul>

	<ul style="list-style-type: none"> <li>No minimum share capital requirements and share capital can be determined in USD (in practice, the share capital shall not be less than USD 1);</li> <li>Flexible corporate governance due to the fact that the acts of AIFC do not establish a clear procedure for the work of corporate bodies, as well as their competence;</li> <li>Possibility of redomiciliation of foreign companies to the AIFC in the form of a Company without the need to create a new company;</li> <li>Possibility for LLPs to merge with a PC;</li> <li>Use of legal mechanisms available in the AIFC: trust, shareholders' agreement, put and call options, and other legal concepts of the common law;</li> <li>Special tax (applicable only to financial organizations), currency and visa regimes, as well as favourable conditions for attracting foreign workforce.</li> </ul>	<ul style="list-style-type: none"> <li>Due to the fact that the AIFC commenced its activities relatively recently, many legal issues have not been tested in practice;</li> <li>The registration of a PC by the AIFC Registrar is subject to a thorough KYC procedure and in case of any involvement in its ownership/management structure of sanctioned persons, persons from sanctioned jurisdictions or persons carrying out activities under sanctions or at risk of sanctions, the Registrar may refuse to register the PC;</li> <li>The location of the PC is limited to the AIFC territory.</li> </ul>
Branch in the RoK	<ul style="list-style-type: none"> <li>Exercise all or part of the functions of the head company, including representation functions: the right to enter into contracts and other transactions on behalf of the head company, represent its interests in court and other governmental and non-governmental authorities, negotiate with potential clients;</li> <li>Developed branch network allows to increase income, increases product recognition.</li> </ul>	<ul style="list-style-type: none"> <li>The head company is liable for the obligations of the branch with all its property.</li> </ul>
Representative office in the RoK	<ul style="list-style-type: none"> <li>Expanding the range of clients of the head company;</li> <li>Assistance in finding and consulting partners for joint projects.</li> </ul>	<ul style="list-style-type: none"> <li>Authorised solely to represent and protect the interests of the head company. Not entitled to engage in operations or other commercial activities;</li> <li>Head company is liable for the obligations of the representative office with all its property.</li> </ul>
Branch/representative office in the AIFC	<ul style="list-style-type: none"> <li>Favourable visa regime for foreign employees of the Branch/Representative Office and simplified visa application procedure (visa is issued for up to 5 years).</li> </ul>	<ul style="list-style-type: none"> <li>The Branch/Representative office is registered as a Recognised company in the AIFC;</li> <li>Ability to apply for only those regulated activities for which the head company has obtained a licence in its country;</li> <li>Location of Branch/Representative office limited to the territory of AIFC.</li> </ul>

## 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The table below summarises the required documents, steps and timelines for the process of establishing the forms of legal entities, branches and representative offices set out in paragraph 1.1 of this Brochure.

Form	Documents/information that the founders needs to collect/prepare first:	Further required:	The process of establishment:
LLP	<ul style="list-style-type: none"> <li>Copy of a legalised/appostilled extract from the trade register or passport (if the founder is a foreign);</li> <li>Individual Identification Number (IIN) for the first head (if he/she is non-resident);</li> <li>C5 visa (for foreign founders) or temporary residence permit (for founders who are citizens of EAEU countries).</li> </ul>	<ul style="list-style-type: none"> <li>Resolution on the LLP establishment;</li> <li>Charter;</li> <li>Founding agreement (if necessary);</li> <li>Power of attorney for a representative;</li> <li>Document confirming payment of the state fee (KZT 9,885.38 or approximately USD 22.3 for large enterprises, KZT 0 for medium and small enterprises).</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 1.</b> Provision by the LLP founders of documents and information required for LLP registration and preparation of the draft documents;</li> <li><b>Step 2.</b> Preparation of the draft documents for the establishment and registration of the LLP (resolution, charter, founding agreement, if applicable, power of attorney for a representative);</li> <li><b>Step 3.</b> Payment of the state fee (if applicable), preparation of the application for LLP registration and a set of required documents;</li> <li><b>Step 4.</b> Submission of documents for LLP registration; the term of application reviewed by the authorised body - up to 3 business days;</li> <li><b>Step 5.</b> Obtaining a certificate of state registration of the LLP;</li> <li><b>Step 6.</b> Production of the LLP seal (if applicable) Production of the LLP seal (if applicable) -- 1-2 business days (if applicable).</li> </ul>
JSC	<ul style="list-style-type: none"> <li>Copy of a legalised/appostilled extract from the trade register or passport (if the founder is a foreign person);</li> <li>Individual Identification Number (IIN) for the first head (if he/she is non-resident);</li> <li>C5 visa (for foreign founders) or temporary residence permit (for founders who are citizens of EAEU countries).</li> </ul>	<ul style="list-style-type: none"> <li>Charter;</li> <li>Minutes of the founding meeting or resolution of the sole participant;</li> <li>Power of attorney for a representative;</li> <li>Document confirming payment of the state fee (KZT 9,885.38 or USD 22.3 for large enterprises, KZT 0 for medium and small enterprises).</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 1.</b> Provision by the JSC founders of documents and information required for JSC registration and preparation of the draft documents;</li> <li><b>Step 2.</b> Preparation of the draft documents for JSC establishment and registration (Minutes or resolution, charter, founding agreement, if applicable, power of attorney for a representative);</li> <li><b>Step 3.</b> Payment of the state fee (if applicable), preparation of the application for JSC registration and a set of required documents;</li> <li><b>Step 4.</b> Submission of documents for JSC registration; the term of application reviewed by the authorised body - up to 3 business days;</li> <li><b>Step 5.</b> Obtaining a certificate of state registration of the JSC - immediately after issuance;</li> <li><b>Step 6.</b> Production of the JSC seal - 1-2 business days (if applicable).</li> </ul>
PC	<ul style="list-style-type: none"> <li>Ownership structure of the PC up to the final beneficiaries;</li> </ul>	<ul style="list-style-type: none"> <li>Articles of Association;</li> <li>Shareholder agreement (if necessary);</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 1.</b> Provision by the founders of the PC of documents and information required for registration of the PC and preparation of draft documents;</li> </ul>

	<ul style="list-style-type: none"> <li>Identification documents of the founders (if they are natural persons), appointed directors, secretaries (if applicable);</li> <li>Documents confirming the state registration of the founder (if the founder is a legal entity);</li> <li>Individual Identification Number (IIN) for chief executive officer (if he/she is non-resident).</li> </ul>	<ul style="list-style-type: none"> <li>Power of attorney for a representative;</li> <li>Choosing the name of the PC to be established;</li> <li>Signing a lease agreement / obtaining a letter of guarantee from the lessor;</li> <li>Filling in the necessary questionnaires / applications for PC registration;</li> <li>Payment of the registration fee (for online filing - USD 300, for paper filing - USD 500).</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 2.</b> Preparation of the draft documents for the establishment and registration of a Private Company (resolution, Articles of Association, power of attorney for representatives);</li> <li><b>Step 3.</b> Preparation of application for registration of a Private Company, KYC procedure for founders and officials of the Private Company;</li> <li><b>Step 4.</b> Payment of the registration fee for the registration of a Private Company;</li> <li><b>Step 5.</b> Submission of application and relevant documents for PC registration;</li> <li><b>Step 6.</b> Review of the application for PC registration by the Registrar of companies - from 2 weeks and more;</li> <li><b>Step 7.</b> Registration of the PC and obtaining a certificate of incorporation;</li> <li><b>Step 8.</b> Production of the PC seal - 1-2 business days (if applicable).</li> </ul>
Branch in the RoK	<ul style="list-style-type: none"> <li>Copy of the legalised/appostilled extract from the trade register of the head company (if the head company is a foreign entity);</li> <li>Resolution of the head company on the establishment of the Branch;</li> <li>Copy of the constituent documents of the head company (e.g. articles of association);</li> <li>Individual Identification Number (IIN) for the head of the Branch (if he/she is non-resident).</li> </ul>	<ul style="list-style-type: none"> <li>Branch Regulations;</li> <li>Power of attorney for a representative;</li> <li>Document confirming payment of the state fee - KZT 9,885.38 or approximately USD 22.3;</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 1.</b> Provision of documents and information by the head company required for the registration of the Branch and preparation of the draft documents;</li> <li><b>Step 2.</b> Preparation of the draft documents for the establishment and registration of the Branch (resolution, Branch Regulations, power of attorney for a representative);</li> <li><b>Step 3.</b> Payment of the state fee (if applicable), preparation of the application for registration of the Branch and a set of required documents;</li> <li><b>Step 4.</b> Submission of documents for registration of the Branch; the term of consideration of the application by the authorised body - up to 3 business days;</li> <li><b>Step 5.</b> Obtaining a certificate of registration of the Branch - immediately after issuance;</li> <li><b>Step 6.</b> Production of the Branch's seal - 1-2 business days (if applicable).</li> </ul>
Representative office in the RoK	<ul style="list-style-type: none"> <li>Copy of the legalised/appostilled extract from the trade register of the head company;</li> <li>Resolution of the legal entity on the establishment of the Representative office;</li> <li>Copy of the constituent documents (e.g. articles of association, charter);</li> </ul>	<ul style="list-style-type: none"> <li>Representative office Regulations;</li> <li>Power of attorney for a representative;</li> <li>Document confirming payment of the state fee - KZT 9,885.38 or approximately USD 22.3.</li> </ul>	<ul style="list-style-type: none"> <li><b>Step 1.</b> Provision of documents and information by the head company required for the registration of the Representative office and preparation of the draft documents;</li> <li><b>Step 2.</b> Preparation of the draft documents for the establishment and registration of the Representative office (resolution, Representative office Regulations, power of attorney for a representative);</li> <li><b>Step 3.</b> Payment of the state fee (if applicable), preparation of the application for registration of the Representative office and a set of required documents - 2 business days;</li> </ul>

	<ul style="list-style-type: none"> <li>Individual Identification Number (IIN) for the head of the Representative office (if he/she is non-resident).</li> </ul>		<ul style="list-style-type: none"> <li><b>Step 4.</b> Submission of documents for registration of the Representative office; the term of consideration of the application by the authorised body - up to 3 business days;</li> <li><b>Step 5.</b> Obtaining a certificate of registration of the Representative office - immediately after issuance;</li> <li><b>Step 6.</b> Production of the Representative office's seal - 1-2 business days (if applicable).</li> </ul>
Branch/ Representative office in the AIFC	<ul style="list-style-type: none"> <li>Certificate of incorporation or a document of a similar nature of the head company;</li> <li>Current Articles of Association of the head company;</li> <li>Financial statements for the last year;</li> <li>Certificate of good standing.</li> </ul>		<ul style="list-style-type: none"> <li><b>Step 1.</b> Submission by the legal entity of the documents and information required by the Registrar of companies to carry out the initial assessment of the compliance of its registration as a Recognised company;</li> <li><b>Step 2.</b> Initial assessment by the Registrar of companies of suitability for registration as a Recognised company;</li> <li><b>Step 3.</b> Prepare an application for registration of the legal entity as a Recognised company;</li> <li><b>Step 4.</b> Payment of the registration fee - USD 300 for online application or USD 500 - for paper application;</li> <li><b>Step 5.</b> Submission of documents for registration of the legal entity as a Recognised company;</li> <li><b>Step 6.</b> Registration of the legal entity as a Recognised Company;</li> <li><b>Step 7.</b> Production of the Recognised company's seal - 1-2 business days (if applicable).</li> </ul>

#### LLP charter capital.

The initial charter capital of an LLP must not be less than 100 monthly calculation indices (in 2024 - KZT 369,200 or approximately USD 835). Small businesses (enterprises with an average annual number of employees not exceeding 100 and annual income not exceeding 300,000 monthly calculation indices) are not subject to the minimum charter capital requirement.

All participants must make a full contribution to the authorised capital of an LLP within the term established by a resolution of the general meeting of LLP participants, but such term must not exceed one year from the date of state registration of the LLP.

#### JSC share capital.

A JSC must have a share capital of at least 50 000 monthly calculation indices (in 2024 - KZT 185 400 000 or approximately USD 419 545).

The amount of pre-payment for shares contributed by the JSC's founders must not be less than the minimum amount of the JSC's share capital and must be fully paid by the founders within 30 days from the date of the JSC's state registration.

#### Share capital of a PC.

There are no minimum share capital requirements for a PC. However, due to the technical requirements of the legal entity registration database, the share capital should not be less than USD 1/KZT 1.

The AIFC Acts do not provide requirements for the period of formation of the share capital of a PC by its shareholders.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

#### RoK

In Kazakhstan, a licence is required for certain types of activities or actions (operations) in the following areas: construction, subsoil use, agriculture, health care, industry and others established by Article 28.1 of the Law on Permits and Notifications.

Pursuant to Article 1.8 of the Law on Permits and Notifications, a licensee may be a natural person or a legal entity, as well as a branch of a foreign legal entity which provides financial services.

#### AIFC

Legal entities registered in the AIFC, as well as branches/representative offices of foreign legal entities in AIFC, established in the form of a Recognised company, may carry out certain types of activities with relevant licences. Thus, AIFC acts establish a list of financial, market and ancillary services requiring relevant licences.

Moreover, a branch/representative office of a foreign company registered in the AIFC as a Recognised company may apply for a licence only for the type of regulated activity for which the foreign legal entity (head company) has already obtained a licence from the regulatory authority of its country.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

The most popular organisational forms of legal entities in Kazakhstan are LLPs and JSCs. In the AIFC, the most popular organisational form is a Private Company. The main features and distinctions between them are presented in the table below. With respect to taxation, it is generally applied to these forms in a similar manner, except for PCs, which are subject to the tax preferences set out in paragraph 2.2 of this Brochure.

Form	Question	Answer
LLP		LLP is a legal entity whose charter capital is divided into participatory interests of its participants, the proportion of which is indicated in the LLP's constituent documents (charter and, if applicable, foundation agreement) and which cannot be divided into units (shares, securities etc.).
	1.4.1. What are the shareholder structures of these types of legal entities?	LLP is managed by the General Meeting of Participants or Sole Participant - supreme body which basically has the authority to make decisions on any issue concerning the LLP's activity.
	1.4.2. What is the Shareholders' responsibility in these types of legal entities?	LLP's participants are not liable for the LLP's obligations and they bear the risk of losses associated with the LLP's activities within the limits of the value of their contributions into the charter capital. The LLP participant who has not fully contributed to the LLP's charter capital is jointly and severally liable for the LLP's obligations within the value of the unpaid part of the contribution.
	1.4.3. What is the responsibility of the representatives in these types of legal entities?	Management Board or Sole Director - executive body which performs operational management of the LLP. The Head of the Management Board or Sole Director is entitled to act on behalf of the LLP. Members of the executive body of the LLP may be held liable at the request of any of the LLP participants for losses caused by them to the LLP. They are jointly and severally liable for losses caused by their joint improper management of the LLP. Members of the executive body of the LLP may be jointly and severally liable to third parties for losses incurred by such persons as a result of insolvency (bankruptcy) of the LLP caused by improper management of the LLP by members of the executive body of the LLP.

<b>JSC</b>	JSC is a legal entity which issues shares for the purposes of raising funds for the performance of its activities.	
	1.4.1.What are the shareholder structures of these types of legal entities?	JSC is managed by the General Meeting of Shareholders or Sole Shareholder – the supreme body which basically has the authority to make decisions on any issue concerning the JSC’s activity.
	1.4.2.What is the Shareholders’ responsibility in these types of legal entities?	The JSC’s shareholders are not liable for the JSC’s obligations and bear the risk of losses associated with the JSC’s business within the limits of value of the shares they hold.
	1.4.3.What is the responsibility of the representatives in these types of legal entities?	Board of Directors – management body which conducts general management of the JSC’s activity, with the exception of resolving issues referred to the exclusive competence of General Meeting of Shareholders, while the Executive Management Board or Sole Director is the executive body which performs operational management of the JSC.  According to Article 63.1 of the Law on JSCs, officials of JSC are liable, as established by the RoK legislation, to the company and shareholders for damage caused by their actions and (or) omissions, and for losses incurred by JSC, including, but not limited to, losses incurred as a result of:  1) provision of misleading or knowingly false information; 2) violation of the procedure for providing information; 3) proposals to conclude and (or) decision-making on conclusion of major transactions and (or) related-party transactions, which resulted in losses incurred by JSC as a result of their unfair acts and (or) omissions, including for the purpose of obtaining profit (income) by them or their affiliates as a result of conclusion of such transactions with JSC.
<b>PC</b>	A PC is a legal entity in which the shareholder’s liability is limited to the amount (if any) that remains unpaid on the shares held by the shareholder.	
	1.4.1.What are the shareholder structures of these types of legal entities?	A PC must have at least 1 shareholder. Decisions on issues within the competence of shareholders are made by the General Meeting of Shareholders or the Sole Shareholder.
	1.4.2.What is the Shareholders’ responsibility in these types of legal entities?	In a PC, a shareholder’s liability is limited to the amount (if any) that remains unpaid on the shares held by the shareholder.
	1.4.3.What is the responsibility of the representatives in these types of legal entities?	The activity of the PC is managed by the Directors or another individual appointed by the Directors or Shareholders as Chief Executive Officer (CEO). A PC must have at least 1 Director.  In practice, the Directors usually undertake the overall management of the Company’s activity, while the CEO has the broadest powers to act on behalf of the Company within the limits set out in the Articles of Association and the AIFC Acts.  The AIFC Acts provide for the key duties of the Directors, failure to fulfil which will result in the Directors being deemed to be in breach of the AIFC Companies Regulations.  In case the duties provided in the AIFC Acts have been breached by a Director intentionally, recklessly or negligently and the Company has suffered loss or damage as a result of such breach, the AIFC Court, on application by the Company or the Registrar of companies, can make an order for the recovery of damages, compensation or restitution of property or any other order the AIFC Court considers appropriate, unless liability for loss or damage is excluded under applicable AIFC law.

#### 1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

##### Non-profit organisations

There are the following forms of non-profit organisation that may be established by foreign legal entities:

- Non-Profit Joint-Stock Company;
- Private Institution;
- Corporate Foundation;
- Association.

Their main characteristic is raising funds for a purpose beneficial to either their members or a public cause.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

#### In RoK:

- LLP re-registration fee (upon decrease of charter capital, change of name, or change in composition of participants)– KZT 10,009.51 or approximately USD 22.6;
- Lease of office (rates vary depending on lessor);
- Reporting expenses (to statistics, tax and other relevant authorities);
- Taxes and mandatory insurance, pension and social security contributions;
- Insurance costs (rates vary depending on insurance provider);
- Salary and wage (minimum salary in 2024 is KZT 85,000 or approximately USD 192).

#### In AIFC:

1. Post-registration fee (paid for changes to registered details of the Company, e.g., change of shareholders, directors, address) – from USD 50 (if application is submitted online)
2. Fee for submission of accounts for each financial year - USD 10 (accounts submitted if the annual turnover of the Company is more than USD 5 million and the articles of association do not provide otherwise);
3. Fee for submission of annual return - USD 10 (annual return is submitted if annual turnover exceeds USD 500 000 or there is on average not more than 20 shareholders during a year);
4. Fee for submission of annual confirmation statement - USD 10 (annual confirmation statement is submitted if the Company does not submit annual accounts as per the item above).

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Below are the main types of taxes and their standard rates. We note that there are approximately 53 bilateral agreements on avoidance of double taxation with various states.

#### Value-Added Tax (the “VAT”) at the 12% rate:

The obligation to register as VAT payer emerges if the sum of taxable turnover for VAT purposes exceeds the minimal threshold of approximately USD 164 000 in one calendar year.

#### Corporate Income Tax (the “CIT”) at the 20% rate:

CIT applies to Kazakhstani legal entities and non-residents, including those acting through permanent establishment in Kazakhstan.

#### Individual Income Tax (the “IIT”) at the 10% rate:

IIT applies to individuals having taxable objects in the form of income taxable at the source of payment or self-assessment.

### 2.2 What tax and customs incentives are available in a country?

#### CUSTOMS INCENTIVES.

Kazakhstan is a member of EAEU. EAEU provides freedom of movement of goods, services, capital and working capital, while customs duties do not apply within EAEU (i.e. Russia, Belorussia, Armenia, Kyrgyzstan, Kazakhstan).

## INVESTMENT PROJECTS.

There are investment preferences in Kazakhstan granted in the form of general and targeted tax preferences.

General preferences include governmental grants-in-kind and options to engage labour outside quotas and permits. They can be applied by any investor.

Targeted tax preferences are granted under investment contracts between investors and the Government of Kazakhstan, when implementing an investment project, an investment priority project or a special investment project in the form of:

1. CIT exemption;
2. land tax exemption;
3. property tax exemption;
4. exemption from VAT on import;
5. customs import duties exemption;
6. accelerated depreciation of fixed assets;
7. deferral of CIT and property tax payments;
8. as well as granting the right to stability of the tax regime applied to investment activities;
9. reduction in tax liabilities for 20% of incurred costs.

Depending on the type of an investment project being implemented, the set of tax incentives and duration of their application may vary in time. Investors can apply targeted tax preferences together with general preferences.

## SPECIAL ECONOMIC ZONES.

The tax code also provides for tax incentives for special economic zones (hereinafter – the 'SEZ'). There are 14 SEZ in Kazakhstan.

These zones are generally exempted from income tax, land tax, fee for land use, and property tax.

## ASTANA HUB INTERNATIONAL TECHNOLOGY PARK.

Astana Hub International Technological Park (hereinafter - 'Astana Hub') is an international information technology park.

ASTANA HUB offers the following benefits:

1. CIT exemption for Astana Hub members;
2. IIT exemption for Astana Hub members in respect of earned income of their employees;
3. social tax exemption for Astana Hub members in respect of the income of their Kazakh employees;
4. VAT exemption for Astana Hub members in respect of goods, works and services sold;
5. VAT exemption for Astana Hub members in respect of imports of certain goods;
6. exemption for Astana Hub members from VAT on behalf of a non-resident;
7. exemption of non-residents from CIT withheld at a source paid by Astana Hub members for consulting, marketing, engineering and other services;
8. exemption of residents and non-residents from CIT/CIT withheld at source in relation to income from value growth received by them on sale of participatory interests/shares in a member of the Astana Hub.

AIFC offers the following benefits:

1. CIT exemption for AIFC members in respect of certain financial services;
2. CIT exemption in respect of the income of foreign employees of AIFC members providing certain financial services;

3. exemption of AIFC members providing certain financial services from land tax on land plots located in the territory of AIFC;
4. exemption of AIFC members providing certain financial services from property tax in respect of the property located in the territory of AIFC;
5. VAT exemption for AIFC members providing certain financial services;
6. exemption of residents and non-residents from taxation of dividends and capital gains received thereby in respect of participatory interests/shares in an AIFC member;
7. exemption of residents and non-residents from taxation of dividends, remuneration, and capital gains received thereby in respect of AIX-listed securities.

## 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

### RoK REQUIREMENTS:

Under the general rule, legal entities, branches, representative offices (including branches and representative offices of foreign legal entities) (the "Organizations") must submit annual financial statements to the following authorities no later than April 30 of the year following the reporting period (that is, calendar year from January 1 to December 31):

- competent authority in the field of state statistics at the place of state registration;
- authorities of state control and supervision of RoK in accordance with their competence.

The management of the Organization facilitates organisation of accounting, including internal documents regulating the process of reflecting all transactions performed by the Organization.

### AIFC REQUIREMENTS:

AIFC Company must submit the following reports to the AIFC:

- annual accounts, if the Company's annual turnover is more than USD 5 million:  
annual accounts must be prepared, approved by directors, audited, and provided to shareholders with an auditor's report within 6 months from the end of each financial year of the Company. Within 14 days from the date of provision of accounts to shareholders a copy of the accounts with the auditor's report must be provided to the AIFC Registrar.
- annual returns (including, among other things, financial statements for last financial year) - if the Company's annual turnover exceeds USD 500 000 or there is on average not more than 20 shareholders during a year:  
annual returns are submitted to the AIFC within 6 months from the end of financial year or other date acceptable to the AIFC Registrar.
- annual confirmation statement (if the Company does not submit annual accounts as per the item above).

## 2.4. What is the taxation of dividends for foreign investors?

### Taxation in Kazakhstan:

The dividends of foreign investors are taxed by withholding tax at the 15% rate ("WHT").

Dividends on securities which as of the date of their payment are in the official lists of securities exchange functioning on the territory of RoK, are exempt from WHT on the condition that such securities



were traded on the securities exchange during the tax period in accordance with the criteria specified by the RoK Government (articles 241.2.3), 645.9.3) and 654.3) of the Tax Code).

### Taxation in AIFC:

In AIFC foreign investors are exempt from CIT/IIT on dividends:

- received in respect of participatory interests/shares in an AIFC member;
- received in respect of securities listed at a securities exchange as of the date of dividend payment, provided such securities were traded on the securities exchange in accordance with the criteria specified by the joint order of AIFC, the central authorised body for state planning and the state body in charge of ensuring tax receipts and other mandatory payments to the budget.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

The primary requirements include:

- obligatory obtaining the consent of the personal data subject (i.e., a person, whom they relate to) or his/her legal representative for the collection and processing of the personal data, except as otherwise provided by law;
- obligatory storage of all personal data collected or to be collected in Kazakhstan in a database located on the territory of the Republic of Kazakhstan;
- obligatory ensuring the personal data protection by applying a set of legal, organisational and technical measures, as well as complying with all requirements provided for by the legislation on personal data and protection thereof;
- compliance with the rights and freedoms of personal data subjects, as well as other requirements provided for by the legislation on personal data and protection thereof.

Secondary requirements specified by the law are requirements for the accumulation, change, supplement, use, distribution, depersonalisation, blocking and destruction of personal data, as well as for the cross-border transfer of personal data to the territory of foreign states.

Violation of the above requirements entails administrative and criminal liability as provided by the legislation of the Republic of Kazakhstan.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

Hiring procedure involves an order issued by the employer. Upon issue of the order, the employer shall ensure the registration of the employee's employment agreement in the Unified Employment Contracts Accounting System. In the future, the specified system should also reflect information on the transfer of the employee to another job, as well as on the termination of the employment agreement.

For foreign employees, a work permit and work visa shall be first obtained (before entering into the employment agreement). The procedure and timing for obtaining a work permit is approximately 1.5 months. The issue and (or) extension of work permits depends on the competence, qualifications and positions (managerial or not) of foreign personnel, as well as on the ratio of foreign and Kazakh personnel in the company. The legislation provides some exceptions when such a ratio is not required.

The main condition for granting a work permit is the compliance of the qualifications of a foreign employee with the requirements established by the legislation of the Republic of Kazakhstan (required experience, appropriate education certificates).

The term of work permits varies from 1 to 3 years, which can be further extended.

A number of categories of foreign citizens can engage in labour activities in the Republic of Kazakhstan without a work permit, including:

- employed by AIFC members;
- citizens of the states that are parties to the Treaty on the Eurasian Economic Union;
- chief executive officers (deputies) of Kazakh legal entities with 100% foreign participation in their charter capital;
- those, who are in a business trip for business purposes, the period of which does not exceed a total of 120 calendar days within one calendar year;
- chief executive officers of organisations that concluded investment contracts for investments over USD 50 million with the Government of the Republic of Kazakhstan and directors of Kazakh legal entities engaged in investing in priority activities and that have signed the contract with the competent investment authority.

### 3.3 What are the requirements for currency regulation and currency control?

	RoK requirements	AIFC requirements
<b>Currency of transactions</b>	<ul style="list-style-type: none"> <li>• Currency transactions between residents on the territory of RoK are prohibited (with certain exceptions).</li> <li>• Currency transactions between residents and non-residents are made in national and/or foreign currency.</li> </ul>	<ul style="list-style-type: none"> <li>• Transactions between AIFC participants are made in national or foreign currency.</li> <li>• Transactions between AIFC participants and RoK residents that are not AIFC participants are made in national currency (with certain exceptions).</li> <li>• Transactions between AIFC participants (except for AIFC banks) and non-residents are made in any currency chosen by the parties in accordance with requirements of AIFC and/or RoK law.</li> </ul>
<b>Notification on bank accounts</b>	RoK residents must notify the RoK National Bank on opening bank accounts in foreign banks.	AIFC acts do not provide a requirement for AIFC participants to notify AIFC of opening bank accounts in foreign banks.
<b>Currency control</b>	RoK residents must register certain currency transactions in the RoK National Bank with non-residents, if the payment under such transaction exceeds USD 500 000.	AIFC participants provide information on contracts on the basis or for the performance of which capital movement transitions for the sum equal or equivalent to USD 500 000 are made to AFSA. In contrast to the procedure used in the general jurisdiction of RoK, such transactions in the AIFC do not require the AIFC participants to apply to the National Bank for registration of currency contracts.

### 3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?

	LLP	JSC	AIFC Company
<b>Pre-emption right to purchase</b>	LLP participants have the pre-emption right to purchase participating interest in LLP upon its sale by any participant (under the general rule).	JSC shareholders have the pre-emption right to purchase shares or securities convertible to shares upon their allotment by the JSC (under the general rule).	Company shareholders have the pre-emption right to purchase shares or securities convertible to shares allotted by the Company (under the general rule).

<b>Minority shareholders' sell-out rights</b>	<p>With respect to LLPs there is no direct provision providing LLP's minority participants with the right to demand buy-out of their participating interests by the purchaser.</p> <p>However, there is a provision in accordance with which in the event when a person themselves or together with its affiliates intends to acquire no less than 50% of participating interests in the charter capital of the LLP, the person must notify all LLP participants of such intention, while the participants may respond to such notification within a set timeframe.</p> <p>However, this provision does not specify whether such notification is an offer to sell participating interests and whether it creates the participants' right to demand buy-out of their participating interests.</p>	<p>If a person individually or together with its affiliates acquires no less than 30% voting shares in JSC, such person must make an offer to the remaining JSC shareholders to sell their voting shares.</p>	<p>If a person acquires no less than 90% of the value of all shares in a Company (or value of all shares of a particular class) as a result of a takeover offer, such person must offer the remaining shareholders who did not accept the takeover offer to sell their shares.</p>
<b>Majority shareholders' squeeze-out rights</b>	<p>The RoK legislation does not provide for the right of the purchaser of controlling participating interest in the LLP's charter capital to squeeze out minority participants.</p> <p>That said, a participant's compulsory sale of interest is possible through a judicial procedure if the participant caused substantial damage to the LLP.</p>	<p>If a person individually or together with its affiliates acquires no less than 95% voting shares in JSC on the secondary market, such person may demand that the remaining JSC shareholders sell their voting shares to it.</p>	<p>If a person acquires no less than 90% of the value of all shares in a Company (or value of all shares of a particular class) as a result of a takeover offer, such person may demand that the remaining shareholders sell their shares to it.</p>
<b>Prohibition of 1-1-1 structure</b>	<p>An LLP may not have another business partnership consisting of one person as its sole participant.</p>	<p>The prohibition of 1-1-1 structure does not apply to JSCs.</p>	<p>The prohibition of 1-1-1 structure does not apply to Companies.</p> <p>That said, in AIFC a legal entity may not be a shareholder of its holding company.</p>
<b>Consent/notification of the antimonopoly authority</b>	<p>In certain cases, classified as "economic concentration", consent or notification of the antitrust authority is required.</p> <p>For example, if a person acquires more than 50% voting shares in another legal entity and had not had 50% or lesser percentage of voting shares in the latter before, the acquirer must obtain the consent for economic concentration, if:</p> <ul style="list-style-type: none"> <li>the total book value of assets of the target company and the group of entities of the acquirer exceeds 10 million monthly indicated indices as of the date of filing the application for consent (KZT 36 920 000 000 or approximately USD 82 million in 2024); or</li> <li>the total turnover of the target company and the group of entities of the acquirer for the last financial year exceeds 10 million monthly indicated indices.</li> </ul> <p>That said, legislation entails certain nuances in determining the need to notify/obtain consent of the antitrust authority, and in this regard each case requires individual approach.</p>		
<b>Other consents of competent authorities</b>	<p>Consents of competent authorities may be required for transactions with shares/participating interests in companies conducting activities in industries of special significance.</p> <p>In the financial sphere, depending on the type of company, sale of shares in the company may require consent of the competent authority for acquisition of the status of major shareholder of a bank/bank holding, major shareholder of an insurance (reinsurance) organisation/insurance holding, major shareholder of an investment portfolio manager.</p>		

	<p>In the field of subsoil use, the consent of competent authority may be required for transfer of shares or other forms of participation in subsoil use. In case of acquisition of shares/participating interests in a company that has subsoil use rights in relation to subsoil plots, deposits having strategic importance, the state's waiver of its priority right to acquire shares/participating interests in such a company is required.</p> <p>For strategic facilities (for example, backbone railway networks, main pipelines, national electric networks, trunk lines, objects of television and radio broadcasting, oil-refineries, energy producing facilities with a capacity exceeding 50 megawatts, international airports, etc.) require consent of the RoK Government for encumbrance of strategic facilities or their alienation, and observance of the priority right to purchase the strategic facility at its market price.</p>
<b>Limitations on foreign participation</b>	<p>RoK legislation establishes limitations on foreign participation in key sectors of the economy.</p> <p>Such limitations are substantiated by the need to observe the interests of national security, balance of economic interests and economic stability, for example, in the banking system.</p>

### 3.5 What are the most efficient mechanics for dispute resolution?

The main fora of dispute resolution include local courts, AIFC Court and International Arbitration Center of AIFC (the "IAC").

In practice investors note the high qualification of AIFC Court.

#### AIFC Court.

AIFC Court is independent in its activity and is not part of the RoK judicial system.

In adjudicating disputes, AIFC Court is bound by the acting law of the AIFC, and may take into account final judgments of the AIFC Court in related matters and final judgments of courts of other common law jurisdictions.

AIFC Court does not have jurisdiction in relation to any disputes that are of a criminal or administrative nature, and have exclusive jurisdiction in relation to:

- 1.any disputes arising between the AIFC Participants, AIFC bodies, and/or their foreign employees;
- 2.any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC;
- 3.any disputes transferred to the AIFC Court by agreement of the parties; and
- 4.the interpretation of AIFC Acts.

AIFC Court decisions are enforced in the RoK under the same procedure and on the same terms as the decisions of RoK courts.

#### IAC.

IAC considers disputes referred to IAC arbitration by the parties' arbitration agreement.

Arbitration tribunal resolves the merits of the dispute in accordance with the provisions of the law chosen as the law applicable to the substance of the dispute, and in the absence of any such choice of applicable law, applies the law that it considers most appropriate with regard to the circumstances of the case and the overriding objective.

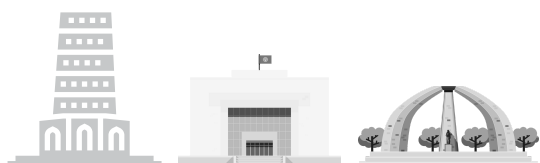
The party that wishes to have IAC arbitration tribunal's award enforced in RoK must apply to AIFC Court for an order on enforcement of the arbitral award.

# KYRGYZSTAN

**Elvira  
Maratova**  
Partner



**Taalaipek  
Aizhamal**  
Junior Associate



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The legislation of the Kyrgyz Republic provides for the possibility for foreign companies to establish branches and representative offices. Representative offices and branches are not legal entities. They are endowed with assets by the legal entity that created them and operate based on approved regulations. A representative office represents and protects the interests of the legal entity, conducting transactions and other legal actions on its behalf.

While a branch performs all or part of its functions, including representative functions. The liability for the activities of the branch and representative office lies with the creating entity.

There are also a number of restrictions regarding branches and representative offices. The period of activity of a branch or representative office is limited by the activity of a parent company. Additionally, a branch or representative office cannot obtain a licence for certain types of activities or the provision of certain types of services. In this case, an individual can register a legal entity. The most commonly used organisational and legal forms in practice are limited liability companies (LLC) and joint-stock companies (JSC), further details of which are discussed in section 1.4.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The initial stage in the process of establishing legal entities, branches, and representative offices is a state registration within the Ministry of Justice of the Kyrgyz Republic. The following documents are required to be submitted for the registration of a legal entity to the registering authority:

#### In case participant is a foreign parent company:

- registration application in a prescribed form;
- corporate decision/resolution on the establishment of the subsidiary;
- extract from the state register of the foreign parent company's country or another document certifying that the foreign legal entity is a valid legal entity under the laws of its own country. The deadline for submission of such extract should not exceed 6 months from the date of its issuance;
- copy of the passport of the CEO/director of the subsidiary;
- consent of the owner of office;
- power of Attorney for authorised persons to take all necessary actions for registration of the subsidiary.

#### In case participant is a foreign citizen:

- registration application in a prescribed form;
- corporate decision/resolution on the establishment of the company;
- copy of the founder's passport;
- copy of the passport of the CEO/director of the company;
- consent of the owner of office;
- power of Attorney for authorised persons to take all necessary actions for registration of the company.
- other information in accordance with the legislation of the Kyrgyz Republic.

The registration period within the Ministry of Justice takes 3 working days, after which an electronic Certificate is issued. However, there is an option of an accelerated procedure of registration of a legal entity where it is possible to carry out registration in 1 day. Upon receipt of the certificate of state registration with the indication of the taxpayer identification number (INN) from the justice authority, the legal entity can obtain a seal. Ordering and manufacturing of the seal is carried out upon application by the legal entity to private companies engaged in seal manufacturing. The next stage is the submission of documents for registration within the tax authority and social fund, which takes up to 5 working days. With the received document package, a current account is opened in a bank. It is necessary to make copies of all received documents from governmental authorities as well as a copy of the charter. Also, it is necessary to notarize a signature card for persons who will be authorised to manage the account.

In accordance with the legislation of the Kyrgyz Republic, the authorised capital determines the amount of property of the legal entity, guaranteeing the interests of its creditors. The authorised capital of a Joint Stock Company (JSC) cannot be less than KGS 100 000, whereas the minimum authorised capital of a Limited Liability Company (LLC) is not determined by legislation and in practice the amount of authorised capital varies from KGS 100 to KGS 1000.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

During the state registration process, a consent form from the property owner for the registration of the legal address is required. For the state registration of financial and credit institutions, their branches, and representative offices, consent from the National Bank of the Kyrgyz Republic or its territorial division is required.

For certain legal entities to conduct their activities, obtaining licences and permits as provided by the Law "On the Licensing and Permitting System in the Kyrgyz Republic" is required.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

In the Kyrgyz Republic, there are various organisational and legal forms for conducting business. However, the most common forms of legal entities, which have several advantages, are Limited Liability Company (LLC) and Joint Stock Company (JSC) of open and closed types. There are differences regarding the number of participants: in an LLC, the number of participants should not exceed 30 individuals, whereas in a closed JSC, the number of participants should not exceed 50 individuals, and the number of participants in an open JSC is unlimited. Additionally, an LLC and a JSC cannot have another business entity consisting of a single person as their sole participant.

#### **1.4.1. What are the shareholder structures of these types of legal entities?**

LLCs typically have the following governing bodies: the general meeting of participants and a collective (board) or sole (director) executive body. The highest governing body of an LLC is the general meeting of participants.

The executive body (collective or sole) is established to manage the day-to-day activities of the company and is accountable to the general meeting of participants. Their responsibilities are regulated by internal documents or the company's charter.

The establishment of a board of directors is not mandatory in an LLC and may be established by the decision of the general meeting of participants. Only a natural person (individual) can be a member of the board of directors. A member of the board of directors cannot simultaneously be a member of the executive body (collective or sole).

#### **1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

Regarding liability, participants of an LLC are not liable for the company's obligations and bear the risk of losses associated with the company's activities only to the extent of the value of their contributions. Participants of a JSC are not liable for the company's obligations and bear the risk of losses associated with its activities only to the extent of the value of the shares they own.

#### **1.4.3. What is the responsibility of the representatives in these types of legal entities?**

The board of directors and the executive body have their own competence on certain matters and bear responsibility in accordance with the general provisions of the law and the internal documents of the legal entity.

Individuals representing the management body bear a material and disciplinary responsibility in accordance with the employment contract.

#### **1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

Additionally, there are other forms of business entities such as:

1. **General Partnership:** Participants (general partners) engage in entrepreneurial activities on behalf of the partnership according to the agreement between them and are jointly liable for its obligations with all their property.
2. **Limited Partnership:** Alongside participants who conduct entrepreneurial activities on behalf of the partnership and are liable for its obligations with all their property (general partners), there are one or several participants (contributors, limited partners) who bear the risk of losses associated with the partnership's activities only to the extent of the contributions they have made and do not participate in the entrepreneurial activities of the partnership.

3. **Partnership with Additional Liability:** Established by one or several individuals, the capital of which is divided into shares of specified sizes by the founding documents. Participants of such a partnership bear subsidiary liability for its obligations with their property in an equal multiple to the value of the contributions made by them, as determined by the founding documents of the partnership. In the event of insolvency (bankruptcy) of one of the participants, their liability for the obligations of the partnership is distributed among the remaining participants in proportion to their contributions, unless another procedure for distributing liability is provided for by the founding documents of the partnership.

### **1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?**

Approximate operating costs associated with the maintenance of a legal entity on a monthly basis are: office rent or payment for a legal address provision, director's salary, accountant's salary, bank account maintenance costs, applicable taxes. All costs have an average estimate and may vary depending on the activities of the company.

## **2. General taxation issues**

### **2.1 What tax obligations are associated with doing business in the country?**

The obligations associated with business taxation entail the payment of all taxes related to generating income. For all legal entities, the following taxes are required to be paid: Value Added Tax (VAT), Personal Income Tax, Land Tax, Excise Tax, Sales Tax, Property Tax, Profit Tax, Garbage collection tax and Subsoil Use Tax. Taxes are levied under either a general or simplified system, depending on the company's activities and tax regime.

### **2.2 What tax and customs incentives are available in a country?**

The Kyrgyz Republic, in an effort to attract foreign investment, provides tax and customs benefits depending on the project and participation in priority sectors of the economy.

In some cases, companies operating within the territory of special economic zones may be exempted from paying taxes, fees, and duties. The annual payment to the administration of the zone should not exceed 0.2% of the total income. Customs duties on imports and exports will not be included in the cost of goods produced within the territory of the free economic zone. Additionally, products intended for export are exempted from quotas and licensing requirements, provided that they are indeed intended for export.

In addition, there are advantages in simplified entry and exit of foreign workers, simplified customs procedures, direct access to important infrastructures, including telecommunications, water supply, electricity supply and means of transport when operating in the SEZ. It should be noted that there are priority sectors of the economy, such as the High Technology Park, Creative Industries Park, where the state applies a special tax regime and incentives. Tax exemption preferences are applied when using renewable energy sources in activities.

### **2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?**

Requirements for submitting financial statements to government authorities depend on the chosen tax regime. Financial reporting by medium and large business entities must be submitted electronically

to the authorised body by June 1 of the year following the reporting year. Tax reports can be monthly, quarterly and annually. The procedure for submitting statistical reporting to statistical authorities depends on the type of activity of the company.

Accounting is maintained in accordance with international accounting requirements.

#### **2.4. What is the taxation of dividends for foreign investors?**

Taxation on dividends for foreign investors is set at 10%.

#### **2.5 What strategies exist for minimising tax liability when conducting international business?**

There are different optimization options for each tax and each type of activity. For instance, international agreements are widely used for optimising the profit tax. Depending on the type of activity within the Kyrgyz Republic, special tax regimes can be applied, such as the High-Tech Park, Special Economic Zones (SEZ), Creative Industries Park (CIP) etc.

Our team considers each client's request individually, taking into account all the elements and details of activities in the Kyrgyz Republic.

### **3. Regulatory and miscellaneous**

#### **3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?**

One of the main requirements is to obtain the consent of the data subject, expressed in written form on hard documents or in the form of an electronic document signed in accordance with the legislation of the Kyrgyz Republic on electronic signatures. Legal entities have the right to work with personal data after registering as the holder (owner) of a personal data array under the Law on personal data.

Individuals who become aware of personal data due to their official position undertake obligations and bear responsibility to ensure the confidentiality of this personal data. Such obligations remain in force even after these individuals have finished working with the personal data during the period of maintaining the confidentiality regime.

Moreover, it is important to note that there is a law on commercial secrets, the purpose of which is to protect commercial secrets and prevent unfair competition in the course of economic activities. By entering into this agreement, persons who have access to trade secrets are obliged to strictly comply with the requirements for its non-disclosure and to prevent the leakage of information to competing business entities.

#### **3.2 What labour law features should be considered when hiring local and foreign employees?**

The Labour Code sets out the general rules governing working conditions for all employees. Special provisions are made for certain categories of employees. With regard to the recruitment of foreign employees, it should be noted that foreign citizens have the right to work in the Kyrgyz Republic on the basis of a legally obtained work permit. Employers, in turn, have the right to hire foreign citizens based on quotas for attracting foreign labour. In the process of obtaining quotas and work permits, the visa process takes place.

This procedure consists of several stages:

1. obtaining a quota for attracting foreign labour;
2. obtaining an electronic work visa, which is necessary for entry into the territory of Kyrgyzstan;

3. confirmation of the existence of a work permit; and
4. extension of the electronic work visa during the validity period of the work permit.

As the Kyrgyz Republic is a full member of the Eurasian Economic Union ("EAEU"), in accordance with the Accession Treaty to the EAEU ratified by the Kyrgyz Republic, citizens of EAEU member states are exempt from obtaining work permits in the Kyrgyz Republic. Moreover, they can be hired without obtaining quotas.

#### **3.3 What are the requirements for currency regulation and currency control?**

The legislation of the Kyrgyz Republic does not contain restrictions on currency operations. Currency operations are conducted in accordance with the Constitutional Law "On the National Bank of the Kyrgyz Republic," the Law "On Banks and Banking Activities," and other regulatory legal acts of the Kyrgyz Republic on currency regulation. The National Bank determines the currency policy and regulation in the Kyrgyz Republic. The volume of import and export of foreign currency to and from the Kyrgyz Republic is not restricted. This condition only includes the declaration of currency and currency values.

#### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

Changes in the corporate structure of a company associated with processes such as mergers, acquisitions, divisions, etc. entail state re-registration or termination of activities. Depending on the type of change, one or another procedure will be applied.

For the acquisition of shares in credit and financial organisations, the consent of the National Bank is required. Reorganisation of legal entities requires the approval of the State Antimonopoly Service. Competition legislation regarding private acquisitions specifies that the acquisition of a controlling stake in the shares (participation interest in the charter capital) of an economic entity holding a dominant position by any legal entity or individual requires prior approval from the antimonopoly authority.

#### **3.5 What are the most efficient mechanics for dispute resolution?**

Effective mechanisms for dispute resolution include resolving issues in the International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic. It is important to note that Kyrgyzstan is a party to the ICSID Convention - International Centre for Settlement of Investment Disputes, as well as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Moreover, Kyrgyzstan has acceded to the Minsk Agreement, under which judgments of CIS courts are recognised and enforced by the courts of the Kyrgyz Republic.



# MOLDOVA



Igor  
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Senior Partner



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

Establishing a company's presence in Moldova can be accomplished through several options, each with its own advantages and limitations:

#### 1. Branch Office:

##### Advantages:

- allows the parent company to conduct business activities in Moldova under its own name;
- provides a direct presence in the market without the need for a separate legal entity;
- can benefit from the parent company's reputation and resources.

##### Limitations:

- the parent company is fully liable for the debts and obligations of the branch office;
- subject to the laws and regulations of Moldova, which may differ from those of the parent company's home country;
- limited autonomy for decision-making compared to a subsidiary.

#### 2. Representative Office:

##### Advantages:

- allows for market research, promotional activities, and liaising with clients or partners in Moldova;
- provides a low-cost option for establishing a presence without engaging in commercial activities.

##### Limitations:

- cannot engage in profit-generating activities or enter into contracts on behalf of the parent company;
- limited scope of operations, mainly restricted to non-commercial functions;
- may require registration and compliance with local regulations.

#### 3. Subsidiary:

##### Advantages:

- separate legal entity distinct from the parent company, providing limited liability protection;
- can conduct business independently, enter contracts, and generate profits in Moldova;
- may qualify for certain tax incentives or benefits available to local companies.

##### Limitations:

- requires significant time, effort, and resources to establish and maintain;
- subject to local corporate governance requirements and taxation laws;

- may face challenges in aligning with the parent company's strategies and policies.

#### 4. Joint Venture:

##### Advantages:

- enables collaboration with local partners to share risks and resources;
- access to local market knowledge, networks, and expertise;
- allows for sharing of investment costs and potential regulatory advantages.

##### Limitations:

- requires careful selection of partners and clear agreements to manage differences in objectives and decision-making;
- potential for conflicts over control, management, and profit-sharing;
- limited autonomy compared to wholly-owned subsidiaries.

Choosing the most suitable option depends on factors such as the company's objectives, level of commitment, risk tolerance, and familiarity with the local market regulations and business environment.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

Creating a legal entity or establishing another form of presence in Moldova involves several steps and requirements. Here's an overview of the general process:

#### 1. Choose the Type of Legal Entity:

Determine the most suitable form of presence based on factors such as liability, tax implications, and operational flexibility. Options include limited liability company (LLC), joint-stock company (JSC), branch office, representative office, etc.

#### 2. Reserve the Company Name:

Check the availability of the desired company name with the Moldovan Chamber of Commerce and Industry (CCI) and reserve it if necessary. The name must comply with local naming regulations.

#### 3. Prepare Constitutive Documents:

Draft the constitutive documents, such as the articles of association (for LLC or JSC), memorandum and articles of association (for branch offices), or relevant documentation for representative offices.

#### 4. Notarize Documents:

Certain documents, such as the articles of association, may need to be notarized by a licensed notary public.

#### 5. Register with the Public Services Agency (PSA):

Submit the required documents to the PSA, which is responsible for company registration in Moldova. The documents typically include:



- application form for registration;
- constitutive documents;
- proof of legal address for the company;
- identification documents of shareholders/directors;
- proof of payment of registration fees.

#### 6. Obtain Tax Identification Number (TIN):

After registration, obtain a tax identification number (TIN) for the company from the State Tax Service.

#### 7. Register with Other Authorities:

Depending on the type of business activity, additional registrations may be required with relevant authorities, such as the National Bank of Moldova (for financial institutions) or the National Agency for Regulation of Energy (for energy-related activities).

#### 8. Open Bank Account:

Open a bank account in the name of the company with a local bank in Moldova.

#### 9. Comply with Reporting Obligations:

Fulfil ongoing reporting and compliance requirements, such as submitting annual financial statements, tax returns, and other regulatory filings.

#### 10. Obtain Licences and Permits (if applicable):

Depending on the nature of the business, certain licences, permits, or approvals may be required from relevant regulatory authorities before commencing operations.

The time and specific requirements for company registration in Moldova may vary depending on factors such as the type of legal entity, the complexity of the business structure, and the efficiency of the registration process.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

In Moldova, besides the general company registration process, certain types of businesses may require additional authorizations, permits, or approvals from specific regulatory authorities or government agencies. The requirements can vary depending on the nature of the business activities. Here are some examples of additional authorizations/approvals that may be required for certain types of businesses in Moldova:

#### 1. Specialised Licences:

Certain industries or professions may require specialised licences or permits issued by relevant regulatory bodies. For example:

- Financial institutions, such as banks, may need licences from the National Bank of Moldova;
- Healthcare facilities may require licences from the Ministry of Health;
- Educational institutions may need accreditation from the Ministry of Education;
- Pharmaceutical companies may require approvals from the State Medicines and Medical Devices Agency.

#### 2. Environmental Permits:

Businesses that have an environmental impact, such as manufacturing facilities or waste management companies, may need permits from the Ministry of Environment.

#### 3. Construction Permits:

Construction projects, whether residential, commercial, or industrial, typically require permits from local authorities, such as municipal or regional councils.

#### 4. Trade Licences:

Businesses engaged in retail or wholesale trade may need trade licences issued by local authorities.

#### 5. Food Safety Permits:

Food processing and catering businesses may require permits related to food safety and hygiene standards issued by the National Food Safety Agency.

#### 6. Alcohol and Tobacco Licences:

Businesses involved in the production, distribution, or sale of alcohol or tobacco products may need licences from relevant government agencies, such as the Customs Service.

#### 7. Import/Export Licences:

Companies engaged in importing or exporting goods may need licences or permits from the Customs Service or other relevant authorities.

#### 8. Work Permits for Foreign Employees:

Employers planning to hire foreign nationals may need to obtain work permits for their employees from the Bureau of Migration and Asylum.

These are just examples, and the specific requirements may vary depending on the type of business, its location, and other factors. It's essential for businesses to research and understand the regulatory environment relevant to their industry and activities in Moldova and ensure compliance with all applicable laws and regulations.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

In Moldova, the most common types of legal entities include:

#### 1. Limited Liability Company (LLC):

**Taxation:** Generally, LLCs are subject to corporate income tax on their profits. Dividends distributed to shareholders are typically subject to withholding tax.

**Liability:** Shareholders' liability is limited to their contributions to the company's capital. Personal assets are generally protected from the company's debts and obligations.

**Management:** Managed by one or more directors appointed by the shareholders or by the general meeting of shareholders. Shareholders exercise control through voting rights based on their ownership stake.

#### 2. Joint Stock Company (JSC):

**Taxation:** Similar to LLCs, JSCs are subject to corporate income tax on their profits. Dividends distributed to shareholders are typically subject to withholding tax.

**Liability:** Shareholders' liability is limited to the value of their shares. Personal assets are generally protected from the company's debts and obligations.

**Management:** Governed by a board of directors elected by shareholders. Shareholders exercise control through voting rights based on their ownership of shares. JSCs may also have a general

meeting of shareholders that makes key decisions.

### 3. Branch Office:

Taxation: Branch offices are generally taxed as part of the parent company and subject to the same tax regime as the parent company.

Liability: Branch offices do not have a separate legal personality from the parent company. Thus, the parent company bears full liability for the debts and obligations of the branch.

Management: Managed by the parent company's management, which retains control over the branch's operations and decisions.

### 4. Representative Office:

Taxation: Representative offices typically do not engage in profit-generating activities and may not have significant tax liabilities in Moldova.

Liability: Representative offices do not have a separate legal personality from the parent company. Therefore, the parent company bears full liability for the activities and obligations of the representative office.

Management: Representative offices usually engage in non-commercial activities such as marketing, research, and liaison work. They are managed by representatives appointed by the parent company.

#### Differences in Terms of Taxation:

LLCs and JSCs are subject to corporate income tax on their profits, while branch offices are typically taxed as part of the parent company. Representative offices may have minimal tax liabilities as they generally do not engage in profit-generating activities.

#### Differences in Terms of Liability:

LLCs and JSCs offer limited liability to their shareholders, protecting personal assets from the company's debts and obligations. In contrast, branch offices and representative offices do not have separate legal personality from the parent company, exposing the parent company to full liability.

#### Differences in Terms of Management:

LLCs and JSCs have their own management structures, with directors appointed to manage day-to-day operations. Branch offices and representative offices are typically managed by the parent company's management, retaining control over their activities.

Choosing the most suitable type of legal entity depends on factors such as the company's objectives, level of liability protection desired, taxation considerations, and management preferences.

#### 1.4.1. What are the shareholder structures of these types of legal entities?

In Moldova, the shareholder structures of different types of legal entities can vary. Here's a general overview:

##### 1. Limited Liability Company (LLC):

LLCs can have one or more shareholders, known as members. Shareholders can be individuals or legal entities, and there are no restrictions on foreign ownership. The ownership structure can vary depending on the agreement among the shareholders. Shareholders' rights and obligations are typically outlined in the company's articles of association.

##### 2. Joint Stock Company (JSC):

JSCs can have multiple shareholders, who hold shares in the

company. Shareholders can be individuals, legal entities, or other JSCs. There are no restrictions on foreign ownership. The ownership structure is determined by the distribution of shares among the shareholders. Shareholders' rights and obligations are governed by the company's articles of association and the law on joint-stock companies.

### 3. Branch Office:

Branch offices do not have a separate legal personality from the parent company. Therefore, they do not have shareholders in the traditional sense. The branch operates as an extension of the parent company, and ownership of the branch's assets and liabilities ultimately rests with the parent company.

### 4. Representative Office:

Similar to branch offices, representative offices do not have separate legal personality and do not have shareholders. They operate as extensions of the parent company and do not engage in profit-generating activities. The parent company retains ownership of the representative office's activities and liabilities.

In summary, LLCs and JSCs have distinct shareholder structures, with shareholders holding ownership interests in the company through shares or membership interests. Branch offices and representative offices, on the other hand, do not have separate shareholder structures, as they operate as extensions of the parent company without independent legal personality.

#### 1.4.2. What is the Shareholders' responsibility in these types of legal entities?

In Moldova, the responsibilities of shareholders in different types of legal entities vary based on the legal form of the entity. Here's a general overview:

##### 1. Limited Liability Company (LLC):

Shareholders in an LLC have limited liability, meaning their personal assets are generally protected from the company's debts and obligations.

Shareholders are typically responsible for contributing the agreed-upon amount of capital to the company.

Shareholders may participate in decision-making through voting rights, usually proportional to their ownership stake.

##### 2. Joint Stock Company (JSC):

Shareholders in a JSC can be held liable for the company's debts and obligations only to the extent of their share capital contribution.

Shareholders' rights and responsibilities are defined by the company's charter and may include voting on significant corporate matters, electing directors, and receiving dividends.

Shareholders can transfer their shares, subject to any restrictions in the company's bylaws.

##### 3. Individual Enterprise (IE):

In an IE, there are no shareholders in the traditional sense. The owner (individual entrepreneur) bears full responsibility for the business's debts and obligations with their personal assets.

The owner has sole decision-making authority and retains all profits generated by the business.

The owner is responsible for fulfilling all legal and tax obligations related to the business.

##### 4. Commercial Partnership (CP):

In a CP, the responsibilities of partners depend on the type of

partnership (general partnership, limited partnership, etc.).

In a general partnership, all partners share unlimited liability for the partnership's debts and obligations.

In a limited partnership, there are general partners (with unlimited liability) and limited partners (with liability limited to their investment).

Overall, shareholders' responsibilities in Moldovan legal entities primarily revolve around contributing capital, participating in decision-making, and fulfilling any obligations outlined in the company's charter or partnership agreement.

### 1.4.3. What is the responsibility of the representatives in these types of legal entities?

The responsibilities of representatives in different types of legal entities in Moldova can vary depending on the specific role and authority granted to them within the organisation. Here's a general overview:

#### 1. Limited Liability Company (LLC):

Representatives in an LLC may include directors, managers, or other appointed officers who are responsible for managing the day-to-day operations of the company.

Their responsibilities may include decision-making, financial management, compliance with legal and regulatory requirements, and representing the company in business transactions.

Representatives are typically appointed or elected by the shareholders or members of the LLC and may be subject to the directives and oversight of the company's governing body, such as the board of directors or shareholders' meeting.

#### 2. Joint Stock Company (JSC):

In a JSC, representatives may include members of the board of directors, executive officers (such as the CEO, CFO, etc.), and other management personnel.

Representatives in a JSC have duties similar to those in an LLC, including strategic planning, corporate governance, financial management, and compliance with legal and regulatory requirements.

They are responsible for executing the decisions of the shareholders' meeting and ensuring that the company operates in accordance with its charter, bylaws, and applicable laws.

#### 3. Individual Enterprise (IE):

Since an IE is typically owned and operated by a single individual, the owner assumes all responsibilities for managing the business.

The owner of an IE is responsible for all aspects of the business, including decision-making, financial management, compliance with legal and tax obligations, and representing the business in dealings with customers, suppliers, and authorities.

#### 4. Commercial Partnership (CP):

Representatives in a CP may include general partners, who have unlimited liability for the partnership's debts and obligations, and managing partners or designated officers responsible for day-to-day operations.

Their responsibilities may include managing the partnership's affairs, making business decisions, ensuring compliance with partnership agreements, and representing the partnership in business transactions.

Overall, representatives in Moldovan legal entities have a fiduciary duty to act in the best interests of the company or partnership and its

stakeholders. Their specific responsibilities can vary depending on their role, the type of entity, and the provisions of the company's governing documents.

## 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Operating costs associated with maintaining a legal entity or presence in Moldova can vary depending on several factors, including the type of business, size of the company, industry, location, and specific regulatory requirements. Here are some common operating costs that businesses may incur:

- 1. Registration and Licensing Fees:** Costs associated with registering the business entity initially and renewing registrations periodically. This includes fees for business registration, obtaining licences, permits, and certifications required for operation;
- 2. Legal and Accounting Fees:** Expenses for legal services, such as drafting contracts, agreements, and compliance with regulations. Accounting fees cover bookkeeping, tax preparation, and financial reporting requirements;
- 3. Rent and Utilities:** Costs for leasing office space, commercial property, or manufacturing facilities. This includes rent, utilities (electricity, water, heating), maintenance fees, and insurance for the premises;
- 4. Labour Costs:** Expenses related to salaries, wages, benefits, and payroll taxes for employees. This also includes recruitment, training, and employee-related expenses;
- 5. Taxes:** Corporate income tax, value-added tax (VAT), social security contributions, property tax, and other local taxes and duties levied by the government;
- 6. Compliance and Regulatory Costs:** Expenses for compliance with various regulatory requirements, including labour laws, environmental regulations, health and safety standards, and industry-specific regulations;
- 7. Marketing and Advertising:** Costs associated with promoting the business, including advertising campaigns, marketing materials, website development, and digital marketing activities;
- 8. Technology and Infrastructure:** Expenses for IT infrastructure, software licences, hardware maintenance, telecommunications, and internet services;
- 9. Travel and Transportation:** Costs for business travel, transportation of goods, shipping, and logistics, especially if the business operates internationally or relies on imports/exports;
- 10. Miscellaneous Expenses:** Other miscellaneous costs, such as professional memberships, business insurance, office supplies, and unexpected expenses.

It's essential for businesses to carefully budget and manage their operating costs to ensure financial sustainability and profitability.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Doing business in Moldova entails various tax obligations that companies must fulfil. Here are the key tax obligations associated with conducting business in Moldova:

- 1. Corporate Income Tax (CIT):** Moldovan resident companies are subject to CIT on their worldwide income, while non-resident companies are taxed only on income derived from Moldovan sources. The standard CIT rate is 12%. Certain preferential rates may apply to specific industries or regions;

2. **Value Added Tax (VAT):** VAT is levied on the supply of goods and services in Moldova. The standard VAT rate is 20%, with reduced rates of 8% and 0% applicable to certain goods and services. Businesses are required to register for VAT if their taxable turnover exceeds a certain threshold;
3. **Personal Income Tax (PIT):** Employees in Moldova are subject to PIT on their employment income. The PIT rates are progressive, with rates ranging from 12% to 18%. Employers are responsible for withholding and remitting PIT on behalf of their employees;
4. **Social Security Contributions:** Employers and employees are required to contribute to the state social security system. The contributions fund various social insurance programs, including pensions, healthcare, and social assistance. The contribution rates vary depending on the type of insurance and the income level;
5. **Property Tax:** Property owners in Moldova are subject to property tax on the value of their real estate holdings. The tax rates vary depending on the type of property and its location;
6. **Excise Duties:** Excise duties are imposed on specific goods, such as tobacco, alcohol, and fuel. The rates and calculation methods vary depending on the type of excisable goods;
7. **Customs Duties:** Customs duties may apply to the import and export of goods into and out of Moldova. The rates and exemptions depend on the type of goods and the countries involved in the trade;
8. **Other Taxes and Duties:** Businesses may also be subject to other taxes and duties, such as vehicle tax, environmental tax, stamp duty, and local taxes imposed by municipalities.

It's essential for businesses operating in Moldova to comply with all tax obligations, including timely filing of tax returns, accurate reporting, and payment of taxes. Non-compliance can result in penalties, fines, and other legal consequences.

## 2.2 What tax and customs incentives are available in a country?

Moldova offers various tax and customs incentives to promote investment, economic development, and trade facilitation. Some of the key incentives available in Moldova include:

1. **Free Economic Zones (FEZs):** Companies operating within designated Free Economic Zones enjoy tax exemptions and incentives, including exemption from corporate income tax, VAT, and customs duties on imported raw materials, equipment, and machinery used for production within the zone. Additionally, FEZs offer simplified customs procedures and streamlined regulatory requirements;
2. **Special Economic Zones (SEZs):** Special Economic Zones are established to attract investment and stimulate economic growth in specific regions of Moldova. Businesses operating within SEZs may benefit from tax incentives similar to those offered in FEZs, including exemptions from corporate income tax, VAT, and customs duties on imports;
3. **Investment Incentives:** Moldova offers various investment incentives to encourage both domestic and foreign investment, such as tax holidays, reduced tax rates, and accelerated depreciation allowances for eligible investments in certain industries or regions;
4. **Export Promotion:** Businesses engaged in exporting goods and services from Moldova may benefit from various incentives, including VAT exemptions or refunds on exported goods, customs duty exemptions or reductions, and access to preferential trade agreements with partner countries;
5. **Research and Development (R&D) Incentives:** Moldova provides tax incentives and grants to companies engaged in research and development activities, including deductions for R&D expenses, tax credits, and support for innovation and technology development projects;
6. **Customs Procedures:** Moldova offers simplified customs procedures, such as customs clearance facilitation, reduced documentation requirements, and expedited processing for qualified businesses engaged in import and export activities;
7. **Double Taxation Treaties (DTTs):** Moldova has entered into DTTs with numerous countries to avoid double taxation and prevent fiscal evasion. These treaties provide tax relief and certainty for businesses engaged in cross-border trade and investment;
8. **Startup Incentives:** Moldova offers various incentives and support programs for startups and small businesses, including tax breaks, grants, access to funding, and incubation services to foster entrepreneurship and innovation.

It's essential for businesses considering investment or trade activities in Moldova to explore and take advantage of the available tax and customs incentives.

However, eligibility criteria, application procedures, and compliance requirements may vary, so seeking professional advice and guidance is advisable to maximise the benefits of these incentives.

## 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

In Moldova, the accounting and reporting requirements for legal entities vary based on the type of entity and the nature of its business activities. Here are the general guidelines for the most common types of legal entities:

### 1. Limited Liability Companies (LLCs) and Joint Stock Companies (JSCs):

**Accounting Standards:** Both LLCs and JSCs must adhere to Moldovan National Accounting Standards or International Financial Reporting Standards (IFRS), depending on their size and whether they are publicly traded.

**Annual Financial Statements:** These must include a balance sheet, income statement, cash flow statement, statement of changes in equity, and explanatory notes. These statements must be audited if the company exceeds certain thresholds regarding total assets, revenue, or number of employees.

**Submission:** Annual financial statements must be submitted to the Public Services Agency by April 30th of the following year.

**Tax Filings:** Entities must file an annual corporate income tax return by March 31st of the following year. Quarterly advance payments may also be required.

### 2. Branches of Foreign Companies:

**Accounting Standards:** Branches must maintain their accounting records in accordance with Moldovan laws, which can either be the National Accounting Standards or IFRS.

**Reporting:** Similar to local companies, branches must prepare and file annual financial statements, which might require an audit depending on their size.

**Submission:** These are also due by April 30th of the following year for the annual financial statements.

### 3. Representative Offices:

**Accounting Standards:** Representative offices are generally limited to non-commercial activities and must maintain their records in line with Moldovan accounting laws.

**Reporting:** They are required to keep financial records and may need

to report their financial position to the parent company, but they typically do not have to file these reports with Moldovan authorities unless engaged in any taxable activities.

#### 4. Sole Proprietorships:

Accounting Standards: Sole proprietors can use simplified accounting standards, especially if they fall under the threshold of small business criteria.

Reporting: They must submit an annual declaration of income to the tax authorities, usually by March 31st of the following year.

#### 5. Non-Profit Organisations:

Accounting Standards: Nonprofits must follow the National Accounting Standards.

Annual Reporting: They must prepare annual financial statements, which may need to be submitted to various government bodies depending on the source of their funding and the nature of their activities.

Submission: Typically due by April 30th of the following year.

Each type of entity must also comply with various regulatory reporting requirements that may be specific to their industry or sector, such as environmental reporting, statistical reporting to the National Bureau of Statistics, and other sector-specific regulations.

### 2.4. What is the taxation of dividends for foreign investors?

In Moldova, the taxation of dividends for foreign investors depends on the type of legal entity distributing the dividends and the tax treaties that may exist between Moldova and the investor's country of residence. Here's an overview:

#### 1. Limited Liability Companies (LLCs) and Joint Stock Companies (JSCs):

- Domestic Tax Rate: Dividends paid by LLCs or JSCs to foreign shareholders are subject to a withholding tax of 15%. However, this rate may be reduced if there is a double taxation treaty between Moldova and the country of the shareholder's residence.
- Tax Treaties: Moldova has tax treaties with many countries, which can lower the withholding tax rate on dividends to rates typically ranging from 5% to 10%.

#### 2. Branches of Foreign Companies:

- Dividend Equivalents: Technically, branches do not distribute dividends as they are not distinct legal entities separate from the parent company. Instead, any repatriation of profits to the foreign parent company is usually treated as a transfer of funds rather than a dividend distribution. However, these transfers might not be subject to withholding tax.

#### 3. Representative Offices:

- Non-Distributive Entities: Representative offices cannot engage in commercial activities and thus do not generate profits or distribute dividends. Consequently, there are no dividend-related tax implications for representative offices.

#### 4. Partnerships:

- Pass-Through Taxation: If a foreign investor is involved in a partnership in Moldova, the entity itself is not taxed on profits. Instead, profits are passed through to the partners and taxed according to their status and residency. For foreign partners, this could involve taxation in Moldova depending on the nature of the income and any applicable tax treaty.

### Key Considerations

Tax Residency: The tax residency of the investor plays a critical role in determining the actual tax rate applied to dividends. Investors should verify their residency status and the applicability of any tax treaty provisions.

Tax Credits: Foreign investors might be eligible for tax credits in their home country for taxes paid in Moldova, subject to the specific regulations in their country of tax residence.

Reporting Requirements: Foreign investors should comply with local and international reporting requirements, including declarations of their tax status and details of their investments.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

Minimising tax liability when conducting international business in Moldova involves a combination of legal strategies, careful tax planning, and compliance with both Moldovan and international tax laws. Here are some key strategies businesses often consider:

1. Utilising Tax Treaties: Moldova has double taxation treaties with numerous countries. These treaties can reduce the tax burden on income, including dividends, interest, and royalties, paid across borders.

Companies should analyse the provisions of the relevant tax treaty to ensure they take advantage of lower withholding tax rates or exemptions that might be available.

2. Establishing the Right Type of Entity: The choice of entity can significantly affect tax liabilities. For example, establishing a subsidiary as a limited liability company in Moldova might offer benefits over other forms of entity, such as a branch of a foreign company, depending on the specifics of Moldovan corporate tax laws and potential tax treaty benefits.

3. Transfer Pricing Compliance: Adhering to transfer pricing regulations is crucial. Moldova follows guidelines similar to those outlined by the OECD. Companies should ensure that all transactions with related entities are conducted at arm's length to avoid adjustments and penalties. Proper documentation and compliance can also help minimise tax liabilities.

4. Financial and Operational Structuring: Optimising the capital structure of the Moldovan entity (e.g., the ratio of debt to equity) can influence tax obligations, particularly in terms of deductible expenses like interest. Additionally, decisions regarding the location of certain business functions and intellectual property can impact tax liabilities, depending on the associated tax regimes.

5. Taking Advantage of Investment Incentives: Moldova offers various tax incentives for investments in specific sectors or regions, including free economic zones where businesses can benefit from reduced tax rates or exemptions. Companies should consider these incentives during the initial investment planning stage to maximise potential tax benefits.

6. Reinvesting Profits: Under Moldovan tax law, reinvested profits may be eligible for certain tax exemptions or reduced tax rates, encouraging companies to reinvest their earnings into local operations rather than distributing them as dividends.

7. Regular Tax Reviews and Audits: Conducting regular tax reviews and audits can help identify potential areas of tax leakage or non-compliance. It also ensures that the business adapts to any changes in tax legislation or international tax policies that could affect operations in Moldova.

8. Consulting with Tax Professionals: Engaging with local tax professionals who understand both Moldovan tax law and the implications of international business can provide valuable insights. They can assist in structuring transactions, operations, and compliance processes to minimise tax liabilities legally.



Implementing these strategies requires a thorough understanding of both Moldovan tax laws and the international tax environment. Companies must balance tax minimization strategies with operational efficiencies and compliance requirements to ensure sustainable and profitable business operations in Moldova.

### 3. Regulatory and miscellaneous

#### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

Moldova has established a framework for data protection and privacy that aligns with international standards, including principles similar to those in the European Union's General Data Protection Regulation (GDPR). The main legislative document governing data protection in Moldova is the Law on Personal Data Protection, which was significantly updated to enhance privacy rights and align more closely with the GDPR.

##### Key Data Protection and Privacy Requirements in Moldova:

- Data Processing Principles:** The principles of data processing in Moldova are similar to those in the GDPR. They include legality, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, and confidentiality. Companies must process personal data lawfully and transparently for specified and legitimate purposes.
- Rights of Data Subjects:** Individuals have various rights regarding their personal data, such as the right to access, rectify, delete, or restrict processing of their data. They also have the right to object to processing and the right to data portability.
- Data Protection Officer (DPO):** Companies that engage in large-scale processing of sensitive personal data or monitoring of individuals must appoint a Data Protection Officer. The DPO is responsible for overseeing data protection strategies and compliance with data protection laws.
- Data Breach Notification:** In case of a personal data breach, companies are required to notify the National Center for Personal Data Protection of Moldova (the supervisory authority) and the affected individuals without undue delay, generally within 72 hours, if the breach is likely to result in a risk to the rights and freedoms of individuals.
- Data Transfer Abroad:** The transfer of personal data outside of Moldova is restricted, similar to the GDPR. Transfers are permitted to countries that ensure an adequate level of data protection or through the use of approved safeguards such as binding corporate rules or standard contractual clauses.
- Impact Assessments:** Companies may be required to conduct Data Protection Impact Assessments (DPIA) for processing activities that are likely to result in a high risk to the privacy rights of individuals. This assessment helps identify and mitigate risks associated with data processing activities.
- Record Keeping:** Organisations must keep detailed records of their data processing activities, including the purposes of processing, data categories, recipient categories, and details of data transfers outside the jurisdiction.

##### How These Requirements Affect Company Operations:

- Compliance Costs:** Companies may incur significant costs related to ensuring compliance with data protection laws, such as training staff, implementing appropriate IT security measures, and maintaining documentation.
- Operational Changes:** Businesses may need to redesign certain

processes to ensure compliance, such as customer consent management, data collection practices, and breach notification procedures.

- Legal and Financial Risks:** Non-compliance can lead to substantial penalties, legal challenges, and damage to reputation. Therefore, maintaining compliance is crucial to mitigate these risks.
- Business Strategy:** Data protection requirements can influence business strategies, particularly those involving personal data, such as marketing tactics and product development.

Overall, while these regulations aim to protect personal data and enhance privacy, they also impose significant responsibilities on companies operating in Moldova.

#### 3.2 What labour law features should be considered when hiring local and foreign employees?

When hiring local and foreign employees in Moldova, employers need to consider several aspects of Moldovan labour law to ensure compliance and maintain fair, legal employment practices. Here are the key features of labour law in Moldova that employers should be aware of:

##### 1. Employment Contracts:

- Written Form:** Employment contracts must be in written form. This applies to both local and foreign employees.
- Language:** Contracts should be in Romanian, which is the official language, although they can also be translated into another language understood by the employee.
- Content Requirements:** Contracts must specify terms including job description, salary, working hours, and other conditions of employment.

##### 2. Work Permits and Visas for Foreign Employees:

- Necessity:** Non-EU foreign nationals generally require a work permit to be legally employed in Moldova.
- Application Process:** The employer must apply for the work permit on behalf of the foreign employee. This process involves proving that the position cannot be filled by a local worker.
- Visa Requirements:** Depending on the employee's nationality, a visa to enter Moldova may also be required.

##### 3. Working Hours and Overtime:

- Standard Working Hours:** The typical working week in Moldova is 40 hours, spread over five days.
- Overtime:** Overtime must be compensated, either with additional pay or compensatory time off. Overtime rates are higher than normal hourly rates, as stipulated by law.

##### 4. Minimum Wage:

- Regulation:** Moldova has a national minimum wage that all employers must adhere to. This minimum wage is periodically updated.

##### 5. Social Security and Taxes:

- Contributions:** Employers are required to make social security contributions on behalf of their employees. These contributions cover pensions, health insurance, and other social benefits.
- Tax Withholding:** Employers must also withhold income tax from employees' salaries according to the progressive rates set by the tax code.



## 7. Termination of Employment:

- Notice Periods: Employment contracts must outline the conditions and notice periods required for termination, which vary depending on the length of service and the reasons for termination.
- Severance Pay: In some cases, severance pay may be required, particularly if the termination is initiated by the employer without cause.

## 8. Discrimination and Equal Opportunity:

- Laws: Moldovan law prohibits discrimination based on race, gender, national origin, religion, age, disability, or any other protected status. Employers must ensure equal opportunity in hiring, training, and promotion.

## 9. Health and Safety:

- Regulations: Employers are responsible for providing a safe working environment. They must comply with national health and safety regulations and ensure that all employees are informed about and trained in these practices.

## 10. Collective Bargaining:

- Agreements: In industries where trade unions are prevalent, the terms of employment may be governed by collective bargaining agreements. These agreements are negotiated between employers and unions and typically cover aspects such as wages, working conditions, benefits, and other terms of employment.
- Impact on Employment Terms: Employers need to adhere to these agreements, as they can supersede individual employment contracts in certain aspects. This ensures that employees receive at least the minimum standards agreed upon in the collective bargaining process.
- Legal Compliance: It's crucial for employers to understand the specific requirements of any applicable collective bargaining agreements to ensure compliance and avoid labour disputes.

### 3.3 What are the requirements for currency regulation and currency control?

Currency regulation and currency control in Moldova are primarily governed by the National Bank of Moldova (NBM) and the legal framework established under the Law on Foreign Exchange Regulation. These regulations are designed to manage the flow of foreign currency in and out of the country and maintain financial stability. Here are some of the key requirements and aspects of currency regulation and currency control in Moldova:

#### 1. Exchange Rate Regulation:

The NBM sets and manages the official exchange rates. These rates are determined based on market conditions and are used for accounting, customs, and other official purposes.

#### 2. Currency Operations:

Residents and Non-Residents: Both residents and non-residents can open and operate foreign currency accounts in Moldovan banks. However, certain transactions may require specific permissions or notifications to the NBM.

Foreign Currency Transactions: Businesses and individuals are allowed to conduct foreign currency transactions, but these must generally be conducted through authorised banks and other financial institutions.

#### 3. Currency Exchange:

Currency exchange can be performed by licensed banks and

authorised exchange offices. The rates offered are subject to market conditions but must adhere to guidelines established by the NBM.

## 4. Capital Transactions:

Capital Inflows and Outflows: Investments and other capital transactions across borders are subject to registration or notification with the NBM, depending on their size and nature.

Investment Abroad: Moldovan residents wishing to invest abroad may need to comply with specific regulatory requirements, including obtaining permissions depending on the amount and destination of the investment.

## 5. Repatriation and Conversion of Earnings:

Foreign investors must repatriate earnings from Moldova in foreign currency. There are generally no restrictions on the repatriation of profits, dividends, or other income from investments, provided that all tax obligations have been met and the transactions are duly reported to the NBM.

## 6. Reporting Requirements:

Companies and individuals engaged in significant foreign currency transactions are required to report these transactions to the NBM. This includes large trade operations, financial transactions, and investments that meet certain thresholds.

## 7. Compliance and Penalties:

Failure to comply with currency regulations can result in penalties, including fines and restrictions on foreign exchange operations. Therefore, it is crucial for businesses and individuals to adhere strictly to the rules set forth by the NBM.

## 8. Preventive Measures:

The NBM and other regulatory bodies implement preventive measures to combat money laundering and terrorism financing. This includes monitoring large and suspicious transactions and requiring detailed documentation for such operations.

For companies operating in or with Moldova, and for foreign investors, it is advisable to consult with financial experts or legal advisers to ensure full compliance with Moldova's complex currency regulations.

### 3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?

When planning mergers, acquisitions, and company restructuring in Moldova, there are several corporate law features to consider to ensure compliance with legal requirements and a smooth transaction process. Here are key considerations:

#### 1. Legal Framework:

The main regulatory framework for mergers, acquisitions, and restructuring in Moldova is provided by the Law on Companies and the Civil Code, alongside specific regulations issued by the National Commission for Financial Markets, if applicable.

#### 2. Types of Mergers and Acquisitions:

Merger: This typically involves one or more companies being absorbed by another or forming a new company. All assets, liabilities, and obligations of the merging companies are transferred to the new or absorbing company.

Acquisition: This can involve the purchase of shares or assets of a company, leading to control or significant influence over the company's operations.

### 3. Due Diligence:

Conducting thorough due diligence is crucial. This includes legal, financial, tax, and operational reviews of the target company to uncover any potential risks or liabilities.

### 4. Approval Processes:

Shareholder Approval: Mergers and acquisitions usually require the approval of shareholders. The specific requirements for such approvals are detailed in the company's articles of association.

Regulatory Approvals: Depending on the sector and size of the transaction, regulatory approvals may be required from the National Commission for Financial Markets, Competition Council, or other relevant authorities.

### 5. Valuation and Pricing:

Accurate valuation of the involved entities is critical. This often involves external auditors or valuation experts to ensure fairness and compliance with applicable accounting standards.

### 6. Structuring the Transaction:

Deciding on the structure of the deal is important, whether it's a share deal, asset deal, or a combination. Each has different legal and tax implications.

### 7. Tax Considerations:

Tax implications are a significant aspect of any merger, acquisition, or restructuring. It's important to understand the tax liabilities that may arise, including transfer taxes, stamp duties, and the impact on future tax liabilities.

### 8. Employment Issues:

Employee rights must be considered. This includes informing and consulting with employees about the transaction, especially in cases where layoffs or changes in employment terms are anticipated.

### 9. Integration and Post-Merger Restructuring:

Planning for post-merger integration is crucial to realise the synergies of the merger. This might involve combining operations, systems, and cultures of the merging entities.

### 10. Legal Documentation:

Comprehensive documentation is needed, including merger agreements, acquisition agreements, transfer documents, and new articles of association, if a new entity is formed.

### 11. Dispute Resolution Mechanisms:

Establishing clear mechanisms for dispute resolution in the transaction documents can prevent future conflicts and facilitate a smoother integration.

### 12. Notification and Registration:

The completion of a merger or acquisition often requires notifications to and registrations with various governmental bodies, such as the State Registration Chamber, to make the transaction legally effective.

## 3.5 What are the most efficient mechanics for dispute resolution?

In Moldova, there are several efficient mechanisms for resolving disputes, ranging from traditional litigation to alternative dispute resolution (ADR) methods. These mechanisms are designed to handle both commercial and civil disputes, providing various options tailored to the specific needs of the parties involved. Here are the

most common and efficient dispute resolution mechanisms available in Moldova:

#### 1. Litigation.

Courts: Traditional court proceedings are the standard method for dispute resolution in Moldova. The judicial system is structured in several tiers, including first instance courts, appellate courts, and the Supreme Court of Justice, which is the highest court. Litigation is often used for more complex cases or when other forms of dispute resolution have failed.

Procedure: The litigation process is formal and guided by the Civil Procedure Code, which ensures that all parties have a fair opportunity to present their case. This process can be time-consuming and costly, but it is effective for enforcing and interpreting legal rights.

#### 2. Arbitration.

Domestic Arbitration: This is a popular form of ADR for commercial disputes in Moldova, especially in international business transactions. Parties typically agree to arbitration through an arbitration clause in their contracts.

International Arbitration: Moldova recognizes and enforces foreign arbitral awards, adhering to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Advantages: Arbitration is generally faster than court proceedings and allows the parties to select arbitrators with specific expertise relevant to their dispute.

#### 3. Mediation.

Voluntary Process: Mediation involves a neutral third party who helps the disputing parties reach a mutually satisfactory agreement. It is voluntary and non-binding until an agreement is reached.

Legislation: Moldova has specific legislation encouraging the use of mediation, particularly in family and labour disputes, to reduce the burden on the judicial system.

Benefits: Mediation is less formal, less confrontational, and often more cost-effective than litigation. It also allows for creative solutions that are agreeable to all parties.

#### 4. Negotiation.

Direct Discussions: Parties may choose to negotiate directly with each other to resolve their dispute without the involvement of third parties. This method is typically the first step in the dispute resolution process.

Flexibility and Control: Negotiation offers parties complete control over the process and outcome, making it highly flexible and confidential.

#### 5. Conciliation.

Similar to Mediation: Like mediation, conciliation involves a third party who facilitates the dispute resolution process but may also offer advice and propose solutions.

Use in Administrative Disputes: Conciliation is particularly useful in administrative disputes involving public authorities.

#### 6. Specialized Courts:

Commercial Courts: For business-related disputes, specialised courts or chambers can provide expertise in commercial law, making the process faster and more tailored to the needs of commercial entities.

#### 7. Online Dispute Resolution (ODR):

Emerging Trends: With the increasing digitalization of services, ODR is becoming a more prominent option. It is particularly useful for low-value claims or where the parties are in different locations.

# MONGOLIA



**Buyanjargal  
Tungalag**  
Associate



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

In Mongolia, a foreign company can establish its presence through a subsidiary or a representative office (RO). The subsidiary may be established in the form of a Limited Liability Company (LLC). The LLC may, then, go public and change its form as a joint-stock company.

#### Key advantages:

- **JSC:** It is one of the company forms recognized under the Company Law of Mongolia. JSCs can carry out any business activities that are not prohibited by laws and are eligible for any business permits. It can raise funds by issuing additional shares and other securities publicly or privately. Shareholders are free to dispose of the shares in their ownership regardless of the other shareholders' votes. On the contrary, the shareholders can also enter into an agreement to restrict the right to dispose of their shares.
- **LLC:** Another form recognized under the Company Law is an LLC. As the same as JSCs, it can carry out any business activities that are not prohibited by laws and are eligible for any business permits. LLCs can issue shares and securities convertible into shares only in private. Other securities may be issued both to the public or private. Generally, the shareholders must offer their shares to other shareholders in the first place. However, the preemptive right may be transferred to other shareholders wholly or partially under an agreement.
- **RO:** It carries out legal representation activities such as protection of the head company's legitimate interests and making transactions on its behalf. Its activities are restricted to the charter adopted by its head company.

#### Limitations:

- **JSC:** As a listed entity whose share is publicly traded, JSCs are overseen by regulatory entities including the Mongolian Stock Exchange, the Financial Regulatory Commission, etc., and are subject to rules and regulations adopted by them. Primarily, JSCs must adhere to the corporate governance principles (e.g. to meet the minimum number a board of directors, establish board committees, periodical reporting and transparency obligations, time-limited obligations such as convening of the General Shareholders Meeting, etc.).
- **LLC:** The maximum number of shareholders is 50. Unless otherwise limited by its charter, it can operate for an indefinite period of time. Each foreign investor must invest at least USD 100 000 as registered capital of the company per the Law on Investment.
- **RO:** The term of the office is usually 2 years and is extended from time to time. It cannot carry out any business activities generating income. Eligible operations include promotion of their head companies' business and market research, etc.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

**Applicable legislations:** A legal entity is established in accordance with the Company Law of Mongolia and the Law on State Registration of Legal Entities.

**Types of legal entities:** Please refer to the answer 1.1 above.

#### Required documents for registration of the legal presence in Mongolia:

##### • LLC:

1. application forms;
2. name confirmation sheet;
3. shareholder resolution on the establishment of an LLC in Mongolia;
4. charter of the new LLC;
5. power of attorney to the Consultant;
6. passport copy of the executive director, in the case of a foreign national;
7. evidence of investment (account statement from both overseas bank and local bank, a reference letter from the local bank);
8. lease agreement in mongolian and a copy of state registration certificate;
9. receipt of payment of stamp duties and service fees;
10. UBO related documents, if the founder is a foreign legal entity (state registration certificate, charter, etc., whichever shows the ownership structure of the parent company).

##### • RO:

1. application forms;
2. state registration certificate of the head office and certified translation into mongolian;
3. profile/brief introduction of the head office and certified translation into mongolian;
4. charter of the head office and certified translation into mongolian;
5. resolution of the head office (shareholder) on establishment of the RO and appointment of a director and Certified translation into Mongolian;
6. charter of the RO (2 copies in Mongolian, 1 copy in the original language);
7. copy of passport of the RO's Director, in case of a foreign national;
8. lease agreement (in mongolian) and a copy of state registration certificate;
9. power of attorney, if required.

#### Registration procedure:

##### • LLC:

1. A name verification sheet shall be obtained from the Authority for State Registration of Legal Entities of Mongolia ("Registration Authority").
2. Temporary bank accounts shall be opened under the name verified as above.
3. The foreign investment shall be transferred to the temporary account.
4. Founding documents including the resolution on the establishment, charter of the new LLC, and other required documents shall be drafted and formalised (signed and sealed by a competent body, and apostilled). The documents shall be executed in bilingual, or a separate Mongolian translation will be done.
5. Ready-to-go documents are delivered to Mongolia and submitted to the Registration Authority.
6. A corporate seal is ordered on the basis of the registration certificate of the new LLC.

- **RO:**

1. Founding documents including the resolution on the establishment, charter of the RO, and other required documents shall be drafted and formalised (signed and sealed by a competent body, and apostilled). The documents shall be executed in bilingual, or a separate Mongolian translation will be done.
2. Ready-to-go documents are delivered to Mongolia and submitted to the Registration Authority.
3. A corporate seal is ordered on the basis of the registration certificate of the RO.

Terms for registration: LLCs are registered within 5 business days, and ROs within 3 business days, provided that all documents are complete and accurate. Unless otherwise stated in the charter of the LLC, it shall be registered for an indefinite period of time. While the RO is registered for a period of 2 years which can be extended from time to time.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

RO: There are not any specific authorizations or approvals required to establish a RO.

Foreign-invested LLC: Under the Law on Foreign Investment, if a foreign state-owned legal entity intends to acquire 33% or more percentage of the total shares issued by Mongolian legal entities operating in the following strategic sectors shall get permission from the Ministry of Economy and Development prior to becoming the shareholder or investor:

1. mining;
2. bank and finance;
3. the media and communications.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

### 1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

The most common type of legal entity in Mongolia is an LLC. There are not any major differences in terms of taxation.

#### 1. Shareholder structures.

	LLC	JSC
<b>The number of shareholders</b>	≥50	No restrictions
<b>Structure</b>	Anyone can be a shareholder. Practically, LLCs tend to have few individual shareholders, as well as parent companies in their ownership. JSCs, on the other hand, tend to have institutional investors, parent company, and a number of minor shareholders.	

#### 2. Shareholders' responsibility.

- A company shall be liable with its assets including properties and property rights owned by it. The company and its shareholders shall not be liable for each other's liabilities. The shareholders are liable only to the extent of their shares owned.
- Shareholders holding more than 10% of the company shares individually or collectively with affiliated persons, or persons authorised to determine the company's activities in other ways shall be liable to the company for property damages caused due to their wrongful actions with their own properties.
- Shareholders shall have dual liability for the company's debts with all of their personal properties and property rights unless their personal properties and property rights are clearly demarcated from the properties and property rights invested in the company.

#### 3. Responsibility of the representatives.

Under the Company Law, persons directly or indirectly involved in the company's official making process and conclusion of contracts and transactions, such as the Board of Directors, members of the executive management team, Chief Executive Officer, head of the financial department, chief accountant, chief specialist, secretary of the Board of directors, etc., are considered as authorised officers of a company. They are subject to the following legal obligations, including:

- to operate and exercise their power within the restrictions under the law and the company's charter and other procedures;
- to uphold the best interests of the company in its operations and strictly adhere to its obligations under the law and the company charter;
- to take reasonable resolutions/decisions in the best interests of the company;
- to avoid conflict of interests when taking resolutions/decisions and notify the company, if any;
- to refrain from accepting any gifts or incentives from external parties while performing their responsibilities;
- to refrain from disclosing the company's confidential information to others or using it for one's own benefit.

The authorised officers shall be liable with their personal properties to the company, shareholders, and creditors for damages caused due to the following unlawful actions or omissions, including:

- use of the company's name for one's own interest;

- deliberately giving false information to shareholders and creditors;
- fail to give information to shareholders;
- fail to store or archive corporate documents mandated to be maintained under the law;
- fail to give or give late the required information to persons authorised to demand so.

These liabilities are applicable to the responsible person regardless of whether he/she has been imposed liabilities under other laws (the Criminal Code, the Law on Infringement).

#### 4. Characteristics of the other types of Legal Entities.

The major difference between JSC and LLC includes (i) supervision by regulatory authorities; (ii) reporting and transparency obligations for JSCs; and (i) flexibility to regulate certain issues under their internal rules and regulations for LLC, including (i) whether or not establish a Board of Directors; (ii) which body would resolve issues regarding (a) the price of shares and securities, (b) the market price of common stocks to be bought back; (iii) the condition to buyback of more than 5 percent of its common stocks; (iv) the procedure to convene shareholders' meeting; (v) the procedure to select and appoint members of the Board of Directors or in its absence the executive management; (vi) additional items to be included in financial statements.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

The following are the basic costs associated with the maintenance of a legal entity:

- office lease, utilities, and maintenance cost;
- employees' remuneration, employer's share of social and health insurance premium;
- contractors' fees (accounting, legal services, etc.), if any;
- other costs as may be incurred depending upon specific needs of the company.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

**Annual taxable income:** According to the Law on Corporate Income Tax, income tax shall be imposed on a taxpayer's taxable income in a given year. The following incomes shall be subject to tax under Article 8 of the Law on Corporate Income Tax:

- income from the sale of goods, works and services;
- income from riddles, gambling games, and lottery activities;
- income from technical, management, consulting, and other services;
- income from goods, works, and services received free of charge; (other similar incomes specified above);
- income from letting use or rental of movable and immovable properties;
- interest and forfeiture (penalty, undue loss) payments from a contractual defaulting party, and reimbursements accepted for damages;
- actual income from foreign exchange rate differences;
- income from sales and transfer of shares, securities, and other financial instruments;
- income from sales of intangible assets and movable properties

except rights granted by state bodies (i.e. business permits) and shares, securities, and other financial instruments.

**Tax rate:** As stipulated by Article 20.1 of the Law on Corporate Income Tax, a taxable income earned (income from the sale of goods, works, and services) in the amount of MNT 0-6 billion for the given year shall be imposed with a 10% tax and taxable income over of MNT 6 billion for the given year shall be imposed with a tax equal to MNT 600 million plus 25% for taxable income over MNT 6 billion.

However, taxpayers earning up to MNT 300 million in taxable income and operating outside of the following 3 areas, are subject to a 1% tax rate on taxable income regardless of the above rate:

- exploration, mining, exploitation, transportation, and sale of minerals and radioactive minerals;
- planting of tobacco plants, producing and importing alcohol and tobacco;
- manufacturing of petroleum products, importing and wholesale and retail trading of all types of fuel, and exploring, mining, and selling of oil.

**Other:** Income described in the chart below is deducted when determining the amount of annual taxable income and is taxed at different rates on a gross basis:

Source of income	Tax rate (%)
Dividends	10%
Royalties	10%
Interest	10%
Law on Petroleum of Mongolia; Upon termination of a production sharing agreement by a Government decision, the costs incurred in exploration and exploitation activities will not be reimbursed, and the money deposited in the escrow account will be used to fully rehabilitate the environment and, if necessary, to dismantle exploration and exploitation facilities, and the remaining money to be returned to the contractor	10%
Insurance reimbursement	10%
Fees and charges evidenced by a payment receipt paid to the State organisation in connection with obtaining the right when it is issued by a State authority	10%
Sale income and transfer of real estate	2%
Quizzes, gambling, and lotteries(net)	40%
Profit transferred from the permanent establishment to its own head entity in the given tax year	20%
Interest income on loans and debt drawn by commercial and domestic sources of the Commercial Bank of Mongolia	5%
Income from the sale of intellectual property rights	5%

### 2.2 What tax and customs incentives are available in a country?

#### TAX

Taxpayers earning up to MNT 300 million in taxable income and operating outside of the following 3 areas are subject to a 1% tax rate on taxable income:

- exploration, mining, exploitation, transportation, and sale of minerals and radioactive minerals;



- planting of tobacco plants, producing and importing alcohol and tobacco;
- manufacturing of petroleum products, importing and wholesale and retail trading of all types of fuel, and exploring, mining, and selling of oil.

Taxpayers earning up to MNT 1.5 billion in taxable income and operating outside of the above 3 areas are entitled to a 90% tax reduction. If the entity is subject to 1% of tax as specified above, this tax reduction shall not apply.

**The following types of income are exempted from taxation:**

- incomes subject to the general tax rate and dividend generated from sales of products belonging to a taxpayer who is operating in Mongolia under a production sharing agreement in the petroleum sector, as well as income transferred abroad that is generated from the sales of such products;
- operational income of educational and health institutions;
- interest income pertaining to the pledge of intellectual property rights;
- operational income of investment.

**The following types of income are subject to tax reduction:**

- 50% tax reduction in rural areas located 500 km (or more) away from the capital city, or a 90% of tax reduction in rural areas located 1000 km (or more) away from the capital city for operational income earned from that area by an entity operating there and registered with the administrative unit of that area. In this case, such an entity must interact with the relevant local tax office and have created job positions (verified by social insurance premium payment);
- income earned by business entities having more than 25 employees out of which 2/3 accounts for disabled persons;
- tax applicable to income earned from sales of innovative products, works, and services newly manufactured by a start-up company for five years from the date of state registration;
- tax applicable to income that is earned in the free zone and is equal to 50% of the investment by an entity that invested USD 500 000 or more in infrastructures such as energy and heat sources, pipelines, clean water supply, sewerage, roads, railways, airports, and telecommunication for the free zone;
- tax applicable to income that is earned in the free zone and is equal to 50% of the investment by an entity that invested USD 300 000 or more in the establishment of warehouses, loading and unloading facilities, hotels, tourism complexes, import substitution, and export product factories;
- tax applicable to the income of citizens, enterprises, and organisations that finance projects to improve the quality of natural water and restore rivers and streams in order to increase the water resources of a certain territory and create a reliable water supply;
- 50 percent tax on the income of the enterprise that produces or cultivates the following products only:
  - cereals, potatoes, vegetables;
  - milk;
  - fruits and berries;
  - fodder and fodder plants;
  - meat and meat products produced in intensive poultry farming.
- the tax on the income of the main activity of the heat and electricity generation project implemented by taxpayers after January 1, 2023, will be reduced by 90% for 3 years and 50% for the following 3 years, starting from the next accounting period after the beginning of earning income;

- operational income of tour operators;
- tax on the sales income earned from tourism products and services of tourism services entities (start-ups) for 3 years from the date of state registration;
- 90% tax reduction on operational income from the production of main and auxiliary equipment for generators with a capacity of more than 5 megawatts of electricity or more than 1.5 megawatts of thermal energy; etc.

**The above incentives are not applicable to the following sectors:**

- exploration, mining, exploitation, transportation, and sale of minerals and radioactive minerals;
- planting of tobacco plants, producing, sales, and importing of alcohol and tobacco;
- importing or re-sales of petroleum products;
- providing talk services;
- construction of energy sources and networks, energy production, sale and distribution;
- civil aviation services;
- construction and maintenance of highways and road facilities.

**CUSTOMS**

According to the Law of Mongolia on Customs Tariffs and Customs Duties, customs tariffs on imported goods are classified into general, most favoured nation, and preferential tariffs, where the general tariff is double the most favoured nation tariff. Preferential tariffs are determined by international agreements.

**Exemption.**

The following goods, among other things, are exempted from customs duty:

- gas fuel, its tanks, equipment, special-purpose machines, equipment, and facilities;
- civil aircraft, engines, and ground trainers, their parts, components, sub-assemblies, spare parts, equipment, and related tools;
- raw materials, materials, and reagents that are not produced domestically and are necessary for the production of new goods and products for domestic and foreign markets through innovation projects;
- special purpose machinery, mechanisms, equipment, facilities, raw materials, materials, chemicals and explosives, and spare parts imported by the contractor and subcontractors for activities related to oil and unconventional oil during the entire period of exploration and during the first 5 years of operation;
- renewable energy research and production equipment, its accessories and spare parts; etc.

**2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?**

**Accounting and reporting requirements.**

**Fiscal year:**

According to the Law of Mongolia on Accounting, the fiscal year of the financial statement commences on January 1 and ends on December 31 of that year.

**Filing period:**

Financial statements: Foreign investors are undertaken to keep



accounting in accordance with international standards under the Law on Investment. Thus, entities obliged to adhere to international standards shall file their financial statements semi-annually within July 20 and annually within February 10 of the following year.

**Corporate income taxation report:** If the taxable income of the previous year is MNT 6 billion (approx. USD 1 780 415) or more, the taxpayer shall submit to the tax authority the quarterly tax returns for the given tax year by the 20th day of the first month of the following quarter and the annual tax report by the 10th day of February of the next year.

**Social insurance premium payment report:** Under the Law on Social Insurance, the social insurance premium payment report shall be submitted by the 5th of the following month.

**Value-added tax report:** Withholding taxpayers (if the sales income reaches MNT 50 million or more, the taxpayer shall be registered as a withholding taxpayer) shall transfer the tax for the goods, works, and services sold and submit the respective report by the 10th of the following month under the Law on Value Added Tax.

#### Language and currency:

According to the Law of Mongolia on Accounting, any entities operating in the territory of Mongolia shall keep their accounting records in Mongolian language, as well as register and report their work and transactions in national currency or MNT.

#### Accounting policy:

Management of entities shall approve and implement accounting policy documents in accordance with accounting laws, standards, rules, regulations, and instructions. The person who keeps the accounting records, prepares and reports the financial statements shall be a professional or certified accountant.

#### Archive requirements:

Accounting records and financial statements shall be kept for at least 10 years.

### 2.4. What is the taxation of dividends for foreign investors?

Dividends transferred to non-resident taxpayers shall be subject to 20% withholding tax, unless otherwise stipulated by a double taxation agreement between Mongolia and the resident country of that non-resident taxpayer.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

The general withholding tax rate for incomes generated in Mongolia and transferred to non-resident taxpayers is 20%. This rate may vary usually between 0 to 10 percent under the Double Tax Agreements of Mongolia with 26 countries. Therefore, it is preferable that foreign investors establish a presence in Mongolia from one of those 26 countries.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

Under the Law of Mongolia Personal Data Protection, personal data (sensitive information of a person and the name of the person's parents, his/her name, date of birth, place of birth, address of residence, location, civil registration number, information on assets,

education, membership, electronic identifiers, other information that directly or indirectly identifies or is identifiable of that person) may be collected, processed and used only upon the following grounds:

- with the consent of the data subject;
- on the grounds specified by law;
- in cases provided by law, to exercise his/her rights and fulfil his/her duties in the employment relations;
- to conclude contracts and ensure the implementation of concluded contracts;
- the information is disclosed to the public in accordance with the law;
- to create historical, scientific, artistic, and literary works, open data, and statistics making it impossible to identify a person.

The law prohibits the transfer of information to foreign individuals, legal entities, or international organisations, except as provided in international treaties to which Mongolia is a party, or with the consent of the data subject.

Further under the Labor Code of Mongolia, employers are prohibited from collecting and using the following information about employees:

- information related to personal secrets;
- membership in political parties, public organisations, and trade unions.

Information required from employees may be collected, processed and used to carry out job interviews and communicate with them in the course of employment relations in accordance with an internal procedure. The procedure and its amendments must be placed in an area clearly visible to all employees. The employer must present the necessity and purpose in advance of obtaining an employee's information from third parties.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

#### Priority to seek local employees.

Employers must seek the necessary employees within the labour market of Mongolia in the first place. For this purpose, information about the necessary vacancies and job requirements should be submitted to the employment agency of the respective province and district, and a request to hire an employee should be made. Afterward, job advertisements will be posted in the employment register and database, and employees will be sought in Mongolia within 14 business days. It is notable to avoid exaggerating the qualifications and skills required to perform the job, as well as refusing to hire a qualified candidate from Mongolia who meets the job requirements. After due completion of this process, the employer may invite foreign employees.

#### Employment contract.

**Term:** Employment contracts shall be concluded for an indefinite term, except for the below cases:

- working as an apprentice;
- working in a probationary period (3+3 months);
- undertaking seasonal jobs;
- working instead of an employee whose position is being retained;
- working in a temporary workplace;
- undertaking the work or duties limited by time frame due to funding or scope of the work.

**Mandatory clauses:** An employment contract shall include the following mandatory conditions:

1. the job title and duties as outlined in the job description;

2. the workplace location;
3. the remuneration amount; and
4. working conditions.

In addition to the above, a “serious breach” that would result in immediate termination of the employment must be exclusively outlined in the contract.

### **3.3 What are the requirements for currency regulation and currency control?**

According to the Law of Mongolia on Conducting Settlement in National Currency, the price of goods works, and services must be expressed and conducted in Mongolian togrog (MNT) in the territory of Mongolia unless with an official permit by the MongolBank (the Central Bank of Mongolia). In other words, Mongolian legal entities and individuals must conduct transactions with one another using MNT.

Transactions in the amount of MNT 20 million (app USD 5 924) or more all at once or in instalments over a 24-hour period may be notified to the Financial Information Unit (“FIU”) of Mongolia by commercial banks. If deemed justifiable, the FIU may suspend the transaction and take further actions including the collection of relevant information and transfer of the case to a competent authority if the transaction was determined to be dedicated to money laundering and terrorist financing, or otherwise, cancel the suspension of the transaction (the Law of Mongolia on Anti-Money Laundering and Combating Financing of Terrorism).

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

Buyback of shares: The reorganisation of a company can have a significant impact on the position and interests of shareholders. If the company is reorganised by means of reorganisation (merger, acquisition, separation, division, or transformation), the shareholder who voted against the decision has the right to demand buyback of his shares from the company. The shares of the shareholder who has not exercised this right, his/her shares will be converted according to the reorganisation decision/resolution and the shareholders of the reorganised company will enjoy the above rights.

Permit to reorganise a dominant entity: In the case of reorganisation of a dominant entity; or acquisition of more than 20% of common shares or 15% of preferred shares of one’s competing entity that sells the same goods and products; or consolidation or unison with related parties, the company shall obtain a permit from the Authority for Fair Competition and Consumer Rights (AFCCR) as per the Law of Mongolia on Competition. The AFCCR shall review and issue an opinion on whether the reorganisation or acquisition would restrict competition within 30 days.

Notification to creditors and clients: Within 15 working days after the decision to reorganise the company is issued, the reorganised company shall notify the creditors and other clients in writing of the reorganisation. In the case of a joint-stock company, it must notify the Financial Regulatory Commission of Mongolia and a securities trading organisation of the decision/resolution within 3 business days. The reorganisation of the joint-stock company shall be registered to the State Registration Authority on the basis of permission from the Financial Regulatory Commission.

### **3.5 What are the most efficient mechanics for dispute resolution?**

Negotiation: The foremost efficient method is that the parties amicably negotiate on mutually beneficial solutions before proceeding to any third-party involved mechanisms, thereby saving money and time.

Mediation: Besides the conventional court proceeding, parties are free to agree on alternative dispute resolution mechanisms such as mediation and arbitration. Mediation is less formal than arbitration. Once the parties reach an agreement and conclude a mediation settlement agreement, it shall be binding upon the parties and enforceable under the court judgement enforcement procedure.

Court/Arbitration: If the mediation is unsuccessful, arbitration or court is the last resort of dispute resolution. However, parties cannot establish both of these mechanisms as they are equally competent except for the exclusive jurisdiction of the Mongolian court over claims regarding immovable property, inheritance, and alimony. Thus, the dispute resolution method should be explicitly stipulated in the contract. Depending on the nature of the dispute and the parties’ preference, either can be the option. If time is the priority, arbitration is more convenient than court proceedings. Arbitration may be costly in some cases.

# RUSSIA



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

#### 1. A foreign company may establish its presence in the Russian Federation in several ways.

##### 1) A foreign company may create/establish a business company: a limited liability company or a joint stock company.

Such a company may be established with different shares in the authorised capital, for example, with a minority or majority share in a company with other founders.

A company may also be established with a 100% shareholding where a foreign company will be the sole participant/shareholder.

Meanwhile, it should be taken into account that in the latter case, the new company cannot have another single-person business entity as its sole participant (shareholder).

Depending on the share of participation of a foreign company in the authorised capital of a Russian company, such a company will be recognized as a subsidiary or affiliate.

A company shall be recognized as a subsidiary if another (main) business company (partnership) by virtue of predominant participation in its authorised capital, or in accordance with an agreement concluded between them, or otherwise has the ability to determine decisions made by such company.

A company shall be recognized as a dependent company if another (predominant) company has more than 20% of voting shares of the first company.

##### 2) A foreign company may not re-create a subsidiary company.

A foreign company may buy shares in an already established and operating Russian company.

In such a case, the same rules on recognizing a company as a dependent or subsidiary and the prohibition of the sole participant/shareholder in turn consisting of one person apply to the acquired company.

##### 3) A foreign company may open (accredit) a branch in the Russian Federation.

A branch is a separate subdivision of a legal entity located outside its location and performing all or part of its functions, including the functions of a representative office.

##### 4) A foreign company may open (accredit) a representative office in the Russian Federation.

A representative office is a separate subdivision of a legal entity located outside its location, which represents the interests of the legal entity and protects them.

#### 2. Advantages of a limited liability company.

Business companies, unlike branches and representative offices, are legally and financially independent.

However, the independence of such subsidiaries does not prevent them from being fully subordinate to the owner of the foreign company.

As a rule, the establishment of a limited liability company (LLC) is preferable to a joint stock company (JSC).

LLC is easier and faster to register. LLCs are subject to fewer regulatory requirements and restrictions, including with respect to corporate governance.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

#### 1. Establishment of a limited liability company (LLC).

Establishment of a company shall be carried out by decision of its founders, including a foreign company or the sole founder - a foreign company. The decision on establishment of a company shall be adopted by the meeting of founders of a company. In case of establishment of a company by one person the decision on its establishment shall be made by this person alone.

The decision on establishment of a company shall reflect results of voting of founders of a company and decisions made by them on issues on establishment of a company, on determination of company's corporate name, location of a company, amount of authorised capital of a company, on approval of charter of a company, on election or appointment of management bodies of a company, as well as on formation of audit commission or election of auditor of a company if such bodies are provided by charter of a company or are obligatory.

In case of establishment of a company by one person a decision on establishment of a company shall define the size of authorised capital of a company, procedure and terms of its payment, and also size and nominal cost of share of a founder.

Founders of a company if their number is more than one, shall conclude in written form a contract on establishment of a company defining procedure of realisation by them of joint activity on establishment of a company, amount of authorised capital of a company, amount and face value of share of each founder of a company, and also amount, procedure and terms of payment of such shares in authorised capital of a company.

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Next, the company is registered in the Unified State Register of Legal Entities (USRLE).

The registration authority is the Federal Tax Service of the Russian Federation (FTS of Russia), which has established registration centres in each region.

To register a company, the registration centre (a specially designated Inspectorate of the Federal Tax Service of Russia in each region) must be provided with:

- a completed application for state registration (form P11001);
- a resolution of the general meeting of founders on the establishment of a joint stock company or a resolution of the sole founder;
- the company's charter;
- a receipt confirming payment of the state duty;
- confirmation of the legal address, including documents from the owner of the premises, draft lease agreement for the premises;
- extract from the register of non-resident legal entities (if the founder is a foreigner);
- civil passport of the applicant;
- a power of attorney (if the documents are submitted by a representative). However, the representative is not the applicant, in fact, the representative performs the function of a courier.

It should be taken into account that the application for state registration (form P11001) is signed by all applicants, i.e., all founders of the company. Or one applicant - the sole founder of the company.

At the same time, since the sole or one of the founders of a Russian company is a foreign company, the decision to establish or participate in a Russian company is made by the body determined by the charter of the foreign company. This may be a general meeting of shareholders, a decision of the management board or the board of directors.

Meanwhile, the application for state registration (form P11001) is signed personally by an individual - the sole executive body of the foreign company (director or one of the directors, if there are several of them).

In this case, the personal presence of the director of the foreign company is required to sign and certify his signature on the application for state registration.

In turn, the application for state registration (form P11001) is signed by the applicant(s) at the time of submission to the registration centre or the signature of the applicant(s) is certified by a notary.

It is recommended to certify the signature of the applicant(s) by a notary and submit the application for state registration to the registration centre through a notary (such an electronic service exists and works successfully).

Authorities of the Federal Tax Service of Russia will independently register the registered company for tax purposes, transfer information to the statistical authorities (Rosstat) for registration and assigning statistical codes, transfer information for registration with the extra-budgetary funds - the Federal Social Security Fund and the Russian Pension Fund.

A registered company will need to produce a seal on its own, if the need for a seal is stipulated in its charter, open a current account in a Russian bank, and conclude a lease agreement for premises.

The minimum authorised capital for a limited liability company is RUB 10 000. The term of such payment may not exceed 4 months from the date of state registration of the company.

At the same time, when establishing an LLC, the minimum authorised capital must be paid in cash only (not in property).

## **2. Creation of a joint-stock company (JSC).**

All the rules on establishment of a limited liability company (LLC) are fully applicable to the establishment of a joint stock company (JSC), except for one essential circumstance.

Unlike a limited liability company, the authorised capital of a joint stock company consists of the nominal value of uncertificated shares (securities) acquired by shareholders.

In this connection, before submitting documents for state registration of a JSC, it is necessary to register the issue of shares constituting the authorised capital of the joint stock company.

Registration of the issue of shares at the establishment of a JSC is carried out either by the Bank of Russia or by a specialised company - registrar.

Only after the state registration of a share issue can documents be submitted to the Federal Tax Service of Russia for the registration of a legal entity - a joint-stock company, accompanied by a document confirming the registration of the share issue.

The minimum authorised capital of a non-public joint stock company shall be RUB 10 000.

The minimum authorised capital of a public joint stock company is RUB 100 000.

At the same time, when creating a JSC, the minimum authorised capital must be paid only in cash (not property).

## **3. Opening (accreditation) of a branch or representative office of a foreign company.**

A foreign company decides to open a branch/representative office in the Russian Federation. Such a decision is made by the body determined by the charter of the foreign company. This may be a decision of the general meeting of shareholders, management board, board of directors or the sole executive body.

The said body of the foreign company approves the Regulations on the branch/representative office, which must define the following:

- the organisational and legal form and name of the foreign legal entity;
- the address of location of the foreign legal entity in the country of registration;
- name of the branch/representative office;
- its location on the territory of the Russian Federation;
- the purposes of establishment, opening and types of activities of the branch/representative office;
- the management procedure of the branch/representative office of the foreign legal entity.

In addition, a foreign company must apply to the Chamber of Commerce and Industry of the Russian Federation (CCI RF) for certification of information on the number of employees. Such certification is mandatory even if there are no employees. Exceptions are banks and airlines. A fee is charged for this certification.

The registration authority for accreditation of branches and representative offices of foreign companies is the Interdistrict Inspectorate of the Federal Tax Service of Russia No. 47 for Moscow (MIFNS No. 47 for Moscow).

At the same time, certain categories of branches/representative

offices are accredited by other state bodies. For example, branches/representatives of banks are accredited by the Bank of Russia, branches/representatives of airlines by the Federal Air Agency, branches/representatives of mass media are accredited by the Ministry of Foreign Affairs of the Russian Federation.

For accreditation an application for accreditation of a branch/representative office in the form 15AFP is submitted to MIFNS No. 47 for Moscow.

The following documents must be attached to the application:

- decision of a foreign company to establish a Russian branch/representative office;
- constituent documents (usually the charter) of the foreign company;
- extract from the register of foreign legal entities (trade register) or other similar document issued by the country where the company is registered, confirming the legal status of the company;
- a tax certificate (certificate) confirming the registration of the company as a taxpayer in this country, indicating the taxpayer code, if it is not indicated in the extract;
- bank details of the foreign company;
- information on employees certified by the Chamber of Commerce and Industry of the Russian Federation;
- a document certifying the payment of the state duty;
- a power of attorney for the head of the branch.

Documents from a foreign company must have consular legalisation of documents or an apostille (depending on the jurisdiction of the foreign company). However, if an international treaty of the country of incorporation of the company and the Russian Federation provides for exemption from legalisation of documents.

All documents drawn up in a foreign language must be accompanied by a translation into Russian, which will be certified by a notary in the territory of the Russian Federation.

The amount of state duty for accreditation of one branch/representative office is a substantial sum - RUB 120,000.

At the same time, the fee for accreditation of a branch or representative office in the Russian Federation is RUB 4 000 for foreign companies from the Eurasian Economic Union.

Application for branch accreditation in Form 15AFP by an authorised representative of a legal entity, which may be:

- the head of a foreign company;
- the head of a Russian branch;
- another person acting on the basis of authorization.

After accreditation, a branch or representative office of a foreign company must:

- receive a certificate of tax registration;
- receive a notification of registration and statistics codes from Rosstat;
- receive notification of registration with the extra-budgetary funds the Federal Social Security Fund and the Russian Pension Fund;
- make a seal;
- open a current account in a Russian bank;
- organise bookkeeping and tax accounting;
- execute the necessary documents for foreign employees to enter the Russian Federation, if any.

### **1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?**

#### **1. Migration requirements.**

A foreign citizen may act as a director of a Russian company with foreign participation.

However, there are some requirements related to migration registration. In order to do so, he or she must fulfil the following conditions:

- have a residence permit or a temporary residence permit, which confirms legal and permanent stay in Russia;
- have a patent or work permit in Russia, which confirms his right to enter into labour relations on the territory of the Russian Federation.

2. As mentioned above, a foreign company must apply to the RF CCI to certify the information on the number of employees. Such certification is mandatory even if there are no employees.

#### **3. Restrictions related to the share of participation in a Russian company.**

If the share of foreign participation in a Russian company exceeds 50%, it is not allowed to establish an insurance company.

If the share of a foreign company in a Russian company exceeds 49%, you cannot apply small business benefits.

#### **4. Tax peculiarities.**

Some tax requirements for Russian companies with foreign participation should be taken into account:

- for companies with foreign participants the tax rate on dividends is increased (up to 15%);
- if the share of a foreign organisation in a Russian company exceeds 25%, the simplified taxation system (STS) cannot be applied.

#### **5. Obtaining permits for certain types of activities.**

There are restrictions for companies with foreign participation in the following activities:

- mining;
- defence industry;
- land lease in port and border areas;
- any activities related to radioactive waste;
- conduct large telecommunications and publishing business;
- work with radioactive waste.

Companies with foreign participation may not conduct the following activities:

- medical services;
- production of medicines;
- production of medical equipment;
- security activities;
- transportation of passengers by motor vehicles for 8 or more persons, railway, water and air transport;
- transportation of waste;
- communication services;
- educational services.

#### **6. Necessity to obtain authorization from a government commission.**

Transactions with residents of unfriendly countries that directly or



indirectly result in the establishment, change or termination of rights to own, use or dispose of shares in authorised capitals of limited liability companies require approval of the government commission.

Such approval is required as a rule and under certain conditions in transactions involving stakes in operating Russian companies when acquiring or disposing of such stakes.

The list of unfriendly countries and territories includes Albania, Andorra, Australia, Great Britain, including Jersey, Anguilla, British Virgin Islands, Gibraltar, member states of the European Union, Canada, Iceland, Japan, Liechtenstein, Micronesia, Monaco, Montenegro, New Zealand, Norway, Republic of Korea, San Marino, Northern Macedonia, Singapore, Switzerland, Taiwan (China), Ukraine, Montenegro, Taiwan (China), the United Kingdom, and the United States.

At the same time, foreign companies from friendly countries are free to establish legal entities in Russia.

#### **1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?**

The Civil Code of the Russian Federation (CC RF) stipulates the following forms of commercial organisations:

- limited liability companies;
- joint-stock companies;
- production cooperatives;
- general partnerships;
- partnerships on faith (limited partnerships);
- business partnerships;
- peasant farms;
- state and municipal unitary enterprises.

The most used forms of commercial organisations are business companies - limited liability company (LLC) and joint-stock company (JSC).

At the same time, limited liability companies (LLC) are the most widespread.

Limited liability company (LLC) is easier and faster to register. There are fewer regulatory requirements and restrictions on LLCs, including with regard to corporate governance.

State registration of a joint stock company (JSC), in addition to similar registration procedures for LLC registration, requires preliminary registration of the issue of shares constituting the authorised capital of the joint stock company.

In this regard, before submitting documents for state registration of a JSC, it is necessary to register the issue of shares constituting the authorised capital of the joint stock company.

Registration of the issue of shares upon the establishment of a JSC is carried out either by the Bank of Russia or by a specialised company - registrar.

The authorised capital of an LLC is divided into shares expressed as percentages or fractions. Such shares are property rights. The number of LLC participants must not exceed 50.

The authorised capital of a JSC is divided into a certain number of shares certifying the rights of shareholders in relation to the company. Shares are book-entry securities. The rights to them are certified by entries on personal accounts with the registry holder (a separate organisation licensed to carry out the activity of keeping the register).

The number of shareholders is not limited by law.

In other types of commercial organisations, such as a production cooperative (PC), the property contributions of the members of the cooperative are pooled together to form a mutual fund.

In terms of management, the principle of membership is applied in basic organisations, including LLCs, JSCs and PCs. The main governing body is the general meeting of members/shareholders.

The management bodies also include: the board of directors (supervisory board), collegial executive body (management board, directorate) and sole management body (director, general director).

At the same time, the current legislation on JSCs, primarily public JSCs or those with 50 or more shareholders, requires mandatory formation of a board of directors (supervisory board).

In LLCs, only the meeting of participants and the sole executive body are obligatory.

The current legislation on LLCs and JSCs provides for the presence of several directors (sole executive bodies), which may be of interest to foreign investors.

##### **1.4.1. What are the shareholder structures of these types of legal entities?**

LLC participants, JSC shareholders, PC members can be both individuals and legal entities.

In a production cooperative (PC) - members of the cooperative as a rule must take personal labour participation. At the same time, the number of those who do not take personal labour participation should not be higher than 25%.

##### **1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

LLC members and JSC shareholders are not liable for its obligations and bear the risk of losses related to the Company's activities to the extent of the value of their shares in the authorised capital of the LLC or JSC.

At the same time, under bankruptcy law, controlling persons, including members of LLCs/shareholders of JSCs, may be subject to subsidiary liability.

Controlling persons are persons who determine the actions of the organisation, influence decision-making and are beneficiaries.

##### **1.4.3. What is the responsibility of the representatives in these types of legal entities?**

Legal representatives of the organisation are persons authorised to represent this organisation on the basis of the law or its constituent documents. A legal representative acts on behalf of the organisation without power of attorney, including representing its interests and making transactions.

As a rule, the legal representative of an organisation is its sole executive body (director, general director).

The sole executive body (director, general director) must act in the interests of the company in good faith and reasonably.

The Director without power of attorney acts on behalf of the Organization, including representing its interests and making transactions on behalf of the Organization.

The Sole Executive Body (Director, General Director), as well as in certain cases, members of the Board of Directors (Supervisory Board), members of the Collegial Executive Body are liable to the Company for losses caused to the Company by their culpable actions (inaction).



#### 1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

Business partnerships may be established in the organisational and legal form of a general partnership or a partnership on faith (limited partnership).

A business partnership acts on the basis of a memorandum of association, which is concluded by its founders (participants).

1) Participants in general partnerships and general partners in partnerships on faith may be individual entrepreneurs and commercial organisations.

A general partnership is established and acts on the basis of a memorandum of association. The memorandum of association is signed by all its participants.

A participant of a general partnership is obliged to participate in its activities in accordance with the terms and conditions of the memorandum of association.

Each participant of a general partnership has the right to act on behalf of the partnership, unless the memorandum of association establishes that all participants conduct the affairs of the partnership jointly, or the conduct of affairs is entrusted to separate participants.

In the case of joint conduct of the affairs of the partnership by its participants, the consent of all participants of the partnership is required for each transaction.

Profit and losses of a general partnership shall be distributed among its participants in proportion to their shares in the share capital, unless otherwise provided by the memorandum of association or other agreement of the participants.

2) A partnership on faith (limited partnership) is a partnership in which, along with the participants carrying out entrepreneurial activities on behalf of the partnership and liable for the obligations of the partnership with their property (general partners), there are one or more participants - contributors (limited partners), who bear the risk of losses related to the activities of the partnership within the limits of the amounts of their contributions and do not participate in the implementation of entrepreneurial activities by the partnership.

Management of the activities of a partnership on faith is carried out by general partners. The procedure for managing and conducting the affairs of such a partnership by its general partners is established by them in accordance with the rules of the Civil Code of the Russian Federation on general partnership.

Also, the rules of the Civil Code of the Russian Federation on general partnership are applied to the partnership on faith insofar as it does not contradict the rules on partnership on faith.

3) Business partnership is a commercial organisation.

Legislation provides for the possibility of using business partnership by participants of innovative (including venture) entrepreneurial activity.

Business partnership is created by 2 or more persons.

The participants of the partnership are not liable for the obligations of the partnership and bear the risk of losses related to the activities of the partnership within the limits of the amounts of their contributions.

The partners may conclude an agreement on the management of the partnership.

Such an agreement may define the following terms and conditions:

- obligations restricting, for a period of time determined by the partnership management agreement, the rights of partnership participants or other persons to financial, personal labour or other participation in the activities of other legal entities or individual entrepreneurs engaged in activities corresponding to the subject matter of the partnership, as well as measures of liability for breach of such obligations;

- provisions on the special rights of partnership participants when leaving the partnership depending on the occurrence or non-occurrence of certain conditions

- procedure, terms and conditions of involvement of other legal entities and individuals in the partnership activities.

4) Citizens conducting joint activities in the field of agriculture without forming a legal entity on the basis of an agreement on the establishment of a peasant farm shall have the right to establish a legal entity - a peasant farm.

Peasant farm is a voluntary association of citizens on the basis of membership for joint production or other economic activities in the field of agriculture, based on their personal participation and the association of property contributions by members of the peasant (farm) economy.

The property of a peasant farm belongs to it by right of ownership.

A citizen may be a member of only one peasant farm established as a legal entity.

#### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

In fact, all regular expenses are considered operational, which cannot be attributed to capital, that is, the cost of acquiring assets that generate profit.

In paragraph 11 of section III of PBU 10/99 "Expenses of the organisation", other expenses are indicated, which are precisely related to operating expenses:

- expenses related to leasing or other form of temporary use of the company's assets;
- expenses incurred when granting intellectual property rights for temporary use;
- expenses incurred with participation in the authorised capital of other entities;
- expenses that relate to the sale, disposal or other write-off of company assets, such as fixed assets;
- the interest that the company pays when receiving a loan;
- expenses related to payment for services of credit institutions;
- deductions made to estimated reserves, for example, to the reserve for doubtful debts;
- fines, penalties paid in connection with violation of the terms of the contract;
- losses of previous years that were recognized in the reporting year;
- accounts receivable with expired statute of limitations, as well as other debts that are not recoverable;
- exchange rate differences;
- the size of the markdown of assets;
- expenses for charity, sports, cultural and educational events, etc.;
- other expenses.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Generally, the following taxes must be paid when running a business:

- VAT;
- profit tax;
- corporate property tax;
- transport tax;
- fees to various foundations (for the employees).

Russian tax legislation permits the use of different tax regimes - Simplified taxation system, Automated simplified taxation system and Unified agricultural tax. The use of special tax regimes is possible if the requirements established by the legislation are fulfilled.

### 2.2 What tax and customs incentives are available in a country?

Goods, which are imported from EAEU, are generally exempt from customs clearance. Customs duties depend on the types of imported goods and their importation procedures.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

All Russian companies are required to keep accounting records and provide accounting reports to the tax authorities.

The main requirement for accounting is, of course, the requirement to keep accounting records, as well as such requirements as: keeping accounting records in rubles; preparation of primary accounting documents, keeping accounting registers and preparation of financial statements in Russian, etc.

Accounting reports are submitted only once a year, and the information must be submitted by the end of the calendar year - by 31 March of the following year, except for certain types of taxes.

### 2.4. What is the taxation of dividends for foreign investors?

The payment of dividends to non-residents of the Russian Federation is taxed at the rate of 15%, a different rate may be established by a double tax treaty.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

Strategies are developed for each business taking into account the challenges which are faced by the business.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

Personal data operators, including foreign ones - that is, legal entities and individuals who independently or jointly with other persons organise and (or) process personal data, as well as determine the purposes of personal data processing, the composition of personal data to be processed, actions (operations) performed with personal data, have a number of responsibilities in accordance with Federal Law No. 152-FZ "On Personal Data" (the "PD Law").

The Operator is obliged to notify Roskomnadzor of its intention to

process personal data (except in certain cases), including those listed below.

When collecting personal data, the operator is obliged to provide the personal data subject, at his request, with the information provided for by the PD Law.

When collecting personal data, including through the Internet, the operator is obliged to ensure the recording, systematisation, accumulation, storage, clarification (updating, modification), extraction of personal data of citizens of the Russian Federation using databases located on the territory of Russia.

The operator independently determines the composition and list of measures necessary and sufficient to ensure the fulfilment of obligations provided for by the PD Law and regulatory legal acts adopted in accordance with it. Such measures, in particular, include:

1. appointment by the operator, who is a legal entity, responsible for organising the processing of personal data;
2. the issuance by the operator, which is a legal entity, of documents defining the operator's policy regarding the processing of personal data, local acts on the processing of personal data, as well as local acts establishing procedures aimed at preventing and detecting violations of the legislation of the Russian Federation, eliminating the consequences of such violations;
3. the application of legal, organisational and technical measures to ensure the security of personal data, their protection from unlawful or accidental access to them, destruction, modification, blocking, copying, provision, dissemination of personal data, as well as from other unlawful actions with respect to personal data in accordance with Article 19 of the PD Law;
4. implementation of internal control and (or) audit of compliance of personal data processing with the Federal Law and regulatory legal acts adopted in accordance with it, requirements for personal data protection, operator's policy regarding personal data processing, operator's local acts;
5. assessment of the harm in accordance with the requirements established by the authorised body for the protection of the rights of personal data subjects, which may be caused to personal data subjects in case of violation of the PD Law, the ratio of the specified harm and the measures taken by the operator aimed at ensuring the fulfilment of obligations provided for by this Law;
6. familiarisation of the operator's employees directly engaged in the processing of personal data with the provisions of the legislation of the Russian Federation on personal data, including requirements for the protection of personal data, documents defining the operator's policy regarding the processing of personal data, local acts on the processing of personal data, and (or) training of these employees.

The Operator is obliged to publish or otherwise provide unrestricted access to the document defining its policy regarding the processing of personal data, to information about the implemented requirements for the protection of personal data.

In case of establishing the fact of illegal or accidental transfer (provision, distribution, access) of personal data, which resulted in violation of the rights of personal data subjects, the operator is obliged to notify Roskomnadzor from the moment such an incident is detected:

1. within 24 hours about the incident that occurred, about the alleged causes that led to the violation of the rights of personal data subjects, and the alleged harm caused to the rights of personal data subjects, about the measures taken to eliminate the consequences of the relevant incident;

2. within 72 hours on the results of the internal investigation of the identified incident, as well as provide information about the persons whose actions caused the identified incident (if any).

### **3.2 What labour law features should be considered when hiring local and foreign employees?**

The Labor Code of the Russian Federation provides for the basic principles of regulating labour relations and other directly related relations, as well as the obligations of all employers hiring employees in Russia.

The basic principles include:

- freedom of work;
- prohibition of forced labour and discrimination in the field of labour;
- protection from unemployment and assistance in employment;
- ensuring the right of every employee to fair working conditions, including working conditions that meet safety and hygiene requirements, the right to rest, including limitation of working hours, provision of daily rest, weekends and non-working holidays, paid annual leave;
- equality of rights and opportunities for employees;
- ensuring the right of every employee to timely and full payment of fair wages not lower than the minimum wage established by federal law;
- ensuring equal opportunities for employees without any discrimination for job promotion, taking into account labour productivity, qualifications and work experience in the specialty, as well as training and additional professional education;
- ensuring the right of employees and employers to unite to protect their rights and interests, including the right of employees to form and join trade unions, the right of employers to form and join employers' associations;
- the obligation to compensate for damage caused to an employee in connection with the performance of his work duties;
- ensuring everyone's right for state protection of their labour rights and freedoms, including judicial protection;
- ensuring the right to resolve individual and collective labour disputes, as well as the right for strike in accordance with the procedure established by federal laws;
- the obligation of the parties to the employment contract to comply with the terms of the concluded contract;
- ensuring the right of employees to protect their dignity during their working life;
- ensuring the right to compulsory social insurance for employees.

Apart from the Labor Code of the Russian Federation, Federal Law No. 115-FZ dated 07/25/2002 "On the Legal Status of Foreign Citizens in the Russian Federation" (hereinafter - Law No. 115-FZ) regulates the specifics of the labour activities of foreign citizens in Russia.

The employer and the customer of works (services) have the right to attract and use foreign workers if they have a permit to attract and use foreign workers, and a foreign citizen has the right to work if he has reached the age of eighteen years, if he has a work permit or a patent. This procedure does not apply to certain categories of foreign citizens, in particular:

- permanently or temporarily residing in the Russian Federation;
- employees of foreign legal entities (manufacturers or suppliers) performing installation (supervision) work, service and warranty maintenance, as well as post-warranty repair of technical equipment supplied to the Russian Federation;

- invited to the Russian Federation as scientific or pedagogical workers, if they are invited to engage in research or teaching activities in bachelor's degree programs, specialty programs, master's degree programs, residency programs, internship programs,
- invited to the Russian Federation as medical, pedagogical or scientific workers, if they are invited to engage in relevant activities on the territory of the international medical cluster;
- accredited employees of representative offices of foreign legal entities accredited in accordance with the established procedure on the territory of the Russian Federation, based on the principle of reciprocity in accordance with international treaties of the Russian Federation;
- recognized as refugees on the territory of the Russian Federation, - until they lose their refugee status or are deprived of their refugee status;
- those who have received temporary asylum in the territory of the Russian Federation, - until they lose temporary asylum or are deprived of their temporary asylum;
- having a temporary identity card of a stateless person in the Russian Federation;
- who are specialists in the field of information technology and have concluded an employment contract or a civil law contract for the performance of work (provision of services) with organisations engaged in activities in the field of information technology and have received, in accordance with the procedure established by the Government of the Russian Federation, a document on state accreditation of an organisation engaged in activities in the field of information technology (with the exception of organisations having the status of a resident of a technical and innovative special economic zone).

Depending on the mode of stay (residence), foreigners can be divided into permanent or temporary residents in the territory of the Russian Federation. Foreign citizens can enter the Russian Federation on the basis of a visa or on a visa-free basis.

To hire foreigners with a temporary residence permit, a residence permit, a refugee certificate or a certificate of temporary asylum, citizens of the EAEU, IT specialists need a national passport and social security number (SNILS) (Article 13 of Law No. 115-FZ).

Temporarily staying foreigners who arrived in the Russian Federation on the basis of a visa additionally require a work permit, foreign citizens who do not need a visa (Ukraine, Uzbekistan, Tajikistan) - a patent.

Citizens of Ukraine, instead of a patent or work permit, can present a document on fingerprinting issued by the Ministry of Internal Affairs (Decree of the President of the Russian Federation dated 27 August 2022 No. 585).

The employer is obliged to notify the territorial body of the Ministry of Internal Affairs of Russia at the regional level in the subject on whose territory they work about the conclusion of employment contracts with foreign citizens. The notification must be submitted no later than three working days from the date of conclusion of the contract.

### **3.3 What are the requirements for currency regulation and currency control?**

In accordance with Federal Law No. 173-FZ dated 10.12.2003 "On Currency Regulation and Currency Control" ("Law No. 173-FZ"), currency transactions between residents and non-residents are carried out without restrictions, with the exception of currency transactions:

- on the use of digital rights as a means of payment for goods transferred (performed, rendered) (works, services), information and results of intellectual activity, including exclusive rights to them, which can be exercised only under foreign trade agreements (contracts) concluded between residents and non-residents;
- certain types of currency transactions related to the acquisition and alienation of digital rights in respect of which a ban or conditions have been established by the Central Bank of the Russian Federation (CBR);
- purchase and sale of foreign currency and checks (including traveller's checks), the nominal value of which is indicated in foreign currency, in the Russian Federation, which is carried out only through authorised banks and the state Development Corporation VEB of the Russian Federation.

When carrying out currency transactions, including the transfer of payments to non-residents, settlements are generally made by resident legal entities through bank accounts with authorised banks, digital ruble accounts opened by the operator of the digital ruble platform, the procedure for opening and maintaining which is established by the CBR, as well as electronic money transfers.

When carrying out foreign trade activities and (or) when residents provide foreign currency or the currency of the Russian Federation in the form of loans to non-residents, residents, unless otherwise provided by Law No. 173-FZ, are obliged to ensure, within the time limits provided for by foreign trade agreements (contracts) and (or) loan agreements:

1. receiving foreign currency or the currency of the Russian Federation from non-residents to their bank accounts in authorised banks for goods transferred to non-residents, works performed for them, services rendered to them, information and results of intellectual activity transferred to them, including exclusive rights to them;
2. return to the Russian Federation of funds paid to non-residents for goods not imported into the Russian Federation (not received on the territory of the Russian Federation), unfinished work, unproven services, untransmitted information and results of intellectual activity, including exclusive rights to them;
3. receipt of foreign currency or the currency of the Russian Federation from non-residents to their bank accounts in authorised banks, due in accordance with the terms of loan agreements.

A number of restrictions on foreign exchange transactions are established by Decree of the President of the Russian Federation dated 28 February 2022 No. 79 "On the application of special economic measures in connection with the unfriendly actions of the United States of America and foreign states and international organisations that have joined them."

Residents participating in foreign economic activity are obliged to carry out mandatory sale of foreign currency in the amount of 80% of the amount of foreign currency credited starting from January 1, 2022 to their accounts with authorised banks on the basis of foreign trade contracts with non-residents and providing for the transfer of goods to non-residents, provision of services to non-residents, performance of works for non-residents, transfer of intellectual property results to non-residents, in particular including exclusive rights to them.

Starting from March 1, 2022, are prohibited:

1. foreign exchange transactions related to the provision of foreign currency by residents in favour of non-residents under loan agreements;
2. crediting by residents of foreign currency to their accounts

(deposits) opened in banks and other financial market organisations located outside the territory of the Russian Federation, as well as making money transfers without opening a bank account using electronic means of payment provided by foreign payment service providers.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

In mergers and acquisitions with respect to limited liability companies (LLC), it must be borne in mind that the company's participants enjoy the pre-emptive right to purchase a share or part of a share of a company participant at the offer price to a third party or at a price other than the offer price to a third party and a price predetermined by the company's charter in proportion to the amount of their participatory interests, unless the company's charter provides for a different procedure for exercising the pre-emptive right to purchase a share or part of a participatory interest (art. 21 of the Federal Law No. 14-FZ dated 08.02.1998 "On Limited Liability Companies", hereinafter referred to as the "Law on LLC").

A participant of the company intending to sell his participatory interest or part of the share in the authorised capital of the company to a third party is obliged to notify the other participants of the company and the company itself in writing by sending through the company at his own expense a notarized offer addressed to these persons and containing an indication of the price and other conditions of sale. The company's participants have the right to exercise the pre-emptive right to purchase a participatory interest or part of a share in the authorised capital of the company within thirty days from the date of receipt of the offer by the company.

The charter of an LLC may provide for longer periods of use of the pre-emptive right to purchase a share or part of a share in the authorised capital of the company by its participants, as well as by the company itself.

A transaction aimed at alienating a share or part of a share in the authorised capital of the company is subject to notarization by drawing up a single document signed by the parties, otherwise such a transaction will be invalid. A transaction aimed at alienating a share or part of a share in the authorised capital of the company in execution of an option to conclude an agreement may be made by separate notarization of an irrevocable offer (including by notarization of an agreement on granting an option to conclude an agreement), and subsequently notarization of acceptance. In this case, the share or part of the share in the authorised capital of the company passes to its acquirer, as a general rule, from the moment the corresponding entry is made in the Unified State Register Of Legal Entities.

The charter of a non-public joint-stock company (JSC) may also provide for a pre-emptive right for its shareholders to purchase shares alienated by other shareholders in return transactions at the offer price to a third party or at a price that or the procedure for determining which is established by the company's charter. Unless otherwise provided by the company's Charter, shareholders enjoy the pre-emptive right to purchase alienated shares in proportion to the number of shares owned by each of them.

A shareholder has the right to alienate shares to a third party, provided that other shareholders of the company and (or) the company do not exercise the pre-emptive right to purchase all alienated shares within two months from the date of receipt of the notification by the company, unless a shorter period is provided for by the company's charter. If the alienation of shares is carried out under a purchase and sale agreement, such alienation must be carried out at the price and on the terms that are communicated to

the company (Article 7 of Federal Law No. 208-FZ dated 12/26/1995 "On Joint Stock Companies", hereinafter - the "Law on Joint Stock Companies").

In addition, the charter of a non-public JSC may provide for the need to obtain the consent of shareholders to alienate shares to third parties, such a provision of the charter of a non-public JSC is valid for a certain period provided for by its charter, but not more than five years from the date of state registration of the company or from the date of state registration of relevant amendments to the charter of the company.

A merger of companies is the creation of a new company with the transfer to it of all the rights and obligations of two or more companies and the termination of the latter.

The General Meeting of participants of each limited liability company (LLC) participating in the reorganisation in the form of a merger decides on such reorganisation, on approval of the merger agreement and the articles of association of the company created as a result of the merger, as well as on approval of the transfer act.

In LLC, such a decision on a merger is made by all participants of the company unanimously (Article 37 of Law on LLC).

In joint-stock companies, such a decision is made by the general meeting of shareholders by a majority of three-quarters of the votes of shareholders – owners of voting shares participating in the general meeting of shareholders (Article 49 of Law on Joint-Stock Companies).

When merging joint-stock companies, the general meeting also decides on the issue of electing members of the board of directors (supervisory board) of the company being created in the amount established by the draft merger agreement for each company participating in the merger, unless the charter of the company being created provides for the exercise of the functions of the board of directors (supervisory board) of the company being created by the general meeting of shareholders this society.

The LLC participating in the merger enters into a merger agreement, which defines the procedure and conditions of the merger, the procedure for exchanging shares in the authorised capital of each company for shares in the authorised capital of the new company.

In the case of a merger of a joint-stock company, the merger agreement must contain the procedure for converting shares of each company participating in the merger into shares of the company being created and the ratio (coefficient) of conversion of shares of such companies.

In the event of a merger, shares in the authorised capital of an LLC belonging to other companies participating in the merger are repaid.

Upon the merger of a joint-stock company, the shares of the company belonging to another company participating in the merger, as well as its own shares belonging to the company participating in the merger, are redeemed.

The sole executive body of the company created as a result of the merger performs actions related to the state registration of this company.

Upon the merger of companies, all rights and obligations of each of them are transferred to the company created as a result of the merger, in accordance with the transfer acts.

### **3.5 What are the most efficient mechanics for dispute resolution?**

The mechanism for resolving corporate disputes, including through conciliation procedures carried out by participants/shareholders

and/or mediation, may be provided for by an agreement on the exercise of the rights of LLC participants or a joint-stock agreement of JSC.

In the absence of such an agreement in accordance with Article 225.1. of the Arbitration Procedural Code of the Russian Federation disputes related to the creation of a legal entity, its management or participation in a legal entity that is a commercial organisation, as well as a non-profit organisation uniting commercial organisations and (or) individual entrepreneurs, i.e. corporate disputes, are considered by the arbitration court at the address of the legal entity.

Corporate disputes may be referred to an arbitration, with the exception of a number of disputes:

- 1) disputes on the convening of a general meeting of participants of a legal entity and disputes arising from the activities of notaries certifying transactions with shares in the authorised capital of limited liability companies;
- 2) corporate disputes in relation to a business company that is essential for ensuring the defence of the country and the security of the state in accordance with Federal Law No. 57-FZ of April 29, 2008 "On the procedure for Foreign Investments in business companies of strategic importance for ensuring the defence of the country and the security of the state" (except for disputes related to with the ownership of shares, shares in the authorised (share) capital of such legal entities);
- 3) disputes related to the application of the provisions of Chapters IX and XI.1 of Federal Law No. 208-FZ dated December 26, 1995 "On Joint-Stock Companies";
- 4) disputes related to the exclusion of participants of legal entities.

Such a dispute may be submitted to an arbitration court only within the framework of arbitration proceedings administered by a permanent arbitration institution that has approved, deposited and posted on its website on the Internet information and telecommunications network the rules for the settlement of corporate disputes in accordance with the procedure established by federal law, with the place of arbitration on the territory of the Russian Federation.

Corporate disputes that have arisen between the participants of a legal entity and the legal entity itself may be submitted to the arbitration court only if the legal entity, all participants of the legal entity, as well as other persons who are plaintiffs or defendants in these disputes, have concluded an arbitration agreement on the transfer of these disputes to an arbitration and if such arbitration proceedings will be administered by a permanent arbitration institution that has approved, who deposited and posted on their website on the Internet the rules for the settlement of corporate disputes in accordance with the procedure established by federal law, with the place of arbitration on the territory of the Russian Federation.



# TURKMENISTAN



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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

Under Civil Code of Turkmenistan (the "CCT"), Law of Turkmenistan "On Enterprises" (the "Company Law") and Law of Turkmenistan "On Foreign Investments Law" there are two options for establishing a company's limited presence in a country, primarily through establishing a representative or a branch office. Alternatively, full legal presence can be established in one of the following forms:

- 1) Economic Society (the "ES");
- 2) Joint Enterprise (the "JE");
- 3) Joint Stock Company (the "JSC").

Here is a summary of advantages and limitations for establishing different types of legal presence of a foreign company in Turkmenistan:

- **Representative Office:** This option allows a foreign company to establish a separate division in Turkmenistan for activities like marketing and negotiation but cannot engage in business activities. While it provides a presence, it doesn't have separate legal status, and the parent company bears full liability for its obligations.
- **Branch Office:** Similar to a Representative Office, a Branch Office is a separate division authorised to conduct business activities in Turkmenistan. It operates under the parent company's umbrella and is liable for its obligations. However, it can engage in entrepreneurial activities, enabling profit generation.
- **JSC:** The Law of Turkmenistan "On Joint Stock Companies (the "JSC Law") permits the establishment of open or closed types of JSCs as local legal entities. Open JSCs allow public distribution of shares, while closed JSCs restrict share distribution to company members. They offer flexibility in share ownership and management but require more than one shareholder.
- **ES:** An ES is a legal entity owned by two or more persons, allowing them to pursue common business goals. It offers flexibility in ownership, with no limit on the number of co-founders. Co-owners can allocate or limit their responsibilities and liabilities within the entity.
- **JE:** Similar to an ES, a JE involves multiple shareholders, each holding a minimum 10% share. Despite this distinction, both ES and JE operate under similar legal requirements. As an additional requirement one of the shareholders of JE should be a physical or legal person of Turkmenistan.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

It is commonly preferred and practised according to the laws related to foreign investors to open branch offices. Therefore, the process for creating a branch office will be considered.

The registration process of the Branch Office on the territory of Turkmenistan is conducted via 3 different government authorities, which are the Tax Department of the Ministry of Finance and Economy of Turkmenistan, Agency of Economic Risks Prevention at the MFE and the Commission of the Economic Risks Prevention.

#### Required steps to establish the Branch Office:

- identify the premises for the branch office and execute the tenancy agreement;
- present the necessary registration documents to the appropriate registration authorities;
- the assessment of relevant registration documents by the respective authorities may span 45-50 days;
- make a payment of TMT 8 000 (approximately USD 2 300) for registration fees, accompanied by a letter and payment confirmation/payment order;
- obtain a temporary Extract form of Unified State Register of Legal Entities and Regulations of the Branch Office from the Tax Department of the Ministry of Finance and Economy;
- a designated representative handles registration affairs at the Statistical Office, Tax Department, Pension Fund, and selected local bank, updating the Temporary Extract of Registration with relevant information;
- prepare a document package for the Ashgabat City Municipality to confirm the legal address of the Branch Office;
- submit the confirmation along with the updated Temporary Extract of Registration to the Tax Department;
- receive a renewed Extract from the Unified State Register of Legal Entities of Turkmenistan and a Certificate of State Registration of the legal entity in Turkmenistan for 3 years from the Tax Department;
- provide notarized and legalised copies of registration documents to the local bank, Tax Department, and Police Department;
- establish a local bank account by preparing, notarizing, and submitting the required bank registration documents to the relevant local bank;
- transfer TMT 1 800 (approximately USD 520) from the Branch Office's local bank account to the Ministry of Finance and Economy of Turkmenistan as a government fee for the Certificate of the Participant of Foreign Economic Relations;
- obtain the Certificate of the Participant of Foreign Economic Relations from the Tax Department;
- prepare and submit a package to create an official Branch Office stamp to the editorial office, police department, and printing office;
- notarize the Branch Office Director's signature with the Branch



Office stamp and submit it to the local bank along with the bank registration document for a foreign currency account.

#### Minimum capital requirement:

- Representative Office/Branch Office: N/A;
- JSC: TMT 10 000 (ten thousand manats) or approximately USD 2860, half of which must be paid before registration of the JSC;
- ES: TMT 5 000 (five thousand manats) or approximately USD 1430, half of which must be paid before registration of the ES;
- JE: TMT 5 000 (five thousand manats) or approximately USD 1430, half of which must be paid before registration of the JE.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

To conduct a business with a legal presence in Turkmenistan, several additional authorizations and approvals are required, which vary based on the type of business and its specific scope. Generally, the following permits are necessary from government authorities:

- Sanitary Certificate: Issued by the Sanitary and Epidemiological Centre, this certificate ensures compliance with health and hygiene standards. It verifies that the business operations meet the necessary health requirements.
- Fire Safety Certificate: Obtained from the Fire Safety Service, this certificate confirms adherence to fire safety regulations. It ensures that the business premises and operations are safe from fire hazards.
- Certificate of Safety: Provided by Turkmenstandartlary, this certificate certifies compliance with safety standards. It covers various aspects of safety relevant to the business operations.
- Licences: Depending on the nature of the business, licences may be required from various licensing authorities of Turkmenistan. The licences authorise specific activities and ensure compliance with regulatory standards in the relevant field of the business entity.

It's essential to note that the documents required for obtaining these permits may vary depending on the scope of the business contract. Therefore, detailed information about the client's business activities is necessary to determine the specific documentation needed for permit applications.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

**1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

In Turkmenistan, the most common types of legal entities are the Branch Office of a foreign company, JSC, ES, and JE.

#### The Branch Office:

- Taxation: The Branch Office is subject to a 20% corporate income tax rate on net profit. There is a 1.5% tax on net profit for the arrangement of territory development, a 3% tax for the

Agriculture Development Fund, and a 0.5% tax for the Ashgabat City Development Fund. They are also liable for VAT at 15% on the value of products, works, and services. Dividend tax is not applicable for the Branch Office.

- Shareholder Structure: The Branch Office is established by its parent company in accordance with board resolution thereof.
- Liability: The Parent company is fully liable for the debt of the Branch Office.
- Management: The Branch Office is managed by its director assigned by the parent company and acts on the basis of the Regulations of the Branch Office and the power of attorney issued by the parent company.

#### JSC:

- Taxation: JSCs are subject to an 8% corporate income tax rate on net profit. Additionally, there is a 1.5% tax on net profit for the arrangement of territory development, a 3% tax for the Agriculture Development Fund, and a 0.5% tax for the Ashgabat City Development Fund. They are also liable for VAT at 15% on the value of products, works, and services. Dividend tax is applicable at a rate of 15%.
- Shareholder Structure: JSCs must have more than one shareholder. In an open-type JSC, shares may be distributed publicly, and there is no limit on the number of shareholders. In a closed-type JSC, shares are distributed only among members or named individuals, and the number of shareholders is limited to 50.
- Liability: Limited liability for shareholders, with the company being a separate legal entity.
- Management: Board of Directors governs strategic decision-making and appoints an Executive Body, often led by a Director General, responsible for implementing decisions and overseeing daily operations.

#### ES:

- Taxation: ESs face an 8% corporate income tax rate on net profit. Similar to JSCs, they are subject to taxes for territory development, agriculture development, and Ashgabat city development. VAT at 15% applies to the value of products, works, and services. Dividend tax is also applicable at a rate of 15%.
- Shareholder Structure: Two or more legal or physical persons own ESs, with the number of co-founders not being limited. This allows for flexibility in ownership structure.
- Liability: Limited liability for shareholders, with the company being a separate legal entity.
- Management: ESs often have a management structure similar to JSCs. They are governed by a General Meeting of Founders, which makes major decisions regarding the enterprise. The Executive Body, led by a Director, is responsible for executing the decisions of the General Meeting and managing day-to-day operations.

#### JE:

- Taxation: JEs are subject to an 8% corporate income tax rate on net profit. They are also liable for taxes related to territory development, agriculture development, and Ashgabat city development. VAT at 15% applies to the value of products, works, and services. Similarly, dividend tax is applicable at a rate of 15%.
- Shareholder Structure: Each shareholder in a JE must have a share not less than 10% of the enterprise. This ensures a more balanced distribution of ownership.
- Liability: Limited liability for shareholders, with the company being a separate legal entity.

- **Management:** JEs typically have a management structure similar to JSCs and ESs. A General Meeting of Members governs them, which is responsible for major decisions. The Executive Body, led by a Director, oversees the implementation of decisions and manages daily operations.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

#### Representative Office:

- There are costs associated with maintaining a representative office, including registration fees and taxes;
- No minimum capital requirement is specified, but there are taxes applicable to property, and employee salaries;
- Full liability for debts incurred by the parent company of the representative office.

#### Branch Office:

- Similar to the representative office, there are registration fees and taxes;
- Full liability for debts incurred by the parent company of the branch office.

#### JSC:

- Minimum capital requirement of TMT 10 000 (or approximately USD 2860), half of which must be paid before registration;
- Shareholders, directors, and senior management requirements;
- Liability limited to the value of shares.

#### ES:

- Lower minimum capital requirement of TMT 5 000 (or approximately USD 1430), half of which must be paid before registration;
- Shareholders, directors, and management requirements;
- Liability depends on the form of property liability.

#### JE:

- Similar to ES with a minimum capital requirement of TMT 5 000;
- Additional requirement of at least one shareholder holding 10% of shares;
- Liability depends on property liability form.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

#### Corporate Income Tax (CIT):

The tax rate for corporate income is specified as follows:

- Representative Office: Not applicable;
- Branch Office (from net profit): 20%;
- JSC, ES, JE (from net profit): 8%;

#### Local Taxes:

These include taxes for the arrangement of territory cities, towns, and rural settlements, contributions to the Agriculture Development Fund, contributions to the Ashgabat City Development Fund, and property taxes.

#### Value Added Tax (VAT):

The VAT at a rate of 15% and is applicable to the value of products, works, and services provided by the business.

#### Retirement Insurance Contributions:

Contributions to retirement insurance at a rate of 20% and are calculated based on the gross monthly salary of employees and shall be paid by the employer.

#### Personal Income Tax (PIT):

The tax rate for personal income is 10% and is applicable to the gross monthly salary of employees and is paid by the employer on behalf of the employee.

#### Dividend Tax:

Dividend tax is applicable to distributed profit at a rate of 15% for JSCs, ESs, and JEs.

### 2.2 What tax and customs incentives are available in a country?

Different types of organisations may receive specific tax and/or customs benefits depending on their activities and other relevant factors.

#### The following entities are eligible for exemption from income tax:

- investment pension funds;
- organisations dedicated to the rehabilitation of disabled individuals;
- educational institutions;
- enterprises associated with public organisations serving disabled persons, wherein the entire authorised capital is exclusively owned by such public associations, with a minimum of 70% of the workforce comprising individuals with disabilities, and a minimum employment of 20 individuals with disabilities;
- religious organisations;
- agricultural enterprises;
- resident legal entities of Turkmenistan or non-resident legal entities of Turkmenistan providing circus services;
- international, intergovernmental, and interstate organisations, excluding income derived from entrepreneurial endeavours;
- legal entities operating within free economic zones, excluding those designated for tourist and recreational purposes, are entitled to a ten-year income tax exemption during their initial operational decade, provided they engage in activities specified within the decision and agreement governing the establishment of such zones, as per the prescribed procedures.

This exemption does not apply to profits made from selling excisable products, nor does it include certain types of income such as dividends and earnings from gambling activities.

Legal entities of private ownership listed above except those governed by the Law of Turkmenistan "On Hydrocarbon Resources," (the "Petroleum Law") and categorised as small to medium-sized, are exempt from paying income tax, set at a rate of 2%.

Additionally, the Petroleum Law outlines a special tax arrangement for contractors operating under subsurface use agreements such as Production Sharing Agreements, Royalty Contracts and Service Contracts. According to this arrangement, contractors are solely liable for corporate income tax and subsurface use payments, while being relieved from all other taxes and duties imposed by the Turkmenistan government.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

Accounting and reporting requirements are tailored to fit the purpose and size of the entity, ensuring that general and interim financial statements meet both national and international standards, while simplified statements specifically accommodate small to medium-sized businesses. It's crucial that all statements receive authorization from designated personnel. Additionally, the reporting period varies depending on the type of financial statements:

- General purpose financial statements: These must be prepared annually, covering the calendar year from January 1st to December 31st.
- Interim financial statements: These should be prepared either quarterly or semi-annually.
- Simplified financial statements and interim simplified financial statements: For simplified financial statements, the reporting period is the calendar year, while for interim simplified financial statements, it is half a year.
- Newly created economic entities: The first reporting period for such entities extends from the date of their state registration to December 31st of the corresponding year.
- Economic entities created in the fourth quarter: The first reporting period for these entities covers the period from January 1st to December 31st of the following year. However, the financial activities of the current year are reflected in the financial statements of the next year.
- Liquidated economic entities: The reporting period for these entities spans from January 1st of the reporting year until the date of their liquidation, as per the established procedures outlined in the legislation of Turkmenistan.

### 2.4. What is the taxation of dividends for foreign investors?

Representative/Branch Office: Dividend tax is not applicable.

JSC, ES, JE: Dividend tax is 15% for these types of entities.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

Strategies for optimising tax liability may be developed based on scope of international business conducted in the territory of Turkmenistan. Besides, applicable bilateral double taxation treaties (DTTs) are recommended and widely used for minimising tax liability.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

The data protection laws and regulations in Turkmenistan are based on the principles outlined in the Constitution of Turkmenistan. These laws include the Law of Turkmenistan "On Information about Private Life and Its Protection" dated March 20, 2017 (the "Data Protection Law") and other regulatory legal acts, which specify the procedures for collecting, processing, and safeguarding personal data. The Data Protection Law in Turkmenistan emphasises obtaining consent, respecting individual rights, ensuring lawful and secure data processing, and maintaining confidentiality.

**In regard to company operations, there are several aspects that need to be considered:**

- the consent of the individual must be obtained, either in writing or in the form of an electronic document;
- personal data stored in electronic databases, including biometric information, is confidential, and its collection and processing are limited to predefined purposes;
- confidentiality for electronic databases containing personal data is obligatory from the moment the information is provided by the individual;
- the retention period for personal data is determined based on the fulfilment of the purposes for its collection and processing;
- personal data accumulation is conducted by gathering the necessary and sufficient information to fulfil tasks assigned by the operator or a third party;
- upon the expiration of the retention period, the operator or a third party is responsible for the destruction of personal data.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

- Restrictions on Foreign Workers: Understand any restrictions on hiring foreign workers. In the given scenario, the percentage of foreign workers should not exceed 10% of the total staff.
- Local Content Requirements: Check for any local content requirements related to hiring foreign workers. Ensure compliance with regulations concerning the employment ratio of foreign to local staff.
- Work Permits and Visas for Foreign Workers: Foreign workers must obtain appropriate work permits and visas. These documents typically require specific paperwork, including contracts, employment contracts, HIV (AIDS) test certificates, diplomas, corporate documents, and a Power of Attorney (PoA).
- Types of Visas: Understand the types of visas applicable to foreign workers (e.g., business visa/work permits).
- Documentation for Visas and Work Permits: Ensure all necessary documentation is provided for visa and work permit applications. This may include contracts, corporate documents, PoA, and other relevant paperwork.
- Processing Times: Be aware of the processing times for visa and work permit applications. Urgent processing options may be available in some cases.
- Duration of Visas and Work Permits: Understand the validity period of business visas and work permits. In this scenario, business visas are typically issued for one month, while work permits can be issued for up to one year.
- Registration Requirements: Foreign employees are required to register with the relevant authorities within 3 working days after arrival in the country or after changing their place of residence. Ensure compliance with registration procedures and timelines.

### 3.3 What are the requirements for currency regulation and currency control?

In Turkmenistan, currency regulation and currency control are primarily governed by the Cabinet of Ministers of Turkmenistan and the Central Bank of Turkmenistan.

**Several currency regulation and control requirements must be taken into account:**

- Primary currency regulation methods include licensing banking activities, registering currency transactions and accounts, and notifying authorities;
- Capital movements in foreign exchange transactions between residents and non-residents are subject to notification if they exceed the freely circulating currency limit (USD 10,000) or

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involve opening or closing resident accounts in foreign credit institutions;

- Non-residents have rights to export foreign currency, receive dividends, and transfer surplus income;
- Transfers of funds from non-residents adhere to currency agreements or market exchange rates in accordance with the rules thereof, in the absence of such agreements;
- Transactions and payments between residents in Turkmenistan are conducted in the national currency, with limited exceptions;
- Foreign exchange transactions related to property transfer or services within Turkmenistan are primarily conducted in the national currency, unless specified otherwise;
- Employment contracts may involve payments in both national and foreign currency;
- Foreign exchange transactions among non-residents are generally unrestricted, including currency transfers between different types of accounts held by non-residents.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

Mainly, mergers, acquisitions (M&A), as well as restructuring of the company are regulated by the Company Law and JSC Law of Turkmenistan. Here are the most important features derived from these laws which should be taken into account when planning M&A and company restructuring within jurisdiction of Turkmenistan:

- restructuring of the company is a reorganisation hereof without fulfilment of the de-registration procedure;
- restructuring of the company in the form M&A may be performed by the decision of its founders and/or the parent company;
- restructured in the form of M&A company is a legal successor for all rights and obligations of merged and/or acquired company;
- restructured company should be re-registered at the Statistical Office, Tax Department, Pension Fund and its respective bank;
- merger of two or more companies is carried out through the creation of a new company based on complete combination of their property;
- the companies participating in the merger cease their activities;
- all rights and obligations of merged companies are transferred to the newly created company in accordance with the transfer act;
- if the rights and obligations of participants in the merged companies were not based on the principle of equity participation in the authorised capital, the decision on the merger of companies must determine the rights and obligations of participants in the new company.

### **3.5 What are the most efficient mechanics for dispute resolution?**

Taking into account that Arbitral Procedure Code of Turkmenistan allows to choose any jurisdiction as governing law of commercial transaction, as well as any arbitral institution at own discretion provided that there is specific clause in the commercial agreement, it is recommended to use any jurisdiction which is a participant of New York Convention (the "Convention") on the Recognition and Enforcement of Foreign Arbitral Awards, taking into account following declarations and reservations:

- "In accordance with article I (3) of the Convention, the Government of Turkmenistan declares that it will apply this Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

- In accordance with article I (3) of the Convention, the Government of Turkmenistan declares that it will apply this Convention only in relation to disputes which are considered as commercial disputes under the national law of Turkmenistan.
- The Government of Turkmenistan will apply this Convention only to the recognition and enforcement of awards which are rendered after the Convention enters into force". Please, note the Convention entered into force on the 4th day of May, 2022.

# TAJIKISTAN



**Kamoliddin Mukhamedov**  
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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The laws of Tajikistan provide several forms for doing business in Tajikistan for foreign legal entities and individuals. Among these options, the most frequently chosen forms because they offer more flexibility vis-à-vis corporate housekeeping, general compliance matters and maintaining the closely held nature of the business are:

Limited Liability Company (preferred by most) - a company founded by one or more participants, the charter capital of which is divided into shares. Participants are not liable for the obligations of the company and bear the risk of losses associated with the activity, within the value of the contributions made. The number of participants should not exceed 30.

Branch Office (second preferred option) - is a separate subdivision performing all or part of the functions of the company, including the functions of a representative office.

Representative Office - is a separate subdivision representing and protecting the company's interests.

There is also the option of establishing a joint stock company, however this option is rarely considered and is not recommended due to the fact that it requires dealing with securities and related laws and authorities. Unfortunately, the laws governing securities issues have not been developed in recent years, and since there are very few joint-stock companies in Tajikistan, the procedures are not streamlined, therefore, many difficulties may arise, and it will be time and resource consuming endeavour.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The formation of legal entities in Tajikistan is facilitated through the tax authorities, which manage the process from start to finish. Key steps include:

#### Documents.

Initial Documentation: Applicants must submit an official form from the tax authorities, constitutional documents such as the charter and regulations, and a resolution from the authorised body detailing the approval of constituent documents, legal address, and director appointment.

Beneficial Ownership Disclosure: Identity documentation is required for any beneficial owner holding more than 25% of shares.

Director's Documentation: Foreign directors need to provide passport copies, visa, registration card, and a Tajik tax identification number.

Legalisation and Translation: Foreign documents must be legalised (no apostille required for CIS countries) and translated into the state language with notarized translations.

#### Timelines for Registration.

Document Preparation: Typically requires 10-12 days.

Authority Processing: By statute, registration should be concluded within 5 working days after documents are submitted. Practically, it can take between 30 to 45 days, particularly for foreign entities or directors.

Post-Registration Steps: Additional procedures, including obtaining statistical codes, local tax registration, and bank account opening, usually take another 10-12 days.

#### Mandatory Capital Requirements.

Limited Liability Company: Minimum charter capital is TJS 500.

Closed Joint-Stock Company: Minimum of TJS 1 000.

Open Joint-Stock Company: Required charter capital is TJS 5 000.

Representative Offices and Branches: These entities are not required to have charter capital.

#### Completion Timeline.

The entire process for registering a foreign company, representative office, or branch in Tajikistan can take up to 2 months, encompassing all necessary legal and procedural steps.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

No additional authorizations and approvals are required.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

1.4.1. What are the shareholder structures of these types of legal entities?

1.4.2. What is the Shareholders' responsibility in these types of legal entities?

1.4.3. What is the responsibility of the representatives in these types of legal entities?

1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

## 1. Limited Liability Company (LLC).

**Structure:** Formed by one or more participants, with a maximum of 30. The charter capital is divided into shares.

**Liability:** Participants are not liable beyond their contributions.

**Management:** Flexible management structures are permissible. The General Meeting of Participants is the supreme management body, and executive functions can be handled by a single individual or a board.

## 2. Branch Office.

**Structure:** Operates as a subdivision of the parent company, performing all or some of the company's functions, including representation.

**Liability:** The parent company bears ultimate responsibility for the branch's obligations.

**Management:** Managed by representatives appointed by the parent company.

## 3. Representative Office.

**Structure:** A subdivision focused solely on representing and protecting the parent company's interests without engaging in commercial activities.

**Liability:** As with branches, the parent company holds full liability.

**Management:** Managed by representatives focusing on advocacy and negotiation, without direct business operations.

## 4. Joint Stock Company (JSC).

### Types:

**Closed Joint Stock Company (CJSC):** Limits shareholders to 50, does not offer shares publicly. Minimum capital required is TJS 1000.

**Open Joint Stock Company (OJSC):** No limit on the number of shareholders, can offer shares to the public. Minimum capital required is TJS 5,000.

**Liability:** Shareholders risk is limited to their investment in shares.

**Management:** Governed by a General Meeting of Shareholders, a Board of Directors, and an Executive Body.

### Taxation:

Taxation is consistent across all entities, with the exception that legal entities are taxed on dividends, whereas branches of foreign legal entities are taxed on the net profits of the permanent establishment.

### Shareholder and Management Responsibilities:

#### 1. Shareholder Structures

**LLC:** Ownership is divided into shares of charter capital, with each participant holding a portion.

**JSC:** Capital divided into shares, which may include other securities like bonds.

#### 2. Shareholders' Responsibility:

LLC & JSC: Shareholders or participants are responsible for losses up to the amount of their contributions. They have preemptive rights to buy shares and must act within the corporate governance framework.

#### 3. Representative Responsibilities:

Representatives, including directors and board members, are obligated to manage in accordance with the entity's charter and national laws, focusing on the best interests of the entity.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Operational costs are not one-size-fits-all. They vary significantly across different organisations, influenced by unique factors such as industry requirements, activities, and company size.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

There are two taxation regimes in Tajikistan:

1. simplified regime; and
2. general regime.

1. **Simplified regime** - this regime applies to companies whose gross income for the last 12 consecutive calendar months did not exceed TJS 1 million (approximately USD 91 600).

This regime does not apply to: investment funds, professional participants of the securities market, insurance and credit organisations, microfinance organisations, pawnshops, users of natural resources, suppliers of primary aluminium, producers and importers of excisable products, as well as persons engaged in intermediary activities on the basis of commission, assignment and other intermediary agreements.

The tax rate under the simplified regime is 6%, except for the VAT on import of goods into the customs territory of the Republic of Tajikistan and non-resident value added tax withheld at the source of payment.

2. **General regime** - companies under this regime are liable to pay the following taxes:

- **Corporate Income Tax** - The taxable income of a legal entity is taxed at the following rates:
  - 13% for the production of goods;
  - for the activities of financial institutions and mobile companies - 20%;
  - for natural resources extraction and processing activities and all other activities - 18%;
- **VAT** - 14% for 2024. From 2027, 13%;
- **Excise Tax** - The excise tax rate depends on the type of activity;
- **Natural Resources Tax** - The rate depends on the type of use of natural resources.

### 2.2 What tax and customs incentives are available in a country?

In Tajikistan, tax and customs privileges for certain persons are established by the annual Law "On the State Budget" or granted by the Decree of the Government of the Republic of Tajikistan.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

According to Article 10 of the Law of the Republic of Tajikistan "On Accounting and Financial Reporting", the main requirements for accounting and financial reporting are:



1. Accounting of property, assets, liabilities and business operations of organisations is kept in the national currency of the Republic of Tajikistan.
2. Property, assets and liabilities, which are the property of the organisation, are accounted for separately from the property of other legal entities, which are part of this organisation.
3. Accounting is kept by the organisation continuously from the moment of its registration as a legal entity.
4. The organisation keeps accounting records of property, assets, liabilities and business operations by double entry on interrelated accounting accounts.
5. Analytical accounting data correspond to the turnovers and balances of the synthetic accounting accounts.
6. All business operations and inventory results are subject to timely and complete registration in the accounting accounts.
7. Subjects of public interest shall be obliged to keep accounting records and prepare financial statements in accordance with international standards and this Law.
8. Heads of public interest entities shall be obliged to organise a permanent internal audit service.
9. Organisations, except for subjects of public interest, shall be obliged to keep accounting records and prepare financial statements in accordance with national or international standards recognized by the Republic of Tajikistan.

Declaration on income tax of legal entities and annual accounting reports, including balance sheet, shall be submitted before April 1 of the year following the reporting year.

The above requirements apply to all organisations, regardless of organisational and legal form, as well as to foreign organisations operating in the Republic of Tajikistan.

#### **2.4. What is the taxation of dividends for foreign investors?**

Dividends paid by resident enterprises of Tajikistan are subject to withholding tax at the rate of 12%.

This dividend tax rate applies to both local and foreign investors and shareholders (participants).

#### **2.5 What strategies exist for minimising tax liability when conducting international business?**

Currently, there is no strategy in place to minimise the tax liability when conducting international business.

### **3. Regulatory and miscellaneous**

#### **3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?**

In Tajikistan, the Personal Data Law, adopted in 2018, is the foundational legislation governing the protection of personal data. This law mandates that personal data may only be collected with the consent of the data subject, which can be obtained through various means, including written forms or digital acknowledgements such as tick boxes, although written consent is specifically required for biometric data due to its sensitivity. The law also addresses the issue of cross-border data transfer, permitting it, provided that the data subject's consent is obtained, and does not impose any data localization requirements, allowing data to be stored abroad.

#### **3.2 What labour law features should be considered when hiring local and foreign employees?**

There are no special restrictions on the employment of local employees, while labour relations with foreign nationals can be established during the period of their registration with the Visa and Registration Department (OVIR). Their registration with the OVIR is confirmed by the issuance of a Registration Card to foreign nationals, which is usually issued for a period of up to one year (with possible extension). Also, in order to attract foreign workers, the Employer must first obtain the appropriate Licence and then will have to obtain a work permit for them for their employment.

#### **3.3 What are the requirements for currency regulation and currency control?**

According to Article 7 of the Law "On Currency Regulation and Currency Control", currency transactions between residents and non-residents are carried out without restrictions.

#### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

First of all, it is necessary to take into account the applicable provisions of the Law of the RT "On Limited Liability Companies" and the Law of the RA "On Joint Stock Companies".

Secondly, the requirements of the Law of the RT "On Competition" should be taken into account.

In the third place, the requirements of the Law of the RT "On State Registration of Legal Entities and Individual Entrepreneurs" should be taken into account.

#### **3.5 What are the most efficient mechanics for dispute resolution?**

Through negotiation, or through the courts.

# TURKEY

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## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

Many regulations have been made to protect foreign investors that want to play an active role in the Turkish market and to encourage them to invest in Türkiye.

According to the Foreign Direct Investments Law No. 4857; unless otherwise provided for by international agreements and special law provisions, foreign investors are subject to equal treatment with domestic investors.

The five types of the companies in Türkiye are Joint Stock Companies, Limited Companies, Collective Companies, Limited Partnership Companies and Cooperative Companies.

Foreign legal entity investors can also open a Liaison Office or a Branch Office in Türkiye.

Key advantages and limitations of those legal entities are as follows:

#### I. Companies:

- Advantages:
  - limited liability for the shareholders compared to branch offices and liaison offices;
  - are permitted to sale and purchase real estates in Türkiye (some limitations and restrictions still apply);
  - for joint stock companies, there are some tax advantages on M&A.
- Limitations:
  - more bureaucratic procedure for the establishment and liquidation compared to branch offices and liaison offices;
  - more internal procedures compared to compared to branch offices and liaison offices (i.e. annual general assembly meetings);
  - minimum Capital Requirement (TRY 50 000 for Limited Companies and TRY 250 000 for Joint Stock Companies).

#### II. Branches:

- Advantages:
  - foreign company can display commercial activities directly in Türkiye under its commercial title;
  - easy incorporation and liquidation process compared to a Turkish company;
  - no Minimum Capital Requirement.
- Limitations:

- foreign company is fully liable for the debts and obligations of the liaison office;

- local management is required.

III. Liaison Offices:

- Advantages:
  - no trade registration process;
  - easy and fast to obtain permit from the Ministry;
  - no Minimum Capital Requirement;
  - tax incentive on the salaries of the employees.
- Limitations:
  - limited life: Liaison Office permits are granted for a period up to 3 years, and extension applications must be made at the end of each period or permit;
  - foreign company is fully liable for the debts and obligations of the liaison office;
  - no commercial Activities are allowed.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

#### I. Companies:

##### 1. Pre-registration stage:

Application process for registration and announcement at the Trade Registry Office. General required documents required for application:

- certified copies of the ID certificates of the real person founders (if they have Turkish citizenship) and their residence certificates. (In case there are any real persons of foreign citizenship among the founders of the company, the xerox copy of his/her passport to be presented together with the passport itself or its notarized copy);
- in case the foreign shareholder(s) is a legal entity; the original copy of Certificate of Business Activity issued by the competent authorities approved by the related Turkish Consulate or apostilled and its notarized translation;
- if there is a manager appointed which is not a shareholder of the company, a notarized document stating that he/she accepts to be the manager of the company. (the document shall bear the residential address of the person, tax number or id number) The xerox copy of his/her passport to be presented together with the passport itself or its notarized copy shall also be attached;
- establishment notification form;
- notarized articles of association;

- signature declaration under the company name of persons authorised to sign;
- bank receipt - bank letter showing that four ten thousandths of the capital has been deposited as Competition Authority fee;
- bank receipt-bank letter regarding the blocking of ¼ of the Cash Capital;
- chamber registration declaration;
- notarized document containing the signatures of non-shareholder board members accepting the duty;

The required documents vary depending on the type of company and partners.

- Creating a capital blockage in the bank: Another process of establishing a company will be to block the company capital in the bank. For capital blockage, go to the bank branch with the potential tax number and articles of association and meet with the authorised person.
- Permission phase from the Ministry of Customs and Trade: This stage in the company establishment process is valid for Joint Stock Companies whose establishment and amendment of the Articles of Association are subject to Ministry permission.

With all these permits and documents, an appointment is made at the Trade Registry and the company is established by announcing it in the Trade Registry Gazette on the same day.

## 2. Post-Registration Stage

- Notary procedures after registration: Immediately after the registration process, the legal books are notarized on the same day. A certificate of registration and a Registry Certificate are obtained from the legal books and the Trade Registry Office. The books are certified by going to the notary with these documents.
- Issuing signature circular phase: One of the tasks to be done after registration will be to obtain the signature circular from the notary. The certificate of registration of the company obtained from the Trade Registry Office and the Articles of Association are submitted to the notary.
- Applying to the Tax Office to open tax liability for the company: Tax liability is one of the basic conditions during the company establishment process. An application is made to the Tax Office for the opening.
- Resolving the capital blockage in the bank: Now it is time to solve the capital blockage deposited in the bank. To do this, go to the consultant at the bank branch where the money is deposited, together with the Registration Certificate obtained from the Trade Registry Office.
- If personnel will be employed, the application phase to Social Security Institution (SGK): If you are going to employ personnel in your company, you must apply to the Social Security Institution for the insurance entries of these people.

## II. Branch Offices:

### 1. Pre-registration stage:

Application process for registration and announcement at the Trade Registry Office. General required documents required for application.

- Petition: to be signed by the authorised signature holder of the Branch,
- Incorporation Declaration Form: to be signed by the authorised signature holder of the Branch,

- Chamber Registration Declaration: to be signed by the authorised signature holder of the Branch,
- A copy of the articles of association (or Memorandum of Incorporation of the Company): To be notarized and apostilled (or certified by the Turkish Embassy) (to be translated and notarized in Türkiye),
- A copy of an official document showing the current registry records of the Company (or Certificate of Activity or a similar document): To be notarized and apostilled (or certified by the Turkish Embassy) (to be translated and notarized in Türkiye),
- A Company Resolution for the incorporation of a branch in Türkiye and appointment of Branch Manager. To be notarized and apostilled (or certified by a Turkish Embassy) (to be translated and notarized in Türkiye),
- A Declaration concerning the information of the Company: to be signed by the authorised representatives of the Company,
- Signatory Declarations of the Branch Manager(s): To be notarized and apostilled (or certified by a Turkish Embassy) (to be translated and notarized in Türkiye),
- In case of Foreign Managers: [Please note that at last 1 manager must be a Turkish resident] 1. passport copy and 2. a work permit should be obtained,
- A statement from competent authority stating that the Company bears the criteria required for Branch opening. To be notarized and apostilled (or certified by a Turkish Embassy).

### 2. Post-Registration Stage

- Notary procedures after registration: Same as Turkish companies.
- Issuing signature circular phase: Same as Turkish companies.
- Applying to the Tax Office to open tax liability for the company: Same as Turkish companies.
- If personnel will be employed, the application phase to Social Security Institution (SGK): Same as Turkish companies.

## III. Liaison Offices:

### 1. Pre-registration stage:

Application process for the approval from the Ministry: A permit is required to establish a liaison office in Türkiye. The permit issuing authority for opening a Liaison Office in Türkiye is the Directorate General of Foreign Investments, Turkish Treasury. If the application procedure is in order and documents completed, the permit will be issued within five days. General required documents required for application:

- official application form;
- declaration form listing the scope of activities to be carried out by the liaison office and indicating that the liaison office will not conduct commercial activities;
- certificate of activity of the foreign company to be received from the relevant trade registry in the country where the foreign company is incorporated (to be apostilled or legalised);
- activity report or balance sheet and income statement of the foreign company for recent years;
- certificate of authority to be issued in the name of the authorised person of the liaison office;
- power of attorney is to be issued in the name of the attorney who will file the permit application with the Ministry.

### 2. Post-Registration Stage

- Notary procedures after registration: Same as Turkish companies.

- Issuing signature circular phase: Same as Turkish companies.
- Applying to the Tax Office to open tax liability for the company: Same as Turkish companies.
- If personnel will be employed, the application phase to Social Security Institution (SGK): Same as Turkish companies.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

Some specific commercial activities are subject to additional permission or approvals required by special laws such as Banking Law, Capital Markets Law and Energy Law.

The companies such as banks, financial leasing companies, factoring companies, consumer finance and card services companies, asset management companies, insurance companies, gas distribution companies, real estate investment trusts, hospitals are subject to activity licences in order to display commercial activities in the sectors such as banking and finance, energy and medical.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

**1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

Joint Stock Company and Limited Company are the most common types of Legal Entities in Türkiye. In terms of Taxation, there is no difference on corporate tax, VAT and withholding tax obligations. Exceptionally, shareholders of Joint Stock Companies can have tax exemption for the sale of their shares in those companies under some circumstances. In principle, shareholders of both legal entities are liable only up to the extent of their contributions, except the public debts. Exceptionally, Limited Company shareholders are directly accountable for the company's uncollected public debts (such as unpaid taxes and social security premiums), in proportion to their capital contributions. Management of the Joint Stock Company can be performed by a board of directors which can be composed of at least one board member. For Limited Companies at least one manager will be responsible for the management of the company.

1.4.1. Shareholder Structure: Joint Stock Companies can be incorporated with as little as one shareholder, and there's no upper limit defined for the maximum number of shareholders. On the other hand, Limited Liability Companies require a minimum of one shareholder and can have up to a maximum of 50 shareholders.

1.4.2. Shareholder's Responsibility: In principle, shareholders of both legal entities are liable only up to the extent of their contributions, except the public debts. Exceptionally, Limited Company shareholders are directly accountable for the company's uncollected public debts (such as unpaid taxes and social security premiums), in proportion to their capital contributions.

1.4.3. Company Representatives' Responsibility: Representatives (Board Members in Joint Stock Companies and Managers in Limited Companies) are directly and jointly accountable for the company's

uncollected public debts (such as unpaid taxes and social security premiums). Representatives are also liable directly and jointly accountable for the losses of the company, shareholder and creditors of the company in case of mismanagement.

#### 1.4.4. Other Types of Legal Entities:

- Collective Companies: A limited liability company is established between real persons who want to operate it under a trade name. It is a type of company in which the company is primarily responsible for debts and commitments and the partners are unlimited in the secondary degree, and no minimum capital is stipulated.
- Limited Partnership Companies: Limited partnerships are established with at least two partners and at least one partner becomes a limited partner. While the liability of the general partner is unlimited, the liability of the limited partner is limited to the capital committed. If there is no special provision in the limited company, the provisions in joint stock companies apply. Limited partnership is a type of company that is not very common in Türkiye.
- Cooperative Companies: Cooperative companies are a type of company that can be established by real or legal persons. It is a legal entity established for the purpose of providing economic interests and professional needs with mutual aid, solidarity and guarantee. Legal entities can be established with at least 7 partners.
- Branch Offices: Foreign companies will have full liability on the branch office's debt and obligations.
- Liaison Offices: Foreign companies will have full liability on the liaison office's debt and obligations.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

The operating costs related to the maintenance of the legal entity or presence in the country rents (for the registered address of the company's headquarters), service fee of the chartered public accountant and the salaries of the employees.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

Tax liabilities of doing business in Türkiye may include:

1. Corporate Tax: It is the tax paid on the profits of companies. The general rate can vary between 20% and 25%.
2. Income Tax: It is the tax paid by employees and business owners on their earnings. Income tax rates vary depending on income level and range from 15% to 35%.
3. Value Added Tax (VAT): It is the tax collected from goods and services sold. The standard VAT rate is 18%, but different rates such as 1%, 8%, 20% apply for some products.
4. Social Security Contributions: Contributions to the social security system shared between employees and employers. Premium rates vary depending on the employee's salary and the insurance status of the person hired by the employer.
5. Real Estate Tax: It is the tax paid according to the value of real estate. It is paid through declaration of value and its rate varies between 0.1% and 0.3%.

6. **Stamp Duty:** It is a tax paid for the issuance of certain documents or transactions such as commercial contracts. Rates vary depending on document type.
7. **Special Consumption Tax:** It is the tax collected from goods subject to special consumption tax, such as alcohol and tobacco products. Rates vary depending on the product and quantity.
8. **Business Licences and Licences:** The documents required to do business and the fees paid to obtain these documents may also be among the tax liabilities.

In addition to these taxes, tax legislation and regulations in Türkiye may change from time to time.

## 2.2 What tax and customs incentives are available in a country?

In Türkiye, tax and customs incentives are offered to various investors and sectors. These may include:

1. **Double Taxation Treaties:** Türkiye has Avoidance of Double Taxation Agreements with 73 countries in order to eliminate double taxation on the incomes of the foreign individuals and legal entities domiciled in those countries.
2. **Investment Incentive Certificates:** Investment incentive certificates that provide various incentives are given to businesses that will invest in Türkiye. Within the scope of these documents, opportunities such as tax deductions, tax exemptions, customs duty exemptions, and insurance premium employer share support may be offered.
3. **Regional Incentives:** There are regional incentives for businesses that will invest in different regions in Türkiye. In particular, the incentives provided to businesses investing in the Eastern and Southeastern Anatolia regions are higher and may include support such as tax reductions and customs duty exemptions.
4. **R&D and Innovation Incentives:** Incentives such as tax deductions and employer share of insurance premiums are provided to businesses that carry out R&D and innovation activities. Additionally, special incentives may be offered to businesses registered as R&D centres and design centres.
5. **Employment Incentives:** Within the scope of employment increasing measures, there are incentives for special groups such as young people, disabled people and women who are employed. These incentives may include opportunities such as insurance premium employer share support and income tax reduction.
6. **Customs Exemptions:** Customs duty exemptions or discounts may be provided to businesses that meet certain conditions. Such incentives can be applied especially to businesses that export or operate in certain sectors.

Details and application conditions of these incentives may change from time to time.

## 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

Joint stock companies, limited companies, collective companies, limited liability companies, corporations and cooperatives, which are capital companies, are considered merchants as soon as they are registered and acquire legal personality. Unlike natural persons, it does not matter whether they operate a commercial enterprise at the time of registration. Gaining the title of merchant has some consequences;

The opening balance sheet and year-end financial statements of

traders are regulated in Articles 68-71 of the Turkish Commercial Code. These items are discussed below. According to Article 68, "The trader must prepare a financial statement (opening balance sheet and annual balance sheet, respectively) showing the relationship between the amounts of assets and liabilities at the beginning of his commercial activity and at the end of each activity period. In the opening balance sheet, the provisions of the year-end financial statements regarding the year-end balance sheet are applied. In addition, the business prepares the income statement. The balance sheet and income statement constitute the year-end financial statements. Article 514 and the provisions of Turkish Accounting Standards on this subject are reserved." Thus, every trader is obliged to prepare year-end financial statements including the opening balance sheet, annual balance sheet and annual income statement.

Another obligation for capital companies is commercial books. The relevant legislation on this subject is regulated in the Turkish Commercial Code and Tax Procedure Law.

### Commercial Books that must be kept:

1. General Journal;
2. General Ledger;
3. Inventory;
4. Share Ledger;
5. Board of Directors / Managers Decision Book; and
6. General Assembly Meeting and Negotiation Book.

### Certification Times

**First Opening Certifications:** All commercial books must be first opened at establishment and before they can be used.

**Opening Certifications in Subsequent Activity Periods:** In the activity periods following the activity period in which the first opening certification is made, the opening certification of these books, journal, general ledger, inventory and board of directors resolution book, must be made until the end of the month before the first month of the activity period in which they will be used.

In other words, those whose accounting period is a calendar year must have the opening certification of these books completed by the end of December.

The share ledger and the general assembly meeting and negotiation book can be used in subsequent activity periods without opening certification, provided that there are sufficient pages.

**Closing Certifications:** Among the above books, only the General Journal and the Board of Directors' Decision book will be closed.

The closing certification of these books must be made by the end of the third month of the activity period following the accounting period in which they are used.

In other words, those whose accounting period is a calendar year must have the closing certification of these books completed by the end of March.

**Audits:** A statutory audit is required for the companies which meet 2 of the following 3 criteria:

1. annual turnover > TRY 75 million;
2. total assets > TL 30 million; and/or
3. number of employees > 175.

In addition to those companies, some companies displaying some certain commercial activities (like banking) are also subject to statutory audit.

Tax audits are generally performed by the Ministry of Finance on a



random basis. However, companies can work with independent sworn accountants authorised by the Ministry.

#### 2.4. What is the taxation of dividends for foreign investors?

Dividends paid to a resident or nonresident individual, or a nonresident company, are subject to a 15% withholding tax, unless the rate is reduced under a tax treaty between Türkiye and the country of residence of the nonresident individual or nonresident company.

Türkiye has made double taxation avoidance agreements with many countries which enable the foreign shareholders to pay withholding tax with a reduced rate.

#### 2.5 What strategies exist for minimising tax liability when conducting international business?

Here are some strategies that can be used to minimise tax liability when doing international business in Türkiye:

1. Customs Discounts and Exemptions: You can reduce customs duties or benefit from exemptions by taking advantage of regulations such as free trade agreements or special customs zones signed by Türkiye.
2. VAT Refund in Foreign Trade: You can request a refund of some or all of the Value Added Tax (VAT) paid when exporting. This is a method of incentive provided to exporters.
3. R&D and Innovation Incentives: Businesses that engage in R&D and innovation activities can benefit from tax deductions on expenses incurred for these activities.
4. Regional Incentives: In some regions in Türkiye, incentives such as tax reductions and exemptions are offered in case of investment. You can reduce tax liabilities by operating in these regions.
5. Transfer Pricing Practices: Tax advantages can be provided through transfer pricing practices in the purchase and sale of goods or services between international companies. In this method, it is important to make pricing in accordance with independent market conditions.
6. Double Taxation Agreements: You can gain tax advantages by taking advantage of the double taxation prevention agreements that Türkiye has signed with various countries.
7. Export Refunds: You can request a refund of some or all of the customs duties paid when exporting. This is a method of incentive provided to exporters.

The applicability and effectiveness of these strategies may vary depending on the characteristics of the business, the sector and the nature of the trade.

### 3. Regulatory and miscellaneous

#### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

In Türkiye, data protection and privacy requirements are primarily governed by the Personal Data Protection Law (KVKK), which is based on international standards such as the European Union's General Data Protection Regulation (GDPR). Here are the general data protection and privacy requirements in Türkiye and how they affect company operations:

Consent: Companies must obtain explicit consent from individuals

before collecting and processing their personal data. This includes informing individuals about the purpose of data collection, processing, and their rights regarding their data.

Minimization: Companies are required to collect only the necessary personal data for the specified purposes. Excessive or irrelevant data collection is not permitted.

Purpose Limitation: Personal data can only be processed for specific, clear, and legitimate purposes. Any further processing must be compatible with these purposes.

Data Security: Companies are obligated to implement technical and organisational measures to ensure the security of personal data against unauthorised access, disclosure, alteration, or destruction.

Data Transfer: Transfer of personal data outside of Türkiye is subject to certain conditions and safeguards to protect the rights of data subjects. Adequate levels of data protection must be ensured in such transfers.

Data Subject Rights: Individuals have various rights regarding their personal data, including the right to access, rectify, erase, restrict processing, object to processing, and data portability. Companies must facilitate the exercise of these rights.

Data Processing Records: Companies are required to maintain records of their data processing activities, including purposes, categories of data processed, data subjects, data transfers, and security measures.

Data Protection Impact Assessment (DPIA): Companies may need to conduct DPIAs for high-risk data processing activities to assess and mitigate potential risks to individuals' rights and freedoms.

Data Protection Officer (DPO): In certain cases, appointing a Data Protection Officer is mandatory, especially for public authorities and organisations engaging in large-scale processing of sensitive data. Non-compliance with data protection and privacy requirements in Türkiye can result in significant fines and legal consequences.

Therefore, companies operating in Türkiye must ensure compliance with KVKK to protect individuals' privacy rights and avoid legal liabilities.

#### 3.2 What labour law features should be considered when hiring local and foreign employees?

When hiring both local and foreign employees in Türkiye, it's crucial to consider various aspects of labour law to ensure compliance and a smooth employment relationship. Here are some key features to consider:

Employment Contracts: Both local and foreign employees should have written employment contracts that clearly outline the terms and conditions of employment, including job duties, working hours, salary, benefits, termination procedures, and any applicable probationary period.

Work Permits for Foreign Employees: Foreign employees must obtain work permits to legally work in Türkiye. Employers should assist foreign employees in obtaining the necessary permits and ensure compliance with immigration laws. Please also note that there are also some requirements for work permits such as minimum paid up capital (i.e. TRY 100 000 for the branches), employment of at least 5 Turkish employees, etc.

Minimum Wage: Employers must pay employees, both local and foreign, at least the minimum wage set by the government. Minimum wage rates may vary based on factors such as industry and location.

Working Hours and Overtime: Turkish labour law specifies standard



working hours, typically 45 hours per week. Overtime work is subject to additional compensation, and employers must comply with overtime pay regulations. Paid Leave: Employees are entitled to paid annual leave, sick leave, maternity leave, and other types of leave as per labour regulations. Employers should adhere to these leave entitlements for both local and foreign employees.

**Social Security Contributions:** Employers are required to make social security contributions for their employees, covering health insurance, retirement, and other benefits. These contributions apply to both local and foreign employees working legally in Türkiye.

**Discrimination and Equal Treatment:** Employers must comply with laws prohibiting discrimination based on factors such as gender, religion, race, nationality, disability, or age. Equal treatment and opportunities should be provided to all employees.

**Termination Procedures:** Labor law sets out procedures and requirements for terminating employment contracts, including notice periods, severance pay, and reasons for dismissal. Employers must follow these procedures when terminating both local and foreign employees.

**Health and Safety:** Employers have a duty to provide a safe and healthy working environment for all employees, including measures to prevent workplace accidents, occupational diseases, and hazards.

**Employee Representation:** In companies with a certain number of employees, employee representation bodies may be established. Employers should be aware of the rights and responsibilities of these bodies as per labour law.

By understanding and adhering to these labour law features, employers can foster a positive and compliant working environment for both local and foreign employees in Türkiye.

### 3.3 What are the requirements for currency regulation and currency control?

Some requirements for currency regulation and currency control in Türkiye are:

- Foreign Exchange Legislation:** Activities such as buying, selling, transferring and using foreign currency in Türkiye are determined by the Law on Foreign Exchange Transactions, Decree No. 32 on the Protection of the Value of the Turkish Currency and relevant regulations. These laws determine how foreign exchange-related transactions can be carried out, who can do so, and what conditions they are subject to.
- Central Bank Supervision:** The Central Bank of the Republic of Türkiye (CBRT) determines and implements the monetary and foreign exchange policies in the country. The CBRT may impose certain rules and standards regarding foreign exchange transactions and supervise these transactions.
- Exchange Rate Policies:** CBRT determines Türkiye's exchange rate policies. These policies include whether to adopt a fixed exchange rate system or a floating exchange rate system, how to determine exchange rates, and the measures to be taken to ensure compliance with these rules.
- Capital Controls:** Capital controls may be applied in Türkiye. These controls regulate foreign investments, capital movements and foreign exchange transfers within certain conditions and limitations. They can be especially applied to control volatility in the foreign exchange market.
- Reporting and Monitoring:** Within the scope of currency regulation and control, there may be reporting and monitoring requirements regarding foreign exchange transactions. In

particular, financial institutions and foreign exchange companies may have specific standards and procedures to monitor and report such activities.

- Foreign Investment Controls:** Certain controls and permits may be required on issues such as the entry and exit of foreign investments into Türkiye and the financing of these investments with foreign currency. These controls can be implemented to maintain balance in the foreign exchange market and manage the economic effects of foreign investments.
- Anti-Money Laundering (KYC) and Anti-Financial Crimes (AML):** KYC and AML rules apply regarding foreign exchange transactions in Türkiye. Financial institutions and foreign exchange companies implement certain procedures and controls to identify their customers and combat financial crimes.

These requirements are just some of the measures introduced to regulate and control Türkiye's foreign exchange market. Individuals and institutions carrying out foreign exchange transactions must comply with the relevant legislation and act in accordance with the requirements.

### 3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?

The following corporate law features should be taken into account when planning transactions such as mergers, acquisitions and company restructurings in Türkiye:

- Turkish Commercial Code:** This law, which regulates the structure and operation of joint stock and limited companies, constitutes a basic reference point in such transactions. This law determines the general rules and procedures for transactions such as mergers, acquisitions, share transfers and company restructurings.
- Shareholders Agreements:** Agreements made between shareholders are important in merger, acquisition or restructuring processes. These agreements regulate the rights of shareholders, voting rights, profit distribution and other issues and enable decisions to be made in transactions.
- Share Transfer Procedures:** Corporate law includes procedures determining share transfers and the validity of these transfers. Legal requirements and steps to be followed in share transfers are important during the transaction process.
- Contracts and Agreements:** Various contracts and agreements are signed in merger, acquisition and restructuring transactions. These agreements may include purchase agreements, merger agreements, share transfer agreements, shareholders agreements, and collaboration agreements. It is important that these contracts are prepared and negotiated correctly.
- Competition Law and Permits:** Competition law and relevant permits should be taken into account in large-scale merger and acquisition transactions. Permissions to be obtained from the Competition Authority and competition law restrictions are important in the transaction process.
- Regulatory Authority Approvals:** For some sectors such as banking & finance and energy share transfers are subject to the pre-approval of the relevant regulatory authority. (i.e. approval of Banking Regulation and Supervision authority is required for the sale of shares in banks.)

These features are important corporate law elements that must be taken into account in order to successfully carry out transactions such as mergers, acquisitions and company restructurings.

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### **3.5 What are the most efficient mechanics for dispute resolution?**

The most preferred way for the dispute resolution is still the conventional litigation before Turkish Courts.

At the same time, Turkish law has fulfilled the requirement to first go to Mediation as a litigation condition for most commercial disputes. By introducing such a method before disputes go to court, the processes are shorter and disputes are often resolved faster.

Investors or companies which do not want any of these options always have the option of resorting to local or international arbitration. Türkiye is a party to many international arbitration agreements.

# UAE



**Issam Dahman**  
Managing Partner



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Legal Associate



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The regulatory framework for establishing businesses in the UAE permits foreign companies to access the market via corporate entities like branches, subsidiaries, and representative offices with its own advantages and limitations.

**Branch Office:** A branch office serves as a regional outpost of the parent company and is established to promote its business within the country. It allows the parent company to conduct commercial activities, although certain restrictions may apply, such as limitations on trading. However, it's important to note that a branch office does not have a separate legal identity, making the parent company fully liable for its actions. Additionally, the income generated by the branch is taxable in the country where the parent company is resident. Each branch office in the UAE requires a local service agent (LSA) but does not have its own equity participation or liability for the business.

**Subsidiary:** A subsidiary is a company that is owned and controlled by its parent company, but unlike a branch office, it has a separate legal identity. This means that the subsidiary can have its own independent financial liability. While a subsidiary can be managed from abroad or within the UAE, its management and workforce must be located within the UAE. Subsidiaries generally have more freedom in their activities compared to branch offices.

**Representative Office:** A representative office is established by foreign companies for market research and studying production capabilities without commercial activity. Representative offices cannot carry out business activities or make profits. They are primarily used for promotional or marketing activities and serve as a low-cost option for establishing a regional presence. However, they do not have the legal capacity to conduct business transactions.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

The process of establishing a business presence in the UAE is considered a strategic decision, as business owners must choose between mainland and free zone options.

To establish a business in the mainland, a licence must be obtained from the Department of Economic Development (DED) in the respective Emirate where the business will be located. Conversely, for registration in any of the 40-plus active free zones in the UAE, businesses need to obtain a licence from the relevant freezone. This

process can be made easier by seeking the assistance of local professional experts. We at GRATA International UAE specialise in providing such assistance. We cater to both local and international clients, offering tailored solutions to meet their specific business needs.

**Documents:** company incorporation encompasses several crucial steps, necessitating the submission of diverse documents to the relevant authorities. These documents typically include identification papers for shareholders, directors, and the appointed manager. Moreover, compliance with Anti-Money Laundering (AML) regulations mandates the disclosure of Ultimate Beneficial Ownership (UBO) details and local addresses. Certain business activities may additionally require lease agreements to validate physical business locations. By leveraging expert assistance, companies can establish a robust legal framework and embark on a path toward successful incorporation.

**Mandatory Capital Amounts and Their Principles:** It's essential to note that while setting up a business in the UAE, certain mandatory capital amounts and principles vary depending on the type of legal entity being established and the business activity. However, it's important to understand that the capital requirement is not explicitly defined for most business activities by the respective regulatory authorities. Instead, it should be reasonable and commensurate with the size, nature, and scale of the business operations.

**Steps for incorporation:** Incorporating a company in the UAE involves several main steps: choosing the business activity and legal structure, reserving a unique trade name, seeking initial approvals, preparing legal documents like the MOA and AOA, appointing shareholders and directors, obtaining necessary approvals, applying for permits, and securing a lease agreement for office space if so mandated.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

Additional authorizations and approvals required to create a legal entity or commence operations in the UAE vary depending on the type of business and the jurisdiction (mainland or free zone). For mainland companies, approvals may include obtaining permits specific to the business activity, such as healthcare, education, hospitality or financial services. For certain activities, additional approvals from other government regulatory agencies may be required, such as the Ministry of Health, the Dubai Municipality, DHA, the Securities and Commodities Authority or the Central bank etc.

Generally, businesses in free zones benefit from streamlined processes and fewer restrictions compared to mainland companies. However, they may still require external approvals related to specific regulated activities.

Overall, the specific authorizations and approvals vary based on factors such as the business activity, jurisdiction, and regulatory

requirements. It's essential for businesses to thoroughly research and understand the regulatory landscape applicable to their industry and seek professional guidance to ensure compliance and a smooth establishment process.

#### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

1.4.1. What are the shareholder structures of these types of legal entities?

1.4.2. What is the Shareholders' responsibility in these types of legal entities?

1.4.3. What is the responsibility of the representatives in these types of legal entities?

1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?

The common legal forms of company formation in Mainland, Free zone, and Offshore in the UAE include:

1. Sole Proprietorship: Owned and operated by a single individual, with limited or unlimited liability;
2. Limited Liability Company (LLC): Provides limited liability to its shareholders;
3. Partnership: Involves two or more individuals sharing profits and liabilities;
4. Public Joint Stock Company (PJSC): Allows public subscription and trade to shares and is subject to higher regulatory requirements;
5. Private Joint Stock Company: Operates similarly to a PJSC but with restrictions on share transferability.

The legal forms of company formation in the UAE, encompassing Mainland, Free zone, and Offshore entities, vary significantly in terms of liability, and management. Sole Proprietorships (which are not in the form of limited liability) entail unlimited liability for their owner, subjecting owner to liability arising from the business activities of the entity. Limited Liability Companies (LLCs) provide shareholders with limited liability, while Free Zone Companies (FZCs) within the same nature of the LLCs but strictly operate within the respective zones where they are incorporated. Partnerships involve joint and several liabilities among partners, whereas Public and Private Joint Stock Companies offer limited liability to shareholders. Management structures vary, with entities being managed by owners, appointed managers, directors, or elected boards, depending on the legal form and jurisdiction.

In the UAE, directors of a company bear the responsibility of overseeing its operations and making decisions that serve the company's interests and stakeholders. Upholding fiduciary duties, they are obligated to act with loyalty, care, and diligence, while avoiding conflicts of interest. Outlined in the updated Commercial Companies Law, Federal Decree-Law no. (32) of 2021, their roles and responsibilities are further defined, including conditions and procedures for appointment, resignation, and dismissal. Relevant laws such as Federal Decree-Law No. 50/2022 Issuing the Commercial Transactions Law and the Civil Transactions Law also govern directors' conduct. Furthermore, adhering to best governance practices is essential. This involves attending board meetings regularly, staying informed about the company's affairs and financial performance, and seeking independent advice when necessary.

#### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

Operating costs for maintaining a legal entity in the UAE encompass licence renewal fees, office rent, utilities, employee visas salaries, government fees, taxes, insurance premiums, maintenance, administrative expenses, compliance costs, and miscellaneous expenses. Licence renewals and office rent are recurring costs, while utilities and employee salaries are ongoing. Miscellaneous expenses cover marketing, training, and contingencies. Budgeting for these expenses is essential for sustaining operations and compliance with UAE regulations while ensuring financial viability.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

On December 9, 2022, the UAE Ministry of Finance issued Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (UAE CT Law), which outlines the tax treatment for corporations and businesses in the UAE. According to the UAE CT Law:

#### UAE Free Zone Entities (Qualifying Free Zone Persons):

Qualifying Free Zone Persons are subject to corporate tax rates of 0% on their Qualifying Income and 9% on non-Qualifying Income.

#### Other Businesses Operating in the mainland:

Businesses operating outside of free zones are subject to corporate tax rates of 9% on their taxable income exceeding a threshold, which is AED 375 000. Taxable income below this threshold is subject to a 0% tax rate.

#### Exemptions:

Certain entities may qualify for exemptions from corporate taxation under the UAE CT Law. Exemptions are available for government entities, extractive businesses, qualifying public benefit entities, and qualifying investment funds, among others. It is essential for businesses operating in the UAE to understand and comply with these tax regulations.

Additionally, Value Added Tax (VAT) in the UAE was introduced in 2018 under Federal Decree-Law No. 8 of 2017/ It is an indirect tax applicable to the supply of goods and services. The standard VAT rate is 5%, with certain goods and services categorised as zero-rated or exempt supplies. Exemptions include undeveloped lands, residential properties, life insurance, public transport, and specific financial services.

### 2.2 What tax and customs incentives are available in a country?

#### TAX INCENTIVE

The UAE government provides various measures to assist businesses and foster economic development.

Benefits for Free Zone Companies: Companies registered in Free Zones may qualify for a 0% UAE CT rate on certain income if they meet specific criteria, including maintaining adequate substance and deriving qualifying income.

Encouraging Business Restructuring: Tax relief is offered for corporate restructuring transactions, such as mergers and spin-offs, under certain circumstances.

Facilitating Intra-Group Transfers: Tax relief is available for transfers of assets or liabilities within the same qualifying group, subject to specific conditions.

Assistance for Small Businesses: Small businesses with annual revenues below AED 3 million have the option to elect not to be subject to UAE CT, providing them with tax relief.

Support for Foreign Tax Payments: Businesses operating in the UAE can receive credit for foreign taxes paid on their UAE taxable income, up to the amount of Corporate Tax (CT) due on that income.

These measures are designed to attract investment, support small enterprises, and streamline business operations in the UAE. For detailed information and eligibility criteria, we recommend consulting with tax advisors or legal experts familiar with UAE tax regulations.

## CUSTOM INCENTIVE

The UAE government has implemented measures to facilitate trade and support economic growth through customs policies.

Customs Duty Refund under Dubai Government's Economic Stimulus Package: The Dubai Government has introduced a customs duty refund program as part of its economic stimulus package. This initiative aims to provide relief to businesses importing goods into Dubai by offering refunds on customs duties paid.

Customs Duty Structure: Customs duty is imposed on imported goods in accordance with Federal Decree-Law No. 15 of 2022. The duty is typically calculated based on a tariff structure, with a general rate of 5%, although certain goods may be subject to higher rates, such as tobacco and alcohol.

Exemptions from Customs Duties: Certain imports are exempt from customs duties, including goods in transit, personal and household goods imported by foreigners or UAE nationals residing abroad, goods for military and internal security use, and goods for diplomatic missions or charity associations.

Free Trade Agreements: As a member of the Gulf Cooperation Council (GCC), the UAE benefits from free trade agreements with the European Free Trade Association (EFTA), Singapore and the Greater Arab Free Trade Area Agreement (GAFTA), covering 17 Arab countries.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

Companies in the UAE, including those in the DIFC, are now required to comply with International Financial Reporting Standards (IFRS) for their accounting and reporting practices. There are several types of financial reports, they are financial statements, Board of Directors reports, Management Decisions & Analysis reports, Audit reports, Corporate Governance reports, Notes to accounts, and Prospectus.

Additionally, companies subject to return filing must prepare an appropriate audit report within the regular deadline. Usually, this period is from 3 to 6 months from the date of the fiscal year-end. This report should accurately reflect the company's financial position and performance in accordance with IFRS regulations and any other applicable standards or regulations in the UAE. Foreign companies registered in the UAE must submit audit reports and audited financial statements for their branches as a mandatory requirement every year. The audit must be performed by a UAE-registered auditor, in line with Federal Law No. 12/2014 (as amended) and read with Ministerial Decision No. 403/2015.

### 2.4. What is the taxation of dividends for foreign investors?

According to the Corporate Tax Law, dividends received from Resident Persons are fully exempt from any conditions. Conversely, dividends received from foreign juridical persons are exempt provided that the conditions for Participation Exemption are satisfied, serving the purpose of mitigating double taxation. Ministerial Decision No. 116 of 2023 delineates a "dividend", encompassing ordinary dividends, dividends in kind, other distributions, and non-arm's length payments.

### 2.5 What strategies exist for minimising tax liability when conducting international business?

When conducting international business, strategies for minimising tax liability include establishing offshore entities in jurisdictions with favourable tax laws, utilising transfer pricing to set market-based prices for intercompany transactions, leveraging double taxation treaties to avoid being taxed on the same income twice in different jurisdictions, maximising deductions and exemptions available under tax laws, optimising business structures for tax efficiency, employing tax-efficient financing options, and maintaining compliance with tax regulations. These approaches enable businesses to strategically manage their tax liabilities while operating globally, ensuring they pay taxes efficiently and in accordance with applicable laws. Seeking guidance from tax professionals familiar with international tax regulations can further enhance the effectiveness of these strategies.

## 3. Regulatory and miscellaneous

### 3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?

The UAE's data protection laws, governed by Federal Decree-Law No. 45 of 2021, significantly impact businesses by requiring fair, transparent, and lawful handling of personal data. Applicable to both data controllers and processors, the law covers all personal data processed within the UAE, including sensitive information. Companies must adhere to key principles such as purpose limitation, data accuracy, and security. Compliance with these regulations is overseen by the UAE Data Office, ensuring accountability and enforcement. Companies must implement measures such as data protection impact assessments and breach notification procedures to comply. Overall, adherence to these laws is crucial for maintaining customer trust, avoiding penalties, and safeguarding against data breaches.

### 3.2 What labour law features should be considered when hiring local and foreign employees?

When hiring both local and foreign employees in the UAE, it's essential to consider various labour law (Federal Decree-Law No. (33) of 2021 Regarding the Regulation of Employment Relationships and its amendments) features to ensure compliance and fair treatment. These features encompass equality and non-discrimination, ensuring that all employees, regardless of nationality, are treated fairly in the workplace. Regulations concerning the employment of juveniles safeguard the rights of young workers. Recruitment and employment processes must adhere to legal standards to maintain transparency and fairness. Employment contracts play a crucial role, outlining terms and conditions for both parties. Provisions such as non-competition clauses protect employers' interests post-employment. Employers are obligated to provide a safe working environment and timely payment of wages to their workers. Forced labour is strictly prohibited, emphasising the protection of workers' rights. Furthermore, labour laws regulate working hours, overtime, and entitlements, ensuring employees' well-being and fair compensation. Provisions for public holidays, annual leave, maternity leave, and sick leave contribute to promoting work-life balance and employee welfare. Adhering to these labour law features fosters a conducive work environment, upholds workers' rights, and promotes equitable employment practices in the UAE.

### 3.3 What are the requirements for currency regulation and currency control?

Currency regulation and control in the UAE, overseen by the Central Bank and Ministry of Finance, entail compliance with foreign

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exchange rules, licensing for financial activities, and strict anti-money laundering measures. Financial institutions must report transactions, adhere to capital controls, and navigate taxation requirements. Adherence to regulations is crucial for maintaining monetary stability, preventing illicit activities, and ensuring compliance with tax laws. Businesses and individuals engaged in currency transactions must stay informed and follow regulatory guidelines to avoid penalties and maintain financial integrity in the UAE.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

When planning mergers, acquisitions, and company restructuring in the UAE, several corporate law features are crucial. Regulatory approvals from bodies like the Securities and Commodities Authority and Department of Economic Development are essential. Understanding foreign ownership restrictions, due diligence requirements, and drafting precise transaction documents are pivotal. Post-transaction integration also demands careful consideration. Engaging legal experts well-versed in UAE corporate laws ensures compliance and smooth execution.

### **3.5 What are the most efficient mechanics for dispute resolution?**

In the UAE, disputes can be efficiently resolved through:

UAE Common Law Courts: Utilising specialised commercial courts like the DIFC Courts and ADGM Courts offers a formal legal process in accordance with common law system for resolving disputes promptly and effectively.

UAE Local Courts: The legal structure in the UAE runs in two systems: the Federal Judiciary presided by the Federal Supreme Court as the highest judicial authority in the UAE and the local judicial departments at the local government level.

- a. Federal Courts: The Federal Judiciary, led by the Federal Supreme Court, serves as the apex judicial authority in the UAE, overseeing matters of federal law and disputes between emirates and the federal government. It operates alongside local judicial departments, with each emirate having the option to participate in the Federal Judiciary or maintain its own local judicial system.
- b. Dubai Courts: Independently operating within the UAE's federal framework, Dubai Courts handle a wide array of cases, including civil, criminal, family, and commercial disputes.
- c. RAK courts: Operating within the UAE's legal system, RAK Courts adjudicate civil, criminal, and family law matters within the emirate of Ras Al Khaimah.

Arbitration: UAE offer various arbitration services catering to the needs of businesses and individuals in the UAE, providing options for dispute resolution in both Arabic and English languages through various key arbitration institutions:

- Dubai International Arbitration Centre (DIAC): It is an independent arbitration institution based in Dubai, United Arab Emirates. Established in 2007, DIAC provides a platform for resolving commercial disputes through arbitration. It operates under its own set of Arbitration Rules and offers services in both Arabic and English languages.
- Abu Dhabi Commercial, Conciliation and Arbitration Centre (ADCCAC): Established by the Abu Dhabi Chamber in 1993, ADCCAC resolves commercial disputes through arbitration or conciliation. ADCCAC offers services in Arabic or English and has accredited mediators for resolving disputes through mediation.
- Abu Dhabi Global Market Arbitration Center and Alternative

Dispute Resolution: Relatively new but equipped with advanced technology, ADGM arbitration centre follows UNCITRAL model laws and provides digitised dispute resolution services.

- Other Institutes: Sharjah has its Commercial Arbitration Centre, and Ras Al Khaimah has the Centre for Reconciliation and Commercial Arbitration.

Choosing the appropriate mechanism depends on factors such as the nature of the dispute and parties' preferences. Our expertise at GRATA International ensures swift, effective, and tailored solutions to your disputes, safeguarding your interests and fostering positive outcomes.



# UZBEKISTAN



**Sitora  
Kozimjanova**  
Associate



**Javokhir  
Urinov**  
Associate



## 1. Forms of doing business and Establishment

### 1.1 What are the options for establishing a company's presence in a country (branch, representative office, subsidiary, etc.), and what are their key advantages and limitations?

The legislation of the Republic of Uzbekistan provides for different organisational and legal forms of doing business, the most popular of which is the establishment of a subsidiary company in the form of a Limited Liability Company.

According to Article 52 of the Law "On Investments and Investment Activities" No. 3PY-598 dated December 25, 2019 (hereinafter referred to as the "Law on Investments"), enterprises with foreign investments have the right to establish subsidiary companies, branches, as well as representative offices and other separate units on the territory of Uzbekistan.

Subsidiary companies are independent legal entities that offer the advantage of limited liability, meaning the head company is not responsible for the subsidiary's debts and obligations beyond its investment. However, establishing a subsidiary may involve more complex legal and regulatory requirements compared to other options.

A branch of a company is its separate subdivision, which is located outside the location of the entity and performs all or part of its functions. A branch of a company carries out its activities on behalf of the head company. Responsibility for the activities of the branch of the company is borne by the head company. A branch is not an independent legal entity, all information about its existence, as well as about their number should be reflected in the constituent documents of the organisation.

Representative offices serve as extensions of the head company, primarily for marketing and promotional activities. They offer a low-cost option for market entry and can help in establishing business relationships. However, they typically have limited legal capacity, are not considered as a legal entity and cannot engage in commercial activities.

### 1.2 What is the process for creating a legal entity or another form of presence in the country, including the laws to follow, legal entities to be considered, documents required, stages and terms for registration?

Registration can be carried out 1. online through the automated system or 2. filed in person directly to the corresponding Public Service Center.

Registration of the company online is carried out in a real-time mode within approximately 30 minutes.

To register a company, constituent documents shall be prepared in the Uzbek language. According to Uzbekistan's legislation, there is no mandatory minimum size of the authorised capital for LLCs. It is important to note that the minimum requirements for the authorised capital may be set out in the licence requirements.

### 1.3 What additional authorizations/approvals are required to create a legal entity or start operations, and how do they vary depending on the type of business (if any)?

Establishing a legal entity to do business in Uzbekistan is one of the most simplified and does not require consent or permits. It is worth noting that a licence, permit or notification will be required to operate in certain areas. According to the Law on Licensing, Permission and Notification Procedures № 3PY-701 dated July 14, 2021 (hereinafter referred to as the "Law on Licensing"), these are authorizations/approvals that may be required to create a legal entity or start operations:

1. Business licences or permits: Certain types of businesses may require specific licences or permits to operate legally;
2. Import/export licences: Companies engaged in international trade may need to obtain import/export licences to facilitate the movement of goods across borders;
3. Certifications: Certain industries, such as healthcare, manufacturing or transportation, may require certifications to demonstrate compliance with health and safety standards;
4. Approvals: Projects concerning construction and supply of energy may need to obtain approvals to ensure that their activities comply with local regulations;
5. Notifications of the commencement or termination of activities: Certain types of activities are carried out in the procedure of notification of authorised bodies.

### 1.4 What are the most common types of Legal Entities in your country and the differences between them in terms of taxation, liability, and management?

**1.4.1. What are the shareholder structures of these types of legal entities?**

**1.4.2. What is the Shareholders' responsibility in these types of legal entities?**

**1.4.3. What is the responsibility of the representatives in these types of legal entities?**

**1.4.4. Briefly, what are the characteristics of the other types of Legal Entities?**

The most common types of legal entities are Limited Liability Companies (LLC) and Joint Stock Companies (JSC). Managing a JSC is much more complicated due to the legal requirements for registering the issue of shares and registering the issue of shares in

the Central Securities Depository, publishing information about decisions made on the website of the JSC, forming a Supervisory Board, etc.

#### 1.4.1. Shareholder structures:

- LLC is formed by multiple founders, but not more than 50 founders. Both residents and non-residents of the Republic of Uzbekistan can be shareholders of the LLC or JSC.
- JSC is represented by shareholders, owners of shares, which can be publicly traded or privately held. The number of shareholders in a JSC is unlimited and each shareholder is entered in the register of shareholders. Also, depending on the type of shares (common and preferred), the rights of shareholders may differ. Holders of preferred shares have the right to receive dividends as well as funds invested in shares in the event of liquidation of the JSC on a priority basis.

#### 1.4.2. Shareholders' liability:

- LLC: LLC participants are not liable for its obligations and bear the risk of losses associated with its activities to the extent of the value of their contributions. LLC participants who have not fully contributed shall be jointly and severally liable for its obligations to the extent of the value of the unpaid part of the contribution of each LLC participant.
- JSC: Shareholders' liability is limited to the value of their shares. In case of financial difficulties, shareholders are not personally liable for the company's debts.

#### 1.4.3. Representatives' liability:

- The management and responsibility of representatives in LLCs and JSCs are not practically different.

#### 1.4.4. Characteristics of other types of legal entities:

Sole Proprietorship. A sole proprietorship is a commercial organisation established and managed by the owner - one individual. He is personally liable for the debts and obligations of the company. A sole proprietorship has separate property, can in its own name acquire and exercise property and personal non-property rights, incur obligations and participate in court.

Family enterprise. Family enterprise is another type of conducting activities with the formation of a legal entity. The activity of a family enterprise is based on the personal labour of its participants. The general meeting of the participants of the family enterprise is the supreme management body.

The total number of participants of a family enterprise and its employees may not exceed the average annual number of employees of small businesses established by law. At the same time, the minimum number of participants of a family enterprise shall be not less than two persons.

### 1.5 What are the operating costs associated with the maintenance of a legal entity or presence in the country?

The set of operational expenses depends on the industry of the company. Examples of operational expenditures include:

- fees for the use of licences, patents, or other intellectual rights;
- operational taxes and mandatory payments unrelated to financial activities;
- employee salaries, bonuses, and social contributions;
- rent for office space, manufacturing facilities, and equipment;
- utility payments;

- expenses for advertising, promotion, market research, and other marketing activities;
- costs for logistics, warehousing, and product delivery;
- maintenance expenses for equipment and machinery.

## 2. General taxation issues

### 2.1 What tax obligations are associated with doing business in the country?

According to the Tax Code, businesses in Uzbekistan are subject to various taxes and fees, including corporate income tax, value-added tax (VAT), property tax, subsoil use tax, excise tax, water use tax and social security contributions. The specific tax liabilities depend on factors such as the type of business, its revenue, and the industry sector.

### 2.2 What tax and customs incentives are available in a country?

1. Tax holidays: Investors may be entitled to exemption from corporate income tax for a certain period after the implementation of an investment project.
2. Value-added tax (VAT) exemption: Investors engaged in certain types of activities may be exempt from paying VAT on the importation of goods and services for their projects.
3. Customs duty deferral: Investors may receive a deferral on paying customs duties on imported goods for use within their investment projects.
4. Preferential corporate income tax rates: Certain industries and types of businesses may benefit from preferential corporate income tax rates.
5. Land tax incentives: Investors may be eligible for exemptions or reductions in land tax payments depending on the purpose of land use and the location of the project.
6. Other incentives: Additionally, tax exemptions for certain taxes, except for value added tax, excise tax, subsoil use tax and special rent tax on the extraction of minerals, may be granted by decisions of the President of the Republic of Uzbekistan in the form of a reduction in the established tax rate.

### 2.3 What are the accounting and reporting requirements for different types of presence, and how often must they be submitted?

The requirements for accounting and reporting may vary for different types of presence in Uzbekistan and depend on the types of taxes paid by the company. Typically, they involve maintaining accounting records in accordance with legislation and international financial reporting standards. This includes recording income, expenses, assets, and liabilities, as well as preparing financial statements such as balance sheets, income statements, cash flow statements, and statements of changes in equity.

The frequency of reporting depends on the type and size of the organisation. For instance, larger organisations are often required to report quarterly, while smaller enterprises may only need to report annually or even less frequently.

Additional requirements may include having financial statements audited by an independent auditor and submitting tax reports to the tax authorities. In addition to tax reporting, companies may also submit statistical reports.

### 2.4. What is the taxation of dividends for foreign investors?

Taxation of dividends for foreign investors in Uzbekistan depends on

the source of the dividends. Dividends received from Uzbekistan by a foreign company that has established a presence in Uzbekistan are subject to income tax at the rate of 5%, which is withheld by the tax agent at the time of dividend payment and transferred to the state budget no later than the date of dividend payment.

For taxpayers who have not established their presence in Uzbekistan, dividends are taxed at the rate of 10%, that are subject to change under Double Taxation treaties.

### **2.5 What strategies exist for minimising tax liability when conducting international business?**

1. Take advantage of available tax incentives and exemptions provided by the legislation of Uzbekistan for certain types of activities or investments.
2. Establish an optimal company structure considering tax peculiarities.
3. Make use of existing bilateral tax treaties between Uzbekistan and other countries to avoid double taxation and optimise tax payments.

## **3. Regulatory and miscellaneous**

### **3.1 What are the general data protection and privacy requirements in the country, and how do they affect company operations?**

According to the Law "On Personal Data" No. 3PY-547 dated July 2, 2019, a legal entity processing the personal data of citizens of the Republic of Uzbekistan using information technology must ensure the collection, systematisation, and storage of data on technical means physically located in the territory of the country and registered in the State Register of Personal Data Bases.

The confidentiality of personal data is mandatory to be observed by the owner and/or operator or any other person who has access to the data. Disclosure and dissemination of personal data without the consent of the subject or other lawful basis are prohibited.

Violation of these rules may lead to administrative and legal consequences, including fines and loss of trust from clients.

### **3.2 What labour law features should be considered when hiring local and foreign employees?**

When hiring local and foreign employees, it is necessary to consider the following provisions of the Labour Code:

1. All workers, regardless of their citizenship, must conclude an employment contract with the employer. The contract should include terms of work, remuneration, work schedule, vacations, and other rights and obligations of the parties. Conclusion of a civil law contract actually regulating labour relations is prohibited;
2. The state annually establishes the minimum wage, and the monthly salary of an employee cannot be set below the minimum wage. The amount of the minimum wage from December 1, 2023 is UZS 1 050 000 per month;
3. Employer should keep records of overtime work, which is paid at least double time;
4. Employers are required to ensure the confidentiality of the personal data of all employees;
5. When hiring foreign workers, additional requirements related to obtaining work and residence permits must be observed, as well as compliance with immigration laws and regulations.

There is a special procedure for the attraction of foreign employees

for work in Uzbekistan, requiring the foreign employee of the company to obtain a work permit. Generally, a work permit is issued for the period of up to one year.

### **3.3 What are the requirements for currency regulation and currency control?**

In recent years, the legislation of Uzbekistan in the field of currency regulation has been reformed by taking measures to improve foreign exchange policy and foreign trade activities, which contributed to attracting foreign investment into the country's economy, increasing export potential, sustainable development of modern, export-oriented industries, as well as small businesses and private entrepreneurship. Thus, at the moment there is a free regime for the circulation of foreign currency in Uzbekistan, subject to some restrictions.

The main body of state currency regulation is the Central Bank of the Republic of Uzbekistan, which, in turn, within the limits of its powers, determines the rules for carrying out currency transactions, establishes the procedure for monitoring currency transactions carried out by residents and non-residents, including with currency control authorities, etc.

Please note that tariffs, prices for goods (work, services), including on national electronic trading platforms, as well as requirements for the size of authorised funds (authorised capital) of legal entities on the territory of the Republic of Uzbekistan are determined exclusively in the currency of the Republic of Uzbekistan.

Moreover, it is not allowed to link prices for goods (work, services) sold on the territory of the Republic of Uzbekistan to foreign currencies and conventional units.

### **3.4 What corporate law features should be considered when planning mergers, acquisitions, and company restructuring in the country?**

#### **Notification of the media and creditors**

In accordance with the LLC Law, merger, consolidation, division, separation and transformation of a legal entity are forms of reorganisation. As a general rule, a company is considered reorganised, except in cases of reorganisation in the form of absorption, from the moment of state registration of legal entities created as a result of reorganisation.

After adoption of the decision on reorganisation, the company must notify in writing all creditors of the company known to it and publish in the mass media an announcement of the decision.

#### **Antimonopoly authorization**

The Republic of Uzbekistan strictly regulates competition relations related to control and suppression of actions that lead or may lead to restriction of competition on commodity or financial markets and exercises state control over economic concentrations.

In case of reorganisation of an economic entity by means of merger, acquisition or acquisition, the provisions of the Law of the Republic of Uzbekistan "On Competition" No. 3PY-850 dated July 3, 2023, in certain situations, require prior consent from the antimonopoly body of the Republic of Uzbekistan. An applicant may be denied preliminary consent if the granting of an application for preliminary consent to economic concentration may result in the emergence or strengthening of a dominant position of the relevant business entity or group of entities on a commodity or financial market and (or) restriction of competition.

### **3.5 What are the most efficient mechanics for dispute resolution?**

The main method of dispute resolution is dispute settlement through

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negotiations between the parties, which is reflected in the Economic Procedural Code of the Republic of Uzbekistan (hereinafter referred to as "EPC RUz"). According to Article 148 of the EPC RUz, a case may be initiated in court only after the parties have taken measures for voluntary settlement of their relations, including the claim procedure for dispute settlement. Also, Article 63 of the Law on Investments mentions negotiation as the primary method of dispute resolution. In case the parties to an investment dispute are unable to reach an agreed settlement through negotiations, such dispute shall be settled through mediation. However, the most common way is judicial settlement of disputes by applying to the competent court of the Republic of Uzbekistan. Uzbekistan has a system of civil, administrative and economic courts.

When disputes arise with foreign counterparties, the parties may also apply to arbitration courts to settle disputes. Currently, Tashkent International Arbitration Center (TIAC) and International Commercial Arbitration Court under the Chamber of Commerce and Industry of the Republic of Uzbekistan (ICAC under the Chamber of Commerce and Industry of the RUz) operate in Uzbekistan.

## About GRATA International



GRATA International is a dynamically developing international law firm which provides services for projects in the countries of the former Soviet Union and Eastern Europe: full coverage of the entire region with network of offices, highly qualified team of professionals suited for cross-border projects. Firm's reputation and expertise are confirmed by testimonials from transnational clients and leading international ratings.

A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

GRATA International is present in the following jurisdictions: Armenia (Yerevan), Belarus (Minsk), Azerbaijan (Baku), Cyprus (Limassol), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Astana and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Turkey (Istanbul), UAE (Dubai), Ukraine (Kyiv) and Uzbekistan (Tashkent).

In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the USA (New York), China (Beijing), Switzerland (Zurich).

**GRATA International is regularly acclaimed by leading international rankings: Chambers Global, Chambers Asia-Pacific, Legal 500, IFLR1000, WWL, Asialaw Profiles, and is featured in Deals of the Year Awards by China Business Law Journal.**

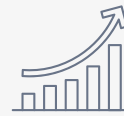
### Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport



> 21

countries of presence



> 32

years of experience



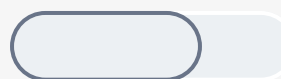
> 220

professionals



> 15

practice areas



14 500+

clients



37 200+

projects





# Global Presence

## Integrated Offices

- |  |  |                               |
|--|--|-------------------------------|
| <b>Azerbaijan</b><br>Baku                                      | <b>Kyrgyzstan</b><br>Bishkek                               | <b>Tajikistan</b><br>Dushanbe |
| <b>Belarus</b><br>Minsk  | <b>Moldova</b><br>Chisinau                                 | <b>Ukraine</b><br>Kyiv        |
| <b>Georgia</b><br>Tbilisi                                      | <b>Mongolia</b><br>Ulaanbaatar                             | <b>Uzbekistan</b><br>Tashkent |
| <b>Kazakhstan</b><br>Astana<br>Almaty<br>Atyrau<br>Aktau, etc. | <b>Russia</b><br>Moscow<br>Rostov-on-Don<br>St. Petersburg | <b>Armenia</b><br>Yerevan     |

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