INTRODUCTION

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Dear Friends and Colleagues,

As the President of Globalaw Limited, a network of more than 115 law firms serving key jurisdictions around the world, it is my distinct pleasure to introduce you to the Doing Business in Asia Pacific Guide, written and produced by member firms representing this key global region. The Guide serves as an immediate resource to provide valuable and critical information about legal requirements to operate in these respective jurisdictions. Thus far, Globalaw has produced Doing Business Guides in Asia Pacific, Europe and Latin America, each of which represent the individual and collaborative expertise of the contributing law firms. These efforts further demonstrate the regional strength of the attorneys who comprise the Globalaw network.

In fact, the total population of the lawyers within Globalaw will exceed 4,500 practitioners who bring and offer a universe of practice areas to these key markets. The Guides serve not only to demonstrate this expertise but also to provide an immediate roadmap to learn more about doing business fundamentals in a concise, informative and “desktop” format for your ready reference.

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

Best regards,

Bill Taylor
Globalaw President
**Australia**

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

**Business Presence**

- Main types of business for profit structure in Australia:
  - Sole Trader, Limited Liability Company (private or public), Partnership (limited liability partnerships and general law partnerships), Unit Trusts
- Other possible options for doing business in Australia: agency arrangement, distribution arrangement, franchise arrangement, contractual joint ventures
- Quick and simple procedure for incorporating companies

**Foreign Investment Restrictions and Conditions**

*Restrictions on Investment - Shares, Business, Urban Land*

- Foreign investment in Australia is subject to the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA).
- Under the FATA, foreign persons may need to seek the approval of Australia’s Foreign Investment Review Board (FIRB) before making an investment in Australia. The outcome of FIRB’s review takes the form of a Recommendation to the Federal Treasurer, who retains the ultimate discretion to determine whether or not approval will be granted to a foreign investment proposal. If a proposal is deemed to be contrary to the “national interest” it can be blocked.
- A foreign person includes a foreign natural person, a foreign corporation (i.e. any corporation, including an Australian corporation, in which a foreign person holds 15% or greater interest, or in which a foreign person with other unrelated foreign corporations, holds an aggregated 40% or greater interest) and in certain circumstances, the trustee of a trust.
- Under FATA and the accompanying regulations, the government is required to be notified of certain proposals. Proposals which are required to be notified to the government are as follows:
  - Acquisition by foreign persons of an interest of 15% or more in an existing Australian business or corporation the value of which exceeds A$252 million (in the case of a US investor not controlled by the US government the threshold is A$1,094 million. Foreign persons also need to notify if they wish to acquire an interest in a company which has Australian subsidiaries valued above A$252 million.
  - Certain proposed investments in “perscribed sensitive sectors”. These have different thresholds. For example, investments in the media sector have a threshold of 5% or more regardless of the value of the investment.
  - Direct investments by foreign governments and their related entities, regardless of the value of the investment.
  - Acquisitions of “interests” in Australian urban land (including buying real estate, obtaining or agreeing to enter a lease, financing and profit sharing arrangements) that involve:
    - Developed non-residential commercial real estate (including hotels, motels, hostels and guesthouses) valued at $55 million or more (unless heritage listed in which case the threshold is $5m or $1,094 million or more in the case of a US investor)
    - Residential real estate, regardless of value
    - Vacant real estate, regardless of value
    - Buying shares or units in an Australian urban land corporation or trust estate (i.e. a company or trust where the value of its land assets exceeds 50% of its total value), regardless of value.
  - Proposals where any doubt exists as to whether they are negotiable (funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment).
  - The Treasurer has a 30-day period to make a determination (plus a 10-day notification period). An interim order prohibiting
implementation can be made within 30 days of receiving the notice, prohibiting implementation for a period of up to 90 days. On advice of the FIRB, the Treasurer may:
- Make an order prohibiting a proposed transaction; or
- Approve it with or without conditions; or
- Indicate that the government has no objection.

• Direct investments by foreign governments and their agencies, including proposals to establish new businesses, require approval irrespective of size.
• All foreign government investors, as defined in FATA, must notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment.
• FATA does not apply to investments by US investors in financial sector companies, subject to the operation of the Financial Sector (Shareholdings) Act 1998 (Cth).

Real Estate – General
• Foreign persons seeking to buy Australian urban land must seek prior approval through the FIRB, unless specifically exempted by regulation.
• Foreign persons intending to buy real estate in Australia should make purchase contracts conditional on foreign investment approval, unless approval has already been granted or the foreign person is exempt from the FATA.

Real Estate – Residential
• Non-resident foreign persons cannot buy established dwellings as investment properties or as homes except as below:
  - Companies that consist of foreign persons need to apply to buy established dwellings to house their Australian-based staff. Such proposals are normally approved subject to the company undertaking to sell the property if it is expected to remain vacant for six months or more.
  - Non-resident foreign persons need to apply to buy established dwellings for redevelopment (that is, to demolish the existing dwelling and build new dwellings). Proposals for redevelopment are normally approved as long as the redevelopment increases Australia’s housing stock (at least two dwellings built for the one demolished) or where it can be shown that the existing dwelling is derelict or uninhabitable. Approvals are usually subject to conditions.
• Non-resident foreign persons need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).
• Non-resident foreign persons need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

Real Estate – Commercial
• Foreign persons need to apply to buy or take an interest in vacant land for commercial development, regardless of the value of the land. Such proposals are normally approved subject to development conditions.
• Foreign persons need to apply to buy or take an interest in developed commercial real estate valued at A$5 million or more—unless the real estate is heritage listed, then a $5 million threshold applies. US investors only need to apply for developed commercial real estate valued at A$10,078 million or more.

Real Estate – Rural
• Rural Land is land used wholly and exclusively for carrying on a business of primary production. To be a business of primary production, the business must be substantial and have a commercial purpose or character.
• From 1 March 2015 foreign persons must notify the Government and get prior approval for a proposed acquisition of an interest in rural land where the cumulative value of rural land that the foreign person (and any associates) already holds exceeds, or immediately following the proposed acquisition is likely to exceed, $15 million.

CENTRAL BANK EXCHANGE CONTROL
Currency Restrictions/Anti-Money Laundering
• Restrictions apply to domestic and international cash and non-cash transactions, whether in Australian or foreign currency. The most significant legislation in this area is the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) (AML/CTF Act) and the Criminal Code 1995 (Cth).
• An organisation is subject to the AML/CTF Act to the extent it provides a “designated service”. Designated services are itemised under the AML/CTF Act, and comprise services which could provide opportunities for money laundering and terrorism financing, such as a broad range of financial services and banking services, gambling and bullion services.
• The AML/CTF Act has recently been extended to the remittance sector and there are indications it may soon be extended to also cover dealings in real estate, jewellery and professional and business services. From 2012, remittance providers must register with the new AUSTTRAC (Australia’s financial intelligence unit) Remittance Sector Register.
• Providers of a “designated service” (known as reporting entities) must undertake a risk assessment of their activities and implement AML/CTF procedures to identify, mitigate and manage AML/CTF risk on the basis of this assessment, directing resources towards the highest risks. These procedures must meet statutory minimum requirements.

Reporting and other requirements
• Reporting entities must report to AUSTTRAC:
  - if a reporting entity forms a suspicion on reasonable grounds that: a service being provided relates to money laundering or terrorism financing, or the customer is not who they claim to be.
  - a customer transaction involves physical currency of A$10,000.00 or more; and
  - where certain services relate to International Funds Transfer Instructions.
• Reporting entities are also under an obligation to identify
and verify the identity of their customers, and re-verify a customer’s identity in some circumstances. Identification and verification requires the collection of reliable and independent documentation and data. Some minimum information is necessary, depending on the type of customer.

- Ongoing customer due diligence is required, such as the monitoring of transactions, to detect complex and unusual transactions.
- Records must be kept for a period of seven years, being:
  - any records it has created relating to the provision of designated services;
  - documents provided by its customers relating to the provision of designated services; and
  - documents associated with the customer identification process.

**TAXATION**

**General**

- The Australian Taxation Office administers most taxes in Australia. A number of taxes, however, are levied by the states and territories, e.g. transfer duty, land tax and payroll tax.

**Corporate Tax**

- Australian resident companies are taxed at the corporate tax rate of 30% on their worldwide trading profits, capital gains and other assessable income.
- Foreign resident companies are also liable to tax, at the corporate rate of 30%, but only on their Australian sourced income and other limited categories of statutory income specified in the taxing legislation.
- Foreign resident companies that operate in Australia through a permanent establishment are taxed at the corporate rate of 30% to the extent that its income is attributable to the permanent establishment.
- The government, which changed after a federal election on 7 September 2013, proposes to cut the corporate tax rate from 30% to 28.5% from 1 July 2015 but there are no finalised changes.
- Pay As You Go (PAYG) rules require companies and other businesses to collect and remit to the Australian Taxation Office various taxes, including installments of income tax payable by the company or business, as well as installments of income tax or related taxes from payments made to employees and contractors. There is a proposed measure to require certain companies to make PAYG installments monthly, rather than quarterly, from 1 January 2014. Under new laws, company directors and their associates may be liable for PAYG withholding non-compliance tax where the amount remitted to the Australian Taxation Office is less than the amount withheld and the director or associate is entitled to a PAYG withholding credit.
- Various other anti-avoidance provisions apply depending on the residency status of the companies involved. For example, Australia operates a controlled foreign companies (CFC) regime, thin capitalisation rules and also has extensive transfer pricing provisions. The government is continually reviewing international tax arrangements.
- A limited carry-back of tax losses by companies was introduced with effect from 2012-2013, but after a change of government in 2013 the rules were repealed with effect on 30 September 2014. This means taxpayers cannot claim the loss carry-back tax offset for the 2013-14 income year or any future years.
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- Generally, no deduction is allowed on dividends paid by a company to its shareholders.
- Dividends paid to shareholders are included in the assessable income of those shareholders, but an imputation system applies which may give shareholders a credit for the tax paid by the company (e.g. where ‘franked dividends’ are paid).
- The imputation system only applies to dividends paid by Australian resident companies. The availability of credits is subject to holding period rules.
- A deduction is allowed in limited circumstances for on-payments of unfranked non-portfolio dividends (including non-share dividends) by an Australian resident company to its foreign resident parent.
- There are also anti-avoidance provisions which tax certain non-dividend payments, loans, asset transfers and private asset uses from private companies as unfranked dividends (Division 7A). The Board of Taxation is conducting a review of Division 7A and has released a discussion paper for these purposes.
- To ensure that the community receives an appropriate share of the large returns that can follow the development of rich petroleum deposits, Australia also has a resource rent tax regime (the petroleum resource rent tax or ‘PRRT’). The PRRT originally applied to petroleum projects in certain offshore areas. However, the scope of the PRRT was expanded from 1 July 2012 to extend to various onshore petroleum projects (including coal seam gas, tight gas and oil shale projects) and the North West Shelf project (but not to the Joint Petroleum Development Area in the Timor Sea).
- A separate Mineral Resource Rent Tax (MRRT) applies to iron ore and coal projects from 1 July 2012, which is levied (in addition to income tax and State royalties) at a rate of 30% of resource profits exceeding $75 million per annum. Payments of MRRT (including installments) are deductible for income tax purposes. The MRRT was repealed in September 2014 so that entities should not accrue MRRT from 1 October 2014.

**Carbon Tax**

- The legislation was repealed after the change of government in 2013 in order to abolish the carbon tax, with some elements of the related household assistance package to be retained (including pension and benefit increases). The effective date of the repeal of the carbon tax was 1 July 2014.
Individual Income Tax
- Residents are subject to Australian tax on their worldwide income, less allowable deductions.
- Foreign source income derived by residents is taxed on a gross basis with foreign tax credits being available for tax paid at source.
- Tax liability arises when income is “derived”. Individuals are generally treated as deriving income when it is paid or credited to them rather than when entitlement to the income accrues.
- Marginal income tax rate scales apply. The top marginal rate is 45%, which applies to income in excess of AUD$180,000 (2012/2013).
- Marginal income tax rate scales apply. The top marginal rate is 45%, which applies to income in excess of A$180,000 (2014/2015). For taxable income exceeding A$180,000 a 2% “budget repair levy” applies to the excess (with a foreign tax offset able to be used to offset the levy).
- Resident taxpayers are exempt from tax on their first A$18,200 of taxable income (this is the “tax free threshold” for 2014/15).
- Non-residents are subject to Australian income tax only on their Australian source income.
- Non-resident taxpayers are unable to access the tax-free threshold.
- Foreign source income of non-residents is expressly exempt from Australian income tax.
- Individuals who qualify as temporary residents are generally able to access certain tax concessions which effectively allow them to be taxed as non-residents (except for employment and personal services income from either Australia or overseas, and income from employee shares or rights).
- Most taxpayers (who exceed relevant low income family thresholds) pay Medicare levy of 2% of their taxable income. This levy is designed to help fund the Medicare scheme, which gives Australian residents access to health care. Taxpayers may be exempt from paying the Medicare levy if they are a foreign resident, or only liable at a reduced rate if their income is below a certain threshold. Taxpayers may also have to pay the Medicare levy surcharge if their income is above a certain threshold and they, or any of their dependants, do not have appropriate private patient hospital cover. From 1 July 2012, the rate of Medicare levy surcharge increased for those on higher incomes (there are now three rate tiers—1%, 1.25% and 1.5% depending on single/family income level).
- Other specific purpose taxes are occasionally levied against individuals’ taxable income. A recent example is the Temporary Flood and Cyclone Reconstruction Levy, which was raised as a one-year progressive levy in 2011–2012 in order to allow the Federal Government to contribute to the rebuilding of disaster affected regions of Australia. The levy applied at a rate of 0.5% of taxable income from $50,000 up to $100,000 and at 1% of taxable incomes from $100,000 and above.
- Non-resident individuals participating in the Seasonal Labour Mobility Program are subject to a 15% final withholding tax.

Capital Gains Tax
- Capital gains tax (CGT) provisions apply where a CGT event happens to a CGT asset.
- There are a wide range of CGT events, not limited to the disposal of assets. For example, becoming, or ceasing to be, an Australian resident are CGT events.
- Capital gains and losses made on CGT assets acquired on or before 19 September 1985 are generally excluded.
- Capital gains are taxed as income under Australia’s tax regime, but special rules apply in calculating the taxable amount and applicable tax rate.
- While net capital gains are treated as part of a taxpayer’s assessable income, where capital losses are incurred they can only be set off against capital gains and not against other income, but can generally be carried forward to the next year if there are insufficient capital gains to offset those losses.
- Non-residents are subject to Australian CGT only in respect of taxable Australian property acquired after 19 September 1985.
- There are five categories of taxable Australian property, including:
  - Taxable Australian real property
  - Indirect Australian real property interests
  - Business assets used in a permanent establishment of a foreign resident
  - Options and rights over any of the preceding assets; and
  - Assets where a CGT gain or loss is deferred when an entity ceases to be an Australian resident.
- Capital gains made by a non-resident on the disposal of other assets are not taxable under the CGT provisions.
- A 50% CGT discount applies to individuals and most trustee taxpayers where the asset has been held for 12 months or more prior to sale. No CGT discount is available to companies. Eligibility for the 50% discount is being removed for capital gains earned by non-residents after 8 May 2012 on taxable Australian property, such as real estate and mining assets. Non-residents will still be entitled to a discount on capital gains accrued prior to 7:30PM (Australian Eastern Standard time) on 8 May 2012 (after offsetting any capital losses), but only if they choose to value the asset at that time.
- The government has announced that it will proceed with the proposal to introduce a non-final withholding regime to support the operation of the foreign resident CGT regime. Submissions on the proposal closed on 28 November 2014.

Withholding Tax
- Australian withholding tax is levied on the payer of dividends, interest, royalties and other limited categories of income paid to non-residents. As withholding tax is a final tax, there is no further tax payable by the non-resident on such income in Australia.
- The following rates of withholding tax generally apply, but these may be reduced by any applicable double tax agreement.
between Australia and the country of residence of the non-resident payee:
- Unfranked dividends – 30%
- Interest – 10%
- Royalties – 30%
• Other common types of payments subject to withholding tax:
  - Managed investment trust income
  - Film royalties
  - Rentals
  - Technical assistance fees.
• A final withholding tax rate of 10% applies from 1 July 2012 to payments from managed investment trusts holding energy-efficient buildings constructed to residents in specified foreign countries.

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

Double Taxation Treaties
• Where assessable income is liable to be taxed in both Australia and another country, relief may be available, e.g. under:
  - The specific terms of a double tax agreement between Australia and that other country; or
  - The foreign tax offset provisions contained in the Australian tax legislation.
• A new transfer pricing regime commenced for income years beginning on or after 29 June 2013.
• Other international tax developments since 1 July 2013 include:
  - The government has announced that it will proceed with certain proposed changes to tax measures on non-portfolio dividends but will not proceed with a proposal to formalise the existing practice of exempting a foreign government’s income from passive portfolio investments such as interest, dividends and managed funds distributions.
  - The government will not proceed with proposals to reform the CFC and foreign source attribution rules.
  - The government will proceed with certain proposals to tighten the Offshore Banking Unit regime.
  - The government will proceed with the third element of the Investment Manager Regime.
  - The government will proceed with the proposal to lower the thin capitalization debt limits.
  - The government has confirmed that amendments to ensure that foreign pension funds can access the Managed Investment Trust withholding tax regime, applicable from 1 July 2008, will proceed as announced.

TAX AND INVESTMENT INCENTIVES

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

Capital Allowances
• Under the uniform capital allowance rules, a deduction for depreciation is generally allowed in respect of plant, machinery and equipment and other assets at various rates over the useful life of an asset.
• Depreciation is calculated on a diminishing value basis unless the taxpayer elects to use prime cost.
• To calculate the applicable rate of depreciation for a particular
asset, reference must be made to the formulas prescribed by Australian tax law.

- The Australian Taxation Office publishes an annual taxation ruling to provide guidance on the effective life of a wide range of depreciable assets.

- Companies that incur expenditure on research and development (R&D) may be eligible to claim a number of tax concessions, including:
  - An accelerated rate of deduction (generally 125%) is allowed for wages, salaries, other labour costs and expenditures incurred directly on R&D activities and for certain payments to approved outside bodies, subject to an A$20,000 threshold;
  - Expenditure on R&D plant incurred after 29 January 2001 is eligible for effective life depreciation at 125%;
  - A 100% deduction can be claimed for expenditure incurred in acquiring rights to pre-existing “core” technology;
  - A 100% deduction over 40 years is allowed for expenditure on R&D buildings;
  - An incremental concession (175% deduction) applies where companies increase their level of R&D expenditure; and
  - A refundable tax offset, equal to the value of the R&D deduction, is available for small companies.

- The government proposes to remove the non-refundable 40% R&D tax offset for entities with an aggregated assessable income of A$20b or more from 1 July 2013.

- Expenditure from 1 July 2012 on exploration for geothermal energy sources may be immediately deductible or alternatively may be deductible over the effective life of the asset. However, the government proposes to repeal this tax break from 1 July 2014.

- The government proposed to introduce a minimum exploration development incentive for small exploration companies, and amend the immediate deduction for mining exploration to exclude mining rights and information.

- The urban water tax offset (former Subdivision 402-W) been repealed because it was not utilised.

**Investment Tax/Reinvestment Allowances**

- Tax incentives apply to encourage foreign investment into the Australian venture capital market and to encourage international venture capital managers to locate in Australia by allowing “flow-through” taxation of certain venture capital entities.
- A tax loss incentive has been provided for designated infrastructure projects from 2012/13.
- In 2012/13 there were amendments to clarify the operation of the Taxation of Financial Arrangements (TOFA) regime including in respect of the tax timing methods.
- The government proposes to proceed with amendments to ensure only net gains and losses are recognised for tax purposes for certain intragroup liabilities and assets that are subject to the TOFA regime upon exit of a member from a consolidated group.

**Tax Exemptions**

- Capital gains tax exemption applies to certain gains made by foreign residents on venture capital investments.
- Conditions for the exemption include registration, holding the investment at least 12 months, the investment must be an eligible venture capital investment, and the partners must be from Canada, France, Germany, Japan, the UK or the US or another prescribed country.

- Individuals who hold a temporary visa and qualify as a “temporary resident” are exempt from Australian tax on certain foreign source income or capital gains. They are treated similarly to non-residents, even though in many cases they would have been classed as residents under the normal tax rules. They are also exempt from interest withholding tax. Special rules apply to employee shares and rights. These concessions generally apply to income years on or after 1 July 2006, but the withholding tax concessions apply to payments made on or after 6 April 2006.

**EMPLOYMENT LAW**

**General Legal Framework**

- The Commonwealth Fair Work Act 2009 (FW Act) is the primary piece of industrial relations legislation. There are also various equal opportunity and anti-discrimination laws, and occupational health and safety laws.
- The FW Act applies to trading or financial corporations, foreign corporations, all Commonwealth government agencies, and aircrew and waterside workers engaged in interstate trade and commerce. All States, except for Western Australia, have also now referred power to the Commonwealth to enable the FW Act to apply to other private sector employers, such as...
partnerships and unincorporated associations.

- State industrial relations laws principally cover State public servants and also partnerships and unincorporated associations in Western Australia. However, State laws continue to apply to private sector employers in relation to matters such as long service leave (but not other forms of leave), occupational health and safety, workers’ compensation, and anti-discrimination.

**The National Employment Standards**

- The National Employment Standards (NES) under the FW Act stipulates 10 minimum standards for employment. It is not possible to contract out of the NES. These are:
  - Maximum weekly hours of work – 38 hours per week, plus reasonable additional hours;
  - Requests for flexible working arrangements – allows parents or carers of a child under school age, or of a child under 18 with a disability, to request a change in working arrangements to assist with the child’s care;
  - Parental leave and related entitlements – up to 12 months’ unpaid leave for every employee, plus a right to request an additional 12 months’ unpaid leave, plus other forms of maternity, paternity and adoption-related leave. A separate Commonwealth-funded paid parental scheme provides parents of children born or adopted on or after 1 January 2011 to leave while receiving the national minimum wage for up to 18 weeks. The pay is funded by the Federal Government. It is in addition to other entitlements including employer-funded paid parental leave (which is common as a matter of company policy);
  - Annual leave – four weeks paid leave per year for full-time employees, plus an additional week for certain shift workers;
  - Personal/carer’s leave and compassionate leave – 10 days’ paid personal/carer’s leave for full-time employees, two days’ unpaid carer’s leave as required, and two days’ compassionate leave (unpaid for casuals) as required;
  - Community service leave – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service;
  - Long service leave – a transitional entitlement for certain employees who had certain long service leave entitlements before 1 January 2010 pending the development of a uniform national long service leave standard. Long service leave is primarily dealt with by State legislation and provides a certain amount of paid leave after a certain period of service (for example, 2 months leave after 10 years service in New South Wales);
  - Public holidays – a paid day off on a public holiday, except where reasonably requested to work;
  - Notice of termination and redundancy pay – up to four weeks’ notice of termination (five weeks if the employee is over 45 and has at least two years’ of continuous service) and up to 16 weeks’ redundancy pay, both based on length of service;
  - Provision of a Fair Work Information Statement – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, rights of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.

**Awards and enterprise agreements**

- The FW Act provides for awards to set minimum terms and conditions of employment for many employees. Terms and conditions of employment can also be controlled through enterprise agreements made under the FW Act.
- Awards and enterprise agreements often deal with entitlements such as overtime and penalty rates for work outside normal business hours, on weekends or shift work. They operate in conjunction with the NES. It is not possible to contract out of an award or an enterprise agreement but there can be some limited flexibility over certain requirements, e.g. when work is done, and whether allowances can be rolled up into an annual salary.

**Awards**

- Awards are binding on employers and employees in a specified class (for example by reference to a particular industry or task) in respect of employees in specified role classifications. Awards can be executed for an employee to whom the award would otherwise apply where the employee’s salary (and other agreed benefits) is more than the High Income Threshold (currently $123,300 as at 1 July 2012, indexed on 1 July annually), provided that the employee has been given a written guarantee of annual earnings in accordance with the FW Act.
- Awards regulate minimum wages. Awards may also include provisions relating to types of employment, arrangements for when work is performed, overtime and penalty rates (including for shift workers), annualised wage or salary arrangements, allowances, leave and leave loadings, superannuation, procedures for consultation, representation and dispute settlement and pay and conditions for outworkers.
- The Clerks – Private Sector Award 2010 is an award which will apply to most employees performing clerical or administrative functions. There are various industry awards that cover clerical employees and exclude the Clerks Award (for example, in the banking, finance, insurance and retail industries). Senior managers are not usually covered by any award (no matter what their rate of pay is). For instance, there is no award that has general application to private sector lawyers (although legal graduates may have some coverage).

**Enterprise Agreements**

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

**Minimum Wage Requirements**

- The Fair Work Commission is responsible for setting minimum wages for employees in the national workplace relations system. Minimum wages for employees covered by an award
are specified in the award. Minimum wages for employees who are not covered by an award or agreement are specified in the national minimum wage order which is reviewed annually. The Fair Work Commission also reviews award minimum wages annually.

- The national minimum wage order sets the national minimum wage, casual loadings, and special national minimum wages for all award/agreement free employees in the following classes:
  - Junior employees;
  - Employees to whom training arrangements apply; and
  - Employees with a disability.
- Award minimum wages include the rates of minimum wages and:
  - Wage rates for junior employees, employees to whom special training arrangements apply and employees with a disability;
  - Casual loadings; and
  - Piece rates.

**Statutory Contributions**

- Taxation is compulsorily exacted by both the Federal Government and the Governments of the States. These include:
  - Payroll tax;
  - PAYG deductions from employees’ remuneration;
  - Compulsory 2% Medicare levy;
  - Fringe benefits tax;
  - Termination payments.

**Superannuation**

- Employers are required to make compulsory superannuation contributions on behalf of employees based on an employee’s “ordinary time earnings”.
- The SG rate increased to 9.5% in 2014/15 and will remain at that rate until 2017/18 and then increase by 0.5% each year until it reaches 12% in 2022/23.
- The SG exemption age of 70 has been abolished from 1 July 2013. Contributions can be made to a complying superannuation fund, and employees can generally choose a fund. From 1 January 2014, employer SG contributions must be made to a superannuation fund that offers a MySuper product if an employee has not chosen a fund.
- Employers are entitled to a deduction on their superannuation contributions for employees regardless of age.
- Australian workers are unable to access their superannuation benefits until they reach a minimum age (generally age 60 where the worker retires) or meet other conditions for payment. After permanently leaving Australia and expiry of a temporary resident visa, an expatriate employee may apply for a refund of their superannuation, subject to withholding tax and certain other conditions.

**DISPUTE RESOLUTION**

**General Legal Framework**

- As Australia is a Federation of States, the legal framework is characterised by a blend of State and Federal jurisdictions.

Each State and Territory has a Supreme Court which has full power over matters arising under the law of that State or Territory. Legislation enacted by the Federal Parliament is presided over by the courts within the Federal jurisdiction. At the apex of both the State and Territory jurisdictions and the Federal jurisdiction is the High Court of Australia, the ultimate appellate court in the land.

**Court System**

- Within the various jurisdictions there are both general courts, with jurisdiction over legal disputes generally, and specialist courts, which have jurisdiction over particular areas of the law.
- The Australian court system is modelled on the British common law, operating in the adversarial style, in which each party to a proceeding is entitled to be represented by Counsel. The proceedings are overseen by a judge or judicial officer, who acts as the ultimate arbiter in questions of law. In the civil jurisdiction, this judicial officer also operates as the ultimate finder of fact.

**Alternative Dispute Resolution**

- Alternative Dispute Resolution (ADR) has gained increasing acceptance among both the general public and legal profession.
- Mediation has become an increasingly common alternative to formal litigation. Parties to a dispute are assisted by an impartial person or persons who work together to isolate the issues in dispute in order to develop a consensual settlement acceptable to both parties. It is common for civil disputes to be referred to mediation before they are heard by the court in a formal litigious setting.
- Arbitration has also become a common method by which disputes are resolved. The issue is referred to an arbitral body, generally by agreement, which considers the elements in a judicial manner, and makes a legally binding “award” which alters the rights of the parties. Each State has adopted legislation to govern the conduct of domestic-based arbitrations. These legislative measures roughly follow an agreed uniform approach. International arbitration may be governed by Federal legislation which adopts the United Nations Commission on International Trade Law (UNCITRAL) model on an opt-out basis.

**IMMIGRATION PROCEDURES**

**Temporary Residency**

- For short-term business visits, the following options are available:
  - Business Electronic Travel Authority short and long validity (subclasses 956 and 977) for passport holders from a number of countries and regions;
  - eVisitor (subclass 651) – for passport holders from the European Union and a number of other European countries;
  - APEC business travel card;
  - Business (Short Stay) visa (subclass 456) for business people who have an approved sponsor in Australia;
  - Sponsored business Visitor (Short Stay) visa (subclass 459).
• For each of the above visas, the purpose of entry must be conducting business on behalf of an overseas business as opposed to undertaking work for an Australian business. Activities included in the meaning of conducting business on behalf of an overseas business are:
  o Attending a conference or training session;
  o Negotiating business deals or contracts;
  o Exploring business options;
  o Business meetings.

• There is a very limited scope for working on a short-term project requiring a high level of skill. Meeting this requirement requires specific advice.

• These visas allow for potentially multiple entries with stays of up to three months on each visit.

**Long-Term Business Visit**

• For foreign employees of companies in Australia or offshore who are required to work temporarily in Australia, the relevant visa is a Temporary Work (Skilled) (subclass 457) visa. This visa is for:
  o Personnel for companies operating in Australia who would like to employ overseas workers to fill skilled positions in Australia;
  o Personnel from offshore companies seeking to establish, or help establish, a business operation in Australia, or fulfil obligations for a contract or other business activities in Australia; and
  o Personnel coming under a labour agreement.

• The position to be filled by the overseas worker must be for an occupation which is approved under the 457 visa program. The approved occupations fall within the occupations of managers, professionals, technicians and trades workers, community and personal service workers, clerical and administrative workers, sales workers and labourers. Sponsors who want to employ an overseas worker in an occupation which is not approved under the 457 visa program must do so under a labour agreement.

• The 457 visa allows a stay for a period of between 1 day and 4 years.

• Amendments to the 457 visa requirements are likely to commence on 1 July 2013, including a new “genuineness” test in relation to the organisation’s need to meet a labour shortage.

**Permanent Residency**

• The Employer Nomination Scheme (ENS) allows Australian employers to sponsor highly skilled workers for a permanent visa to work in Australia. The nominated position must correspond to an approved occupation for the purposes of the ENS.

• The employees can be either:
  o Highly skilled workers from overseas; or
  o Highly skilled temporary residents currently working in Australia (ie 457 visa holders).

• The ENS allows the employee and any dependant family members included in their visa application to live as permanent residents in Australia.

• The ENS consists of three streams:
  o The Direct Entry stream is for applicants who are untested in the Australian labour market, or have not held a 457 visa for at least two years with their nominating employer or who are applying directly from outside Australia.
  o The Temporary Residence Transition stream is for 457 visa holders who have worked for their employer for at least two years in the nominated occupation and the employer wants to offer them a permanent position in that same occupation, and
  o The Agreement stream is for applicants who are being sponsored by an employer through a tailored and negotiated labour agreement or regional migration agreement.
**BUSINESS PRESENCE**

- Main types of business models in China: domestic and foreign companies (limited liability companies and companies limited by shares) locally incorporated companies (which may be limited by shares or by guarantee), sole proprietorships, partnerships and registered branches of foreign companies.
- Main vehicles available to foreign direct investors: representative office, equity joint venture (‘EJV’), cooperative joint venture (‘CJV’), and wholly foreign-owned enterprise (‘WFOE’).
- PRC laws allow and encourage foreign investors to set up foreign investment holding company (‘FIHC’) and multinational corporations’ regional headquarters (‘MCRH’) in China.

**FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS**

**Investment categories**

- The National Development and Reform Commission, and the Ministry of Commerce jointly publish a Catalogue of Industries for Guiding Foreign Investment which classifies various industries into these general categories in terms of accessibility of foreign investment: (i) encouraged industries; (ii) permitted industries; (iii) restricted industries; (iv) prohibited industries. Under PRC laws, the approval by related authorities is necessary for the set-up and many other activities of foreign invested enterprises (‘FIEs’).

**Foreign Investment Approval Authorities**

- The National Development and Reform Commission (“NDRC”), the Ministry of Commerce, and their local counterparts are mainly responsible for various aspects of foreign investment. As to some special industries where foreign investors are limited to enter into, relevant authorities (e.g. the State Food and Drug Administration) may also take part in approving procedures.
- The corporate documents of all business entities shall be recorded with the local counterparts of State Administration for Industry and Commerce. Special industries’ (e.g. advertising) initial approval shall also be overseen by the State Administration for Industry and Commerce.
- Among others, the routine management of FIEs is conducted by the Tax Bureau, the State Administration of foreign Exchange, the Customs, the Administration of Quality Supervision etc.

**Eligible Chinese party**

- Chinese investors do not have to meet special conditions in order to become a party to a Sino-foreign joint venture.
- There are mandatory requirements on the qualification of Chinese counterparts in the joint venture of certain industries (such as establishing a Sino-foreign cooperative education institution).

**Partnership enterprises**

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

**Representative office**

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

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

TAX COMPLIANCE

Basic tax system
• Central tax: customs duty, consumption tax, value added tax (“VAT”) levied by customs, etc.
• Local tax: business tax (“BT”), individual income tax (“IIT”), tax for use of state-owned urban land, land value added tax, real estate tax, etc.
• Business transactions between affiliated enterprises shall be conducted at arm’s length and on independent basis. Otherwise the taxing authority shall have the right to adjust the FIE’s taxable income.

Main taxes applicable to FIEs
• EIT:
  o 15%: applicable to “encouraged hi-tech enterprises”
  o 20%: applicable to small-scale enterprises earning a “small profit”
  o 25%: applicable to all enterprises other than those mentioned above
• BT:
  o BT rate generally ranging from 3% to 5%
  o BT rate for entertainment industry could be as high as 20%
• VAT:
  o In terms of various industries, general taxpayers shall apply to VAT rates that are classified as: (i) 17%, (ii) 13%, (iii) 11%, (iv) 6%, (v) 4%, (vi) 3%, (vii) 0%

Preferential tax treatment for FIEs
• The tax treatment for both FIEs and domestic enterprises has become consistent, and most nationwide preferential tax treatments will not be available or continued anymore. Even the Urban Maintenance and Construction Tax, and Education Surtax have applied to FIEs and foreign individuals since 1 December 2010.
• Local governments in certain districts may still provide FIEs with local tax preferential treatment.

CONTRACT LAW

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

PRODUCT LIABILITY

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

INTEREST LIMITATION

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

LABOUR LAW

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

- In addition, FIEs shall reserve housing accumulation funds on behalf of their Chinese employees, and shall use such funds according to local regulations.

**REAL ESTATE**

**Limits on Ownership**

- The foreigners may purchase real estate in China according to relevant laws and regulations, however, the ownership of land in the PRC is either State-owned or collectively owned.

**Ownership Registration System**

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

**INTELLECTUAL PROPERTY**

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

**Term**

- The duration of patent right is 20 years for an invention and 10 years for a utility model or design, commencing from the date of the patent application.

- The period of validity of a trademark is 10 years from the date of approval of the registration, and the registration can be renewed for additional 10 year periods.

- The period of copyright protection, in most cases, extends to the life of the author plus 50 years, and the period for film, television, video and photographic works is 50 years, commencing from the date of the work’s first publication.

**Infringement and Rights Protection**

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

**MERGER AND ACQUISITION**

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

**Industry Restrictions on Investment/Acquisition**

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

**DISPUTE RESOLUTION**

**Consultation/mediation**

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

**Arbitration**

- If parties to the contract wish to choose arbitration as a mode of dispute resolution, they must indicate in their contracts that disputes will be resolved through arbitration.

- Agreements to arbitrate usually specify a choice of arbitration body, which may be located in China or abroad, and a choice of law to govern the dispute. For foreign-related disputes, parties to the contract may specify the nationality of members of the arbitration panel in the contact.

- There are several Chinese government-sponsored arbitration bodies for handling cases involving at least one foreign party: the China International Economic and Trade Arbitration Commission (‘CIETAC’) and Shanghai International Economic and Trade Arbitration Commission (‘SHIAC’). For maritime disputes, the China Maritime Arbitration Commission (‘CMAC’) is prevailing.

- Contracts involving foreign companies doing business in China often provide for CIETAC or SHIAC arbitration.


**Litigation**

- Foreign individuals and companies can bring action in court in the same manner as Chinese citizens and companies.

- China has four levels of courts: basic courts, intermediate courts, high courts, and the national Supreme People’s Court.

- Foreign individuals and companies can only engage PRC qualified lawyers working with Chinese law firms as their legal representatives in court.

- A people’s court shall complete the adjudication of a case to which ordinary procedure is applied within six months after the case is accepted. Where an extension of the term is necessary for special circumstances, a six-month extension may be given upon the approval of the president of the court. Any further extension shall be reported to the people’s court at a higher level for approval.
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS OR JUDGEMENT

**Enforcement of Arbitral Awards**
- If an award made by a foreign arbitration institution needs the recognition and enforcement of a people's court of the People's Republic of China, the party shall directly apply to the intermediate people's court located in the place where the party subject to the enforcement has its domicile or where its property is located. The people's court shall deal with the matter according to the relevant provisions of the international treaties concluded or acceded to by the People's Republic of China or on the principle of reciprocity.

**Enforcement of Foreign Judgments**
- If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a people's court of the People's Republic of China, the party may directly apply to the intermediate people's court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement of a people's court.

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

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

IMMIGRATION PROCEDURES

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

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

**The Chinese Green Card System**
- Foreign nationals who wish to apply must fall under at least one of the eligible categories below:
  - Individuals who make a large direct investment in China for three consecutive years.
  - Individuals who make outstanding contributions to China's development, or are considered by the Chinese government to be critical to the needs of the country.
  - Individuals who have held a high-level position and have resided in China for three of the past four years, in a business which promotes the country's economic, scientific and technological development or social progress.
  - Individuals who are the spouse or unmarried child under 18 years old of a person under item(1), (2) or (3) above;
  - Individuals who are the spouse of a Chinese citizen or of a foreigner with permanent residence status in China, and (i) have at least five years of marriage relation, (ii) have stayed in China for at least five successive years, with at least nine months of stay in China each year, and have stable source of subsistence and a dwelling place;
  - Individuals who are unmarried persons under 18 years old dependent to their parent; or
  - Individuals who are persons who are or above 60 years old, who have a directly-related member of their family abroad and are to be dependent to any directly-related member of their family in China, and have stayed in China for at least five successive years, with at least nine months of stay in China.
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CHINA

• Each year, and have stable source of subsistence and
  a dwelling place.

• If the individual is successful in their application, they will be
  granted a five or ten year renewable permanent residency card,
  which allows them to enter or exit China freely without having
  to apply for a visa. There is no requirement to continuously
  renew the work permit, as tied to their current local employer.

CHINA (SHANGHAI) PILOT FREE TRADE ZONE

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

Background and Major Tasks

• Focusing on the strategic requirement of “serving China from
  global perspective “ and the strategic mission of “construction
  of four centers in Shanghai”, setting up CSPFTZ is to actively
  explore innovative management model of government in trade
  and investment in China, open service industry wider to the
  world.

• CSPFTZ will be progressively developed into a zone featured
  with investment and trade facilitation up to international
  standards, free conversion of currencies, convenience and
  efficiency, and internationally recognized legal environment.

• It will be prompted to be a pilot zone for implementation of
  new rules for international investment, a spearheading zone
  for trade in services innovation, a cluster zone for offshore
  industrial system, a precursor zone for overseas investment
  services, an antecedence zone for improved supervision and a
  demonstration zone for innovative government administration.

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

• On the basis of the relevant foreign investment laws and
  regulations, the Special Administrative Measures of CSPFTZ
  for Admittance of Foreign Investments (Negative List) (2014)
  (“Negative List”) lists the admittance measures that will be
  inconsistent with the national treatment and will be taken for
  the foreign investment projects and establishment of foreign
  investment enterprises within CSPFTZ.

• As to the fields beyond the Negative List, the foreign
  investment projects will be subject to filing, other than
  approval, system (except those domestic investments projects
  which remain to require approval pursuant to the provisions of
  the State Council). The contracts and articles of association of
  the foreign investment enterprises will be subject to filing, other
  than approval, system.

• In addition to the special administrative measures listed
  regarding the foreign investments, the foreign investors
  are prohibited (limited) to make investments to industries
  prohibited (limited) by the state and the international treaties
  entered into or participated by China, to make investments
  to projects that will endanger the national security and social
  security, and to involve in operating activities that will endanger
  the social and public interests.

• The foreign capital mergers and acquisition, the strategic
  investments of foreign investors to the listed companies, and
  the capital contributions by offshore investors with equities of
  domestic enterprises conducted in the Pilot Free Trade Zone
  shall satisfy relevant provisions, and if national security review
  and anti-monopoly review are involved, then relevant provisions
  shall prevail.

• The Negative List shall, mutatis mutandis, be applicable to the
  investments in CSPFTZ made by the investors from Hong Kong
  Special Administrative Zone, Macao Special Administrative
  Zone, and Taiwan.

• If there are more favorable policies in the Arrangement for
  Establishing Closer Economic and Trading Relationship by
  Mainland China and Hong Kong Special Administrative Zone,
  Macao Special Administrative Zone and its supplementary
  agreements, the Framework Agreement for Economic
  Cooperation between Mainland and Taiwan and the follow-
  up Service and Trade Agreement between Mainland and
  Taiwan, and the free trade treaties executed by China that are
  applicable in CSPFTZ and are available for qualified investors,
  then such relevant agreements and treaties shall apply.

• The Negative List will be adjusted properly from time to time
  subject to the foreign investment laws, regulations and the
  demands for the development of CSPFTZ. 

GUAM

• Guam is a territory of the US and is subject to US law and local law enacted by Guam’s legislature.
• Guam is strategically located in the Western Pacific within a three to five-hour flight from most commercial centres in East Asia, including Tokyo, Manila, Hong Kong and Singapore. Guam has an area of 541.3km².
• Guam has three branches of government: the executive, which is headed by the governor, a unicameral legislature, and the judiciary, which is comprised of the Superior Court and the Supreme Court.
• Population: 178,000, comprised of Chamorro (39%), Filipino (26.3%), Pacific Islander (11.3%), White (6.9%), Other Asian (6.3%), Other (2.3%) and Mixed (9.8%)
• Religious composition: Roman Catholic (85%).
• English and Chamorro are the two official languages. English is universally spoken.
• Currency: US Dollar.
• Investment growth areas include: tourism, shipping and transportation industry, government contracting and consulting, and retail.

BUSINESS PRESENCE

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

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Equity Participation
• None.

Restrictions in Real Property Acquisition
• Laws limiting the ownership rights of foreigners still exist, however, these laws are widely regarded as unconstitutional and unenforceable. Nevertheless, some foreign businesses choose to form local entities with which to acquire real property on Guam in order to further reduce any risk of divestiture.

Approvals and Licensing
• Appropriate approvals and licences are required for the operation of any business activity. These may be obtained from the Department of Revenue and Taxation or, in the case of professional service firms, from the appropriate self-governing body. For example, in the case of lawyers, the Guam Bar Association and, in the case of architects, the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors.
• Application process and prescribed fee payable vary depending on the certificate or license sought.

EXCHANGE CONTROL

• None.

TAXATION

• Gross Receipts Tax (aka Business Privilege Tax)
  o Businesses – 4% on monthly gross income due by the 20th day of the following month income received or accrued
  o Commercial banks and lending institutions – 4% on annual net income due by the 90th day following tax year
• Use Tax – 4% assessed on personal property imported into Guam.
  o not applicable to items imported for resale, to used goods, to property with a value of $1,000 or less to aircraft parts and materials
• Hotel Occupancy Tax – 11% of daily room rate
• Alcoholic Beverage Tax – tax on all imported alcoholic beverages (locally manufactured alcoholic beverages are exempted)
  o $10 per wine gallon on distilled beverages
  o $2.75 per wine gallon on vinous beverages
  o $0.04 per each 12 fl ounce on malted beverage
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GUAM

- Tobacco Tax – tax on all imported tobacco products
  - $0.35 per each 100 cigarettes
  - 10% of landed cost of cigars
  - $0.35 per pound for all others
- Real Property Tax
  - Upon the sale of land and/or buildings – 35% of the full cash value.
  - On the assessed value – .005% for land and .01% for building
- Amusement Tax - $50 to $250 on various types of coin-operated machines.
- Recreational Facilities Tax - $5 to $100 on various types of facilities such as bowling alleys, golf courses, billiard halls, shooting galleries, etc.
- Liquid Fuel Tax – levied on a distributor of liquid fuel
  - $0.10/gallon on diesel
  - $0.04/gallon on aviation fuel
  - $0.11/gallon on all other fuel
- Personal Income Tax
  - Guam individual tax rates are the same as those imposed under the US Internal Revenue Code.
  - Personal income taxes are imposed progressively based upon income with a marginal tax rate ranging from 10% to 35%.
  - Income brackets and associated marginal tax rates can be found in Section 1 of the Guam Territorial Income Tax Law.
- Corporate Tax
  - Guam domestic corporations are subject to income tax on their income from all sources at the same rate schedule published by the U. S. Internal Revenue Service for the applicable tax year.
  - Other corporations doing business on Guam incur income taxes to Guam on all Guam source income.
  - Corporations are required to file an income tax return for the calendar year on or before March 15 of the following year.
  - Corporations on a fiscal year basis must file income tax return on the 15th day of the third month following the close of the fiscal year.

TAX AND INVESTMENT INCENTIVES

Qualifying Certificate Program

- Guam’s principal program for incentivising investment in Guam is its Qualifying Certificate (“QC”) Program.
- The program is administered by the Guam Economic Development Authority (“Authority”). The Program has proven to be highly successful, particularly in the development of Guam’s primary industry – tourism.
- Any trust, partnership, sole proprietorship, Limited Liability Partnership, Limited Liability Company, or corporation, formed under the laws of Guam and licensed to do business in Guam and engaged in a wide range of business activities (as set forth in 12 GCA § 58104) may apply for participation in the program.
- Businesses selected by the authority for participation in the program receive tax rebates and/or tax abatement as follow:
  - Up to 75% Rebate of corporate income tax for up to 20 years.
  - Up to 75% Rebate of corporate dividends tax for up to five years.
  - Up to 100% abatement of real property tax for up to 10 years on property utilised by the QC beneficiary to operate its business.
  - Up to 100% abatement of gross receipt tax on income derived from the sale of alcoholic beverages and petroleum products manufactured in Guam for up to 10 years.

EMPLOYMENT LAW

- Guam is subject to the US Fair Labor Standards Act (“FLSA”), which covers most hourly wage earners and their employers. The FLSA’s principal function is that it establishes minimum wage and overtime pay.
  - Minimum wage: the federal minimum wage is $7.25 per hour effective 24 July 2009.
  - Overtime: covered nonexempt employees must receive overtime pay for hours worked over 40 per work week (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.
  - Hours worked: hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.
- Guam has also adopted a local version of the FLSA which largely mirrors the federal law.
- Guam recognises “at will” employment relationships, which allow parties to an employment relationship to terminate the relationship for any reason except one which violates public policy or any local or federal statute.
- Local and federal laws, including Title VII of the Civil Rights Act, COBRA Act and WARN Act, apply to employers on Guam.

INTELLECTUAL PROPERTY

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

• Guam has both a local and federal court system. Disputes arising out of local law are tried at the Superior Court and all decisions are subject to appeal to the Supreme Court.

• The local courts of Guam have been in operation for almost 60 years, and have therefore developed a deep and broad body of common law. In cases of first impression, Guam courts typically look for guidance to common law trends in the States.

• The US District Court of Guam provides the forum for disputes arising out of federal law. Appeals from the US District Court of Guam are made to the US Circuit Court of Appeals for the Ninth Circuit.

• In 2004, Guam enacted a law that established rules for international arbitration on Guam. Based upon the UNCITRAL rules of arbitration, arbitral awards granted under the law and certified by US District Court of Guam are enforceable in every nation that is a signatory to the UNCITRAL Convention. Although in its nascent stage of development, the Guam International Mediation and Arbitration Center is expected to eventually serve as the principal forum for international arbitration on Guam.

IMMIGRATION PROCEDURES

Passport and Visa Requirements

• All persons entering Guam must possess valid national passports or other internationally recognised travel documents valid for travel to Guam.

• Applications for visas (where necessary) may be made at the nearest United States embassy, consulate or mission abroad.

Visa Types

• The “E” visas are for individuals or employees of corporations that have made a substantial investment in a US business or property.

• The “L” visas are commonly known as transfer visas used to bring an employee into the US to work for his same employer abroad.

• The “H” visas are typically for contract workers who enter the US for a specific project or a one-time assignment.

• H-The “J-1” visa is for participants who seek volunteer or minimally paid practical training in the US in a specific field of interest.

• H-1B and H-2B Worker Program

• To help with the lack of sufficient workforce personnel for the various construction projects that must be completed in conjunction with the recent US military build-up on Guam, the United States Citizenship and Immigration Service has exempted Guam from the quota normally imposed on the issuance of H-1B and H-2B worker visas for the period of 28 November 2009 to 31 December 2014. This exemption will allow contractors to bring in the skilled labour that will be required to satisfy the demand from federal and local projects generated as a result of the build-up. ⚫
**BUSINESS PRESENCE**

- Operates a free enterprise, free trade, ‘laissez-faire’ economic system with minimal government interference in all sections of the economy. Companies and individuals may import or export capital at their own discretion and profits and dividends derived from a business in Hong Kong can be freely converted and remitted.

- No taxation on dividends, no exchange controls or foreign currency regulations (except those that relate to suspected terrorist financing and money laundering) and no statutory anti-trust laws.

- Various sectors of the financial and securities community are regulated by the Hong Kong Stock Exchange (HKSE), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA).

- A foreign company wishing to carry on business in Hong Kong can do this through a company incorporated in Hong Kong, a branch office of that foreign company, or by establishing a representative office in Hong Kong.

- Companies incorporated in Hong Kong can be public or private and can be limited by shares or by guarantee. Companies limited by guarantee are generally set up by non-profit organisations.

**FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS**

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

**EXCHANGE CONTROL**

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

**TAXATION**

**Profits Tax**

- Liability to tax, as a general rule, will arise when certain types of income have a source within Hong Kong. In general, income which arises or is derived from outside Hong Kong will not be assessed to tax by the Hong Kong Inland Revenue Department. Current tax rate around 16.5%.

- Interest earned by companies (other than financial institutions) on deposits with an authorised institution are exempt from profits tax.

- Losses can be carried forward without limit.

**Property Tax**

- Charged on every person who owns any building or land in Hong Kong and based on the rent payable in respect of such land or buildings for each year of assessment.

- Exemption from property tax for corporations for any income earned in respect of any property brought into charge for profits tax purposes or the corporation occupies the property for the purpose of producing profits assessable to profits tax.

- The rate of property tax is 15% (2008/09 onwards). Property is also subject to rates based on an assessed rateable value for each property.

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**HONG KONG**

- A population of 7.1 million, with three languages commonly spoken: English, Cantonese and Mandarin.

- Legal system based on the English common law system and on the rules of equity, with a strict adherence to the principles of the Rule of Law and to the independence of the judiciary.

- The Basic Law, the constitution of Hong Kong, provides that for a period of 50 years from 1 July 1997, Hong Kong will enjoy a high degree of autonomy and will be allowed to retain its current political, social, commercial and legal system including the capitalist economic and trade systems that have made it the successful international financial and business centre that it is.

- The Hong Kong Dollar (HK$) has been pegged at HK$7.80 to US$1 since 1983.

- Hong Kong has full autonomy in the conduct of its external commercial relations, and can conclude and implement bilateral or multilateral trade agreements with states, regions and international organisations.

- A founding member of the World Trade Organisation (WTO), Asia-Pacific Economic Co-operation (APEC), and has a number of double tax treaties, these being with mainland China, Luxembourg, Belgium, Thailand and Vietnam.
HONG KONG

Salaries Tax
- Charged on everyone in respect of his income arising in or derived from Hong Kong from any office or employment of profit and any pension.
- Income deemed to include all wages, salary, leave pay, perquisites, bonus and allowances, and includes the rental value of a residence provided by an employer to an employee.
- The employee can elect to have this rental value to be deemed to be equal to 10% of the total income paid by the employer to the employee (therefore reducing the tax liability if his rent allowance exceeds 10% of his total income).
- Charged on a sliding scale, the top rate being 17% (2008/09 onwards).
- In determining whether or not all services are rendered outside Hong Kong, no account is taken in respect of services rendered in Hong Kong during visits not exceeding a total of 60 days per year.

Other Taxes
- Stamp Duty on documents effecting the transfer of shares and securities which are required to be registered in Hong Kong or transfer or lease of land and buildings situated in Hong Kong: at various rate, with 0.2% on shares or securities, and max 4.25% on transfer of real properties.
- Capital tax on the creation of authorised capital of a company: HK$1 per HK$1,000.00.
- No withholding taxes (with exception), no taxes on dividends, no taxes on any other types of income except those mentioned above, no capital gains tax, no gifts tax and no wealth tax.

TAX AND INVESTMENT INCENTIVES
- There are few treaties for the avoidance of double taxation between Hong Kong and other countries, one of which is the PRC.
- An arrangement was entered into between the PRC and Hong Kong for the avoidance of double taxation on income, the effect of which is to tax profits attributable to a permanent establishment and provide for credits if profits are taxed in both jurisdictions. The arrangement is based largely on the Organisation for Economic Co-operation and Development (OECD) model double taxation treaties.

EMPLOYMENT LAW
- Employment in Hong Kong is less regulated than it is in many other jurisdictions such as the European Union and the United States.
- There are a number of labour organisations/trade unions in Hong Kong but no closed shops.
- No statutory requirement that a percentage of employees must be local nationals or that a percentage of payroll be paid to local national employees.
- A minimum wage of HK$28.00 per hour will be implemented on 1 May 2011.

- No statutory provisions prescribe maximum working hours, but it is currently under review.
- Employees are entitled to a minimum of between 7 and 14 days annual leave per year.
- In general every employer in Hong Kong contributes an amount equal to at least 5% of an employee’s salary (up to a maximum monthly salary of HK$20,000) to a retirement scheme that is registered as an MPF scheme. Every employee is also required to contribute at least 5 per cent of their salary (up to a maximum salary of HK$20,000 pm) to the scheme.
- Employers are required to maintain insurance coverage in respect of work-related injuries but, otherwise, there is no statutory requirement to provide medical benefits.
- Hong Kong has a non-contributory social security system to provide a basic social safety net. No deductions are made from salaries in respect of social security contributions.
- Subject to the qualifying requirements, female employees are entitled to paid maternity leave of 10 weeks or as provided by the terms of the employer, whichever is more favourable. Maternity leave pay is paid at the rate of four-fifths of a month’s pay.
- Employees are entitled to pay sick leave at the rate of four-fifths of a month’s pay, with conditions applying.
- Severance pay is applicable for employees of more than 24 months if he/she is dismissed by reason of redundancy, or laid off, with a maximum payment of HK$390,000. Contractual gratuity and retirement scheme benefit due to the employer’s contributions may be set-off against an employee’s entitlement to the severance pay.
- Long service pay applies to employees working for more than five years, calculated on the period of service and salaries, and subject to a maximum payment of HK$390,000.
- Hong Kong employees are subject to salaries tax payable on ‘assessable income’. As such, suitably tailored remuneration packages can have tax advantages for the employee without any detrimental effects on the employer’s Hong Kong Profits Tax liability, since all costs of rewarding employees should be allowable expenses incurred in the production of chargeable profits.

INTELLECTUAL PROPERTY
- Intellectual Property protection in Hong Kong comprises patents, trademarks, industrial design, copyright, geographical indications and layout designs of integrated circuits.
- Registered patents, trademarks/service marks, industrial design and geographical marks enjoy monopoly rights/protection for specific periods of time.
- Unregistered trademarks protected by the Hong Kong courts under the tort of passing off.
- Copyright protection for literary, musical or artistic works, sound recordings, broadcasts and films.
HONG KONG

- Know-how may be protected as confidential information under contract, rules of common law and equity, and can be assigned or licensed.
- Remedies for infringement of all intellectual property rights include an injunction, disclosure upon oath, delivery up for destruction or forfeiture, damages and/or an account of profits and legal costs. In the case of serious counterfeiting, the courts may grant orders to search premises and seize infringing goods and evidence without prior notice to the infringer. The Customs and Excise Department also have wide powers of search, seizure and arrest under the criminal provisions to enforce trademark and copyright.

DISPUTE RESOLUTION

Litigation
- Similar to that in England and various Commonwealth countries, Hong Kong courts adopt an adversarial common law system with the legal representatives of the parties appearing before the District Court or (for cases over HK$1,000,000) the Court of First Instance, with machinery for appeals to the Court of Appeal, and thereafter to the Court of Final Appeal.
- The judiciary is generally recognised as independent and free from Government interference.
- Provisions exist for obtaining default judgment without a trial where the defendant does not file an acknowledgement of service or a defence within the prescribed time, and for obtaining summary judgment without a trial where there is no bona fide defence to a claim.
- The High Court has specialist judges hearing admiralty, arbitration, commercial, company and construction-related matters.
- Many types of foreign monetary judgement obtained in the superior courts of some jurisdictions (largely certain Commonwealth and Western European countries but excluding the United States) may be registered in the High Court and enforced in Hong Kong.

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

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

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

IMMIGRATION PROCEDURES
- Hong Kong has visa-free entry for residents from over 170 countries and territories for trips ranging from seven to 180 days. Short-term visitors may conduct business negotiations and sign contracts while entering Hong Kong on a visitor visa or entry permit.
- To employ people from overseas it must be demonstrated that the proposed employee has special skills, knowledge or experience not readily available in Hong Kong.
- An investment visa requires the applicant to be a shareholder of a Hong Kong-registered company, either by registering and setting up a company in which the applicant is the major investor or investing in a Hong Kong-based company. Details on the viability of proposed business must be provided.
- Capital Investment Entrant Scheme (CIES) requires a capital investment of HK$10 million into a legitimate asset class in Hong Kong, (real properties investment excluded). Applicants must also demonstrate that they can support themselves and their dependants without public assistance. Approved CIES applicants are allowed to take up employment or establish a business.
- Dependant visa: persons who are successful in receiving one of the above visas may also bring their spouse and dependant children under the age of 18 to Hong Kong provided there are sufficient funds and suitable accommodation for them. The limit on their stay is the same as that of the applicant sponsor.
- Every adult (and child aged 11 years or above) who enters and is permitted to stay in Hong Kong for more than 180 days must apply for a Hong Kong Identity Card within 30 days of arrival. Applying for the card from the Immigration Department is simple and free.

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BUSINESS PRESENCE:

- Main types of business models in India: locally incorporated companies (may be limited by shares or by guarantee), one person companies, sole proprietorships, partnerships and limited liability partnerships.
- Foreign companies may incorporate a company under the Companies Act either as a joint venture company or as a wholly owned subsidiary subject to foreign investment restrictions.
- Foreign companies may also open branch offices, project offices or liaison offices in India in accordance with the provisions of the Foreign Exchange Management Act, 1999.

FOREIGN INVESTMENTS RESTRICTIONS AND CONDITIONS

- Foreign collaboration and equity participation in India is regulated by the Foreign Direct Investment (FDI) policy announced by the Government of India and the Foreign Exchange Management Act of 1999.
- FDI can be made by non residents in the shares/convertible debentures/preference shares of an Indian Company through two routes – Automatic Route and the Government Route.
- FDI in all sectors or activities, except those which are specifically restricted falls under the “automatic route”. This essentially means that an investor can bring in investment in those sectors without any prior approval from any regulatory authority, either from the government or the RBI. The only regulatory formalities required are certain post-facto filings with the RBI.
- In few sectors, FDI is permitted under the automatic route within the specified limits. This implies that up to the mentioned limit the investment is without approval i.e. it is under automatic route and beyond the limit, approval must be taken. These sectors are: Defence, Insurance, petroleum refining by PSUs, Infrastructure company in the securities market, power exchange and commodity exchanges, and pension, banking in private sector and telecom services.
- FDI in activities not covered under the automatic route requires prior government approval and are under the “government route/approval route”. Some of these sectors are: Publishing or printing of scientific and technical magazines/specialty journals/periodicals, and satellites establishment and operation. Applications are to be sent to the Foreign Investment Promotion Board (FIPB). Consolidated proposals involving foreign investment and foreign technical collaboration are also considered by the FIPB.
- Foreign investment in any form is prohibited in few activities such as: (a) Lottery business including Government or private lottery, or online lotteries; (b) Business of chit fund; (c) Nidhi company; (d) Gambling and betting including casinos, etc., (e) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes (f) Real estate business, or construction of farm houses; (g) Trading in Transferable Development Rights (TDRs); (h) Activities / sectors not open to private sector investment atomic energy and railway transport (other than mass rapid transport systems) and (i) Agriculture sector/activity (excluding few specific related activities such as Floriculture, Horticulture and Animal Husbandry to name a few).

FDI OVERVIEW OF IMPORTANT SECTORS

- Pharmaceuticals
  - 100% FDI is allowed for greenfield projects and up to 74% is allowed for brownfield project investments, under the automatic route.
  - India’s generic drugs account for 20% of global exports in terms of volume, making India the largest provider of generic medicines globally.
  - India’s cost of production is significantly lower than that of the USA and almost half of that of Europe.
  - India is the 3rd largest market in terms of volume and 13th largest in terms of value.
  - The Government has unveiled ‘Pharma Vision 2020’ aimed at making India a global leader in end-to-end drug manufacture, and has introduced mechanisms such as the Drug Price Control Order and the National Pharmaceutical Pricing Authority to deal with the issue of affordability and availability of medicines.
The Indian Railway network is growing at a healthy rate and by 2021 the Indian railway market will be the 3rd largest, accounting for 10 per cent of the global market.

Automobiles
- The Indian auto industry is one of the largest in the world.
- India is currently the seventh largest producer in the world with an average annual production of 23.36 Million vehicles, of which 3.57 Million are exported.
- India is also a prominent auto exporter and has strong export growth expectations for the near future.
- 100% FDI is allowed under the automatic route in the auto sector.

Defence Manufacturing
- India has the 3rd largest armed forces in the world.
- 60% of defence equipment requirements met by imports.
- The country's defence services include three Armed Forces (i.e., the Army, the Navy and the Air Force), and other Departments, primarily Defence Research and Development Organisation and Defence Ordnance Factories.
- Up to 49% FDI is allowed under the automatic route, above 49% on a case-to-case basis, wherever it is likely to result in access to modern and state-of-the-art technology in the country.
- Foreign investment in this sector is subject to security clearance and guidelines of the Ministry of Defence.
- The industry is upbeat about the opportunities in defence and aerospace with continuous efforts of Government to develop and fine-tune the procurement regime and industry drivers that will enable industry to grow into a robust and sustainable defence industry in India.
- India's current requirements on defence are catered largely by imports. The opening of the strategic defence sector for private sector participation will help foreign original equipment manufacturers to enter into strategic partnerships with Indian companies and leverage the domestic markets and also aim at global business. This will help bolster exports in the long term.

Information Technology (IT)
- World's largest sourcing destination for the IT industry, accounting for approximately 67 per cent of the US$ 124-130 billion market.
- India ranks third among global start-up ecosystems with more than 4,200 start-ups
- The IT and ITeS industry is divided into four major segments – IT services, Business Process Management (BPM), software products and engineering services, and hardware.
- Rapidly growing urban infrastructure has fostered several IT centres in the country.

Renewable Energy
- 5th largest power generation portfolio.
FOREIGN VENTURE CAPITAL INVESTMENTS

- Investments through Foreign Venture Capital Investors (FVCI) Route: The term FVCI has been defined under the SEBI (Foreign Venture Capital Investor) Regulations, 2000 (FVCI Regulations) to mean an investor incorporated or established outside India, which proposes to make investments in Venture Capital Fund(s) (VCF) or Indian Venture Capital Undertakings (IVCU) and is registered under the FVCI Regulations.
- Given that the FVCI regime has been developed to attract venture capitalists, there are certain incentives attached to being recognised as one. This accordingly requires registration and approval from SEBI and RBI.
- Normally, investments by FVCI entities are restricted to select identified sectors, which include, inter alia, infrastructure, biotechnology and IT related to hardware and software development. SEBI registered FVCIs are specifically exempted from the RBI pricing guidelines.
- It is not mandatory for an offshore fund to register with SEBI as a FVCI. However, SEBI and RBI have extended certain benefits to SEBI registered FVCIs and registered domestic VCF, which would not be available to such unregistered offshore funds. In order to seek and obtain registration as an FVCI, it will be required to comply with the investment conditions and restrictions as laid down under the FVCI Regulations.
- FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, RBI permits the FVCI to open a Foreign Currency Account and/ or a Rupee Account with a designated branch of an AD Category – I bank.
- Even under this route, the government is aiming to ease procedures and encourage the growth of new companies. The RBI proposes to smoothen flow of funds to start ups by allowing them to get foreign venture capital without any curbs and by enabling easier transfer of shares between residents or non-resident investors.

FOREIGN PORTFOLIO INVESTMENTS

- In a bid to simplify and rationalize the foreign portfolio investment regime, Securities and Exchange Board of India (SEBI) introduced the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations).
- The FPI route as such is the preferred route for foreign investors who want to make portfolio investments and trade in Indian listed stocks on the floor of the stock exchange.
- FPIs can invest in instruments such as listed or to be listed shares, government securities, units of mutual funds or collective investment schemes, treasury bills, corporate debt and Indian depository receipts. The FPI Regulations provide that investment in the issued capital of a single company by a single FPI or an investor group shall be below 10% of the total issued capital of the company.

RESTRICTIONS ON REAL ESTATE ACQUISITION

- Foreign companies permitted to open branch office are allowed to acquire any immovable property in India which is necessary for or incidental to carrying on such activity. Declaration in prescribed form (Form IPI) is required to be filed with the Reserve Bank of India within 90 (ninety) days of the acquisition of such immovable property.

TAXATION

Direct Taxes
- a domestic company is taxable at 30%
- The amount of income-tax shall be increased by a surcharge at the rate of 7% of such tax, where total income exceeds one crore rupees but not exceeding ten crore rupees and at the rate of 12% of such tax, where total income exceeds ten crore rupees.
- A foreign company is taxable at 40%, and in respect of Royalties from Government on agreement made with Indian concern after March 31, 1961 but before April 1, 1976 @ 50%

Indirect Taxes
- India has a dual taxation system for Indirect taxes, entailing both federal as well as state levies and seeks to tax both goods and services.
• The following are some of the significant labour laws in India:
  
  • Excise Duty, Custom Duty, VAT, Central Sales Tax, Service Tax levied on goods and/or services have been part of the elaborate system of indirect taxation in India.
  
  • However, very recently the Indian Parliament passed the Constitution Amendment Bill for Goods and Services Tax (GST) replacing all the indirect taxes levied on goods and services by the Centre and States and aims for the implementation to take place by April 2017.
  
  • GST is a value added tax, levied at all points in the supply chain with credit allowed for any tax paid on inputs acquired for use in making the supply. It would apply to both goods and services in a comprehensive manner with exemptions restricted to a minimum.

**Double Taxation Relief and Tax Treaties**

• Taxpayers have the option to choose between the provisions of the tax treaty or the Income Tax Act, whichever is beneficial to them
  
• If the foreign income source of a resident is taxed in a country with which no double taxation avoidance agreement exists and such income is also taxed in India, then resident taxpayers may claim a tax credit in respect of such doubly taxed incomes to the extent of the taxes paid in the source country or the rate of tax in India, whichever is lower.

**EMPLOYMENT LAW**

• The labour sector in India can broadly be divided into three categories: organised workforce, unorganised workforce and the self-employed making the sector varied and segmented.
  
• The labour laws are derived from the principles enshrined in the Constitution of India which mention regulation of conditions of employment in industries, wages, leave, provident fund, workers’ compensation, maternity benefits and old age pensions.
  
• The subject of labour is such that it is governed both at the central level and at the state level. This has led to a gamut of labour laws that are required to be followed and there are several factors governing the same. Since there is a multiplicity of labour laws, state and central with overlapping provision, the Government is striving to amend the existing laws in order to make the regulation of the sector efficient, make compliance simpler and create a business friendly atmosphere.
  
• The Government has introduced the e-business portal - “Shram Suvidha Portal”, which has the facility for allotment of labour identification number (LIN) and the transparent inspection scheme. This will enable units to file online compliances for 16 labour laws. Further the Government has activated the facility for filing online single annual return under eight central acts. The government has also introduced the Universal Account Number, Apprentice Protsahan Yojana and e-business portal in order to make filing procedures easier thereby aiding in ease of business.
  
• The following are some of the significant labour laws in India:
  
  • Factories Act, 1948: The Factories Act contains provisions for ensuring the welfare of workers employed in factories in terms of health, safety, working hours, benefits, leave, overtime pay, etc. The Act is enforced by the State Government which frames rules to ensure that local conditions are reflected in the enforcement.
  
  • Shops and Commercial Establishments Acts: The state-specific legislations governing shops and commercial establishments prescribe basic terms of employment such as work hours (opening and closing), overtime payment, leave entitlement, termination mechanism, etc.
  
  • Industrial Employment (Standing Orders) Act, 1946: This Act prescribes the framework for establishments to formally define and publish the conditions of employment of workmen by way of standing orders or service rules and to make them known to the workmen employed. The employer is required to act in conformity with the certified standing orders in dealing with the day today affairs of the workmen. Certified standing orders have the force of the law like any other enactment.
  
  • Contract Labour (Regulation and Abolition) Act, 1970: The statute governs and regulates the employment of contract labour and prescribes the duties of the contractor and the principal employer. It applies to all establishments in which 20 or more workmen are employed. It was enacted with the objective to provide better conditions of contract labour and provide for its abolition in certain cases.
  
  • Maternity Benefit Act, 1961: The statute envisages provision of maternity leave, maternity bonus and other benefits with respect to childbirth.
  
  • Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: The statute prescribes a mechanism for prevention and prohibition of workplace sexual harassment and for redressal of grievances pertaining to workplace sexual harassment. It is mandatory for organisations to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women. This Act has to be followed by employers both in the public and in the private sectors.
  
  • Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996: This Act applies to establishments employing 10 or more building workers in any building/ construction work and regulates the conditions of employment and service of the workers and imposes obligations on the employer, with respect to health, safety and welfare of the construction workers.
  
  • Minimum Wages Act, 1948: The Act is the main minimum wage law in India. It empowers the appropriate labour authorities in each state to fix the minimum rates of wages for specific employment in certain specified industries. Minimum wages fixed by the state government are regularly revised, taking into consideration various factors including industry, location, nature of work done, cost of living and inflation.
  
  • Payment of Wages Act, 1936: The statute regulates the payment of wages to employees and contains provisions, inter alia, with respect to the time and manner of payment of wages and permissible wage deductions. The Act guarantees
payment of wages on time and without any deductions except those authorised under the Act.


- Payment of Bonus Act, 1965: The statute provides for payment of compulsory bonuses to persons employed in certain establishments under defined circumstances on the basis of profits or production or productivity. The Act is applicable to every factory, establishment employing 20 or more persons or other designated establishments.

- The Payment of Gratuity Act, 1972: The Gratuity Act provides for the payment of a gratuity to employees upon cessation of employment. It applies to all employees in factories, establishments, employing ten or more employees and in other designated establishments.

- Employees’ Provident Funds and Miscellaneous Provisions Act, 1952: This is one of India’s most important security legislations. The statute provides for the compulsory institution of a contributory provident fund, pension fund and deposit-linked insurance scheme for employees. In other words, contributions are to be made by the employer as well as the employee at the prescribed rate, towards the provident fund account of the employees.

- Employees’ State Insurance Act, 1948: The ESI Act envisages benefits (through government hospitals) to employees including dependents, in case of sickness, maternity, medical reasons, disablement and employment injury.

- The Apprentices Act, 1961: Apprentices Act provides for the regulation and control of training of technically qualified persons under defined conditions. It provides for standards of education, period of training, and sets out obligations of the apprentice and the employer.

- Child Labour (Prohibition and Regulation) Act, 1986: The statute regulates the engagement of children in certain occupations. The Act defines a child as any person who has not completed his fourteenth year of age. It prohibits children from working in certain occupations. The recent amendment to the Act abolishes all forms of child labour and violation of the law has been recognized as a cognizable offence.

- Industrial Disputes Act, 1947: This Act is an important legislation covering industrial establishments and providing for the investigations and settlement of industrial disputes relating to lockouts, layoffs, retrenchment etc. It provides for the reconciliation and adjudication of disputes and differences.

- Trade Unions Act, 1926: The Trade Union Act sets out the mechanism for registration of trade unions but does not make registration mandatory. As per the Act, a registered trade union is deemed to be a body corporate and has the status of a juristic entity which has perpetual succession and a common seal. The most important right of a trade union as granted by the Act, is to negotiate and secure terms of employment acceptable to its members by adopting various forms of collective bargaining.

- Applicability of some of these laws depends on the number of employees and specific industry.

**INTELLECTUAL PROPERTY RIGHTS PROTECTION**

With the emergence of a knowledge and technology centric age, where innovation is a key driver of development, protecting intellectual property is imperative. India is at par with the developed nations vis-à-vis its Intellectual Property Regime. India has a well-established statutory, administrative, and judicial framework for safeguarding IPRs. India is a signatory to the Agreement on Trade Related Intellectual Property Rights (TRIPS) and in compliance with the same. India is also a signatory to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization (Rome Convention), Berne Convention, Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Universal Copyright Convention, Paris Convention, Convention on Biological Diversity, Washington Treaty on Intellectual Property in Respect of Integrated Circuits, Madrid Protocol, and Patent Cooperation Treaty. By virtue of India’s membership to these multi-lateral conventions, applications for the registration of these intellectual properties are accepted with the priority date claim and are thereafter protected in India.

The major types of Intellectual property are as follows:

- Patents
- Trade Marks
- Copyright
- Industrial Design
- Geographical Indications

**Patents**

The primary legislation regulating patents in India is the Patents Act, 1970 and the Patent Rules, 2003, thereunder. A patent is a statutory right to exclude others, from making, using, selling, and importing a patented product or patented process without the consent of the patentee, for a limited period of time. Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms. Once a patent expires, protection ends and the invention enters the public domain. A Patent is granted protection for a period of 20 years. After such period, the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others. The basic obligation is that, invention in all branches of technology whether products or processes shall be patentable if they meet the three tests of being new, involving an inventive step and being capable of industrial application.

**Trade Marks**

India’s trade mark laws consist of the Trade Marks Act, 1999 and the Trade Marks Rules, 2002, which became effective in 2003. Trade marks have been defined as a mark that is capable of graphical representation and distinguishing the goods or services of one undertaking from another. Registration under the Trade
Marks Act confers exclusive rights to use the mark, subject to any conditions imposed, and if these rights are infringed to restrain unauthorised users. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods. The protection also tends to prevent unauthorized use in relation to trade names or domain names.

Apart from and/or in addition to registration, a person can also obtain rights in an unregistered mark which is protectable at common law by way of a passing off action. Indian law also recognizes trans-border reputation of a trader and there are a number of judicial precedents wherein foreign proprietors and their trade marks have been protected on the basis of their world-wide business goodwill even in the absence of direct business presence in India.

Copyright

Copyright Act, 1957 supported by the Copyright Rules, 2013 is the law governing copyright protection in India. Copyright Act provides that a copyright subsists in an original literary, dramatic, musical or artistic work, cinematograph films, and sound recordings. The term of copyright in India is, in most cases, the lifetime of the creator plus 60 years thereafter. Registration is not compulsory under the Copyright Act. A copyright once created vests in the said work. Copyright grants certain moral rights upon the creator of the work such as Right of Authorship, Right of Integrity and can restrain or claim damages with respect to any distortion, mutilation, modification of the work.

Industrial Design

Industrial designs are protected under the Designs Act, 2000. The Designs Act incorporates the minimum standards for the protection of industrial designs, in accordance with the TRIPS agreement. As per the Designs Act, design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by an industrial process, which in the finished article appeal to and are judged solely by the eye. The Designs Act provides for civil remedies in cases of infringement of copyright in a design in the form of injunctions, damages, compensation, or delivery-up of the infringing articles.

Geographical Indication

The present geographical indications regime in India is governed by the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indication of Goods (Regulation and Protection) Rules, 2002. A geographical indication (GI) is an indication or a sign which specifies the geographical origin of the product and links it with the essential qualities that are present in the product due to that place of the origin. It is mainly used to identify the agricultural, handicraft, manufacturing goods from the particular territory which has developed a good will in the market due to the special characteristics like temperature, humidity, soil etc. associated with the territory that are unique. By registering a geographical indication in India, the rights holder can prevent unauthorized use of the registered geographical indication by others and promote economic prosperity of producers of goods produced in a particular region.

DISPUTE RESOLUTION

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

ARBITRATION

The Indian law also recognizes, arbitration, conciliation, judicial settlement including settlement through Lok Adalat and mediation as alternate mechanisms of settlement of disputes, besides litigation. While arbitration and conciliation are governed under the Indian Arbitration and Conciliation Act, 1996.

Arbitrations in India are either ad hoc arbitrations or institutional arbitrations. Large commercial disputes in India are normally settled by ad hoc arbitrations with the Arbitration Act as the governing legislation. Though some parties opt for dispute resolution under the rules of a particular arbitration institution. Some of the popular arbitration institutions include the: International Chambers of Commerce (ICC), London Court of International Arbitration (LCIA) and Singapore International Arbitration Centre (SIAC).

Foreign awards under the New York Convention on the
Recognition and Enforcement of Foreign Arbitral Awards and under the Geneva Protocol on Arbitration Clauses are enforceable in India, treated as decrees of an Indian Court. Indian courts do recognize and enforce a choice of law and jurisdiction decided by parties to the dispute subject to such choice being bona fide and not being opposed to public policy. However, Indian courts may refuse to enforce a stipulation as to the choice of forum where it is of the opinion that such choice is oppressive, unfair or inequitable and does not bear any real or substantial connection to the subject matter of the dispute.

**ENFORCEMENT OF FOREIGN JUDGEMENTS**

The Code of Civil Procedure, 1908 lays down the procedure for enforcement of foreign judgments and decrees in India. The basic principle which is followed while enforcing a foreign judgment or decree in India is to ensure that the judgment or decree is conclusive, passed on the merits of the case and by a superior court having competent jurisdiction. The judgment rendered by a court outside India should not have been obtained in a fraudulent manner and the judgement should not be in breach of a law in force in India.

Where a foreign judgment has been rendered by a superior court in any country or territory outside India, which the Government of India has by notification declared to be a reciprocating territory, it may be enforced in India as if the relevant court in India had rendered the judgment. A judgment of a court in a jurisdiction, which is not a reciprocating territory, has only evidentiary value and may be enforced only by a new suit upon the judgment.

**IMMIGRATION PROCEDURES**

**Passport and Visa Requirements**

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

**Types of Visa issued**

- Tourist visas valid for six-month and one year (six months stay each time) are available.
- Entry Visa valid for six months to one year stay with multiple entries for legitimate purposes.
- Business Visa valid for six months and one year with multiple entries. A letter from sponsoring organisation indicating the nature of applicant’s business, probable duration of stay, places and organisations to be visited needs to be accompanied with the application.
- Student visa - Depending upon the duration of the course, multiple entry student visas for bonafide students to pursue regular studies at recognized institution in India are available. Visa is valid for up to five years or the duration of the course, whichever is less. A letter confirming admission from such an institution along with evidence of financial arrangements for stay in India should accompany the application.
- Transit Visa valid for single/double entry for short stop over for travelling to a third country is available.
- Journalist visas are given to professional journalists and photographers for three months stay in India.
- Employment visas are initially issued for one-year stay. A copy of the contract with the employer is required to be enclosed. Employment Visa is given only for jobs that require very high level of skills and expertise. The period can be extended by Foreigners Regional Registration Office in India, if the job contract continues. Spouses and children are granted co-terminus entry visas on request.
- Conference Visa may be issued if application is accompanied with a letter of invitation from the organizer of the conference and approvals of Indian authorities are to be submitted along with the visa application.
INDONESIA

- Strategically located in Southeast Asia at the intersection between the Pacific and Indian Oceans, bordering the Malacca Straits with an area of 1.922.570 km².
- Practices democracy with a Republic system.
- Bahasa Indonesia is the national language. English is widely written and spoken especially in urban areas and for business.
- Currency: Indonesian Rupiah (IDR or Rp).
- State recognised religions consists of Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.
- With a GDP of nearly US$ 550 billion in 2009, Indonesia has become the third fastest-growing economy in Asia and the largest economy in Southeast Asia.
- Investment growth areas include transportation, telecommunications, infrastructure, food industry and real estate.

BUSINESS PRESENCE

- Main types of business models in Indonesia: locally incorporated companies in the form of limited liability companies, cooperatives, permanent establishments, state-owned companies or regional-owned companies, sole proprietorships and partnerships.
- Foreign investment must take the form of limited liability companies incorporated pursuant to Indonesian law and domiciled in Indonesia unless otherwise stipulated by law.
- Representative offices of foreign companies may be opened in Indonesia. Three types of representative offices are recognised in Indonesia: (i) Foreign company representative offices, which are utilised by foreign companies or groups of foreign companies for purposes of managing the interests of a company or affiliated companies and/or preparing for the establishment and development of a foreign investment company in Indonesia and in other countries; (ii) trade company representative offices, which are utilised to act as selling agents, manufacturing agents and/or buying agents; and (iii) foreign construction service company representatives, which are utilised by foreign construction services companies to be licensed to engage in construction services in Indonesia together with an Indonesian participant through joint operations.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Shareholding Equity Participation

- All business sectors or business categories are open to investment activities, except for business sectors or business categories which are expressly declared closed or open subject to certain conditions.
- Foreign shareholding restrictions are imposed through relevant law set forth in a negative investment list issued by the government and periodically modified.

Approvals and Licensing

- Appropriate approvals and licences are required for the operation of all business activities. These may be obtained from the Indonesian Investment Coordinating Board, the relevant ministry, government agencies and/or regional government.
- Application process and prescribed fees payable vary depending on the prescribed condition for the application and geographical location where the activity is proposed.

EXCHANGE CONTROL

- Exchange controls are governed by Law No. 24 of 1999 dated 17 May 1999 concerning Foreign Exchange Traffic and Exchange Valuation System.
- No foreign exchange restrictions are imposed on flows of foreign exchange except with regard to offshore commercial loans.

TAXATION

Corporate Tax

- Domestic companies are taxed at a rate of 25% on income derived from Indonesia.
- Permanent establishments are also taxed at the rate of 25% on income derived from Indonesia.

Personal Income Tax

- Tax obligors in Indonesia are subject to graduated tax rates from 5% to 30% on income accrued in or derived from Indonesia.
- A person is categorised as a tax obligor if that person resides or is present in Indonesia for at least 183 days in period of 12 months or is present for an entire tax year and has intention to reside in Indonesia.
**Withholding Tax**
- Income paid by tax residents and permanent establishments to other tax residents or permanent establishments is subject to tax withholding of 15% of the gross amount of: (i) Dividends; (ii) interest, including premiums, discounts and compensation for loan repayment guarantees; (iii) royalties; and (iv) gifts or rewards.
- Withholding of 2% of net income on gross amount estimates are required for: (i) Rents and other income connected with the use of property; and (ii) compensation connected with technical, management, construction, consulting and other services other than those received by individual taxpayers and already subject to withholding by their employers.
- Income paid by tax residents or permanent establishments to non-tax residents is subject to a 20% withholding tax, deemed final in nature (subject to certain exceptions), on the following: (i) Dividends; (ii) interest, including premiums, discounts and compensation for loan repayment guarantees; (iii) royalties, rents and other income connected with use of property; (iv) compensation for services, work and activities; (v) gifts and awards; (vi) pensions and other periodic payments; (vii) swap premiums and other protected value transactions; and (viii) profits due to release of debt.

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

**Double Taxation Treaties**
- Indonesia has signed and ratified bilateral tax treaties with the following countries: People’s Democratic Republic of Algeria; Australia; Republic of Austria; People’s Republic of Bangladesh; Kingdom of Belgium; Brunei Darussalam; Republic of Bulgaria; Canada; People’s Republic of China; Czech Republic; Kingdom of Denmark; Arab Republic of Egypt; Republic of Finland; French Republic; Federal Republic of Germany; Hong Kong Special Administrative Region of People’s Republic of China; Hungarian People’s Republic; Republic of India; Italian Republic; Islamic Republic of Iran; Japan; Hashemite Kingdom of Jordan; Democratic People’s Republic of Korea; Republic of Korea; State of Kuwait; Grand Duchy of Luxembourg; Malaysia; Republic of Mauritius; United Mexican States; Mongolia; Kingdom of The Netherlands; New Zealand; Kingdom of Norway; Islamic Republic of Pakistan; Republic of Philippines; Republic of Poland; Portuguese Republic; Romania; Russian Federation; Kingdom of Saudi Arabia; Republic of Seychelles; Republic of Singapore; Slovak Republic; Republic of South Africa; Kingdom of Spain; Democratic Socialist Republic of Sri Lanka; Republic of Sudan; Syrian Arab Republic; Kingdom of Sweden; Swiss Confederation; Kingdom of Thailand; Republic of Turkey; Republic of Tunisia; Ukraine; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United States of America; Republic of Uzbekistan; Socialist Republic of Vietnam; and Bolivarian Republic of Venezuela.

**TAX AND INVESTMENT INCENTIVES**

**General**
- The Indonesian government provides facilities to investors who undertake business expansion or conduct new capital investments which fulfil one of the following criteria: (i) Absorb a large amount of labor; (ii) include high priority scale investments; (iii) include development infrastructure; (iv) implement technology transfers; (v) conduct pioneering industries; (vi) are located in remote/isolated areas, underdeveloped areas, border areas or other areas which are deemed necessary; (vii) protect environmental preservation; (viii) implement research, development and innovation activities; (ix) partner with micro, small, medium or cooperative businesses; or (x) involve industries which utilise capital goods or machines or equipment which are produced domestically. (Art. 18[1], [2] and [3] of Law No. 20 of 2007).
- Types of facilities which are to be granted to investors may take the form of: (i) income tax through reduction of net profits up to certain levels in relation to total amount of capital investment which is undertaken within a certain time; (ii) exemption or relief/reduction from import duties on capital goods, machines or equipment for production requirements which are not yet capable of being produced domestically; (iii) exemption or relief/reduction of import duties on basic commodities or auxiliary materials for production requirements for certain periods of time and on certain conditions; (iv) exemption or postponement of value added tax on imports of capital goods or machines or equipment for production requirements which are not yet capable of being produced domestically for a certain period of time; (v) accelerated depreciation or amortisation; and/or (vi) relief/reduction from tax on land and buildings especially for certain business sectors, in certain territories or regions or zones. (Id. at Art. 18[4]).

**EMPLOYMENT LAW**
- Normal working hours include: (i) seven hours per day and 40 hours per week for a six-day work day week; or (ii) eight hours per day and 40 hours per week for a five-day work day week.
- Employees are entitled to statutory benefits which include rest days, public holidays, annual leave, Employee Social Security Program (Jaminan Sosial Tenaga Kerja) (“Jamsostek”) and termination benefits.
- Minimum wage differs from one region to another as determined by the local government.
- Every employee/labourer has right to form and become member of an employee/labourer union.
- Strikes are basic rights of employees/labourers which must be conducting without contravening the law with a prior written notice to the entrepreneur/employer and the local of government within not less than seven business days.
**INTELLECTUAL PROPERTY**

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

**DISPUTE RESOLUTION**

- Civil disputes in the first instance may be heard at the District Court. Cases may go on appeal to the High Court, cassation at the Supreme Court and then for Supreme Court Judicial Review.
- Employment disputes are heard in the Industrial Relations Court.
- Alternative Dispute Resolution ("ADR") is available and includes out of court settlement through consultation, negotiation, mediation, conciliation or expert evaluation.
- Disputes subject to settlement through arbitration are only those disputes in the trade/commercial sector concerning rights which according to prevailing laws and regulations are fully controlled by the parties to the dispute, which include, among other fields: (i) Matters arising in the field of trade and commerce; (ii) banking matters; (iii) finance matters; (iv) investment matters; (v) industrial matters; and (vi) intellectual property rights.
- The District Court has no authority to adjudicate disputes arising between parties who are already bound by arbitration agreements.
- Indonesia has the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia) ("BANI"), an independent institution which provides various services relating to arbitration, mediation and other forms of out of court dispute resolution. The cost for BANI arbitration varies depending on the value of claims in dispute.

**IMMIGRATION PROCEDURES**

**Passport and Visa Requirements**

- Every person who enters the territory of Indonesia is required to possess a valid passport. Aliens entering Indonesia are required to possess a visa, to obtain a valid entry permit and to enter and exit through examination by immigration officials at immigration check points.
- Application for a visa is submitted to the head of representative of the Republic Indonesia abroad or to officers in other places as stipulated by the government of the Republic of Indonesia.
- Exceptions to the obligation to possess visas include: (i) aliens who are state citizens of a country which, based on Presidential decree, are not required to possess a visa; (ii) aliens who possess re-entry permits; (iii) captains and crew who are employed on means of transportation which anchor/dock at an Indonesian port or which land at an Indonesian airport; and (iv) transit passengers at Indonesian ports or airports so long as they do not leave the place of transit which is located within an immigration check point zone.

**Professional’s Passes and Work Permits**

- A visit visa may be issued to an alien who visits Indonesia for business purposes for a maximum of 60 days from the date of grant of an entry permit.
- A limited stay visa may be issued to an alien who visits Indonesia for the purpose of investing or working in Indonesia for a maximum of two years from the date of grant of an entry permit.
- Every employer who employs foreign labour is required to possess a written permit from the Minister of Labor Affairs or an authorised official. Representatives of foreign nations are exempt from the obligation to possess a written permit for utilisation of foreign labour as diplomatic and consular officials.

**Special Permanent Residency or Other Permits**

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

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

**FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS**

**Restrictions in Equity Participation**
- The Foreign Exchange and Foreign Trade Act requires investors to report foreign investment into Japan and the Bank of Japan has been authorized to administer the reports submitted by foreign investors.
- Japan has continuously increased the opening of its market to foreign investors; however, some areas remain restricted to foreign investors – such as the telecom sector – due to national interest.

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

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

**JAPAN**

- Japan is geographically located in East Asia with an area of 377,944 km². It consists of four main islands, laid out from north to south: Hokkaido, Honshu, Shikoku and Kyushu. The capital city is Tokyo. Other large cities are Osaka, Yokohama, Sapporo, Nagoya, Kyoto, Kobe, and Fukuoka.
- Japan is a constitutional monarchy with a parliamentary government. The Japanese Royal Family holds no political or executive power and serves in a symbolic role. The head of the government is the Prime Minister.
- The Japanese Parliament (the Diet) consists of two houses; the House of Representatives being the lower house and the House of Councillors being the upper house.
- Population of 126,820,000 people, as of January 2016, comprising Japanese (98.4%), Chinese (0.5%), Korean (0.4%) and others (0.7%).
- Religious composition of the country is primarily Shinto and Buddhist.
- The national language is Japanese. English is studied from age 10.
- Currency is the Japanese Yen.
- Japan is a leading country in areas including machinery and equipment, metals and metal products, textiles, autos, chemicals, electrical equipment, and processed foods.

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Japan is a leading country in areas including machinery and equipment, metals and metal products, textiles, autos, chemicals, electrical equipment, and processed foods.
**EXCHANGE CONTROL**

- The Foreign Exchange and Foreign Trade Act has been substantially liberalized. In only limited circumstances, is a license or prior notification required under the Act for making or receiving payment, capital transactions, inbound direct investment and foreign trade between residents and non-residents. However, post facto notification is required in many cases.

- Prior notification to Japan Customs is necessary when importing or exporting means of payment and/or securities exceeding 1,000,000 yen and precious metals exceeding one kilogram.

**TAXATION**

**Corporate Tax**

- Corporations located in Japan are required to pay corporate tax and local income tax (the amount of which varies depending on the locality). In principle, a domestic corporation is liable to pay corporate tax on both domestic and foreign source income while a foreign corporation is liable to pay corporate tax when it has domestic source income.

- The rate of the corporate tax on domestic source income was lowered from 23.9% to 23.4% and this rate is applicable for any business year which starts after April 1, 2016. When combined with local income taxes, the effective tax rate can be around 29.97%. A corporation whose capital contributions is not more than 100,000,000 yen, is taxed at a rate of 15% on income of up to the amount of 8,000,000 yen.

**Personal Income Tax**

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

- Non resident individuals are subject to income tax in respect of domestic source income.

**Withholding Tax**

- For certain income, the payor of the income is required to withhold tax at a rate specified by law (with a special income tax surcharge levied for reconstruction in addition to this base rate). Generally, the payee can claim a tax credit with respect to the withheld amount against income tax when the annual tax return is filed.

- With respect to certain domestic source income, such as dividends, loan interest and royalty payments received by foreign corporations and non-resident individuals, withholding tax is imposed without further adjustments. The withholding tax rate (including the special income tax surcharge for reconstruction) is 20.42% for dividends (15.315% in case of dividends from listed companies), 20.42% for loan interest and 20.42% for royalties, subject to a lower rate provided by the applicable tax treaty.

**Capital Gains Tax on Real Property**

- For domestic and foreign corporations, capital gains on real estate asset sales are included in gross income and taxed accordingly.

- For resident individuals, capital gains are taxed separately to other types of income and any gain is taxed at an effective rate of 39.63% (national tax: 30 %; special income tax for reconstruction: 0.63%; local tax: 9%) for property held for 5 years or less and 20.315% (national tax: 15%; special income tax for reconstruction: 0.315%; local tax: 5%) if more than 5 years. Non-resident individuals are exempted from local tax. A discounted rate may be available depending on whether the property is a residence.

- The purchaser of real property from a non-resident individual or a foreign corporation is required to withhold 10.21% of the purchase price and pay the withheld amount to the relevant tax office.

**Other Taxes**

- Consumption tax is currently 8%. The rate was set to increase to 10% from 1 October 2015 but this increase has been delayed until October 2019.

**SUPPORT AND SERVICES ON INVESTING IN JAPAN**

- To increase foreign direct investment in Japan, the government founded the “Invest Japan Business Support Centers (IBSCs)” within the Japan External Trade Organization (“JETRO”). IBSCs provide information on investment to help foreign companies create their business foundations in Japan, including information on investment opportunities and procedures to obtain business permits and licenses.

- To improve access to the Japanese market, overseas or domestic enterprises can make complaints to the Office of Trade and Investment Ombudsman – a governmental body – stating how the government regulations are an obstacle to exporting and investing in Japan. In principle, an explanation to the complaint should be made within 10 days.

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

• The maximum working hours are 40 hours a week and eight hours a day. If an employer has an employee work in excess of the statutory working hours, or on a holiday, or late at night, the employer has to conclude a labor-management agreement with the employees (labor union), submit a notification of the agreement to the local Labor Standards Inspection Office, and provide an extra payment which is calculated at an increased hourly rate of between 25% and 50% in accordance with the Labor Standards Act.

• Employees within the protection of the Labor Standards Act are entitled to statutory benefits such as rest periods, annual paid leave, maternity leave, child care leave, family medical leave and other leaves of absence from work. Sick leave is not required by law.

• In principle, employers must provide health insurance, welfare pension insurance and employment insurance.

• Minimum wage requirement is stipulated in the Minimum Wages Act, according to region and industry (eg. at the time of writing, the most recent increase in October 2016 brought the minimum wage in Tokyo to ¥932 per hour).

• When an employer fixes the mandatory retirement age of employees, it shall not be below 60 years of age. However, if an employer fixes the mandatory retirement age below 65 years, the employer needs to introduce a continuous employment system until the employee reaches 65 years if an employee currently employed wishes continued employment after the mandatory retirement age.

• With regard to a fixed-term labor contract, an employer may not dismiss an employee until the expiration of the term of such a labor contract, unless there are unavoidable circumstances.

• Labor unions have a constitutional right to carry out their activities, such as requesting collective negotiation, and no company may refuse such request of negotiation.

• Employers may not prohibit employees from joining labor unions, nor disadvantage an employee because of union membership.

• Labor dispute actions, such as strikes, are not subject to civil and criminal penalties that would otherwise apply, provided that the dispute action is justifiable. Employees in certain sectors are prohibited from taking labor dispute action. These sectors include government employees, and employees working on public projects.

• In Japan, it is very difficult to dismiss an employee. A dismissal is treated as an abuse of right and may be invalid, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms. According to many precedents, a dismissal for the purpose of the reorganisation of an employer for management reasons is allowed only when all of the following four circumstances are satisfied; namely, (1) such a dismissal is highly necessary, (2) an employer made all efforts to avoid such a dismissal, (3) the standards for distinguishing employees who are to be dismissed are reasonable and the practice of using the standards is appropriate, and (4) an employer made sufficient efforts to negotiate with employees and to explain the company management situation to them.

INTELLECTUAL PROPERTY

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

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• Inventions, utility models, designs and trademarks are registered at the Patent Office and are protected for a certain period of time. A copyright is automatically granted from the time a work is created and no registration is required thereafter. For integrated semiconductor circuits, an application for the registration to the Minister of Economy, Trade and Industry is required to obtain protection. For plant varieties, an application to the Minister of Agriculture, Forestry and Fisheries is required.

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### Protected IP Rights and Protection Period

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</table>

- A design must be a shape, pattern or colour (or any combination thereof) of an article which produces an aesthetic impression on the sense of sight.
- A patent must utilise technological concepts which use natural laws and rules characterized by a high level of technological creativity.
- A trademark used to be characters, figures, signs or three-dimensional shapes (or any combination thereof) However, since April 1, 2015, new types of trademarks, namely, a moving mark, a hologram mark, a color mark, a sound mark, and a position mark can be applied for.
- A trade secret is technical or business information useful for commercial activities, such as manufacturing or marketing, that is kept secret and that is not publicly known.
- A utility model is a form of product, structure or combination of the two which is created using creative technological concepts based on natural laws and rules.
- Japan is a member of the World Intellectual Property Organization (WIPO) and has ratified the Paris Convention, the Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

### Dispute Resolution

- In general, the judicial system in Japan is three instance system, which is composed of five types of courts: the Supreme Court, High Courts, District Courts, Family Courts and Summary Courts. The court of first instance may be the Summary Court, District Court, Family Court or High Court, depending on complexity, value and legal issues involved. Judgments in the Summary, District and Family Courts may be appealed to the High Courts and judgments in the High Courts may be appealed to the Supreme Court.
- Alternative dispute resolution (ADR), such as mediation and arbitration is available. The Japan Commercial Arbitration Association (JCAA) provides facilities for arbitration. The arbitral awards made in such procedures have the same effect as final and conclusive judgments and the enforceability of such arbitral awards is guaranteed under the Japanese Arbitration Law and UNCITRAL Arbitration Rules.

### Immigration Procedures

**Passport and Visa Requirements**
- Immigration control in Japan is conducted in accordance with the Immigration Control and Refugee Recognition Act and the Basic Resident Registration Act. Immigration rules have recently changed in Japan. Among the changes have been the abolition of the previous Alien Registration System and the extension of the maximum length of almost all visas to 5 years.
- All persons entering into and out of Japan are required to arrive and deport through immigration with possession of a valid national passport with an affixed valid visa or other international recognized travel documents valid for travelling in Japan. Depending on the country and the visa obtained, passports or travel documents may need to be valid for at least six months beyond the date of entry.

**Business Passes and Work Permits**
- Japan has made arrangements with 67 countries and regions (as of December 2014) to waive requirements of a visa when the visit is for a short period of time. The purpose of such a stay may be commerce, conference, tourism or visiting relatives and acquaintances.
- A stay that exceeds 90 days (15 days if a visitor is a national of Indonesia, Thailand or Brunei) and in which the applicant will perform paid work requires a working visa (and for family visas to be issued to any accompanying family members). Work visas and family visas are valid for 1 to 5 years.
- The number of days required from application to issuance of the visa is approximately five working days. Although, when applying for a long-term visa, if a Certificate of Eligibility is not submitted with the application, issuance will take one to three months regardless of whether there is a problem or not.
- All foreign residents in Japan are required to personally appear and register themselves at the municipal office of the city, ward, town or village in which they are resident. Under the Basic Resident Registration Act, foreign residents are eligible to apply for a resident record (juminhyo) and will be provided with a resident card. This card must be carried at all times.
MALAYSIA

• Strategically located in Southeast Asia with an area of 329,750 km².
• Practices parliamentary democracy with a Constitutional Monarch.
• Population comprises Malays (52%), Chinese (30%), Indians (8%) and other races (10%). Religious composition of the country consists of Islam (the official religion), Buddhism, Hinduism, Sikhism and Christianity.
• Bahasa Malaysia is the national language, whereas English is widely written and spoken especially in urban areas and for business.
• Currency: Malaysian Ringgit (RM)
• Investment growth areas include biotechnology industry (encompassing agriculture, food, industrial and medical biotechnology), tourism, environmental management, research and development, medical device industry, shipping and transportation industry, information and communication technology, manufacturing-related services and agriculture.

BUSINESS PRESENCE
• Main types of business models in Malaysia: locally incorporated companies (may be limited by shares or by guarantee), sole proprietorships, partnerships and registered branches of foreign companies.
• Use of locally incorporated companies by far the most prevalent. These may be incorporated or purchased “off the shelf.”
• Representative offices of foreign companies may be opened in Malaysia. These require registration with the Malaysian Industrial Development Authority (part of the Ministry of International Trade and Industry). Representative offices are approved only for the purposes of receipt and dissemination of information and are not permitted to conduct business.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Equity Participation
• Generally no restrictions are imposed on foreigners owning equity in Malaysian companies. However, certain sectors deemed of national interest such as banking, insurance, domestic trade (supermarkets) are safeguarded and subject to foreign ownership restrictions as may be imposed by respective sector regulators.

Restrictions in Real Property Acquisition
• Except for low/medium cost properties, properties on Malay reserved land and properties allocated to fulfil Bumiputera quotas, no restriction is imposed on the acquisition by foreigners of real property valued between RM500,000.00 and RM20,000,000.00.
• Real property acquisitions are subject to the approval of State Authorities.

Approvals and Licensing
• Appropriate approvals and licences are required for the operation of any business activity. These may be obtained from the relevant ministry, government agencies and/or local councils.
• Application process and prescribed fee payable vary depending on the prescribed condition for the application and the geographical location where the activity is proposed.

EXCHANGE CONTROL
• Governed by the Exchange Control Act 1953 and the Exchange Control Malaysia Notices and regulated by the Central Bank of Malaysia.
• Generally no restrictions on repatriation of capital, profits, dividends, interest and rental income by foreign investors. However, these payments must be remitted in a currency other than Ringgit Malaysia.

TAXATION

Corporate Tax
• Companies are taxed at a rate of 25% on income derived from Malaysia.
• Branches of foreign companies are also taxed at the rate of 25% on income derived from Malaysia.
• Labuan incorporated companies carrying on an offshore trading activity are taxed at either 3% of net audited profits or RM20,000, at the companies’ election at incorporation.

Personal Income Tax
• Individuals resident in Malaysia are subject to graduated tax rates from 1% to 26% on income accrued in, or derived from, Malaysia.
• A person is “resident” in Malaysia if he or she stays in Malaysia for at least 182 days in a calendar year.

Withholding Tax
• Withholding tax on certain types of payments made to a non-resident is imposed. Interest earned in Malaysia attracts withholding tax of 15% whilst royalties, guarantee fees and introducer fees earned in Malaysia attract withholding tax at a rate of 10%. Contract payments earned in Malaysia attract withholding tax of 10% + 3%.

Real Property Gains Tax (RPGT)
• Any gain on disposal of real property in Malaysia within five years from the date of the original sale and purchase agreement is taxed at a rate of 5%.

Other taxes
• Sales tax at the import or manufacturing level: 10%.
• Service tax: 6%.
• Import duty: ad valorem duty at various rates.
• Selected products manufactured in Malaysia: excise duty at various rates.
• Stamp duty on certain documents executed within Malaysia: nominal or ad valorem stamp duty.

TAX AND INVESTMENT INCENTIVES

General
• Various tax exemptions and investment incentives exist to stimulate investment in promoted activities and products such as manufacturing, agricultural, tourism, environmental management, shipping transportation, information and communication technology, and multimedia activities.
• Categories of investment incentives include industrial adjustment allowance, industrial building allowance, double deduction of expenses, approved agricultural projects incentives, research and development incentives, inbound tour operators’ incentives, incentives for approved overseas investments and incentives for overseas construction projects.
• Quantum of deduction varies depending on the activity engaged and the geographical location where the expenditure is incurred.
• Company granted MSC (Multimedia Super Corridor) Status, Industrialised Building System Status, BioNexus Status or Operational Headquarters Status enjoy further tax exemptions and investment incentives.
• Venture Capital Companies, International Procurement Centers and Regional Distribution Centers enjoy further tax exemptions and investment incentives.

Labuan
• Entities incorporated in Labuan enjoy a low (offshore tax regime) and can also take advantage of Malaysia’s double taxation agreements with over 50 countries. However, Labuan-incorporated entities are generally not allowed to do business in Malaysia.
• Protection against nationalisation of investments undertaken in Labuan.

Pioneer Status
• Companies undertaking a promoted activity or production of promoted product may be granted “Pioneer Status”. Companies with pioneer status enjoy having only a portion of their income taxed (e.g. 30%) at the usual corporate rates. Promoted activities include research and development, new and emerging technologies, strategic knowledge intensive activity and the automotive component modules industry.

Investment Tax Allowance
• Allowance between 60% and 100% of qualifying capital expenditure given which may be used to set off against 70% to 100% of statutory income. These allowances are given to companies with a qualifying project or approved service project such as projects with high capital expenditure with long gestation periods, companies in the hotel and tourism industry or companies setting up in particular geographical areas within Malaysia.

EMPLOYMENT LAW
• The maximum working hours are 48 hours per week or eight hours per day. This limit may be exceeded under certain specified circumstances. Maximum overtime permissible in a month is 104 hours.
• Retrenchment selection is based on the “Last-In-First-Out” rule in the category. Foreign workers are to be retrenched first before any local worker in the same category.
• Employees within the protection of the Employment Act 1955 are entitled to statutory benefits such as rest days, public holidays, annual leave, sick leave, hospitalization leave, maternity leave and termination benefits.
• Wages are determined through market forces and therefore there is no minimum wage requirement.
• Trade unions in Malaysia are regulated by the Industrial Relations Act (IRA) 1967.
• Formation of employee unions are subject to recognition by employer. Upon formation, the union invites the employer to bargain collectively over the terms and conditions of employment. The collective agreement, which must be for a minimum period of three years, is legally binding and enforceable if it has been taken cognisance of by the Industrial Court.
• Strike action is prohibited in respect of any matter already covered by the collective agreement.
• Employer and employee must make a statutory contribution of 12% and 11% respectively of the monthly wages to the Employees Provident Fund.
• Social Security Organization (SOCSO) provides social security protection to employees, who are Malaysians or permanent residents, and to their family. An employer and employee contribute 1.75% and 0.5% respectively of the employee’s monthly wages.
INTELLECTUAL PROPERTY

• Intellectual Property protection in Malaysia comprises patents, trademarks, industrial design, copyright, geographical indications and layout designs of integrated circuits.
• Registered patents, trademarks/service marks, industrial design and geographical marks enjoy monopoly rights/protection for specific periods of time.
• Unregistered trademarks are protected by the Malaysian courts under the tort of passing off.
• Copyright protection for literary, musical or artistic works, sound recordings, broadcasts and films.
• Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention, Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
• Malaysia’s intellectual property laws conform to international standards and provide adequate protection to both local and foreign investors.

DISPUTE RESOLUTION

• Civil disputes at first instance may be heard at the Magistrates’ Court, Sessions Court or High Court, depending on complexity and value. Cases may go on appeal to the Court of Appeal and then to the Federal Court.
• Employment disputes are heard in the Labour Court or the Industrial Court.
• Matters in relation to Shariah Law are heard by the Shariah Court.
• Alternative dispute resolution (ADR) is available and include mediation and arbitration.
  o The Malaysian Mediation Centre (MMC) mediates disputes involving construction agreement clauses, business agreements and the like. The minimum fee for an MMC mediator (per party) starts at RM500 per day for claims of RM100,000 and below, with a maximum of RM5,000 for claims exceeding RM10,000,000.
  o The Kuala Lumpur Regional Centre of Arbitration (KLRCA) arbitrates settlement of disputes and currently provides facilities for arbitration. The arbitration rules are based on UNCITRAL Arbitration Rules 1976 with certain modifications.

IMMIGRATION PROCEDURES

Passport and Visa Requirements

• All persons entering Malaysia must possess valid national passports or other internationally recognized travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia.
• Applications for visas (where necessary) may be made at the nearest Malaysian mission abroad. In countries where Malaysian missions have not been established, applications can be made to the nearest British High Commission or Embassy.

Business Passes and Work Permits

• Visit Passes (Business) may be issued to a foreigner entering Malaysia for the purpose of looking at business opportunities, investment potential or introducing their goods that are to be manufactured in Malaysia. This pass cannot be used for the purposes of employment.
• Visit Passes (Professional) may be issued to a foreigner who holds acceptable professional qualification or specialist skills entering Malaysia for short-term professional work not exceeding 12 months at any one time.
• Employment Passes are required for foreigners taking up employment under contracts of service in Malaysia for a minimum of two years earning minimum wages of RM3,000 per month. The spouse and children of a foreigner who has been issued with an Employment Pass may be issued Dependant’s Passes.
• It is the sole responsibility of an employer to submit an application for work permit. Work permits are generally valid for two years and may be renewed for up to 10 years.

Malaysia My Second Home (MM2H) Program

• The program is open to citizens of countries recognized by Malaysia regardless of race, religion, gender or age and allows an applicant to bring the spouse, parents and unmarried children below the age of 21 and parents above the age of 60 as dependants.
• An applicant below 50 years of age must open a fixed deposit account of RM300,000. A withdrawal of up to RM150,000 may be made after a year and a minimum balance of RM150,000 must be maintained from the second year onwards throughout the stay.
• An applicant above 50 years of age has the option to open a fixed deposit account of RM150,000 or show proof of government-approved pension funds of RM10,000. A minimum balance of RM100,000.00 must be maintained throughout the stay.  

MALAYSIA
NEW ZEALAND

- A series of islands in the South Pacific, lying to the south east of Australia.
- A constitutional monarchy with one house of parliament responsible for all legislation.
- The monarch is the English monarch for the time being who acts through his or her representative the Governor General in New Zealand.
- The executive function is performed by ministers headed by the Prime Minister, who are all members of parliament.
- There is no federal structure and therefore no state governments.
- The next and only other level of government is the local authorities or councils.
- Laws are based on the English common law system with its mixture of legislation and case law.
- Commercial law is often very similar to Australia. However, there are areas where particular laws differ significantly such as, company law, employment law and its laws protecting the rights and culture of its indigenous people, the Maori.
- Official languages are English and Maori.
- English is the main spoken language and as such almost all business is conducted in English.
- Currency: New Zealand Dollar ($NZD)

BUSINESS PRESENCE

- Various forms of incorporation are provided including:
  - Limited Liability Company
  - Unlimited Liability Company
  - Limited Partnership.
- The New Zealand Companies Office is the government agency responsible for administration of corporate body registers, including the Companies Register.
- A company may also have an optional constitution which can allow it to change some of the “default” rules for companies set out in the Companies Act 1993.
- A company requires at least one director and one shareholder, who can be the same person.
- At least one director must be a New Zealand resident or resident in Australia and a director of a company registered in Australia.
- Shares do not have a fixed or "par value" – they are simply issued at an agreed price or a price specified in the constitution.
- A Limited Partnership is a partnership with the benefit of limited liability for the limited partners but unlimited liability for the general partner, who must be responsible for management.
- Overseas companies must register with the New Zealand Companies Office within 10 working days of commencing business in New Zealand.
- To register as an overseas company certain information must be supplied to the Companies Office (Directors, Shareholders etc).
- An overseas company registered with the Companies Office must maintain a New Zealand address and a person located in New Zealand and authorised to accept service of documents on behalf of the company.
- Others structures include:
  - Partnership
    - This can be formed by contract or implied by law if two or more individuals carry on a business together with a view to making profit.
    - Each partner can bind each other partner and is jointly and severally liable for all debts of the partnership.
  - Trust
    - This can be formed by contract or implied by law from certain circumstances.
    - Trustees hold property on trust and must apply the property for the benefit of particular beneficiaries or for a particular purpose.
    - Trustees are personally liable for the debts of the trust unless it is agreed by the creditor that liability is limited to the assets of the trust.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions on Foreign Investment

- There are no blanket restrictions on foreign investment in
New Zealand. However consent will be required to foreign investments involving "sensitive land", or "significant business assets".

- Where consent is required application must be made before the assets are acquired.
- The most common categories of "Sensitive Land" are non-urban land of over 5 ha, and land on most islands other than the North or South Islands. In addition consent will be required where land over 0.4 ha is, contains or adjoins:
  - Land on islands other than the North or South Island;
  - Land on any foreshore;
  - Seabed and any bed of a lake;
  - Reserve land.
- “Significant Business Assets” are:
  - 25% or more of the ownership or control of a New Zealand entity, worth in excess of $100 million;
  - A new business to be located in New Zealand where the set up costs will exceed $100 million; and
  - Assets in New Zealand used in carrying on a business in New Zealand, worth in excess of $100 million.
- Interests in fishing quota or 25% or more interest in a company which holds interests in fishing quota.
- Values are higher for Australian investors.

CENTRAL BANK EXCHANGE CONTROL
- No specific approvals are required for moving money across international boarders in New Zealand.
- There are however reporting requirements:
  - Cash in any currency to the value of NZ$10,000 must be declared.
  - New Zealand’s money laundering rules require report of suspicious transactions.

TAXATION

Corporate Income Tax
- Company profits are taxed at 28%.
- Companies can issue imputation credits equivalent to the tax paid on their profits which New Zealand shareholders can use to avoid paying double taxes on distributions.

Personal Income Tax
- Income tax rates for individuals range from 10.5% to 33% depending on income.

Capital Gains Tax
- New Zealand has no capital gains tax. However, it does tax some gains, which might be considered capital gains, as income, such as profits from the sale of land or shares made by traders or dealers.
- New Zealand has a comprehensive withholding tax regime requiring deductions from payments to residents and overseas persons.
- There are particular concessions which overseas investors can use to avoid or reduce the amount of withholding tax on dividends and interest payments to them.
- There is also a “PAYE” or “pay as you earn” system where deductions are made from salaries and wages on account of income tax.

Indirect Tax
- GST at the rate of 15% is charged on almost all supplies of goods and services by "registered persons".
- The only exceptions to GST are "exempt" supplies, such as financial services, sales of securities and residential tenancies, and "zero rated" supplies, such as exported goods, and business sales.
- There are a limited number of special taxes on goods such as alcohol, tobacco and motor fuel.
- Local authority rates (a form of land tax) are also payable by property owners.

Double Taxation Treaties
- New Zealand currently has Double Taxation Treaties with more than 30 countries.

TAX AND INVESTMENT INCENTIVES
- There are almost no incentives intended to encourage foreign investment in New Zealand such as Pioneer Status, Capital Allowances, Investment/Reinvestment Allowances or Tax Exemptions. One notable exception is tax incentives designed to encourage the film industry.

EMPLOYMENT LAW
- New Zealand employment law is based on contract but legislation can override or add to the terms of the contract.
- A written employment agreement is required for all employees although this can take the form of a collective agreement where the employee is a union member.
- There is no standard notice period for termination and this must be set in the employment agreement.
- Notwithstanding any termination period provided in the employment agreement, New Zealand law provides that termination by an employer is only possible for cause or in the case of redundancy, and then only after appropriate procedures have been followed.
- In addition fixed term agreements can only be relied upon where the particular circumstances justify the fixed term.
- Minimum wage requirement is NZ$14.75 per hour.
- Trade Unions are permitted in New Zealand but not compulsory. Whether to join is a decision of the individual employee.
NEW ZEALAND

Statutory Contributions
- Employers must make contributions to the Accident Compensation Scheme ("ACC") on behalf of the employee. ACC is the government accident insurance scheme that provides accident cover regardless of blame. Levies depend on the industry accident record.
- If an employee does not elect to opt out of Kiwi Saver, his or her employer can be required to contribute the equivalent of 3% of their wage or salary to their Kiwi Saver account.

DISPUTE RESOLUTION
- There is only one legal jurisdiction, which covers all of New Zealand.
- The law of New Zealand consists of statute law passed by parliament and case law, where judicial precedent is applied in the courts by judges.

Court System
- Civil disputes at first instance are heard in the District Courts (for lesser claims) or the High Court.
- Cases may be appealed to the Court of Appeal (Civil Division) and then to the Supreme Court.
- There are also a limited number of specialised courts or tribunals, which deal with disputes in particular areas such as employment disputes, family disputes and environment issues.

Alternative Dispute Resolution
- Alternative dispute resolution is encouraged in New Zealand, in particular mediation.
- Various organizations exist which handle alternative dispute resolutions, the most popular of which is LEADR.

IMMIGRATION PROCEDURES

Social Visit Pass
- Visitors need to obtain a visitor’s visa before they arrive in New Zealand.
- Visitors from visa-exempted countries do not need to obtain visas prior to their arrival. Instead, they will be automatically issued with a visitor’s visa on arrival.

Professional’s Visit Pass
- Professionals who want to enter New Zealand to perform specific tasks may apply for a limited purpose visa or a work visa, which will specify the period they are allowed to remain in New Zealand, and the tasks they are allowed to perform in New Zealand.
- Long-term visas are available for employees of businesses relocating to New Zealand, or entrepreneurs who want to establish a business in New Zealand.

Work Visas
- Workers with the desired skills may be granted a work visa, the duration of which will depend on their skills and area of specialty.

Special Permanent Residency or other permits
- Permanent residency in New Zealand may be granted under a number of different categories, such as skilled migrant, family reunion, entrepreneur and investor.
BUSINESS PRESENCE

Legal Entities

• Sole proprietorship
  • Any local or foreign individual conducting business may register a business name with the Philippine Department of Trade and Industry ("DTI").
  • Foreigners may put up single proprietorship business in the Philippines in industries where the Constitution and the laws do not impose any restriction or limitation on foreign equity.

• General or Limited Partnership
  • There is no minimum capital requirement to start a partnership in the Philippines, except for partnership with a foreign partner and other special partnerships mentioned by law.
  • A partnership with a capital of more than PhP 3,000.00 must register with the Philippine Securities and Exchange Commission ("SEC").

• Corporation
  • A corporation must register with the SEC.
  • At least 5 individual incorporators are required for incorporation, each of whom must hold at least one share.
  • Minimum paid up capital is PhP 5,000.00, except for certain types of businesses where a higher minimum capitalization is required.
  • Corporations, if at least 60% Filipino-owned, are considered Filipino corporations; if more than 40% of the capital stock is foreign-owned, said corporations are not considered as Filipino corporations.

PHILIPPINES

• The Philippines is an archipelago located in Southeast Asia with a population of more than 102 million.
• It has an area of approximately 300,000 square kilometers, consisting of more than 7,100 islands grouped into three major geographical divisions, namely: Luzon, Visayas, and Mindanao.
• The Philippines has a tropical climate consisting of three seasons: summer (March to May), rainy (June to November) and cool dry (December to February) seasons.
• For purposes of communication and instruction, Filipino and English are the official languages according to the Philippine Constitution. English proficiency is at a high level in major sectors such as business, education, and media. In fact, the Philippines is the world’s third largest English speaking country next to the United States of America and the United Kingdom. Other dialects, however, are spoken in local communities spread across the region.
• The Philippines has a literacy rate of 95%.
• Religious composition of the country is primarily Christian.
• The Philippines has a democratic government. It adopts the presidential system of government, with the President as head of state and the Philippine Congress – composed of the Senate and the House of Representatives – and the Judiciary treated as co-equal branches with the Executive Department.
• The legal system is a blend of customary usage, and Roman (civil law) and Anglo-American (common law) systems. The main sources of law are the Constitution, statutes, treaties, and decisions of the Supreme Court.
• The Philippines is currently one of Asia’s fastest growing economies, transitioning from being one based on agriculture to one based on services and manufacturing. Primary exports include semiconductors and electronic products, transport equipment, garments, copper products, coconut oil and fruits.
• Local currency is the Philippine Peso (PhP).
• Time zone is at UTC/GMC+8.
o Any corporation owning land in the Philippines must be a Filipino corporation.

Foreign-owned or controlled legal entities

- Branch Office
  - Minimum paid up capital of US$200,000.00, which can be reduced to US$100,000.00 if: (a) business activity involves advanced technology, or (b) the branch office employs at least 50 direct employees.
  - Registration with the SEC is mandatory.

- Representative Office
  - Minimum inward remittance of US$30,000.00 to cover operating expenses.
  - Registration with the SEC is mandatory.

- Regional Headquarters/Regional Operating Headquarters
  - Under Executive Order No. 226 (Omnibus Investments Code of 1987), any multinational company, with branches, affiliates and subsidiaries in the Asia Pacific Region and other foreign markets may establish an RHQ or ROHQ.

  - Regional Headquarters ("RHQs")
    - Activities shall be limited to acting as supervisory, communication and coordinating center for its branches, affiliates and subsidiaries in the Asia Pacific Region.
    - It does not derive income from sources within the Philippines.
    - Minimum inward remittance of US$50,000.00 annually to cover operating expenses.

  - Regional Operating Headquarters ("ROHQs")
    - Activities comprise of performance of qualifying services to its branches, affiliates and subsidiaries in the Philippines such as the following:
      - General administration and planning - Business planning and coordination - Sourcing/procurement of raw materials - Corporate finance advisory services - Marketing control and sales promotion - Training and personnel management - Logistic services - Research and development services and product development - Technical support and maintenance - Data processing and communications - Business development.
    - It derives income from sources within the Philippines.
    - Required capital of US$200,000.00 through a one time remittance.

- Regional Warehouse
  - Established by a multinational foreign company simultaneous with or subsequent to the establishment of a RHQ or ROHQ.
  - License is required to be obtained from the Philippines Economic Zone Authority ("PEZA"), or from the appropriate economic zone authorities, if it will be located in Special Economic Zones.
  - Its activities are limited to the following:
    - Serving as supply depot for storage.
    - Deposit.
    - Safekeeping of products and materials.
    - Filling up transactions and sales made by its head office or parent company.
    - Storage or warehouse of goods purchased locally by its home office for export abroad.
    - Not allowed to engage in trade or business nor enter into contracts in the Philippines.

Mergers and Acquisitions

- Additional reportorial requirements for listed companies

  - On 16 February 2016, the newly organized anti-trust body, the Philippine Competition Commission (PCC), issued Memorandum Circular (MC) 16-002. The MC outlines the transitory rules and guidelines for M&A transactions involving listed companies on the Philippine Stock Exchange ("PSE").
  - The MC requires parties to M&A agreements to make a report to the PCC where: (1) one of the companies involved has shares listed on the PSE, and (2) the transaction value exceeds PhP 1,000,000,000.00.
  - Subsequently or on 31 May 2016, the PCC released the Implementing Rules and Regulations ("IRR") of the Philippine Competition Act. It provides that the PCC, motu proprio or upon notification as provided under the rules, shall have the power to review mergers and acquisitions having a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines, based on factors deemed relevant by the Commission.
  - M&As which are likely to substantially prevent, restrict or lessen competition in the relevant market or in a market for goods and services in the Philippines are prohibited, except when the parties are able to establish that:
    - The agreement has brought or will bring about gains in efficiencies greater than the decrease in competition because of the M&A; or
    - A party to the M&A is faced with imminent financial failure, and the M&A is the least anti-competitive alternative available.
  - Under the IRR, parties to an M&A are required to provide notification when:
    - The aggregate annual gross revenues in, into or from the Philippines, exceeds PhP1,000,000,000.00;
    - The value of the assets in the Philippines of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds PhP1,000,000,000.00;
    - The value of the transaction exceeds PhP1,000,000,000.00; or
    - If as a result of the M&A, the acquiring entity, together with its affiliates would own voting shares of the corporation more than:
      - 20%, if the corporation is publicly traded.
- 35%, if the corporation is not publicly traded
- 50% if the person or persons already own more than the percentages set above, before the proposed acquisition.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

• Restrictions on foreign investments are generally in the form of limitations on foreign equity ownership and/or control. Majority of these limitations are found in the 1987 Philippine Constitution and Republic Act No. 7042 (Foreign Investments Act of 1991 or “FIA”).
• The FIA introduced the concept of the Foreign Investments Negative List (“FINL”) under the policy that foreigners may freely invest in all industries and business activities in the Philippines except as otherwise provided by the FINL. The Tenth Regular FINL, which was promulgated on 29 May 2015, is the latest amendment and reflected the following changes:

### Table: Foreign Investment Restrictions and Conditions

<table>
<thead>
<tr>
<th>Ref./Item No.</th>
<th>9th FINL</th>
<th>10th FINL</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Foreign Equity</td>
<td>2. Practice of all professions[1]</td>
<td>2. Practice of Professions[2] (Art. XII, Sec. 14 of the Constitution; Sec. 1 of RA5181; Sec. 7(j) of RA8981)</td>
</tr>
<tr>
<td></td>
<td>a. Engineering</td>
<td>a. Pharmacy (RA5921)</td>
</tr>
<tr>
<td></td>
<td>i. Aeronautical engineering (PD1570)</td>
<td>b. Radiologic and X-ray Technology (RA7431)</td>
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<td></td>
<td>ii. Agricultural engineering (RA8559)</td>
<td>c. Criminology (RA6506)</td>
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<td></td>
<td>iii. Chemical engineering (RA9297)</td>
<td>d. Forestry (RA6239)</td>
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<td>iv. Civil engineering (RA1582)</td>
<td>e. Law (Art. VIII, Sec. 5 of the Constitution; Rule 138, Sec. 2 of the ROC)</td>
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<td></td>
<td>v. Electrical engineering (RA7920)</td>
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<td></td>
<td>vi. Electronics and communication engineering (RA9292)</td>
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</tr>
<tr>
<td></td>
<td>vii. Geodetic engineering (RA8560)</td>
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<tr>
<td></td>
<td>viii. Mechanical engineering (RA8495)</td>
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<td>ix. Metallurgical engineering (PD1536)</td>
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<td>x. Mining engineering (RA4274)</td>
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<td>xi. Naval architecture and marine engineering (RA4565)</td>
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<td>xii. Sanitary engineering (RA1364)</td>
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<td></td>
<td>b. Accountancy (RA9298)</td>
<td></td>
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<td></td>
<td>c. Architecture (RA9266)</td>
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<td></td>
<td>d. xxx</td>
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<td>e. Law (Art. VIII, Sec. 5 of the Constitution; Rule 138, Sec. 2 of the ROC)</td>
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<tr>
<td>Deleted: Items no. 27, 28, 29</td>
<td>Maximum of Forty-Nine Percent Foreign Equity (49%)</td>
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<tr>
<td></td>
<td>27. Lending companies (Sec. 6 of RA9474)</td>
<td>27. Lending companies (Sec. 6 of RA9474)</td>
</tr>
<tr>
<td></td>
<td>Up to Sixty Percent (60%) Foreign Equity</td>
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<tr>
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<td>28. Financing companies regulated by SEC (Sec. 6 of RA5980 as amended by RA8556)</td>
<td>28. Financing companies regulated by SEC (Sec. 6 of RA5980 as amended by RA8556)</td>
</tr>
<tr>
<td></td>
<td>29. Investment houses regulated by SEC (Sec. 5 of PD129 as amended by RA8366)</td>
<td>29. Investment houses regulated by SEC (Sec. 5 of PD129 as amended by RA8366)</td>
</tr>
</tbody>
</table>

- The FINL lists down industries or businesses where domestic market access by foreigners is limited or altogether denied. The FINL consists of two parts, namely:
  - List A – consists of areas of activities reserved for Philippine nationals where foreign equity ownership is limited by constitutional mandate and other specific laws
  - List B – consists of areas of activities where foreign equity ownership is limited for reasons of security and defense, risk to public health and morals, and for the protection of small and medium scale enterprises
- Approvals and licenses required:
  - SEC – Incorporation of corporate entities
  - Board of Investments (“BOI”) – Availment of investment incentives
  - Philippine Economic Zone Authority (“PEZA”) – Registration of export-oriented business operations of investors located inside selected areas proclaimed by the President of the Philippines as PEZA Special Economic Zones
  - Local Government Units – securing licenses to conduct business within the territorial jurisdiction of the local government unit concerned
  - Bureau of Internal Revenue – Taxpayer registration
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- Domestic market enterprise vs. export oriented enterprise:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Domestic Market Enterprise</th>
<th>Export Market Enterprise</th>
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<tr>
<td></td>
<td>An enterprise which:</td>
<td>An enterprise wherein:</td>
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<tr>
<td></td>
<td>(1) produces goods for sale;</td>
<td>(1) a manufacturer, processor or service exports at least sixty percent (60%) thereof</td>
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<tr>
<td></td>
<td>(2) renders services to the domestic market entirely; or</td>
<td>(2) a trader purchases products domestically and exports sixty percent (60%) or more of such purchases.</td>
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<tr>
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<td>(3) if engaged in export, its output fails to export at least sixty percent (60%) thereof</td>
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</tbody>
</table>

- Limit on Foreign Equity

<table>
<thead>
<tr>
<th>Minimum Capitalization</th>
<th>At least US$200,000.00 if the activity engaged in:</th>
<th>At least PhP 5,000.00 if:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>(1) is not included in the FINL</td>
<td>(1) the foreign company will export at least sixty percent (60%) of its output; or</td>
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<tr>
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<td>(2) is more than forty percent (40%) foreign-owned; and</td>
<td>(2) a trader that purchases products domestically will export at least sixty percent (60%) of its purchases</td>
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<td>(3) will cater to the domestic market</td>
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<td></td>
<td>At least US$100,000.00 if:</td>
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<td>(1) the activity involves advanced technology; or</td>
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<td></td>
<td>(2) the company employs at least fifty (50) direct employees</td>
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</table>

**EXCHANGE CONTROL**

- The FIA defines the term “foreign investment” as “an equity investment made by a non-Philippine national in the form of foreign exchange and/or assets actually transferred to the Philippines.”

- Registration of foreign investments with the Bangko Sentral ng Pilipinas ("BSP") is required when the foreign exchange needed for the repatriation of capital and remittance of dividends/profits accruing on foreign investments will be sourced from authorized agent banks ("AABs") or their affiliate/subsidiary foreign exchange corporations. If not registered, the foreign exchange needed for repatriation and remittance may be sourced from foreign exchange dealers, money changers and the like.

- For BSP registration, foreign investments may be in the form of:
  - Foreign direct investments in Philippine firms or enterprises
  - Investments in peso-denominated government securities
  - Investments in securities listed in the Philippine Stock Exchange ("PSE")
  - Investments in peso-denominated money market instruments
  - Investments in peso time deposits with AABs with a minimum maturity of 90 days

- Outward investments require prior BSP approval, if the foreign exchange needed to fund such outward investments exceeds US$60,000,000.00 per investor, per year, such foreign exchange to be sourced from AABs or their affiliate/subsidiary foreign exchange corporations.

**TAXATION**

**In General**

- The 1997 Philippine National Internal Revenue Code is the primary source of Philippine tax law.

- Companies doing business in the Philippines are generally within the reach of the taxing authority of the Philippine Bureau of Internal Revenue ("BIR").

**Corporate Income Tax**

- Domestic corporations are taxed at 30% of taxable income from all sources within and without the Philippines.

- Resident foreign corporations are taxed at 30% of taxable income from all sources within the Philippines. Non-resident foreign corporations are taxed at 30% of gross income from all sources within the Philippines.

- A Minimum Corporate Income Tax of 2% of gross income is imposed on domestic and resident foreign corporations beginning on the fourth taxable year of its operations whenever the MCIT is greater than the tax computed using the regular 30% rate.

- Foreign corporations with a branch office/s in the Philippines shall be subject to a branch profit remittance tax of 15% of the total profits applied or earmarked by the branch for remittance to the head office.

- RHQs are not subject to income tax. ROHQs of multinational companies are taxed at 10% of their taxable income.

- Withholding tax on certain incomes received by a resident foreign corporation.
Individual Income Tax

- Resident citizens are subject to tax on their income derived from worldwide sources according to a graduated schedule with tax rates ranging from 5% to 32%.
- Non-resident citizens and resident aliens are subject to the same graduated tax rates of 5% to 32% but only on income derived from Philippine sources.
- Non-resident aliens engaged in trade and business in the Philippines are subject to the same graduated tax rates of 5% to 32% but only on income derived from Philippine sources.
- If not engaged in trade and business, i.e. if the stay of the non-resident alien is not more than 180 days during any calendar year, subject to an income tax rate of 25% of gross income from Philippine sources.
- Dividends received from domestic corporations, joint stock companies, insurance and mutual fund companies, and ROHQs of multinational companies, or the share in the net income after taxes of a partnership or joint venture – 10%; if received a non-resident alien – 20%
- Alien employed by (a) RHQs and ROHQs of multinational corporations, (b) offshore banking units, and (c) petroleum service contractor and subcontractor: 15% of gross income received from such employers (salaries, wages, annuities, compensation, remuneration and other emoluments)
- Fringe benefit tax of 32% of grossed-up monetary value of the benefit/s given by the employer to its employee and payable by said employer, except when the benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the benefit is for the convenience or advantage of the employer.
- Republic Act No. 10653 increased the 13th month pay and other benefits ceiling from PhP 30,000.00 to PhP 82,000.00, which is excluded from the computation of gross income for purposes of income taxation.

Indirect Taxes

- Value Added Tax ("VAT")
  - Sales, barter exchanges and sales: VAT at the rate of 12% of the gross selling price or gross value in money is imposed on the seller of the goods or services.
  - Importations: VAT at the rate of 12% of the total value of the goods (dutiable value) as determined by the Bureau of Customs is imposed on and payable by the importer in addition to customs duties, excise taxes and other charges.
  - VAT-registered entities are allowed a tax credit of the taxes paid on their purchases of goods or services (input taxes) as against the taxes paid on its sales of goods or services (output taxes).
  - A person is not subject to VAT when his or her gross annual sales and/or receipts do not exceed the amount of PhP 1,919,500.00.

- Donor's or Gift Tax
  - Donations made to a stranger: 30% of the net gift; payable by the donor.
  - Donation made to a donee who is not a stranger: Graduated schedule at rates ranging from 2% to 15%, depending on the total net gifts made during the calendar year; payable by the donor. A “stranger” is a person who is not a: (a) brother, sister, spouse, ancestor, and lineal descendant, or (b) blood relative in the collateral line within the fourth degree of relation.
  - Donations made to government and corporations with eleemosynary purposes: Exempt
  - A tax credit is allowed for donor’s taxes paid to a foreign country by a citizen or resident at the time of the donation.
Double Taxation Treaties
- The Philippines is party to tax treaties with thirty-six (36) different countries in an effort to avoid international double taxation as well as to promote international trade and investment.
- Tax treaties essentially cover income taxes imposed by the laws of the Contracting States.
- Business profits of a resident of a Contracting State shall not be taxable in the Philippines unless the enterprise of such resident is being carried on in the Philippines through a permanent establishment.
- To avail of a tax treaty relief, a ruling must first be secured from the Internal Tax Affairs Division (“ITAD”) of the BIR. This must be preceded by the filing of an application and request for a ruling together with the submission of the necessary documents required by the ITAD.

EMPLOYMENT LAW
- The Philippines has ratified 8 out of 8 of the Fundamental Conventions of the International Labor Organization which include the Forced Labour Convention, the Freedom of Association and Protection of the Right to Organise Convention, the Right to Organise and Collective Bargaining Convention, the Equal Remuneration Convention, the Abolition of Forced Labour Convention, the Discrimination (Employment and Occupation Convention), the Minimum Age Convention, and the Worst Forms of Child Labour Convention.

General Legal Framework
- The law on labor standards and labor relations in the Philippines is governed by Presidential Decree No. 442 (Labor Code of the Philippines or “Labor Code”). It is also supplemented by other various labor laws such as the laws on thirteenth month pay and sexual harassment.
- The Labor Code applies to all workers, whether agricultural or non-agricultural. Government employees, those who are employed by foreign governments and international organizations are however, excluded.
- Section 3, Article XIII of the 1987 Philippine Constitution expressly provides for equality of employment opportunities for all Filipinos. Article 133 of the Labor Code states that it is unlawful for any employer to discriminate against women solely on account of being women.
- Article 279 of the Labor Code guarantees the right of employees to security of tenure. There are no “at will employees” in the Philippines. An employee may only be removed for a “just cause” under Article 282 of the Labor Code, or for an “authorized cause” under Article 283 of the same. In addition, due process must be observed which entails two written notices as well as an opportunity to defend oneself for just causes, while dismissal for an authorized cause requires a written notice at least thirty (30) days before the expected date of dismissal to both the Department of Labor and Employment (DOLE) and the concerned employee.

Labor Standards
- The minimum daily wage rate in the private sector for Metro Manila as of 2 June 2016 is PhP491.00 for non-agricultural workers, and PhP454.00 for agricultural workers (Wage Order No. NCR-20).
- 48 hours a week and 8 hours a day is the maximum period of the regular work hours of an employee. Any work to berendered in excess of these hours requires extra payment of the employee’s regular wage along with a premium.
- Overtime pay, for work performed extending beyond the regular 8 hours of work, is equivalent to the regular hourly wage of the employee with a premium of at least 25% if it is a regular work day. If the extra work is to be performed on a holiday or a rest day, the premium on top of the regular hourly wage is at least 30%.
- An employee is given a rest period of at least one day for every six. 4 PHILIPPINES Doing Business in Asia Pacific consecutive working days. Employees are also provided a meal period of at least one hour which can be shortened, but should in no case be less than 20 minutes.
- There is also a Night Shift Differential which requires workers to be paid at least a 10% premium for work done between 10:00 pm and 6:00 am.
- An employee is to be paid a day’s pay even if he does not work on a regular holiday and double the day’s pay (i.e., 200%), if the employee comes to work on a holiday. There are 12 legal holidays which are provided by law.
- Employees who have rendered at least one year of service are entitled to 5 days of leave with pay as service incentive leave (“SIL”). The SIL is convertible to cash if the employee does not utilize the allowed leaves.
- Employers must also give 13th Month Pay equivalent to 1/12 of the total basic salary of the employee for the year.
- A vital principle in Philippine labor law is “non-diminution of benefits.” Benefits which have been freely and intentionally given by the company cannot be reduced unilaterally by the employer as the grant of the benefit is already deemed part of the employment contract.
- The enactment of Republic Act No. 10151 (An Act Allowing the Employment of Night Workers) has lifted the prohibition on employment of women to work during nighttime or between midnight and six o’clock in the morning.

Labor Relations
- Philippine labor law advocates the right of workers to free and voluntary self-organization, collective bargaining and negotiation, stable and just industrial peace, and favors the use of alternative modes of settling labor disputes such as arbitration and mediation.
- The law recognizes the importance of both labor and capital in the development of the country and espouses a democratic method of regulating relations between employers and employees.
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• The Labor Code provides for the right of employees to self-organization for the purpose of collective bargaining and to engage in lawful concerted activities for their mutual benefit and protection.

• Only legitimate labor organizations are granted the right to strike. Employees may strike only on specified grounds and to be valid, must strictly comply with procedural requirements under the law.

INTELLECTUAL PROPERTY

• Republic Act 8293 (Intellectual Property Code of the Philippines) strengthens the intellectual and industrial property system in the Philippines to facilitate creative activity, transfer of technology, and to attract foreign investments.

• The Philippines is likewise a signatory to multiple international conventions on the protection of intellectual property rights which include, among others, the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure, the Berne Convention for the Protection of Literary and Artistic Works, the International Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organizations, and Agreement on Trade-Related Aspects of Intellectual Property Rights.

Patent

• An invention of a product, a process or an improvement of a product or process which is novel, has inventiveness and has industrial applicability may be patented. The term of patent is 20 years counted from the filing date of the application.

• The patent application should contain sufficient disclosure regarding the invention itself and may include drawings necessary for the understanding of the invention as well as a clear definition of the matter which is sought to be protected. The filing date of an application is of great importance since it is controlling in cases of dispute with a fellow applicant regarding the same invention. The application is filed with the Bureau of Patents of the Philippine Intellectual Property Office (“IPO”).

• A patent grants the holder thereof, the exclusive rights to the manufacture, use, sale or importation of a product or the process subject of the patent. It also grants the holder the exclusive right to assign or transfer by succession such patent and to enter and conclude licensing contracts.

• Each of the joint owners may individually make, use, sell or import the invention. However, neither shall have the right to grant licenses or to assign their right without the consent of the other.

Trademarks

• Any mark or collective mark, which is capable of distinguishing the goods or services of a business may be registered as a trademark. Under the IPC, prior use is no longer required. However, there must be actual use AFTER registration. The registrant shall file a Declaration of Actual Use of the mark with evidence to that effect within three (3) years from the filing date of the application, otherwise it may be cancelled. Registration of the trademark is the sole basis of ownership.

• Registration of a trademark is in force for a period of 10 years. To be deemed filed, an application must contain, among others, a request for the registration of the mark, the identity of the applicant, a reproduction of the mark and a list of the goods and services for which the registration is sought. Additionally, the required fee must be paid.

• A trademark which has been registered grants the holder the exclusive right to prevent third persons from using identical marks, signs or containers for similar goods or services where such use would likely result in confusion. The rights of a holder of a registered well-known mark extend even to identical marks, signs or containers used in unrelated goods or services.

Copyright

• A copyright covers artistic creations such as books, paintings, sculptures, films, music and technology-based works. Artistic creations are protected by the law by the mere fact of their creation and from that moment, the copyright subsists.

• The copyright subsists during the lifetime of the creator thereof and for 50 years after his or her death.

• A copyright may be assigned or licensed in whole or in part. Any exclusivity in the economic rights in a work may be exclusively licensed.

• A copyright confers both economic and moral rights which includes the exclusive right to conduct, authorize or prevent any reproduction of the artistic creation or a substantial part thereof as well as the right to have the authorship of such creative work to be properly attributed to him or her.

• While the general rule is that a copyright provides protection for the holder, the law provides for limitations on economic rights of authors comprising of acts which do not constitute copyright infringement even if done without the consent of the copyright holder. The fair use of copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes are not an infringement of copyright.

• In determining whether the use made of a work in any particular case is fair use, the factors to be considered include: a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit education purposes, b) the nature of the copyrighted work, c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and d) the effect of the use upon the potential market for or value of the copyrighted work.

Infringement

• Any infringement of such patent, trademark or copyright gives the rights-holder thereof the remedy to go to court, either through a civil or a criminal action, to seek an injunction to prohibit the acts complained of, to ask for damages against the infringer and a disposal or destruction of the infringing goods.

• If the court should find that the patent is invalid then the Director of Legal Affairs of the IPO shall record such fact in the Register of the IPO and publish a notice of the same.
PHILIPPINES

DISPUTE RESOLUTION

• The court system in the Philippines is composed of the Supreme Court, the Court of Appeals, the Regional Trial Courts, the Municipal Trial Courts, and the Metropolitan Trial Courts. There are also specialized courts that handle specific types of cases, e.g., the Court of Tax Appeals and the Sandiganbayan (Anti-Graft Court).

• Judicial procedure in the Philippines is governed by the Philippine Rules of Court ("Rules of Court") except where special laws apply in general, e.g., election, land registration, insolvency, naturalization and cadastral proceedings, and the Rules of Court only apply in a suppletory manner.

• The Supreme Court of the Philippines, through A.M. No. 08-8-7-SC, has designated the first level courts (Municipal and Metropolitan Trial Courts) to hear and decide small claims cases. This provides for an inexpensive, expeditious and informal manner of settling disputes over small amounts. Effective 1 February 2016, the threshold amount to prosecute a claim under the small claims system must not exceed PhP200,000.00, exclusive of interest and cost.

• The Supreme Court of the Philippines enacted A.M. No. 14-03-02-SC, effective 23 February 2015, which deals with the establishment of a new system for a speedy court trial in selected courts throughout the country. The pilot system which will implement the proposed amendments to Rule 22 and Rule 24 of the Rules of Court will effect the following changes:
  o Parties are required to submit Terms of Reference of the case which shall include, among others, a summary of the admitted facts, a statement that the documents attached to judicial affidavits or object evidence referred to are faithful copies, reproductions, or pictures of their originals if such be the case, a statement of the factual issue or issues that the conflicting evidence of the parties present, a list of the witnesses from either side who, based on their judicial affidavits and exhibits, are competent to testify on each of the factual issues or related factual issues in the case; and a statement of the legal issues of the case.
  o Trial proper may either be an alternate trial wherein parties take turns in presenting their witnesses respecting the factual issues; the party who bears the burden of proving the affirmative of the issue shall be the first to present a witness while the opposing party shall afterwards present his/her witness for that issue or a face-to-face trial wherein witnesses from the contending sides appear together before the court and sit face-to-face around a table in a non-adversarial environment and where the examination is to be conducted by the court as well as the parties' counsel.

• The Philippine judicial system advocates the resolution of disputes through alternative means such as arbitration. Republic Act 9285 (Alternative Dispute Resolution Act of 2004 or "ADR Law") promotes party autonomy in the resolution of disputes and the adoption of an alternative dispute resolution system, which includes mediation, arbitration, conciliation, or any of their combination in appropriate cases.

• Philippine law recognizes the right of parties to include arbitration clauses in their contracts. Generally, all commercial disputes may be arbitrated. As an exception, some disputes such as those arising from labor disputes, civil status of individuals, marriage, legal separation, legitime, and criminal liability are not subject to arbitration. Courts also recognize a contract clause mandating the finality of any arbitral award. However, it does not mean that the decision is beyond judicial review; only that the decision cannot be modified or changed, except on limited grounds such as fraud, collusion and clear mistake of law.

• Domestic arbitration is governed by Republic Act No. 876 (Arbitration Law) while international arbitration is governed by the UNCITRAL Model Law through the ADR Law. The Philippine Dispute Resolution Center, Inc. and the Construction Industry Arbitration Commission (CIAC) are examples of local arbitration venues.

• Enforcement of a domestic arbitral award is done by filing a petition for confirmation of the arbitral award with the Regional Trial Court. Such final award can only be reversed if any of the grounds to vacate an award is present. Under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which the Philippines has assented, an international arbitral award can also be recognized and enforced by filing a petition to confirm such award with the Regional Trial Court. Once confirmed, such award can only be set aside under specific grounds provided by law.

IMMIGRATION PROCEDURES

• Foreign nationals who intend to engage in gainful employment in the Philippines must secure an Alien Employment Permit ("AEP") from the Philippine Department of Labor and Employment. The AEP shall be valid for the position and the company for which it was issued for a period of one (1) year or co-terminous with the duration of employment, but in no case to exceed three (3) years (Department Order No. 146-15).

• A foreign national may apply for either a pre-arranged employment visa, treaty trader visa or a special non-immigrant visa. A pre-arranged employment visa applies to foreign nationals who will be engaged in either an executive, technical, managerial or highly confidential role, a treaty trader visa applies to a foreign investor who is a national of a country which signed a reciprocal agreement with the Philippines regarding the entry of investors while a special non-immigrant visa is granted only by the Secretary of the Philippine Department of Justice on grounds of public policy or public interest.

• A foreign national looking to invest in the Philippines may also apply for a Special Investor's Resident Visa which enables the holder thereof to stay in the Philippines indefinitely with multiple entry privileges so long as their investments subsist. Investors are required to remit at least US$75,000.00 into the Philippines. He/she may also apply for a Special Visa for Employment Generation, if he/she is a qualified non-immigrant foreign national who shall actually employ at least ten (10) Filipinos in a lawful and sustainable enterprise, trade or industry.
A Special Resident Retiree’s Visa ("SRRV") is likewise available to foreign nationals enrolled under the Retirement Program of the Philippine Retirement Authority. The visa entitles the holder to multiple-entry privileges with the right to stay permanently/indefinitely in the Philippines. Level of investment required ranges from US$10,000.00 up to US$50,000.00, depending upon the SRRV option chosen by the foreign national.
REPUBLIC OF KOREA

- Strategically located in Eastern Asia, neighbouring Japan and China, with an area of 100,210 km².
- Adopted a presidential system with powers shared between the executive, legislative and judiciary branches.
- Religious composition of the country consists of Buddhism 22.8%, Protestantism 18.3%, Catholic 10.9%, other 1.5% and none 46.5%.
- Korean and Hangul, its written form, is the national language. English is also widely written and spoken.
- Currency: South Korean Won (KRW).
- Korean economy is export-driven with production focuses in major industries such as IT, electronics, semiconductor, automotive, shipbuilding, steel, and petrochemical industries.

BUSINESS PRESENCE

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

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Equity Participation
- Foreign investment is facilitated by foreign direct investment (FDI) pursuant to the Foreign Investment Promotion Act.
- FDI includes acquisition of shares or equity of a domestic corporation or business, and provision of long-term loans (five years or more). For FDI through equity acquisition, the foreign investment amount must be at least 100 million Korean Won and the foreigner equity ratio must be 10% or more of the voting stocks of the target company or its total equity investment.

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

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

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

EXCHANGE CONTROL

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

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

Personal Income Tax
• Resident individuals in Korea are taxed on their worldwide income. Non-resident individuals are taxed only on their Korea-derived income. Individual income is subject to graduated tax rates from 6% to 35%.
• A person is “resident” in Korea if he or she holds his or her domicile in Korea or has held his or her temporary domicile in Korea for one year or more.

Withholding Tax
• A foreign corporation that has no domestic place of business in Korea is subject to tax on its Korea-derived income, including dividends, interest and royalties, on a withholding basis in accordance with the relevant tax law and tax treaties.

Real Property and Capital Gains Tax
• Capital gains made by a foreign company from its transfer of real property are subject to corporate taxation, unless a relevant tax treaty provides otherwise.
• In cases where a foreign company has transferred any land used for non-business purposes, it shall pay the tax amount calculated as “corporation tax on the transfer of land, etc.” The applicable corporate tax rate on the transfer income of land, etc is 10%, (40% for any income accruing from the transfer of unregistered land, etc.).
• Capital gains made by transfer of stocks or equity in a Korean company may be subject to withholding taxes unless a relevant tax treaty provides otherwise.
• Foreign individuals may be subject to taxation for capital gains made from the transfer of real property and stocks or securities of a domestic corporation. However in the case of capital gains from the transfer of real property, foreigners may benefit from a special long-term holding deduction of a maximum of 30% based on the period of ownership of the real property.

Other taxes
• Stamp tax: varies between KR₩50 and KR₩350,000 depending on the type of taxable document.
• Customs duty: rate varies depending on the classification of product.
• Individual consumption tax: rate varies between 2% and 20% depending on the type of product.

• Valued added tax: 10%. However a zero-tax rate and tax exemptions apply to certain goods and services, such as goods to be exported, services provided abroad; and goods and services for national welfare, related to culture and personal services.

TAX AND INVESTMENT INCENTIVES

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

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

EMPLOYMENT LAW

• The maximum working hours are 40 hours per week or eight hours per day. This limit may be exceeded under certain specified circumstances.
• Workers within the protection of the Labor Standard Act are entitled to statutory benefits such as rest days, public holidays, annual leave, sick leave, hospitalisation leave, maternity leave and termination benefits.
• Minimum wage for 2015 is KR₩5,580 per hour.
• Subject to the Trade Union and Labor Relations Adjustment Act, workers are free to establish and/or join a trade union. Trade unions may engage employers or employer’s associations to bargain and enter into collective agreements.
• Employers and employees are statutorily required to withhold pension and social security contributions which includes National Pension (9%), Medical Insurance (6.07), Long-term Care Insurance (13.1% of withheld Medical Insurance amount), and Unemployment Insurance (between 1.3), and Industrial Accident Compensation Insurance (between 0.7 to 34).

INTELLECTUAL PROPERTY

• Intellectual property rights such as patents, copyrights, trademarks, trade secrets and other industrial property rights are recognised under Korean law. For the protection of such rights, appropriate application and registration procedures permit the holder of such right to enjoy exclusive rights and/or protection for specific periods of time. Registration applications for patents, utility models, industrial designs and trademarks are
filed with the Korea Intellectual Property Office. Copyrights are registered with the Korea Copyright Commission.

- Korea is a party to numerous international agreements and treaties, including the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, TRIPs Agreement, the Paris Convention, the Patent Cooperation Treaty (PCT), the Budapest Treaty, the Universal Copyright Convention (UCC) and the Berne Convention.

- Korea’s intellectual property law conforms to international standards and provides adequate protection to both local and foreign investors.

**DISPUTE RESOLUTION**

- The court of first instance for both criminal and civil claims is the District Court. Cases may go on appeal to the High Court and then to the Supreme Court. Employment disputes are heard by the District Court.

- Alternative dispute resolution (“ADR”) is available and includes conciliation, mediation and arbitration.

- The Korea Commercial Arbitration Board (“KCAB”) is the major body governing domestic and international commercial arbitration in Korea. The fee for a KCAB arbitrator varies depending on the amount of money in dispute.

- The Korea Copyright Commission provides various ADR services for the settlement of copyright-related disputes.

**IMMIGRATION PROCEDURES**

**Passport and Visa Requirements**

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

**Business Investment Visas and Work Visa**

- Depending on the length of stay and the nature of the business activities to be undertaken, a temporary business visa or other long-term business visa can be issued to those seeking entry for business purposes. Family members of a person eligible for any of the long-term business visas may be eligible for a family dependency visa. A temporary employment visa or other long-term work visa may also be issued to those seeking entry for employment purposes depending on the length of stay and the nature of the employment activity.

- Foreigners who have entered Korea on a long-term visa (not less than 91 days) visa must apply for alien registration within 90 days of his/her arrival in Korea at a local immigration office.
SINGAPORE

- Singapore is located on the southern tip of the Malaysian peninsula, 137 kilometres north of the equator.
- Singapore has an English-based legal system and its corporate law operates on a common law basis.
- English is the language of administration and, as such, almost all business is conducted in English.
- Currency: Singapore Dollar (SGD).
- Multi-racial.

Singapore is an international finance and investment hub, a regional base for MNCs and the world’s fourth-largest foreign exchange centre. With low taxes, double taxation treaties, political and economic stability and international repute for compliance, it is an ideal base for regional headquarters and holding companies, and a gateway for foreign investments into the emerging Asian markets for businesses as well as high net worth individuals.

Investment growth areas include global logistics hub, technology and urban solutions hub, manufacturing, investments, printing and imaging industry, research and development, and intellectual property management hub.

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

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in equity participation
- Generally, there are no restrictions on foreign ownership of a corporate entity except for certain industries for policy considerations.
- Broadcasting company: foreign ownership of equity is limited to 49%.
- Newspaper company: there are two classes of shares in a newspaper company – management and ordinary shares. No management shares shall be issued or transferred except to citizens of Singapore or corporations that have been granted written approval by the Minister for Communications and Information.

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

EXCHANGE CONTROL
- The Exchange Control Act governs dealings in gold and foreign currency, and payments in and out of Singapore, among other things.
- Singapore generally does not have a policy for capital controls. Both residents and non-residents are free to remit Singapore dollar funds into and out of the country, and to purchase or sell Singapore dollars in the foreign exchange market.
- A person who enters or leaves Singapore is required to give a report to the immigration officer at the Singapore Customs if he carries with him an amount exceeding S$30,000 (or its
equivalent in a foreign currency). There is no restriction on the amount that can be moved into or out of Singapore as long as a report is given

• Excessive speculation, whether or not amounting to ‘manipulation’, is abhorred on the exchange level. Futures and securities exchanges, therefore, have rules on position limits, margin levels, large position reporting and financial, administrative, and accounting requirements for market participants.

• Banks may lend Singapore Dollars to non-resident financial institutions for any purpose whether in Singapore or elsewhere. The bank must comply with certain conditions prescribed by the Monetary Authority of Singapore in the event that the aggregate Singapore Dollar credit facilities exceed $5 million per entity.

TAXATION

Corporate Tax

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

• Full tax exemption scheme: A qualifying company will enjoy a full tax exemption on the first $100,000 of its chargeable income and a 50% tax exemption on the next $200,000 of its chargeable income. The exemption applies for the initial three consecutive years of assessment, meaning the qualifying company will enjoy an effective tax rate of only about 5.7% on the first $300,000 of chargeable income. A company will qualify for the full tax exemption scheme if it satisfies the following criteria:
  o The company must be incorporated in Singapore.
  o The company must be tax resident in Singapore for the year of assessment in question (a company is tax resident in Singapore if control and management of the company’s business is exercised in Singapore).
  o The company must not have more than 20 shareholders.
  o The company must have at least one shareholder who is an individual beneficially and directly holding at least 10% of the issued ordinary shares of the company, or all of the company’s shareholders must be individuals beneficially and directly holding the shares in their own names.
  o The company, if incorporated after 25 February 2013, must not be an investment holding company or a company developing properties for sale, for investment or for both sale and investment.

• Partial tax exemption scheme: Companies that do not qualify for the aforementioned full tax exemption scheme may benefit from the partial tax exemption scheme pursuant to which a company will enjoy a 75% tax exemption on the first $10,000 of its chargeable income and a 50% tax exemption on the next $290,000 of its chargeable income.

○ The partial tax exemption scheme applies to Singapore-incorporated companies as well as Singapore branches of foreign companies, regardless of when they were incorporated or registered.

○ The scheme applies regardless of the country of tax residence.

○ There are no restrictions on shareholding for the scheme to apply.

• Corporate Income Tax (CIT) Rebate: Companies will receive a 30% CIT Rebate that is subject to a cap of $30,000 per Year of Assessment (YA), for 3 years from YA 2013 to YA 2015. The cap will be reduced to $20,000 for each YA for YA 2016 to YA 2017.

○ The CIT rebate applies to all companies, including registered business trusts, companies that are not tax resident in Singapore and companies that receive income taxed at a concessional rate.

○ The CIT rebate will not apply to the amount of income, derived by a non-resident company that is subject to final withholding tax.

Personal Income Tax

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

• Tax rates for non-resident individuals

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

  o Directors’ fees, consultation fees and all other income: Directors’ fees, consultation fees and all other income received by a director is taxed at the rate of 20%.

• Tax rates for resident individuals

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Rate (%)</th>
<th>Gross tax payable ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $20,000</td>
<td>0</td>
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</tr>
<tr>
<td>Next $10,000</td>
<td>2</td>
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</tr>
<tr>
<td>First $30,000</td>
<td>-</td>
<td>200</td>
</tr>
<tr>
<td>Next $10,000</td>
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<td>350</td>
</tr>
<tr>
<td>First $40,000</td>
<td>-</td>
<td>550</td>
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<td>Next $40,000</td>
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<tr>
<td>First $80,000</td>
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<td>Next $40,000</td>
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<tr>
<td>First $200,000</td>
<td>-</td>
<td>20,750</td>
</tr>
<tr>
<td>Next $120,000</td>
<td>18</td>
<td>21,600</td>
</tr>
</tbody>
</table>
Doing Business in Asia Pacific

Stamp duty payable in respect of share transfers in Singapore is 0.2% based on the purchase price or market value of shares transferred, whichever is higher.

- Goods and Services Tax (“GST”). GST is a self-assessed tax. Businesses are required to continually assess the need to be registered for GST. In most cases, registering for GST is compulsory when: the turnover of your business is more than $1 million for the past 12 months; or you are currently making sales and you can reasonably expect the turnover of your business to be more than $1 million for the next 12 months. A business can also choose to be voluntarily registered for GST.

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

**TAX AND INVESTMENT INCENTIVES**

**Productivity and Innovation Credit**
- The Productivity and Innovation Credit (the ‘P&I Credit’) provides significant tax deductions for investments in a broad range of activities along the innovation value chain. All businesses will be eligible for the P&I Credit of 400% tax deductions/allowances and/or 60% cash pay out from YA 2011 to YA 2018, based on the amount they invest in any of the following activities: research and development, registration of intellectual property, acquisition of intellectual property rights, training of employees, purchase/lease of prescribed automation equipment, and investments in approved design projects.
- PIC can benefit the business in 3 ways:
  - PIC Scheme of 400% tax deductions on up to S$400,000 of expenditure per year or PIC + Scheme of 400% tax deductions on up to S$600,000 of expenditure per year from YA 2011 to YA 2018.
  - Cash Payout on up to S$100,000 of expenditure per year.
- In addition, businesses that spend a minimum of S$5,000 in qualifying P&I Credit activities in a YA will receive a dollar-for-dollar matching cash bonus up to S$15,000 from YA 2013 to YA 2015.

**Incentives and programmes**
All incentive schemes come with a list of qualifying conditions which must be met before the benefit of the tax concession/exemption is granted.
- Pioneer Incentive: Tax relief may be granted to a pioneer industry. Income derived from its pioneer activities will be tax exempt for a period of up to 15 years provided specified conditions are satisfied.

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

**These rates apply where income is not derived by the non-resident person through its operations in Singapore: in such a case, the rates are to be applied on the gross payment and the resultant tax payable is a final tax. However if income is derived by the non-resident person through its operations in Singapore, the tax rate to be applied on the gross payment will be 20% for non-resident individuals and the prevailing corporate tax rate for persons other than individuals.

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

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

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Rate (%)</th>
<th>Gross tax payable ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $320,000</td>
<td>20</td>
<td>42,350</td>
</tr>
<tr>
<td>Above $320,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Tax and Investment Incentives

**Productivity and Innovation Credit**
- The Productivity and Innovation Credit (the ‘P&I Credit’) provides significant tax deductions for investments in a broad range of activities along the innovation value chain. All businesses will be eligible for the P&I Credit of 400% tax deductions/allowances and/or 60% cash pay out from YA 2011 to YA 2018, based on the amount they invest in any of the following activities: research and development, registration of intellectual property, acquisition of intellectual property rights, training of employees, purchase/lease of prescribed automation equipment, and investments in approved design projects.
- PIC can benefit the business in 3 ways:
  - PIC Scheme of 400% tax deductions on up to S$400,000 of expenditure per year or PIC + Scheme of 400% tax deductions on up to S$600,000 of expenditure per year from YA 2011 to YA 2018.
  - Cash Payout on up to S$100,000 of expenditure per year.
- In addition, businesses that spend a minimum of S$5,000 in qualifying P&I Credit activities in a YA will receive a dollar-for-dollar matching cash bonus up to S$15,000 from YA 2013 to YA 2015.

**Incentives and programmes**
All incentive schemes come with a list of qualifying conditions which must be met before the benefit of the tax concession/exemption is granted.
- Pioneer Incentive: Tax relief may be granted to a pioneer industry. Income derived from its pioneer activities will be tax exempt for a period of up to 15 years provided specified conditions are satisfied.

### Tax and Investment Incentives

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- The Productivity and Innovation Credit (the ‘P&I Credit’) provides significant tax deductions for investments in a broad range of activities along the innovation value chain. All businesses will be eligible for the P&I Credit of 400% tax deductions/allowances and/or 60% cash pay out from year of assessment (‘YA’) 2011 to YA 2018, based on the amount they invest in any of the following activities: research and development, registration of intellectual property, acquisition of intellectual property rights, training of employees, purchase/lease of prescribed automation equipment, and investments in approved design projects.
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All incentive schemes come with a list of qualifying conditions which must be met before the benefit of the tax concession/exemption is granted.
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Doing Business in Asia Pacific

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

**EMPLOYMENT LAW**

**Statutory contributions**

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

- **CPF Contribution and Allocation Rates**

<table>
<thead>
<tr>
<th>Employee age (years)</th>
<th>Contrib. by employer (% of wage)</th>
<th>Contrib. by employee (% of wage)</th>
<th>Total contrib. (% of wage)</th>
<th>Ordinary account (% of wage)</th>
<th>Special account (% of wage)</th>
<th>Medisave account (% of wage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>35 and below</td>
<td>17</td>
<td>20</td>
<td>37</td>
<td>23</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>36-45</td>
<td>17</td>
<td>20</td>
<td>37</td>
<td>21</td>
<td>7</td>
<td>9</td>
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<td>46-50</td>
<td>17</td>
<td>20</td>
<td>37</td>
<td>19</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>51-55</td>
<td>16</td>
<td>19</td>
<td>32.5</td>
<td>14</td>
<td>10.5</td>
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<td>56-60</td>
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<td>7.5</td>
<td>5</td>
<td>12.5</td>
<td>1</td>
<td>1</td>
<td>10.5</td>
</tr>
</tbody>
</table>

- The above CPF contribution rates apply to private sector and non-pensionable employees who earn monthly wages of S$750 or more. From 2015, the CPF Annual Limit is increased to S$31,450.
  This affects Singapore Citizens, Singapore Permanent Residents (SPR) in the 3rd year and onwards of obtaining SPR status, and SPRs in the 1st and 2nd year of obtaining SPR status but who has jointly applied with employer to contribute at full employer and employee rates.

**DISPUTE RESOLUTION**

- Being a former British colony, the legal system in Singapore is based on English common law. Singapore’s law is founded on four pillars: constitution, legislation, subsidiary legislation and legal decisions made by judges.
Singapore’s common law is characterised by the practice of judicial precedent. In other words, the law is created by judgements handed down by the courts. In this regard, the judges are only required to apply the ratio decidendi (or the operative reason for the decision) of the higher court within the same hierarchy.

Major portions of Singapore law, particularly contract law, equity and trust law, property law and tort law, are largely judge-made, though certain aspects have now been modified to some extent by statutes. On the contrary, Singapore’s criminal law is largely statutory in nature and can be traced to the exhaustive penal code.

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

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

IMMIGRATION PROCEDURES

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

Work passes
- A person who wishes to stay and work in Singapore is required to obtain the appropriate pass from the Ministry of Manpower before commencing work.
  - Employment Pass (‘EP’): The EP is for foreigners foreigner professionals, managers and executives who earn a fixed monthly salary of at least S$3,300 and who have acceptable qualifications. There are various categories of EP depending on the monthly salary and qualifications of the foreigner.
  - S pass: This pass is for foreign mid-level skilled staff who earn a fixed monthly salary of at least S$2,200 and meet the assessment criteria.
  - Personalised Employment Pass (‘PEP’): The PEP is similar to the EP, except a PEP holder is not tied to any particular employer and can switch employment any time he/she wishes without having to apply for another pass. Additionally, a PEP holder can remain in Singapore for up to six months in between jobs to evaluate new employment opportunities. The PEP is valid for five years and will be granted on the strength of an EP holder’s individual merits and provided certain conditions are met.
  - Work Permit: A work permit is for semi-skilled Foreign workers in the construction, manufacturing, marine, process or services sector. There is also a work permit specifically for foreign domestic workers (FDWs) to work in Singapore.

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

- Taiwan is geographically located North of the Philippines and south east of China, proximity to the East China Sea, South China Sea, Philippine Sea and Taiwan Strait.
- Total area: 36,188 square kilometers.
- Climate: Oceanic and subtropical monsoon.
- Population: 23 million inhabitants.
- Population density: 637 people per square kilometer.
- Population by age: about 16.3% of the total population is less than 15 years of age, and 10.6% is greater than 65 years of age.
- Taiwan has two levels of government, the Central Government and the Local/Municipal Government. The Central Government is composed of five branches: Executive, Legislative, Judicial, Control and Examination Yuan.
- In contrast to countries such as the United States or England, the legal system in Taiwan is based on civil law, similar to Germany or Japan. The primary source of law comes from statutes rather than judicial decisions.
- One significant fact for foreign nationals doing business in Taiwan is: unless otherwise provided by law, legal documents do not have to be in Chinese. English legal documents are accepted in general and are as binding and effective as if they were written in Chinese.
- Mandarin Chinese (official language), Taiwanese, Hakka and other Chinese dialects.
- English and Japanese are the most commonly used foreign languages.
- Ethnic Groups: Taiwanese (including Hakka) 84%, mainland Chinese 14%, indigenous 2%.
- Religions: mixture of Buddhist and Taoist 93%, Christian 4.5%, other 2.5%.
- Investment Growth Areas: as the economy has shifted from labor-intensive industries to knowledge-based and capital-intensive industries, there are a variety of new investment opportunities available in Taiwan. Some of the world’s leading high-tech players are located in Taiwan. The prime industries for potential investment include: semi-conductors, opt-electronics, precision machinery and instrumentation, metals, computers and communication equipment, electrical products, aviation, and automotive, biomedical and pharmaceutical products.
- Currency: New Taiwan dollar (NT$)

HISTORICAL AND CURRENT BUSINESS ENVIRONMENT

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

BUSINESS PRESENCE REGULATIONS

Local Incorporation
• All companies in Taiwan must be incorporated and certified by the Ministry of Economic Affairs.
• There are four different types of corporate structure in Taiwan: unlimited company, unlimited company with limited liability shareholders, limited company and company limited by shares.

Branch of Foreign Corporations
• To establish a branch office in Taiwan, a foreign parent company must obtain recognition by the Ministry of Economic Affairs. Upon obtaining the recognition, the parent company must register with the local City Bureau of Economic Development in order to obtain a company license for the branch office. The branch office must also register with the local tax authorities.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Restrictions in Shareholdings
• A company where more than one shareholder has limited liability is a “limited company.” The shareholders are liable for debts and obligations incurred by the company only to the extent of their capital contribution. There are strict restrictions on the transfer of shares.
• A “company limited by shares” has at least two shareholders or at least one government or legal entity as a shareholder. It is similar to a US corporate structure. There are no minimum capital requirements. The total capital is divided into shares and each shareholder is liable for the debts and obligations of the company only to the extent of his or her holdings. Shares may be transferred freely one year after the company’s incorporation, but 10 to 15% of newly issued shares must be set aside for employee stock purchase plans.

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

CENTRAL BANK EXCHANGE CONTROL

Approvals Required
• There are currently no foreign exchange controls in Taiwan. However, any financial-type foreign exchange accounts must comply with the measures set out in “The Statute Governing Foreign Exchange”. The statute applies to any inflow or outflow of foreign currency funds that involves an exchange of New Taiwan dollars.

Reporting Requirements
• For any inflow or outflow of foreign currency involving an exchange of New Taiwan dollars, the following measures apply:
  o Business entities may conduct transactions of up to US$50 million a year for payments that are not related to trade.
  o Non-residents of Taiwan may exchange up to US$100,000. There is no time or frequency limitation to currency exchanges for non-residents.

TAXATION

Corporate Income Tax
• According to Taiwan’s Income Tax Law, taxable income is defined as gross revenue minus allowable deductions. For any business with a head office in Taiwan, gross income is income derived from within or outside Taiwan. Locally incorporated companies with overseas operations can deduct taxes paid in those foreign countries.
• Any business with a head office outside Taiwan, but with a local branch office in Taiwan is liable for tax on income derived from local sources. These entities are taxed at the same rate (17%) as domestic Taiwanese companies.
• Income tax of overseas businesses with no fixed office or agent in Taiwan is withheld at a rate of 20% at source.

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

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

Indirect Tax
• The business tax rate for business entities other than those previously outlined, namely VAT (Value Added Tax) business entities, shall be between 5% and 10% subject to the prescription of the Executive Yuan. The current applicable VAT rate is 5%.
• The VAT on transactions related to banking, insurance, securities brokerages etc, shall be 2%, and VAT on reinsurance transactions is 1%.

Double Taxation Treaties
• Taiwan’s policy toward tax treaties is to avoid double taxation, prevent fiscal evasion and improve bilateral economic and investment relations. The tax treaties that Taiwan has negotiated follow the OECD and UN models; these take into consideration matters relating to the political and fiscal status, economic and trade of the mutual parties involved.
• As of 18 February 2013, there are 25 comprehensive income tax treaties and 13 international transportation income tax
agreements, which have been signed by Taiwan and are currently active.

**TAX AND INVESTMENT INCENTIVES**

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

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

**Investment Tax/Reinvestment Allowances**
- For the purposes of improving and modernizing industrial production, an investment tax credit of 5% to 20% against profit-seeking enterprise income tax is available for investments made in equipment or technology used for automation, reclamation of resources, pollution control, etc. If the investment is for R & D or staff training, an investment tax credit of up to 35% may be applicable.
- For the purposes of balancing the distribution of industries in various geographical areas, an investment tax credit of 20% is available for corporations.

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

**EMPLOYMENT LAW**

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

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

**Minimum Wage Requirements**
- In accordance with the regulation of Article 21 of the Labor Standards Act, wages should be paid in accordance with the agreement between employers and employees, and the wage should not be lower than the basic minimum wage. As of 1 July 2015, the basic minimum wage is NT$20,008 per month, and NT$120 per hour.
- A worker’s normal working hours should not exceed eight hours per day and the cumulative total working hours for each two-week period should not exceed 84 hours.

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

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

**DISPUTE RESOLUTION**

**General Legal Framework**
- Law in Taiwan is mainly based on the civil law system. The legal structure is organized into the six codes: the Constitution, the Civil Code, the Code of Civil Procedures, the Criminal Code, the Code of Criminal Procedures and Administrative laws.
Court System

- The court system in Taiwan is divided into three levels: District Court, High Court and the Supreme Court. There are 20 District Courts in Taiwan, each divided into civil, criminal and summary divisions. Almost all civil and criminal cases in the first instance is heard in District Court.

Alternative Dispute Resolution

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

IMMIGRATION PROCEDURES

Social Visit Pass

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

Professional’s Visit Pass

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

Work Permits

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

Special Permanent Residency or Other Permits

- Resident visas can be issued to applicants who want to stay for more than six months and whose reason for staying in Taiwan includes one of the following: joining family, study or research, employment, investment, medical treatment, missionary work, or other legitimate activities. A holder of a Resident Visa must, within 15 days of entry into Taiwan, or within 15 days following the issuance of a Resident Visa to replace another type of visa, apply to the Bureau of Consular Affairs County/City Service Station at his or her place of residence for an Alien Resident Certificate (ARC) and Re-entry Permit. The ARC is valid between one to three years.
- Citizens of applicable countries and certain foreign nationals who meet specific criteria may enter Taiwan without a visa for a maximum 90-day stay (Visa Exempted Permit).
Thailand is situated in the heart of the Southeast Asian mainland, covering an area of 513,115km², from North 5° 30’ to 21°’ and from East 97° 30’ to 105° 30’. Thailand borders the Lao People’s Democratic Republic, Cambodia and the Gulf of Thailand to the east, Myanmar and the Indian Ocean to the west and Malaysia to the south. Thailand has maximum dimensions of about 2,500 kilometers north to south and 1,250 kilometers east to west, with a coastline of approximately 1,840 kilometers on the Gulf of Thailand and 865 kilometers along the Indian Ocean.

The climate is tropical – rainy, warm, cloudy, south-west monsoon from mid-May to September and dry, cool, north-east monsoon from November to mid-March. The terrain consists of a central plain, an eastern plateau and mountains elsewhere.

The country’s official name is Kingdom of Thailand and in short, Thailand. The capital is Bangkok.

The government is a constitutional monarchy. The King is head of state, while the leader of the government is the Prime Minister. Other chief executives also include cabinet members and ministers, together with high-ranking government officials in ministries, bureaus and agencies. As head of state, the King has the authority to exercise sovereign power through the National Assembly, the Council of Ministers, and the Courts. The Prime Minister functions in the name of the King, and is responsible for all royal commands regarding the affairs of the country.

Thai is the national and official language and English is moderately written and spoken in general and business dealings.

The population of Thailand, estimated at 65,720,000 million in the 4th quarter of 2015, includes ethnic Chinese, Malays, Cambodians, Vietnamese, Indians, and others. Immigration is controlled by a quota system.

Buddhism, the national religion, is the professed faith of 95% of the population. Islam (3.8%), Christianity (0.5%), Hinduism (0.1%), others (0.6%) are embraced by the rest of the population. There is absolute religious freedom. The King of Thailand, under the constitution and in practice, is patron of all major religions.

The literacy rate in Thailand is quite high and in recent years there has been an increased emphasis on education. The development of the Kingdom's human resources is its highest priority.

Currency: Thai Baht (THB).

Time zone: GMT+7 (12 hours ahead of East Coast USA during Standard Time)

Internet TLD: .th

Calling code +66
THAILAND

BUSINESS PRESENCE

• As in most countries, generally, there are four kinds of business organisations in Thailand: sole proprietors, partnerships (unregistered and registered), private limited companies and public limited companies.

• The most common form of business organisation among foreign investors in Thailand is the private limited company, which requires a minimum of three promoters and must file a memorandum of association, convene a statutory meeting, register the company, and obtain a tax identity card and value added tax license, in order to set-up and commence operation of a private limited company.

• Established business organisations in Thailand must also follow accounting procedures specified in the Civil and Commercial Code, the Public Company Act, the Revenue Code and the Accounts Act. Audited financial statements must also be prepared once a year and filed with the Department of Revenue and Commercial Registration.

• Additionally, there are other forms of business set-up for specific activities, such as Branch Office, Representative Office, and Regional Office, considerable under a specific law known as the “Foreign Business Act B.E. 2542 (1999)”.

• Joint Venture, Distributorship, Licensing and Agency are also widely used in foreign investment into Thailand.

FOREIGN INVESTMENT RESTRICTIONS AND CONDITIONS

Foreign Business Act B.E. 2542 (1999)

• For all foreign investors, a specific law so-called Foreign Business Act B.E. 2542 (1999) (“FBA”) must always be looked at. FBA prescribes certain business activities that (1) may not at all be done by a foreigner, or (2) may be engaged by a non-Thai, but only if Foreign Business License (“FBL”) is applied for and granted.

• Business considerable as a “foreigner” if it is: (1) a juristic person not registered in Thailand; or (2) half or more of capital of juristic person is owned by foreign individual and/or foreign entity; or (3) half or more of the value of the total capital being invested by foreign individual and/or by foreigner in names of Thai individuals and/or Thai entity.

• FBA is a restrictive and negative written law applicable on physical business undertakings and project-by-project basis grantable by discretion of the Cabinet or the Foreign Business Committee under the Ministry of Commerce, as the case may be. FBA divides businesses into three categories as follows:
  o Category I is absolutely prohibited to foreigners unless there is an exception contained in a special law or treaty. By way of example, they are business of and about newspaper, radio, television, rice farming, forestry, fishery, trade and auction of Thai antiques or objects of national historical values, and trading of land.
  o Category II refers to businesses involved in national safety or security, culture, traditional custom, handicraft, national resources and environment. Grant of FBL under this category is subject to permission by the Minister of Commerce with the approval of the Cabinet.
  o Category III is regarded as those in which Thai nationals are not ready to compete with foreigners at present. These businesses were permitted to apply for FBL provided that approval is first received from the Foreign Business Committee.

• Generally, the following factors must be satisfied under the FBA for the FBL to be issued:
  o Advantages and disadvantages to national safety and security;
  o Advantages and disadvantages to national economic and social development;
  o Advantages and disadvantages to public order or good morals;
  o Advantages and disadvantages to arts;
  o Advantages and disadvantages to culture and traditional customs of the nation;
  o Advantages and disadvantages to conservation of natural resources, energy and environmental preservation;
  o Advantages and disadvantages to consumer protection;
  o Size of business and expenditure estimation;
  o Employment of labour;
  o Technology transfer;
  o Research and development; and
  o Benefits to the nation from allowing non-Thai to engage in the activities.

• There are certain exemptions from being subject to the FBL under the FBA, where foreigners could instead apply for the Foreign Business Certificate. They are those qualified under:
  o Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America.
  o Japan-Thailand Economic Partnership Agreement (JPEPA).
  o Thailand-Australia Free Trade Agreement (TAFTA).
  o Asean Comprehensive Investment Agreement (ACIA).
  o Asean Framework Agreement on Services (AFAS).

Other Restrictions

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

EXCHANGE CONTROL

• The legal basis for exchange control in Thailand is derived from the Exchange Control Act B.E. 2485 (1942) and Ministerial Regulation No. 13 B.E. 2497 (1954) issued under the Exchange Control Act. These laws set out the principles of controls under which Notifications of the Ministry of Finance and Notices of the Competent Officer are issued.

• The Bank of Thailand has been entrusted by the Ministry of Finance with the responsibility of administering foreign exchange. The governor of the Bank of Thailand shall appoint the officials of the Bank of Thailand as the Competent Officers under the Exchange Control Act (B.E. 2485).

• All foreign exchange transactions are to be conducted through commercial banks and through authorised non-banks that are granted foreign exchange licenses by the Minister of Finance namely authorised money changers, authorised money transfer agents and authorised companies. Any transactions not conducted through the said licensees requires approval from the Competent Officer on a case by case basis.

• Foreign currencies can be transferred or brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to sell such foreign currencies to an authorised financial institution or to deposit them in a foreign currency account with an authorised financial institution within 360 days of receipt, except for foreigners temporarily staying in Thailand for not more than three months, foreign embassies and international organisations including their staff with diplomatic privileges and immunities.

• Foreign currency purchased with authorised banks is generally allowed upon submission of the underlying international trade and investment. Corporates in Thailand can engage in derivatives transactions with authorised banks to hedge against foreign exchange risk, provided that supporting documents indicating future foreign currency receipts or obligations are submitted.

• Any person, who brings into or takes out of Thailand an aggregate amount of foreign currency exceeding USD 20,000 or its equivalent, must declare to a customs officer.

• There is no restriction on the amount of Thai Baht that may be brought into the country.

• Non-residents may maintain foreign currency accounts with authorised banks in Thailand without limit. The accounts can be freely credited with funds originating from abroad.

• Non-residents may open Thai Baht accounts (1) Non-resident Thai Baht Account for Securities (NRBS) and (2) Non-resident Thai Baht Account (NRBA) with authorised banks in Thailand.

• Transfers in foreign currency for direct and portfolio investments in Thailand are freely permitted. Proceeds must be surrendered to an authorised financial institution or deposited in a foreign currency account with an authorised financial institution in Thailand within 360 days. Repatriation of investment funds and repayment of overseas loans can be remitted freely upon submission of supporting documents to an authorised financial institution. In case of repatriation of investment funds, evidence of sale or transfer of such investment shall be submitted. In case of loan repayment, evidence of inward remittance of such loan and loan agreement shall be submitted.

• Investing in or lending to affiliated business entities abroad is allowed in an aggregate amount not exceeding USD 100 million per year. Investing in or lending to parent companies abroad, which hold shares or have an ownership not less than 10% of resident entity, or affiliated business entities of such parent companies abroad is allowed in an aggregate amount not exceeding USD 100 million per year.

• Individuals are allowed to purchase shares of related companies under employee benefit plans of up to USD 1 million per person per year. Individual or corporate investors can invest in securities abroad, other than those under employee benefit plans, through private funds, or securities companies subject to the Securities and Exchange Commission's guidelines and approval from the Bank of Thailand.

• Purchase of immovable properties abroad is allowed up to USD 5 million per person per year.

• Any person purchasing, selling, depositing, or withdrawing foreign currencies with an authorised financial institution in an amount of USD 50,000 or above shall be required to report such foreign exchange transactions to an authorised financial institution in the form as prescribed by the Competent Officer.
## TAXATION

### CORPORATE INCOME TAX

<table>
<thead>
<tr>
<th>A. Tax on net corporate profits</th>
<th>RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Ordinary company</td>
<td>Accounting Year: 2016</td>
</tr>
<tr>
<td></td>
<td>20%</td>
</tr>
<tr>
<td>(2) Small company (paid up capital &lt;5m Thai Baht and income not exceeding 30m Thai Baht in an accounting year)</td>
<td>Accounting Year: 2016</td>
</tr>
<tr>
<td>- Net profit not over 300,000 Thai Baht</td>
<td>Exempt</td>
</tr>
<tr>
<td>- Net profit over 300,000 Thai Baht</td>
<td>10%</td>
</tr>
<tr>
<td>(3) Company listed on Stock Exchange of Thailand (SET) and Market for Alternative Investment (MAI)</td>
<td>Accounting Year: 2016</td>
</tr>
<tr>
<td>(4) Regional Operating Headquarters (ROH)</td>
<td>10%</td>
</tr>
<tr>
<td>(5) Bank deriving profits from International Banking Facilities (IBF)</td>
<td>10%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Tax on gross receipts</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Association and foundation</td>
<td></td>
</tr>
<tr>
<td>- For income under Section 40 (8)</td>
<td>2%</td>
</tr>
<tr>
<td>- Otherwise</td>
<td>10%</td>
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<tr>
<td>(2) Foreign company engaging in international transportation</td>
<td>3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Remittance tax</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Foreign company disposing profits out of Thailand</td>
<td>10%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>D. Foreign company not carrying on business in Thailand but receiving income from Thailand</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Dividends</td>
<td>10%</td>
</tr>
<tr>
<td>(2) Interests</td>
<td>15%</td>
</tr>
<tr>
<td>(3) Professional fees</td>
<td>15%</td>
</tr>
<tr>
<td>(4) Rents from hiring property</td>
<td>15%</td>
</tr>
<tr>
<td>(5) Royalties from goodwill, copyright and other rights</td>
<td>15%</td>
</tr>
<tr>
<td>(6) Service fees</td>
<td>15%</td>
</tr>
</tbody>
</table>

### PERSONAL INCOME TAX

<table>
<thead>
<tr>
<th>Level of taxable income (Baht)</th>
<th>RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1- 150,000</td>
<td>exempt</td>
</tr>
<tr>
<td>150,001 - 300,000</td>
<td>5%</td>
</tr>
<tr>
<td>300,001 - 500,000</td>
<td>10%</td>
</tr>
<tr>
<td>500,001 - 750,000</td>
<td>15%</td>
</tr>
<tr>
<td>750,001 – 1,000,000</td>
<td>20%</td>
</tr>
<tr>
<td>1,000,001 – 2,000,000</td>
<td>25%</td>
</tr>
<tr>
<td>2,000,000 – 4,000,000</td>
<td>30%</td>
</tr>
<tr>
<td>Over 4,000,000</td>
<td>35%</td>
</tr>
</tbody>
</table>

### VALUE ADDED TAX

<table>
<thead>
<tr>
<th>Level of taxable income</th>
<th>RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 1,800,000 Thai Baht</td>
<td>7%</td>
</tr>
</tbody>
</table>
TAXATION (CONTINUED)

Double Taxation Agreements exist with the following countries:

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

Other Taxes

1) Import duties are ad valorem duty and fixed at various rates.

2) Excise tax is charged on petroleum products, non-alcoholic beverages, electrical appliances, crystal products, motor vehicles, motorcycles, entertainment, telephone service, fermented liquors, distilled spirits, special spirits, absolute alcohol, tobacco, playing cards, and perfume.

3) Stamp duty is charged on certain documents and instruments, including rental agreements, share transfer instruments, proxy, power of attorney, insurance policies, and arbitration awards.

TAX AND INVESTMENT INCENTIVES

- Tax and investment incentives in Thailand are governed by the Investment Promotion Act B.E. 2520 (1977) (as amended), which is implemented and supervised by the Board of Investment.

- The Board of Investment stipulates the following criteria for project approval:

  • Development of competitiveness in the agricultural, industrial and services sectors
    - The value added of the project must not be less than 20% of revenues, except for projects in agriculture and agricultural products, electronic products and parts, and coil centers, all of which must have value added of at least 10% of revenues.
    - Modern production processes must be used.
    - New machinery must be used.
    - Imported used machinery may be allowed under specific criteria of the Board of Investment
    - Projects that have investment capital of 10 million Thai Baht or more (excluding cost of land and working capital) must obtain ISO 9000 or ISO 14000 certification or similar international standard certification within 2 years from the full operation startup date, otherwise corporate income tax exemption shall be reduced by one year.
    - For a concession project and the privatization of a state enterprise project, the Board of Investment's criteria as follows:
      - An investment project of state enterprise according to the 1999 State Enterprise Corporatization Act shall not be entitled to investment promotion.
      - For Build-Transfer-Operate or Build-Operate-Transfer projects, the state agency that owns the project must submit its project to the Board of Investment for consideration prior to any invitation to bid, and bidders shall be informed of any promotional privilege entitled to them, prior to the bidding. In principle, the Board of Investment will not promote a project where the private sector pays the state for a concession, unless such payment is deemed reasonable in comparison with what the state has invested in the project.
      - For Build-Own-Operate projects, including those leased to or managed by the private sector, which in return pays rent to the state, the Board of Investment shall use normal criteria for investment promotion.
      - For the privatization of state enterprises according to the 1999 State Enterprise Corporatization Act, in case of expansion after the privatization, only the expansion investment shall be eligible for promotion. Incentives shall be granted according to normal criteria for investment promotion.

  • Environmental protection
    - Adequate and efficient guidelines and measures to protect environmental quality and to reduce environmental impact must be installed. The Board of Investment will give special consideration to the location and pollution treatment of a project with potential environmental impact.
    - Projects or activities with type and size that are required to submit environmental impact assessment reports must comply with the related environmental laws and regulations or Cabinet resolutions.
    - Projects located in Rayong must comply with the Office of the Board of Investment Announcement No. Por 1/2554 dated May 2, 2011 on Industrial Promotion Policy in Rayong Area.

  • Minimum capital investment and project feasibility
    - The minimum capital investment requirement of each project is 1 million Thai Baht (excluding cost of land and working capital), unless specified otherwise on the list of activities eligible for investment promotion that is attached to this announcement.
    - As for knowledge-based services, the minimum capital investment requirement is based on the minimum annual salaries expense specified in the list of activities eligible for investment promotion that is attached to this announcement.
• Criteria for Shareholding by Foreign Investors
  o For projects in activities under List One annexed to the Foreign Business Act, B.E. 2542, Thai nationals must hold shares totaling not less than 51% of the registered capital.
  o For projects in activities under List Two and List Three annexed to the Foreign Business Act, B.E. 2542, there are no equity restrictions for foreign investors, except as otherwise specified in other laws.
  o The Board of Investment may set foreign shareholding limits for certain activities eligible for investment promotion as deemed appropriate.

EMPLOYMENT LAW

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

  o Civil and Commercial Code (“CCC”)
    – The provisions regulating the rights and duties of employers and employees are set out under Title 6 of Book 3 of the CCC, Sections 577 to 586 (“Hire of Services”).
  o Labor Protection Act B.E. 2541 (1998)
    – The Labor Protection Act principally describes the minimum labour and employment requirements and standards such as duties of the employer in using labour, arranging compensation, the use of labour consisting of women and minors, providing welfare and safety measures at work as well as governing severance pay for termination of employment.
  o Labor Relations Act B.E. 2518 (1975):
    – The Labor Relations Act deals with the procedures of negotiations and bargaining as regards labour issues between employers and employees, i.e. the settlement of labour disputes, labour strikes and lockout, the rights of the employees to set up associations and labour unions as well as the rights and duties of these organisations. The act also covers the establishment of employee committees as a vehicle for holding consultations between employees and their employers.
  o Act on the Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979):
    – The act introduces the establishment of the Labor Court and labour litigation. The Labor Court is competent for cases dealing with disputes between employers and the employees arising from the employment contracts or that are concerned with the rights of the employers and employees under the laws of labour protection and labor regulations.
  o The Social Security Act B.E. 2533 (1990):
    – The act regulates the establishment of a Social Security Office and Social Security Fund and requires the employers, the employees and the Government to pay
monthly contributions in order to help compensate employees in cases of injuries, illness, disability, death, maternity, ageing and unemployment. The benefits also includes spouses and children of the employees.

  - The law deals with the employer’s liabilities in case of employer’s death or loss as a consequence of working for the employer. Therefore, the act establishes a compensation fund whereas collection is to be made from employers. In addition, the Act governs conditions and procedures in making claims for employer’s compensation.

**Work Rules and Employment Conditions**

- Every employer with 10 or more employees must establish written rules and regulations governing working conditions. These work rules must be in Thai language and be displayed at the workplace. Furthermore, the work rules or any amendment to them have to be submitted to the Labor Registrar (Director-General, Department of Labor Protection and Welfare) for his approval within 15 days from the date the workforce reaches 10 in number. In the case that the work rules provides less rights and interests to employees than those specified by laws (please see below) these rules are void. Thus, clauses waiving employers’ rights are not enforceable. Though work rules are not recited or incorporated in the employment agreement, they have binding effect on the employer and all its employees.

- The minimum requirements to be covered by the work rules are as follows:
  - Working Days, Normal Working Hours and Rest Period;
  - Holidays and Rules Governing Holidays;
  - Rules on Overtime and Work During Holidays;
  - Dates and Place of Payment of Wages, Overtime and Pay for Work on Holidays;
  - Leave and Rules for Taking Leave;
  - Disciplinary Measures and Punishment;
  - Submission of Complaints; and
  - Termination of Employment, Severance Pay and Special Severance Pay.

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

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

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Working Days</td>
<td>• Not more than six days a week.</td>
</tr>
<tr>
<td>2. Working Hours</td>
<td>• Not more than eight (8) hours a day. Nevertheless, where the work is hazardous to the health and safety of the employee, working hours shall not more than seven (7) hours a day.</td>
</tr>
<tr>
<td></td>
<td>• Not more than forty-eight (48) hours a week. Nevertheless, where the work is hazardous to the health and safety of the employee, working hours shall not be more than forty-two (42) hours a week.</td>
</tr>
<tr>
<td></td>
<td>• There must be one (1) hour rest period each day after the end of the fifth (5th) hour of work.</td>
</tr>
<tr>
<td></td>
<td>• A female employee shall not work as the followings: (1) mining, construction work performed underground, underwater, in a cave, in a tunnel or in a mountain shaft except where the nature of work is not hazardous to the health and safety of the female employee, (2) the work performed on scaffolding ten meters or higher above the ground, (3) producing or transporting explosive or inflammable material, and (4) other works designated by Ministerial Regulations. Working time of the female employee performed between 24.00 hours to 6.00 hours may be modified, changed or reduced subject to an order of the Director-General as an appropriation and consideration.</td>
</tr>
<tr>
<td></td>
<td>• The pregnant employee is not allowed to work between 22.00 hours to 6.00 hours, to work overtime, to work on a holiday, or to perform any work as follows: the work involving vibration machinery, driving or going on a vehicle, lifting, carrying, pulling or pushing loads in excess of fifteen (15) kilograms, the work in a boat, or other works designed by Ministerial Regulations.</td>
</tr>
<tr>
<td></td>
<td>• An employment of a child who is less than fifteen (15) years of age is not allowed. An employment of young worker who is under eighteen (18) years of ages shall comply with further requirements, i.e., restricted working hours, overtime work, holiday work, restricted category of work, restricted location of work. There must be one (1) hour rest period each day after the end of the forth (4th) hour of work.</td>
</tr>
<tr>
<td></td>
<td>• With employee’s consent, rest period lasting less than one hour is possible, but the total rest period for the day must not be less than one (1) hour.</td>
</tr>
<tr>
<td></td>
<td>• When overtime work lasts for not less than two (2) hours beyond normal working hours, not less than twenty (20) minutes of rest period must be allowed before the employee starts to work overtime.</td>
</tr>
<tr>
<td>Issue</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3. Wages</td>
<td>• For Work During Normal Working Day: Basic wages must not be less than minimum wages prescribed from time to time by the Ministry of Labour and Social Welfare. Currently, minimum wages for Bangkok area is Thai Baht 300.00 per day.</td>
</tr>
</tbody>
</table>
| 4. Overtime   | • Maximum overtime is 36 hours per week  
• Overtime work which may be hazardous to the health and safety of the employee is not allowed.                                                                                                                 |
| 5. Overtime Pay | • For Work During Normal Working Day: Not less than one and a half (1.5) times the rate of the hourly wages earned in normal working day.  
• For Work During Holiday: Additionally, not less than one (1) multiple of hourly wages per hour on a normal working day.  
• For Work During Holiday: Not less than three (3) times the rate of the hourly wages earned in normal working day.                                                                                     |
| 6. Holidays   | • Weekly Holiday: There must be at least one (1) day weekly holiday, not necessarily Sunday, and the interval between each weekly holiday must not be longer than six (6) days.  
• Annual Traditional Holidays: Minimum of 13 days of annual public holidays to be announced annually by the employer. In case such traditional holiday falls on a weekly holiday of the employee, a day off to substitute for such traditional holiday on the following working day shall be granted.  
• Annual Vacation Holidays: Minimum of 6 days vacation holidays for an employee, who has worked continuously for one (1) full year. For employee who has worked less than one (1) year, employer may grant annual vacation holidays on pro-rata basis. If agreed, annual vacation holidays not taken may be cumulative and postponed to the following year. |
| 7. Leaves     | • Sick Leave: As long as employee is sick, but with pay not exceeding thirty (30) days. A day on which the employee is unable to work due to an injury or an illness caused by a work under an employment or on maternity leave shall not be regarded as this sick leave.  
• Maternity Leave: Ninety (90) days, but with only forty-five (45) days with pay.  
• Personal Leave: Pursuant to the period prescribed in the company’s work rules, with pay. Generally, most company allows 5-10 business days for personal leave annually.  
• Leave for Sterilization: Pursuant to the period prescribed by the doctor, with pay.  
• Military Service Leave: Pursuant to the period notified for such in accordance with laws governing military service with pay not more than sixty (60) day a year.  
• Leave for Training and Professional Improvement: Not more than thirty (30) days annually with pay and applicable only for employee younger than eighteen (18) years of age. |

**INTELLECTUAL PROPERTY**

- Thailand recognises, accepts and protects the following as intellectual properties.
  - **Trademark**, which according to the Trademark Act B. E. 2534 (1991), means a mark used or proposed to be used on or in connection with goods to distinguish the goods bearing the trademark of the proprietor of such trademark from goods under another person’s trademark. Under the same act, “mark” means a photograph, drawing, device, brand, name, word, phrase, letter, number, signature, group of colours, figure or shape of material or any combination thereof.
  - **Copyright**, pursuant to the Copyright Act B. E. 2537 (1994), means exclusive right to do anything under this act in connection with the work created by the author.
- According to Copyright Act, “work” comprises of literary work, computer program, dramatic work, artistic work, musical work, audiovisual material, cinematograph film and sound recording. Under the law, “author” refers to the person creating or causing the creation of any work qualified to gain copyright under the Act. However, like any other copyright law in other countries, Thailand also grants neighbouring rights to the performer which refers to the actor/actress, musician, singer, dancer and anyone acting, singing, speaking, playing according to his/her role or in any other description.
- **Trade name** means name used in trading or doing business.
Thailand recognises, accepts and protects the following as **intellectual property**:

- Trade secrets, which according to the Trade Secrets Act B.E. 2545 (2002), means trade information not generally known to the public or not accessible by person(s), who basically deal with such information; however, such information shall have trade benefit due to its confidence and it shall be kept confidential by proper measurement employed by the controller of such trade secrets.

- Integrated circuit, which according to the Protection of Layout-Design of Integrated Circuit Act B.E. 2543 (2000), means arrangement of electrical circuit in the semi-conductor or super-conductor material such as an electrical part called IC.

**Dispute Resolution**

**System of Court of Justice**

- The Thai system of justice is based on civil law. All administration of justice must conform to written legislation. Thailand has no juries. Judges preside over the courts. Different numbers of judges and levels of specialised judicial expertise are required, depending on the level and type of court.

- The Court system in Thailand is divided into three levels: The Courts of First Instance, which are the first level lower courts, where trials take place. The Courts of Appeal, where points of fact or points of law are appealed. The Supreme Court hears fact or points of law are appealed. The Supreme Court hears those in foreign countries, so long as the foreign arbitral award is governed by a treaty, convention and/or agreement which Thailand is a party to. To-date, Thailand is a signatory to the New York Convention.

**Intellectual Property**

- Trademark, which according to the Trademark Act B.E. 2534 (1991), means a mark used or proposed to be used on or in connection with goods to distinguish the goods bearing the trademark of the proprietor of such trademark from goods under another person’s trademark. Under the same act, “mark” means a photograph, drawing, device, brand, name, word, phrase, letter, number, signature, group of colours, figure or shape of material or any combination thereof.

- Copyright, pursuant to the Copyright Act B.E. 2537 (1994), means exclusive right to do anything under this act in connection with the work created by the author.

- Patent, which pursuant to the Patent Act B.E. 2522 (1979) amended in B.E. 2535 (1992), means letter issued to protect the invention or product design as determined in this act.

- Trade name means name used in trading or doing business.

**Alternative Dispute Resolution**

Thailand’s arbitration law is the Arbitration Act B.E. 2545 (2002), which is based substantially on the UNCITRAL Model Law. As recognised globally, it is an alternative to court trials.

- Under the law, parties may agree to submit civil disputes to arbitration, provided that there is an agreement or written evidence between or among the parties to do so. There are two arbitration institutes in Thailand. They are (1) Thai Arbitration Institute of the Alternative Dispute Resolution Office, Ministry of Justice.

- If the party declines to comply with the arbitral award, court order must be sought to enforce such award. There is no difference between arbitral awards rendered in Thailand and those in foreign countries, so long as the foreign arbitral award is governed by a treaty, convention and/or agreement which Thailand is a party to. To-date, Thailand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention 1958).
Immigration Procedures

Passport/Visa Requirements

- Generally, a foreign citizen who wishes to enter the Kingdom of Thailand is required to obtain a visa from a Royal Thai Embassy or a Royal Thai Consulate-General. However, nationals of certain countries do not require a visa if they meet visa exemption requirements as follows:
  - They are nationals of countries which are exempted from visa requirements when entering Thailand for tourism purposes. Such nationals will be permitted to stay in the Kingdom for a period of 15, 30 or 90 days, as the case may be. For more information, please see http://www.mfa.go.th or http://www.immigration.go.th.
  - They are nationals of countries which hold bilateral agreements with Thailand on the exemption of visa requirements. Such nationals will be permitted to stay in the Kingdom for a period of 14, 30 or 90 days. For more information, please see http://www.mfa.go.th or http://www.immigration.go.th for a list of countries, which have agreements with Thailand on exemption of visa requirements.
  - Nationals of certain countries may apply for visa upon arrival in Thailand. Travelers with this type of visa are permitted to enter and stay in Thailand for a period of not exceeding 15 days. For more information, please see http://www.mfa.go.th or http://www.immigration.go.th for visa on Arrival.

- To apply for a visa, a foreigner must possess a valid passport or travel document that is recognized by the Royal Thai Government and comply with the conditions set forth in the Immigration Act of Thailand B.E.2522 (1979) and its relevant regulations. In addition, the visa applicant must be outside of Thailand at the time of application. The applicant will be issued with a type of visa in accordance to his or her purpose of visit. For more information on types of visas and general requirements for each type of visa, please see http://www.mfa.go.th and/or http://www.immigration.go.th for types of visa and issuance of visa.

- Please note that the period of visa validity is different from the period of stay. Visa validity is the period during which a visa can be used to enter Thailand. In general, the validity of a visa is 3 months, but in some cases, visas may be issued to be valid for 6 months or 1 year. The validity of a visa is granted with discretion by the Royal Thai Embassy or Royal Thai Consulate-General and is displayed on the visa sticker.

- On the other hand, the period of stay is granted by an immigration officer upon arrival at the port of entry and in accordance with the type of visa. For example, the period of stay for a transit visa is not exceeding 30 days, for a tourist visa is not exceeding 60 days and for a non-immigrant visa is not exceeding 90 days from the arrival date. The period of stay granted by the immigration officer is displayed on the arrival stamp. Travellers who wish to stay longer than such period may apply for extension of stay at offices of the Immigration Bureau. For information on application for extension of stay, please see the Immigration Bureau website at http://www.immigration.go.th.

- Royal Thai Embassies and Royal Thai Consulates-General have the authority to issue visas to foreigners for travel to Thailand. The authority to permit entry and stay in Thailand, however, is with the immigration officers.

Work Permit/Temporary Stay Permit/Re-Entry Permit

- Foreigners entering Thailand are not permitted to work, regardless of their types of visa, unless they are granted a Work Permit. Those who intend to work in Thailand must hold the correct type of visa to be eligible to apply for a Work Permit, which generally is a “Non-Immigrant B” visa.

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

- Application for Temporary Stay Permit with the Immigration Bureau is conditional that an application for a Work Permit is first applied for with the Alien Occupational Control Division. Therefore, it is a “must” that an application for a Work Permit is filed first and to follow by an application for Temporary Stay Permit. Please note that the Immigration Bureau shall not give extension of short term stay permit simply to allow time for a foreigner to apply for a Work Permit.

- Temporary Stay Permit is granted 1 year at a time and renewal is required annually (unless under special rules, e.g., those of the Board of Investment). Work permit is granted and renewable also on the annual basis, so long as the Temporary Stay Permit remains valid. Therefore, it is important to note and recognize that once the Work Permit and Temporary Stay Permit are granted, they are inseparable.

- Despite the grant and validity of the Work Permit and Temporary Stay Permit, foreigners are also required to apply for and obtain a “Re-Entry Permit” to travel in and out of Thailand. Leaving Thailand without Re-Entry Permit shall affect automatic cancellation of the granted and valid Work Permit and Temporary Stay Permit.

Permanent Residency

- Foreigners may apply for permanent residence in Thailand if he/she has held Temporary Stay Permit for more than 3 consecutive years.

- The annual quota for granting permanent residency in Thailand is a maximum of 100 persons per country. The Interior Minister is responsible for issuing the announcement each year that the quota is open for submission of applications, usually from October to the end of December.

- The Immigration Commission has the power to define all regulations concerning permanent residency. The Immigration Bureau is the agency that handles all procedures concerning permanent residency applications. For information on application for permanent residency, please see the Immigration Bureau website at http://www.immigration.go.th.
Vietnam

- Located in Southeastern Asia, bordering the Gulf of Thailand, Gulf of Tonkin, and South China Sea, alongside China, Laos, and Cambodia. Extending 1,650km north to south, the country is only 50km across at its narrowest point.
- Vietnam is a socialist country under the leadership of the Vietnam Communist Party.
- Legal system is largely based on communist legal theory and French civil law system.
- Vietnamese is the official language. English is increasingly favoured as a second language, some French, Chinese, Khmer, and mountain area languages (Mon-Khmer and Malayo-Polynesian).
- Currency: Vietnamese Dong (VND).
- Races include 86.2% Kinh (Viet), 1.9% Tay, 1.7% Thai, 1.5% Muong, 1.4% Khome, and others 7.3% (1999 census).
- Religions include approximately 50% Buddhist, 8–10% Catholic, 1.5–4% Hoa Hao, 1.1% Cao Dai, 0.5% Protestant, and 0.1% Muslim.
- Strong economic growth, ongoing reform and a large population of 85.79 million, half of which are under the age of 30, have combined to create a dynamic and enticing commercial environment in Vietnam.
- Investment growth areas include aviation, telecommunications, information technology, oil and gas exploration and power generation.

Business Presence

- Local incorporation of 100% foreign owned entity (“FOE”) or joint venture (“JV”).
- Both can take the form of limited liability companies with two or more members, one member limited liability companies, partnership, private enterprises and shareholding companies (also called joint stock companies).
- Other possible forms of doing business in Vietnam include representative office, build-operate-transfer (BOT) for infrastructure projects, business co-operation contract, agency, and distributors and franchising.
- The Department of Planning and Investment (“DPI”) is the contact point within a local provincial/city people’s committee. It will be incumbent on the DPI to obtain all of the necessary approvals and opinions from the relevant ministries, departments and other relevant authorities prior to issuing any IC.
- The length of time it takes for an IC to be issued can vary widely, depending on a variety of factors. The estimated time required for a licensing authority to issue an IC is typically between two and six months from the date of submission of the application. It can take longer for more complex and sensitive projects.

Foreign Investment Restrictions and Conditions

Restrictions in equity participation

- There are no general restrictions on foreign investment and shareholdings in Vietnamese companies. Any such restrictions are determined on an industry-by-industry and sometimes even a case-by-case basis.

Approvals and licensing

- The local provincial/city people’s committees and management boards of industrial zones are the primary licensing authorities to issue an investment certificate (“IC”) for most type of foreign investment within provinces/cities/industrial zones.

Exchange Control

- Governed by Ordinance No. 28 and Decree No. 160 on Foreign Exchange Control and under the control of State Bank of Vietnam (“SBV”).
- All domestic business transactions must be in the Vietnamese currency.
- Foreign invested enterprises and foreign parties to business co-operation contracts must open a foreign currency deposit account at an authorised bank to process all capital transactions. They are also required to open a foreign currency and/or Vietnam Dong account for their operations in Vietnam, through which all business transactions are to be conducted. Foreign currency accounts outside Vietnam of foreign invested enterprises may be permitted only upon the SBV’s approval.
Doing Business in Asia Pacific

VIETNAM

TAXATION

Corporate Tax
• Both domestic and foreign invested enterprises are subject to corporate income tax ("CIT") with the standard CIT rate of 25% (reduced from 28% on 1 January 2009) on their worldwide trading profits, capital gains and other assessable income.
• The CIT rate applicable to business establishments conducting exploration and exploitation of oil and gas and other valuable and rare natural resources is between 32% and 50%.

Personal Income Tax
• An individual who stays in Vietnam for 183 days or more during a period of 12 consecutive months from the date of arrival, who leases a house with a term of 90 days or more within the tax calculation year, or who is registered at a permanent residence in Vietnam is classed as a resident individual.
• Income tax rates for resident individuals range from 5% to 35% on assessable income generated both inside and outside of Vietnam, regardless of where it is paid or received.

Withholding Tax
• Vietnamese enterprises that make cross-border payment to a foreign contractor/provider pursuant to a contract, the payments of interest, royalties, services, construction, management fees and the like except pure trading transactions (unless such transaction is from a distributor to a manufacturer) are subject to withholding tax.

Real Property Gains Tax (RPGT)
• Any gain earned by a resident individual from the sale of real estate is taxable at the rate of 25%. A rate of 2% will be charged for sale proceeds when purchase price and related expense cannot be determined.
• Tax rate of 2% is applicable to non-resident individuals for the gain earned from the sale of real estate.

Other taxes/fees
• Special Sales Tax (Excise Tax): ranges from 10% to 70% for goods and services at the production stage. Products for export are exempt.
• Value added tax (VAT): ranges from 0% to 10% for various goods and services.
• Registration fees: 0.5% for buildings and land, and 1% for boat/ ships. The duty payable is capped at VND 500 millions per asset per transaction, except for passenger vehicles with fewer than 10 seats. 0.5 to 15% is levied on transfer of property.

Double taxation treaties
• Vietnam currently has double taxation treaties with more than 30 countries.

EMPLOYMENT LAW

General
• The main statute dealing with employment is the labour code and its implementing instruments, including decrees, decisions, and circulars. The labour code governs both Vietnamese and foreign employees.
• Employees can be classified as either fixed-term or indefinite term employees, and this classification impacts the rights and obligations of both the employer and employee.

Since 1 January 2009, CIT preferences have been limited to high technology and education sectors. (Use of high technologies, scientific research, technology development, development of especially important infrastructure for the state, software production, education and training, vocational training, health, culture, sports, and the environment.)

Capital allowances
• Depreciation can be claimed on fixed assets used for business purposes.
• Depreciation is calculated using the straight-line method or an accelerated depreciation method in the case of technology renovation purposes.
• The accelerated rate must not be more than twice the rate as that applied under the straight-line method.
• Fixed assets are depreciated for a minimum of a full month.
• Entities wishing to allocate the cost of assets over different periods from the set schedule of useful lives of the assets must obtain approval from the Ministry of Finance.

Tax exemptions
• An exemption from CIT for a maximum of four years and 50% CIT reduction for nine subsequent years, is available for investment in:
  o Geographical locations with especially difficult socio-economic conditions;
  o Economic and high-tech zones; and
  o In the sectors of high-tech, scientific/technological research and development, important infrastructure facilities of the state, and education.
• An exemption from CIT for maximum of two years and 50% CIT reduction for four subsequent years is available for investment in geographical location with difficult socio-economic conditions.
  o Import/export tax exemption will apply to certain goods and goods imported/exported pursuant to certain conditions and/or purposes.
  o Income derived from technology transfers involved with relevant projects that are entitled to investment incentives may be exempted.
• Exemption or reduction of land use tax in certain preferential investment sectors and geographical areas may be available.
• Vietnam does not have an at-will employment regime, and
the employer must make sure that it has proper cause to
terminate the employment relationship, and has strict notice
requirements.
• Vietnam also requires severance pay to be paid in most cases.

Minimum wage requirement
• As of 1 January 2011 to the areas set out in Appendix 1 and as
of 1 July 2011 to the areas whose category has been changed
as set out in Appendix 2 of Decree 107-2010-ND-CP, the
minimum wage for employees working for foreign-invested
enterprises are as follows:
  o Level 1: VND 1,550,000 per month, applicable to enterprises
    operating in Area I;
  o Level 2: VND 1,350,000 per month, applicable to enterprises
    operating in Area II;
  o Level 3: VND 1,170,000 per month, applicable to enterprises
    operating in Area III; and
  o Level 4: VND 1,100,000 per month, applicable to enterprises
    operating in Area IV.

Trade union
• The local trade union and the industry trade union where the
enterprise is located have the responsibility for setting up an
internal union organisation in such enterprise.
• Enterprises in both public and private sectors are required to
contribute a fund to support the operation of the trade union.

Social Insurance Fund contribution
• The employer is obliged to contribute an amount equal to
16% of an employee’s salary to the Social Insurance Fund. The
employer will contribute an additional 1% every two years until
the contribution reaches 18%—the next increase is scheduled
for 2012.
• The employee is obligated to contribute 6% of his salary. The
employee’s contribution will increase by 1% every two years
until it reaches 8%—the next increase is scheduled for 2012.

Health Insurance Fund contribution
• The employer is obliged to contribute an amount equal to 3%
of an employee’s salary to the Health Insurance Fund.
• The employee is obligated to contribute 1.5% of his salary.

Unemployment Insurance Fund
• The employer is obliged to contribute an amount equal to 1%
of an employee’s salary to the Unemployment Insurance Fund.
• The employee is obligated to contribute 1% of his salary.

DISPUTE RESOLUTION

General
• The Chief Justice of the Supreme Court is elected by the
National Assembly; judges of lower level courts are appointed
by the Chief Justice of the Supreme Court.
• Independent judgements rendered but not publicly published,
and it is difficult to get access to past judgements.
• Commitment under the 2000 US–Vietnam Bilateral Trade
Agreement and under the pressure to adhere to the World
Trade Organization.

Court System
• Vietnam has a two-tier court system, including courts of first
instances and courts of appeal. The judgements are susceptible
to further reviews under special circumstances.
• The court system consists of the Supreme Court, the provincial
People’s Courts and the district People’s Courts. There are
specialised courts at the Supreme Court and at the provincial
level. These include the Criminal Court, Civil Court, Economic
Court, Administrative Court and Labour Court.

Alternative dispute resolution
• Alternative dispute resolution (ADR) is available and includes
mediation and arbitration.
• Mediation: a mandatory part of certain litigation procedures
such as civil litigation, labour, marriage and family litigation. The
State encourages the resolution of civil and family disputes and
violations of the law which do not amount to criminal offences
by means of mediation. At the local community, groups of non-
professional mediators are set up to carry out this mediation
mandate.
• Arbitration:
  o Vietnam is a member of the 1958 New York Convention on
    the Recognition and Enforcement of Foreign Arbitral Awards.
  o Commercial Arbitration Law came into effect on 1 January
    2011, which now allows for greater enforceability of arbitral
    awards, and foreign arbitrators to be appointed to arbitration
    tribunals in Vietnam.
  o The most well-known Vietnamese arbitration organisation is
    the Vietnam International Arbitration Centre at the Vietnam
    Chamber of Commerce and Industries.

IMMIGRATION PROCEDURES

Passport and visa requirements
• Immigration law allows individuals from most ASEAN countries
as well as those involved in a bilateral or unilateral treaty with
Vietnam to enter without the need of a visa, but only up to a
maximum of 30 days.
• Tourist visas are issued only for single entry, with a validity
period not exceeding three months. Diplomatic, business,
official and other types of visas should be acquired from the
official agencies or government or business sponsor.
• Business passes and work permits.
• Foreign entrepreneurs, investors, and businessmen get multiple
entry options with a validity period lasting anywhere between
three and six months.
• Work permits are required for foreign labours to work in
Vietnam. A labour contract must also be signed in accordance
with the work permit and the labour law of Vietnam. The
employer shall be responsible for filing a copy contract to the
issuing body.
VIETNAM

Special permanent residency and other permits

- A residence permit is required after arrival in Vietnam. The multiple entry business visa ("MEBV") can be continually renewed every six months or when the employee has stayed in the country for a minimum of six months.

- Employees may also choose to apply for a permit card for temporary residence, which is usually issued for the duration of the work permit. A residence permit replaces the MEBV for the employee and their dependants, if appropriate.