ITECHLAW®
INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

A Quick Reference Guide to International Market Entry for Startups (and Their Lawyers)

Second Edition, 2024

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STARTUP LEGAL PLAYBOOK

INTRODUCTION

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FOREWORD

Welcome all to the second edition of the ITechLaw Startup Legal Playbook: *A Quick Reference Guide to International Market Entry for Startups (and Their Lawyers)*.

The goal and purpose of this Playbook are to provide startup founders and startup lawyers alike with a quick reference guide to key issues they may experience in foreign jurisdictions. Let's face it, the modern startup is not concerned with owning the local geography, but instead wants to step out onto the world stage as early as possible. Oftentimes, this means that the need for foreign legal advice comes well before the resources which their institutional, established competitors can bring to bear.

Enter the *Playbook*. This is not meant as a definitive guide to everything you'll need to know about legal systems and local market realities in any given jurisdiction, but it is intended to help triage key issues. Whether you're using this guide as a lawyer advising a startup client, or as a startup company yourself, our hope is that the *Playbook* will help you to better assess potential risks and to ask the right questions.

And if you have need of a local legal expert, well now you've got a list of lawyers from around the world that deal with startups just like yours, that are ready and willing to help.

A bit about format. As you'll see, the *Playbook* is broken into chapters by country. Each country's entry is organized in the same manner, as answers to a series of nine questions or prompts:

- **Legal Foundations** - *Please describe the general legal structure of your country. Is it common law or civil code? What are the important jurisdictional layers (i.e. Federal, State, Provincial, etc.)?*

- **Corporate Structures** - *Please describe the most relevant structures from a practical point of view a start-up might consider when looking to start its business in your country.*

- **Entering the Country** - *Are there any foreign investment rules/restrictions to be aware of?*

- **Intellectual Property** - *Please identify on high level where IP may be registered, and what protections that affords. Do you have specific trade secret legislation? Are you on the Madrid System?*

- **Data Protection/Privacy** - *Please describe any regime for data protection and/or protection of personal information in your country. For EU: Are there significant national particularities due to the usage of the 99 opening clauses of the GDPR?*
- **Artificial Intelligence** - *Is there a specific regime for AI regulation in your country? Are there any other legal particularities to consider?*

- **Employees/Contractors** - *What does a foreign entity briefly needs to know about engaging employees or contractors in your country? Is there a work for hire regime? Are there restrictions on terminations of employees?*

FOREWORD CONT'D

- **Consumer Protection** - *What does a foreign entity need to know about consumer protection in your country?*

- **Terms of Service** - *Is there anything that can't be or must be included in online terms of service in order to be enforceable in your country?*

- **What else?** - *Is there anything else specific to your country not addressed above that a foreign entity ought to know before entry?*

The basis of these ten questions should provide a reasonable primer on key inter-jurisdictional issues you or your startup or startup client will want to consider as you contemplate expansion into new territories.

This publication has been a years-long project of the Startup Committee of the International Technology Law Association (ITechLaw). First discussed in 2020 during the height of the global pandemic, our committee spent time considering and developing these foundational questions and then enlisted colleagues from around the globe to provide responses forming their respective chapters. We have been amazed and humbled by the response we have received. The first edition of the Playbook included detailed chapters for thirty-nine countries!

Whats's new? For this second edition of the Playbook, we asked contributors to update existing entries from the first edition, and added an additional question about AI regulation. We also added completely new chapters for 24 more jurisdictions!

What's next? In future editions, we will continue to expand the Playbook by adding more countries, provide updates as various jurisdictions inevitably change their laws, and consider adding to the list of questions on specific industry verticals and regulatory regimes. If you or your firm would like to contribute for a country not already listed, or you have other ideas on future expansions, please let us know!

In the meantime, we hope you find the following chapters illuminating and useful in your push for global domination!

Sincerely,
Your ITechLaw Startup Committee Co-Chairs

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ALBANIA

LEGAL FOUNDATIONS

Albania is a unitary parliamentary republic, the constitutional structure of which is rooted in the principle of checks and balances among three separate and independent branches of the government – the executive, legislative, and judiciary. The Constitution is the highest law in Albania and establishes the basic institutions of a democratic state. Albania has embraced the civil law system and therefore the formal legal sources are the codified rules, which include in a hierarchical order:

1. the Constitution;
2. ratified international treaties (that form an integral part of the domestic legal system);
3. laws of Parliament;
4. acts of the Council of Ministers;
5. acts of the bodies of the local government (binding only within their territorial jurisdiction); and
6. acts of ministers or other central institutions (binding only within the sphere of their jurisdiction).

The primary source of private law is the Albanian Civil Code, while the main governing legislation for criminal law is the Albanian Criminal Code.

Court rulings (precedents) do not constitute a legal source, but 'unifying decisions' of the Albanian High Court are mandatory for the lower courts and the decisions of the Constitutional Court are final and binding from the moment they are published in the Official Journal.

CORPORATE STRUCTURES

Business activity can be organized in various forms of corporate structures however the most common and dominant ones are entrepreneurships, limited liability companies ("LLC") and joint stock companies **("JSC")**.

Entrepreneurship (person fizik)

Entrepreneurs are natural persons who conduct a given independent economic activity that requires a basic level of organization. More specifically, in this form of organization, there are no other administration structures, except for the entrepreneur himself, which is generally the only one responsible for any management issue and decision-making that arises in the course of the activity. Even though it is quite possible to hire employees for the performance of certain duties, they are typically not vested with the power of legal representation of the business.

ALBANIA

CORPORATE STRUCTURES, CONT'D

Entrepreneurship (person fizik), CONT'D

Notably, entrepreneurs are fully and personally liable in respect to all obligations that stem from the exercise of the activity, and responsible for their fulfilment with all of their current and future assets or rights (that can be measured in monetary value). Registration with the National Business Centre ("NBC") is required but has only declarative effect. Entrepreneurs are obliged to keep accounting books and compile and disclose their financial statements, but nonetheless, the latter are not an object of control and certification by independent auditing conducted by registered accounting experts.

Limited Liability Companies (shoqëri me përgjegjësi të kufizuar – SHPK)

An LLC is a company established by one or more natural or legal persons and has its own legal personality. The company possesses distinct assets, rights, and obligations, from those of its members. The members are personally liable for the company's obligations only to the extent of their unpaid contributions, constituting the company's basic capital. Exceptionally, in cases of the piercing of the "corporate veil," primarily associated with instances of abuse or fraud, members may be held personally liable with all their personal assets.

These companies acquire legal personality only upon registration with the NBC. The minimum capital is approximately 1 Euro. Members can contribute to the basic capital either in cash or in kind (excluding services). Payment of the share capital is not required to be made before the creation of the company. In principle, the value of the shares and voting rights is proportionate to each member's contributions in the capital; however, shareholders may decide otherwise in the company's statute.

In terms of corporate governance, the administration of the company is structured in alignment with the regulations specified in its statute. Generally, the decisions related to day-to-day activities are the competence of the director/s, while important decisions, such as the setting of business policies, the appointment or dismissal of the directors, the amendment of the statute, reorganization or dissolution of the company etc., fall under the prerogatives of general assembly (the meeting of all the members).

Joint Stock Companies (shoqëri aksionare – SHA)

JSCs, similarly to limited liability companies, can be established by one or more natural or legal persons and have a separate legal personality from its founders, who are personally liable only to the extent of their unpaid contribution in the company's capital. The capital of a JSC is divided into shares with same par value. The legal minimum capital for companies with a public offering is approximately EUR 96,000, while for those with a private offering, it is approximately EUR 35,000. Similarly to LLCs, the capital contributions can be either in cash or in kind (excluding services). At least one-quarter of the in-cash contributions and the entire in-kind contributions must be paid or transferred before the registration of the company.

Regarding capital rules, a certain portion of the annual profit shall be allocated to a mandatory reserve (5% of the net profit each year until it reaches 10% of the registered capital) and is thereby excluded from distribution as dividend.

In terms of corporate governance, the company can opt for either a one-tier system, where the executive organ is a board of directors comprising both managing directors and board members, or a two-tier system, wherein the managing directors form a distinct organ monitored by a supervisory board. The primary distinction between the two models is that, in the two-tier system, members of the supervisory board cannot be appointed as directors, and the board itself does not participate in the management decision-making process, which remains exclusive to the director/s. The appointments and dismissal of these organs fall under the purview of the general assembly (comprising all shareholders), along with any other prerogatives assigned by law or the statute.

ALBANIA

ENTERING THE COUNTRY

The Albanian Law on Investments guarantees equal treatment and protection of foreign investors. Foreign investors are not subject to any special authorization from the state institutions and are entitled to:
i)employ both foreign and domestic employees without any restrictions;
ii)be guaranteed protection against expropriation,
iii)freedom to transfer abroad any funds or properties that are related to the foreign investments;
iv)enjoy the same treatment for losses incurred due to armed conflicts, states of emergencies or other similar situations;
v)benefit from discretionary special state protection granted by the state to foreign investments, in cases where the investment is carried out in public or tourist infrastructure, energy or agriculture.

In this aspect, the Strategic Investment Law, without distinguishing between domestic and foreign investors, puts forward a range of advantages for operators that invests a certain amount (as specified in the law) in a sector deemed strategically important (with technology expressly mentioned). The advantages include:
i)a fast-track procedure to obtain the necessary permits, licenses and other mandatory authorizations;
ii)unification of the procedures in case the process requires the involvement of different sectors and/or several procurement or tendering procedures;
iii)state support through the provision of the necessary infrastructure including roads, telecommunication, water and energy supply, the temporary use of public property, and the application of the expropriation provisions etc.

Noteworthy, due to a prohibition introduced in 1998 and not updated since, the transfer of ownership rights over agricultural land, forests, meadows, and pastures is not recognized for foreign individuals and legal entities. However, this prohibition is mitigated in practice, as foreign individuals or entities can own the types of lands mentioned above: (i) indirectly, through an Albanian-established legal entity fully owned by foreign persons, and (ii) by having the right to lease it for up to 99 years.

The Albanian parliament has recently enacted a sectoral law that provides customized benefits for startups for a period up to two years (with a possibility of extension) after attaining the status as a start-up. These include:
i)the availability of a one-stop-shop service, encompassing the receipt of all essential information regarding the legal framework related to this field;
ii)the potential receipt of state grants, subject to meeting legal criteria and a successful application to the competent authorities.

In terms of taxation, entities registered up to a specified deadline that engage in the production and development of software enjoy a reduced personal income tax rate of 5% until 2025.

Moreover, Albania has signed approximately 45 bilateral investment treaties, various other treaties with investment provisions (i.e the Association Agreement with EU, the Energy Charter Treaty, CEFTA etc.), and also related investment instruments (such as TRIPS, GATS, New York Convention among others).

ALBANIA

INTELLECTUAL PROPERTY

Trademarks

What is protectable? Any sign, and in particular words, including personal names or the designs, letters, numbers, colors, shape of the goods or their packaging or sounds, provided that they are capable of individualizing and clearly distinguishing the particular goods or services from those marketed by other natural or legal persons and upon the condition that they are duly registered in the competent authority.

Where to apply? The institution vested with the authority to administer the filings for the national registration of the marks is the General Directorate of Industrial Property. This office exercises an ex officio control over the fulfillment of the formal requirements of the request and examines a certain category of grounds for refusal (absolute and/or relative grounds), as well as addresses the objections of third parties that are raised within a certain deadline. Provided that there are no obstacles for the registration of the mark, and following the payment of the respective fee, it issues the registration certificate, which grants the user of the mark exclusive rights over it. The owner of the mark can also opt for international protection by filing an application with the International Bureau (the mechanism provided under the Madrid Agreement) through the national office and only after the latter has registered the given mark. If the Bureau, after conducting the necessary verifications, approves the application, the mark enjoys the same protection in each of the Contracting Parties without the need to undertake any further steps.

Duration of protection? The registered mark is protected for 10 years starting from the date of the filing, with the option of unlimited extensions (10-year periods), subject to a request made for this purpose and the payment of a renewal fee.

Cost? The application fee is 7,000 ALL (approximately EUR 70), and the registration fee is 8,000 ALL (approximately EUR 80).

Patents

What is protectable? Patents are granted for the inventions that can take the form of either products or processes, and that made in any technological field, provided that:

1. the invention does not fall under the scope of the exceptions, enacted by the law, of those matters that cannot be subject to patentability;
2. have industrial applicability (including agriculture), meaning possessing the capability to be used for conducting practical and technical activities;
3. presents a novelty, in the sense that it is not a reflection or part of a prior art, accomplishments that have been exposed to the public before the filing date;
4. contains an inventive step, meaning that it has achieved a qualitative leap in the respective field, a progress that cannot be deduced as obvious based on the knowledge that existing at the time by the ordinary experts of that field; and
5. it is disclosed in a clear manner in the application.

Where to apply? The application to obtain a patent must be submitted to the General Directorate of Industrial Property, which examines the formal requirements, and in the event that no impediments are detected in these respects and no objections by third parties are raised (or have been unsuccessful), the office grants the patent.

Duration of protection? The protection accorded by the legislation to the patent owner lasts up to a maximum of 20 years, but the validity of the patent is conditioned on its yearly renewal that is completed by a payment of a certain fee. Additionally, following a separate submission by the patent proprietor or their authorized party, the General Directorate of Industrial Property may grant Supplementary Protection Certificates for medicinal products and plant protection products. These certificates become effective upon expiration of the corresponding patent and are valid for a maximum duration of 5 years.

Cost? The application fee is 7,000 ALL (approximately EUR 70) and the issuance fee is 6,000 ALL (EUR 60), while the renewal fee increases progressively from the minimum 5,000 ALL (approximately EUR 48) in the first year to the maximum of 70,000 (approximately EUR 670) in the last.

INTELLECTUAL PROPERTY, CONT'D

Patents, CONT'D

Employee invention and inventor bonus?
If the invention is made by an employee, in the execution of his contractual duties, then the right for a patent belongs to the employer, which is nevertheless obliged to compensate the employee if the economic value of the invention is considerably higher than it was foreseen in the contract.

Even in the case that the invention is not a result of the employee's fulfilment of the contractual conditions but is attributed to the information or means that the employee obtained because of his employment, this right is enjoyed by the employer under the condition that he expresses his interest for the invention to the employee within a certain legal timeframe (i.e., 6 months upon receiving the report on the invention from the employee), and fairly compensates the employee.

Industrial Design

What is protectable? The features of the external form of a product, that serve an ornamental or aesthetic purpose. To be included in the scope of the protection the design must firstly have a novel and individual character, meaning that it must not be identical or similar to any prior industrial design that is known by the public and secondly, it needs to be registered so that the creator can have exclusive ownership rights over it.

Where to apply? The registration procedure is the competence of the General Directorate of Industrial Property, which is responsible for the verification of the compliance of the formal requirements of the request and examines a certain category of grounds for refusal (absolute and/or relative grounds), as well as addresses the objections of third parties that are raised within a certain deadline. If the results from these control mechanisms are favorable to the applicant, the office registers the design.

Duration of protection? The registration yields legal effects for 5 years starting from the date of the application, and it can be renewed every five years, subject to a payment of a fee. In any case, the protection cannot be extended to a period that surpasses 25 years.

Cost? The application fee is 4,000 ALL (approximately EUR 40) for the first design and 2000 ALL (approximately EUR 20) for any additional design (in case of multiple design) and the registration fee is 6,000 ALL (approximately EUR 60). The renewal fee is 6,000 ALL (approximately EUR 60).

Industrial Design created by a mandate agreement or by an employee:
If the industrial design is made by a mandate agreement or by an employee, in the execution of contractual duties, then the right for an industrial design belongs to the principal/employer respectively, which is nevertheless obliged to compensate the person/employee if the economic value of the industrial design is considerably higher than it was foreseen in the contract.

Even in the case that the industrial design is not a result of the employee's fulfilment of the contractual conditions but is attributed to the information or means that the employee obtained because of his employment, this right is enjoyed by the employer under the condition that he expresses his interest for the industrial design to the employee within a certain legal timeframe (i.e., 4 months upon receiving a notification on the industrial design), and fairly compensates the employee.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

The Albanian legislation has strict rules against the illegal appropriation, usage or publication of the information that constitutes a trade secret. A trade secret is considered any information that:

- is not widely known or easily accessible to persons who generally encounter that type of information;
- has a commercial value because it is secret; and
- has been subject to reasonable measures taken by its legitimate holder with the aim of preserving its secrecy.

The obligations that arise in respect to trade secrets do not cease after a certain period. Hence the protection is indefinite. It is a local practice to reinforce such obligations by entering specific clauses in the contracts.

Copyright

What is protectable? The object of protection of the copyright law is any original intellectual creation in the literary, scientific and artistic field, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose. Copyright protection is granted immediately with the creation of a work and no mandatory registration is required. However, authors may voluntarily register their works in a special register at the Copyright Directorate to obtain stronger evidence vis-à-vis third parties.

Exploitation of copyright protected work? Copyright owners have moral rights (i.e., the indispensable right to be named as author) and pecuniary rights to exploit the work (i.e., economic copyrights). The pecuniary rights are transferrable to third parties, while the moral rights are not.

Duration of protection? The pecuniary rights are protected until after 70 years from the death of the author and in the case of a co-authored work, copyright lasts for 70 years from the death of the co-author who has lived the longest. Moral rights are not subject to any time limitations.

DATA PROTECTION/PRIVACY

The principal act that regulates the processing of personal data in Albania is the Law on Personal Data Protection **("DP Law")**, which intelligibly lays down the conditions that govern the processing of personal data, along with the rights of the data subjects and the obligations of the controllers. Even though the current legislation resembles the EU framework to a certain degree, a new l law fully aligned with the GDPR is currently in the pipeline and expected to be approved soon.

Registration Formalities

All Controllers situated in Albania, as well as those situated outside of Albania but exercise their data processing activities using any means situated in such territory, should notify the Information and Data Protection Commissioner ("the Commissioner") in advance of any processing of personal data. To this end, a notification containing inter alia information on the data controller (i.e., name, address, activities performed), the contact person appointed by the data controller, purpose of the processing, data subject and data categories, recipients or categories of recipients of personal data, proposal for any international transfer that the controller intends to do and general description of measures adopted to secure personal data should be submitted with the Commissioner.

DATA PROTECTION/PRIVACY, CONT'D

Key obligations under the DP Law

It is important that when performing data processing activities, the following obligations are fulfilled by Controllers:

- The processing of personal data complies with the general principles of data protection, i.e., transparency, lawfulness, purpose of limitation, data minimisation, proportionality, retention, data accuracy;
- There is an appropriate legal basis for processing personal data, which is determined on a case-by-case basis;
- The data subjects are properly informed about all aspects of processing prior to initiation of the processing by means of a privacy notice in Albanian language, containing all the required information under the DP Law;
- Appropriate security measures for the protection of collected data are implemented;
- Data subjects are offered the ability to exercise their rights granted under the DP Law, i.e., right of access to data; right to rectification of errors; right to deletion/right to be forgotten; right to object to processing; right to restrict processing; right to data portability; right to withdraw consent; right to object to marketing; right to complain to the Commissioner.

International data transfer

Specific provisions are dedicated for the international transfer of data, that are applicable in all the cases in which the data transfer is done to a recipient in a foreign state. For this purpose, the law differentiates between two categories: i) states with an adequate level of protection, ii) states that do not have an adequate level of protection. For the first category, the data transfer is allowed without any restrictions, while on the other hand, when transferring personal data to a country lacking and adequate level of data protection, prior authorization of the Commissioner is required. However, the Law provides for exceptions to the obtaining of such prior authorisation in cases when:

- the international transfer is based on international treaties ratified by the Republic of Albania;
- prior consent has been obtained by the data subject;
- the international transfer is necessary for the performance of a contract between the data subject and controller;
- it is a legal obligation of the controller;
- it is necessary for the vital interest of the data subject;
- the transfer is done from a register that is open for consultation and provides information to the general public; and
- it is necessary or legally required by an important public interest or for exercise/defence of a legal right.

ARTIFICIAL INTELLIGENCE

Artificial Intelligence ("AI") is defined by a recent Law on Electronic Governance, which entered into force in July 2023, as "the simulation of human intelligence processes through systems and computer algorithms." However, there is currently no specific regime and detailed rules regarding artificial intelligence in Albanian legislation. The methodology and technical standards for the use of AI technology are expected to be enacted within the first semester of 2024. Indeed, the government has pledged to introduce a framework that would enable the integration of AI in government electronic systems, public procurement procedures, the provision of quality public services, school curriculums, scientific and academic research, data protection measures, etc. Finally, it is also worth mentioning that in November 2023 Albania has ratified a bilateral treaty with the EU on Albania's participation in the Digital Europe Programme (2021-2027).

EMPLOYEES/CONTRACTORS

The Albanian legislation offers two methods for engaging a person to perform specific work or services – either as an employee or as an independent contractor/entrepreneur. In the former scenario, the parties formalize their arrangement through a written employment contract, while in the latter, they enter into a service agreement. These two relationships are governed by distinct legal frameworks (Labour Code and Civil Code), resulting in varying sets of rights and obligations.

It should be noted that, until now, entrepreneurs have benefited from a more favourable tax treatment, leading to the frequent exploitation of certain features in practice through the misrepresentation of employment relations as service contracts. New amendments that have entered in force on January 1st 2024 intend to reduce such instances.

Foreign citizens can work in Albania by obtaining a single permit, which provides both legal residence and employment rights in the country. The application is submitted online through the governmental platform. The processing time for the permit generally ranges from 1 to 2 months, particularly for citizens of EU and Western Balkan countries.

Work for hire: Apart from employment and service contracts with an independent contractor, there is no specific work-for-hire regime in Albania. In the absence of specific contractual provisions, economic rights either generally belong to the author of the work or are limited in time. Therefore, it is advisable to include clauses covering IP issues in the specific agreements.

Taxes and social security: The employer is bound to declare and register the employees to the relevant institutions and to withhold from their gross salary the health and social security contributions as well as the personal income tax.

Termination: The Albanian regime for employment termination generally favours employees, whereas terminating a service agreement is comparatively easier. The Albanian Labour Code outlines two procedures for the termination of employment contracts:

1. The standard procedure necessitates the employer to follow specific steps, which include conducting a meeting with the employee, sending a notification and providing reasons for termination, and adhering to the mandatory notice period. Grounds for termination can be related to the abilities or behavior of the employee, or factors associated with the operational conditions of the company. Failure to comply with the procedure entitles the employee to seek compensation equivalent to two months' salary, while a breach of the notice period triggers damages up to three months' salary and the application of immediate termination rules (addressed below).
2. Immediate termination occurs when there are serious circumstances that make it unreasonable for the employment relationship to continue. The law explicitly identifies grounds such as a serious breach of obligations or repeated breaches with non-serious fault despite written warnings from the employer. If the immediate termination is not justified, the employee may seek up to twelve months' salary.

On the other hand, service agreements concluded for an indefinite term can be terminated for non-fulfilment of the obligations by one party, or for any other cause that is specifically contemplated in the contract.

CONSUMER PROTECTION

The Albanian Law on Consumer Protection:

- Guarantees to the consumers a comprehensive set of rights including the right to file a complaint, the right of information, the right of legal protection of their life and health, the right of compensation, the right of legal protection, the right to form an organization and/or other form of gatherings regarding consumer protection and their representation in the decision-making processes etc.
- Obliges the traders to place on the market only safe products taking into account the i) characteristics of the services; ii) effect on the other services and goods; iii) presentation of the services, any warnings or information regarding the services; iv) the categories of consumers at risk when using the services (in particular children and elderly); and v) potential risks that service can cause, if not properly used.
- Entails an obligation for the traders to accurately inform the consumers on the trading items and describe in the labelling the characteristics of the goods that they offer in the Albanian language, safely pack them, clearly display their price, and give the receipt to the buyer.
- Prohibits unfair commercial practices in the form of i) misleading practices and/or omissions, that through false information or material omissions deceive or are likely to deceive the average consumer or ii) aggressive practices, that consist of the using of harassment, coercion, physical force or undue influence on the part of the trader aiming to diminish the ability of the consumer to make a free and unconfined decision.
- Regulates marketing of an item, by prohibiting i) misleading advertising (designated to deceive the consumer), ii) unfair advertising (discriminatory based on sex, race, religion etc.) and restricting comparative advertising (references to other traders or their products).
- Prohibits unfair contractual conditions as detailed under the section on Terms of Service below.
- Governs the sale contracts with the consumer (i.e., providing product information, responsibilities and liabilities of the traders, rights of the consumers, product compliance etc.) including i) distance contracts (i.e., contracts that are concluded through means of communication), ii) off-premises contracts, iii) special contracts (i.e., contracts for the supply of water, energy and telecommunication services), and iv) travel package contracts.
- Designates the responsible State bodies for the monitoring and enforcement of the legal requirements regarding consumer protection law and regulates the establishment of non-governmental organizations in the realm of consumer protection.

TERMS OF SERVICE

Terms of service prepared by one of the contracting parties have effects on the other party if, at the moment of the contract formation, the latter, exercising due care, was aware or should have been aware of them. When the contractual conditions include clauses related to limitations of liability, restrictions on raising counterclaims, limitations on contractual freedom in relations with third parties, derogations from the competence of the courts, etc., they are considered effective only when separately adopted in writing by the other party.

More specifically, from a Consumer Protection Law standpoint, terms of service should steer clear of incorporating what are referred to as unfair contractual provisions, which encompass (for instance):

- exclusion or limitation of the trader's liability for harms caused to the consumers due to the traders actions or omissions;
- inappropriate restrictions of the consumer rights;
- setting of unproportional penalties for consumers in case of non-fulfilment;
- exclusive right of the trader to interpret the contractual provisions;
- the right of the trader to unilaterally change the characteristics of the goods provided;
- an obligation to the consumer to fulfil his obligations, regardless of the conformity with the contract on the part of the trader etc.

WHAT ELSE?

UBO Register

In parallel with the company incorporation or immediately upon its registration, the company must declare and register its ultimate beneficial owner(s) holding directly or indirectly 25% or more of the shares or voting rights. The initial UBO registration has proven to be complicated in practice and has caused delays in the company incorporation process, considering the difficulties for foreign entities to evidence their chain of control and submit documents in due form. Failure to complete the initial registration of the ultimate beneficial owner(s) results in the suspension of the registration of the LLCs in Albania.

E-governmental portal

Upon company registration, the startup must activate its account on the governmental platform e-Albania. Numerous services from state authorities, such as first employee registration and obtaining an electronic certificate for tax purposes, are exclusively available online through the company's account. Additionally, filings made through the governmental platform usually require obtaining a certified electronic signature issued by the competent authorities in Albania, which is valid for one year and is renewable.

ARGENTINA

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ARGENTINA

LEGAL FOUNDATIONS

Argentina is a federal republic, consisting of 23 provinces and the Autonomous City of Buenos Aires. The Argentine Constitution establishes a federal governmental structure where the provinces reserve all the powers which have not been delegated to the federal government. Thus, two distinct orders of legal governance coexist in Argentina, **Federal** and **Provincial**.

The Argentine Constitution also provides for a tripartite system of government consisting of an executive branch, headed by the President, the legislative branch in the form of a Congress divided into two chambers – the Senate and the Chamber of Deputies–, and the judicial branch. Provincial governments are organized along similar lines.

Argentina follows the **civil law** system. Accordingly, Argentine substantive and procedural law is mainly codified.

In the federal sphere, the Federal Constitution represents the supreme source of legal order, along with certain international human rights treaties that were expressly conferred constitutional status through the 1994 constitutional amendment. Following the Constitution are all international treaties and conventions entered into by the Federal Government. Next, in descending order, follow federal laws, executive decrees and resolutions and other administrative acts of the executive branch. Subordinate to the federal sources of law are the provincial constitutions, provincial laws, and provincial administrative rules or acts.

Argentine **private law** is mainly codified in the Argentine Civil and Commercial Code, whose latest amendment entered into force on August 1st, 2015 ("CCCN"). The CCCN governs the relationship between individuals (liability, contracts, property law, family and inheritance, private international law). Besides, the national legislative branch has enacted several legal statutes regarding specific fields of law (for example: Companies' Law, Consumer Law, Employment Law, Personal Data Protection Law, Bankruptcy Law). These statutes are continuously updated.

Argentine **criminal law** is mainly codified in the Argentine Criminal Code ("ACC"), which includes: (i) rules for the geographical application of Argentine criminal statutes; (ii) rules on criminal liability, recidivism and attempt; (iii) rules for the prosecution of criminal actions and statutes of limitations; and (iv) criminal definitions and applicable penalties. However, the criminal definitions in the ACC are not exhaustive, as several substantive laws introduced criminal offences.

The Argentine judicial system is divided into federal and provincial courts. The supreme judicial power is vested in the Argentine Supreme Court of Justice. Since Argentina has adopted a civil law system, case law only constitutes a source of interpretation of the written statutes and codes, but precedents are not binding. In this sense, although lower courts tend to follow decisions handed down by the higher courts (especially from the Supreme Court), their rulings are not binding.

CORPORATE STRUCTURES

Principal Types of Business Entities

Foreign companies may conduct business in Argentina on a permanent basis or they can appoint a local commercial representative, set up a branch, incorporate a local corporate entity (subsidiary), or acquire shares in an existing Argentine company.

The main investment vehicles used by non-resident individuals and foreign companies are the following: branch, corporation (Sociedad Anónima), and limited liability company (Sociedad de Responsabilidad Limitada).

It is worth noting that the LGS recognizes single-shareholder corporations (Sociedades Anónimas Unipersonales, or SAU) as a corporate entity that can be adopted.

In addition, Law No. 27349 (Ley de Apoyo al Capital Emprendedor) has introduced a new type of legal entity called simplified corporation (Sociedad por Acciones Simplificada or SAS). The SAS was characterized by its use of digital means and flexible framework to rule its bodies; however, due to recent regulations issued by the Public Registry of the City of Buenos Aires (the IGJ), the SAS is currently facing some practical inconveniences in that jurisdiction. Additionally, a national bill draft was approved by the Senate, imposing even more requirements and formalities on the SAS.

Requirements for the registration of foreign entities as shareholders of local entities substantially vary from jurisdiction to jurisdiction. Foreign companies incorporated abroad and registered in any jurisdiction of Argentina that hold shares or will hold shares in companies domiciled in the City of Buenos Aires must also be registered with the IGJ and registrations in any other registry are not enforceable against the IGJ. Additionally, the IGJ will not register any foreign companies registered or incorporated in jurisdictions considered non-cooperative for tax transparency purposes, with low or no taxation, and/or categorized as non-cooperative in the fight against money laundering and financing of terrorism.

As a general principle, all types of Argentine companies and Argentine branches of foreign companies are considered Argentine resident taxpayers and subject to the same tax treatment. Thus, from a tax perspective, there are no relevant differences between carrying out businesses in Argentina through any of those vehicles.

The basic characteristics of the branch, corporation, single-shareholder corporation, simplified corporation, and limited liability company, as per Argentinian law and the regulations of the IGJ are detailed below.

Branch of a Foreign Entity

Any company duly organized and existing in accordance with the laws of its country of origin can set up a branch in Argentina. However, the registration of foreign companies that lack the capacity and authorization to conduct business in their place of incorporation has been recently prohibited by the IGJ. Also, the IGJ will not register foreign companies that are incorporated in jurisdictions with special tax regimes that are deemed non-cooperative for the purpose of tax transparency and/or categorized as non-cooperative collaborators in the fight against Money Laundering and Terrorism Financing or that have low or no taxation in accordance with the criteria of certain Argentine authorities or which at the IGJ's reasonably founded discretion fail to meet those standards.

In principle, it is not necessary to allocate capital to the Argentine branch, except as required for regulatory matters (e.g., insurance or reinsurance companies). The branch must keep separate accounting records in Argentina, file annual financial statements and comply with the AIR regime described above. The branch must also comply with several obligations related to the external supervision of the IGJ, such as maintaining positive net equity.

CORPORATE STRUCTURES, CONT'D

Corporation
(Sociedad Anónima or SA)

Capital stock and Shareholders: At least two shareholders, which can be legal entities or individuals, are required to set up an SA. The minimum capital required is ARS 100,000 (approximately USD 122 at the exchange rate at the time of writing). While the share capital must be fully subscribed at the time of incorporation, only 25% need be paid in on such shares, with the balance to be paid within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription.

Capital stock is divided into shares that must be in registered form and denominated in Argentine currency. Except for specific cases provided by law, there are no nationality or residency requirements. Foreign individuals, whether residents of Argentina or not, and foreign companies may hold up to 100% of the capital. Shares must be of equal par value and have equal rights within the same class. However, different classes of shares may be created. Transfers of shares are generally unrestricted, but restrictions may be included in the by-laws if they do not effectively prevent the transfer of shares.

Management and Representation: A board of directors elected at a shareholders' meeting manages the SA. Directors, and even the president of the company, may be foreigners. Even so, most of the board members must be Argentine residents.

- The IGJ enacted Resolutions No. 34/2020 and 12/2021, which provide that certain companies and associations incorporated in the City of Buenos Aires must observe gender equality in the composition of their board of directors and statutory supervisor committees, if applicable.

- Through Resolution No. 1/2022, the IGJ recently limited the term of duration of companies to be registered with such entity, to a maximum of 30 years since the date of their registration.

Shareholders' Meetings: A shareholders' meeting must be held at least once a year to consider the annual financial statement, the allocation of the results of the fiscal year, and the appointment of directors and statutory supervisors.

Shareholder resolutions must be recorded in an appropriate minute book.

SAs must keep a share registry book as well as books on attendance at shareholders' meetings and the minutes of boardroom and shareholders' meetings. Accounting books, and, if applicable, a supervisory committee minutes book must be kept.

Supervision: Argentine companies are subject to the external supervision of the IGJ, and the internal supervision of controllers or supervisors (síndicos / comisión fiscalizadora) appointed by the shareholders, if required by law.

Shareholder Liability: Shareholders who have fully paid up their subscribed shares are in general not liable for the company's obligations beyond their capital contributions. Shareholders who are partly paid up in their shares are required to pay any outstanding balance within a maximum of two years from the date of subscription.

Any shareholder with a conflict of interest has a duty to abstain from voting on any matter relating to that conflict. Any shareholder who fails to comply with this provision will be liable for any damage resulting from a final resolution of the matter in conflict if their vote contributed to the majority vote necessary to adopt the resolution. Shareholders who vote in favor of a resolution that is subsequently declared null are jointly and severally liable for damages caused because of that resolution.

Liability of Directors and Managers: All directors and managers of an SA are subject to a standard of loyalty and diligence. Noncompliance with these standards results in unlimited joint and several liability.

CORPORATE STRUCTURES, CONT'D

Single-Shareholder Corporations
(Sociedades Anónimas Unipersonales or SAU)

Incorporation Requirements: Since a SAU is a type of SA, it has the same incorporation requirements of an SA, with these additional requirements:

- SAUs can only be incorporated as corporations (SAs or sociedades anónimas).
- SAUs cannot be shareholders in another SAU (this also applies to SAUs whose shareholder is a sole-shareholder company incorporated abroad).
- SAUs' share capital must be fully subscribed and paid up upon incorporation or capital increase.

Supervision: The LGS establishes that SAUs are subject to permanent government supervision, as provided in Section 299 of the LGS. In this regard, SAUs must:

- appoint a statutory supervisor; and
- comply with the filings required of companies subject to permanent government supervision by the public registry of the jurisdiction where the SAU's domicile is registered. This includes information on the holding of ordinary and extraordinary shareholders' meetings and financial statements.

As SAUs are subject to permanent government supervision, they are a costly type of corporate entity, so they are typically not a convenient option for small-scale businesses.

Simplified Corporations
(Sociedades por Acciones Simplificadas or SAS)

These types of corporations were introduced as part of a law passed in 2017 to promote entrepreneurial activities in Argentina.

Incorporation: Registration must be completed within 24 hours from the next business day after the filing if the filings are made electronically with a standard form. However, timings and requirements may vary and be extended due to new regulations and requirements. The incorporation or any amendment may be made by public deed, a duly legalized private instrument, or electronically with a digital signature. This procedure includes digital notices for IGJ observations. If the draft by-laws approved by the IGJ are not adopted, the registration may take at least twenty (20) days.

Board of Directors: The simplified corporation must have at least one regular and one alternate director, in the case of no statutory supervisors. At least one of the regular directors must have residential address in Argentina. This new type of entity also allows meetings of the board of directors and the shareholders to be held remotely through a virtual platform and off the company's premises.

Limitations: A SAS cannot incorporate or participate in another SAS. A SAS cannot be controlled by or related by more than 30% of its corporate capital with a company included in section 299 of the LGS (essentially large corporations).

Initial Corporate Capital: At first, corporate capital cannot be less than two times the minimum salary. Capital is divided into shares with singular or plural vote. Capital integration is based on the terms and conditions of the by-laws.

CORPORATE STRUCTURES, CONT'D

Limited Liability Companies
(Sociedad de Responsabilidad Limitada or SRL)

Corporate Capital and Partners: An SRL may be set up by a minimum of two and a maximum of 50 partners, who may be individuals or corporate entities. Foreign individuals or corporate entities can be admitted as partners of SRLs if they are empowered to participate in such companies by the laws of their jurisdiction of incorporation.

The corporate capital must be fully subscribed upon incorporation, denominated in Argentine currency, and divided into partnership quotas. A quarter (25%) of the corporate capital must be paid up by the partners at the time of incorporation and any balance must be paid up within two years thereafter.

When quotas are issued for contributions in non-monetary assets, they must be fully paid in. Partnership quotas must be of equal par value and entitle the holder to one vote each. Partners in an SRL are entitled to preemptive rights with respect to new issuances of quotas.

Management and Representation: The partners may appoint one or more managers, who may be partners, employees or third parties. The managers represent the company, either individually or jointly, as determined in the by-laws.

Limited Liability Companies, CONT'D
(Sociedad de Responsabilidad Limitada or SRL)

Partners' Meetings: SRL by-laws contain the rules for adopting resolutions. Unless the by-laws state otherwise, resolutions may be passed in writing without the need for holding a meeting. The exception is for those companies with a capital of ARS 50 million or more, that must hold meetings to review the annual financial statements. Different majorities are required to make decisions in the partners' meetings, depending on the subject matter. In meetings considering amendments to bylaws, if one partner holds the majority vote, the vote of another partner will be necessary to approve such amendment.

Supervision: The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital amounts to ARS 50 million or more, in which case one or more statutory supervisors or a supervisory committee must be appointed. When statutory supervisors or a supervisory committee are appointed, the rules for SAs generally apply.

The Liability of Partners and Managers: In general, and with few exceptions, similar rules for the liability of partners and managers apply to SRLs and SAs. However, when there is more than one manager, liability will depend on the provisions of the by-laws.

ENTERING THE COUNTRY

In general, foreign investors who want to invest in Argentina, either by starting up new businesses or acquiring existing businesses or companies, do not require prior government approval except in regulated industries or under general rules such as antitrust regulations. However, if a foreign company's investment will imply holding equity in an Argentine company, the foreign company must register in the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and must comply with certain periodic reporting requirements.

The Argentine Constitution states, as a general principle, that foreigners investing in economic activities in Argentina have the same status and the same rights that the law grants to local investors.

One of the only foreign investment sectors still restricted in Argentina is broadcasting, but the Investment Protection Treaty with the United States has been construed as repealing these restrictions, at least for U.S. investors. Law No. 25,750, enacted in 2003, also eases the restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies. A lack of precedent, however, has made its application uncertain.

Another restriction on foreigners is that they must obtain prior government approval to purchase land in border and security areas, or to hold a controlling stake in a company owning such land. Additional restrictions on foreign ownership of farmland were introduced imposing certain limits on the ownership or possession of rural land or adjacent to certain water bodies.

INTELLECTUAL PROPERTY

Section 17 of the Argentine Constitution protects intellectual property by providing that "all authors or inventors are the exclusive owners of their works, inventions or discoveries for the period of time established by law".

Since 1966, Argentina has been a party to the Paris Convention (Lisbon Agreement of 1958). Argentina is a member of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the General Agreement on Trade and Tariffs (GATT) in 1994, the Universal Copyright Convention in 1957 and the Berne Convention in 1999. Argentina has not adhered to the Patent Cooperation Treaty (PCT) or the Madrid Protocol yet.

The following IP rights can be registered:

Trademarks

What is protectable? The Trademark Law No. 22,362, as amended by Law No. 27,444, together with its regulatory decree No 242/2019 ("Trademark Law") provides that any sign having distinctive capacity may be registered as a trademark. Some examples include, but are not limited to: one or more words, with or without meaning; drawings; emblems; monograms; engravings; stampings; seals; images; bands; combinations of colors applied to a particular place on the products or containers; wrappers; containers; combinations of letters and of numbers; letters and numbers insofar as concerns the special design thereof; and advertising phrases. On the contrary, it is not possible to register as trademarks names, words, and signs that constitute the usual designation of the products or services that are intended to be identified, or that are descriptive of their qualities, function or other characteristics; the names, words and phrases that have become of common use before application; and products' shapes and the natural color of a product or a single color applied to it.

Where to apply? Trademarks applications must be filed with the National Institute of Industrial Property ("INPI").

Duration of protection? Trademark registrations are granted for ten years and can be indefinitely renewed for subsequent ten-year periods provided that the trademark has been used in connection with the sale of a product, the rendering of a service, or as a trade name during the five-year period preceding each expiration date. Renewal of a trademark registration can be filed six months in advance or up to six months after the renewal deadline.

Cost? The official fee for filing a trademark consisting of up to 20 positions in the specifications of goods/services is ARS 17,680 (approximately USD 22 at the exchange rate at the time of writing). The filing of each additional position is charged ARS 200 (approximately USD 0.25 at the exchange rate at the time of writing).

[1] Costs were calculated based on the INPI fee schedule and official exchange rate of January 2024.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? The Patent Law No. 24,481 ("Patent Law"), as amended, provides that patents will be granted for any invention that complies with the requirements of novelty, inventive step and industrial application.

Where to apply? Patents applications must be filed with the INPI.

Duration of protection? Patents protection last 20 years as of the filing date. After this term, the patent will enter the public domain.

Cost? Application fees for patents vary depending on if the applicant is a legal entity or human person.

The official fee for filing a patent application of up to 10 claims is ARS 48,000 (approximately USD 59 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 3,200 (approximately USD 4 at the exchange rate at the time of writing).

For human persons, the official fee for filing a patent application of up to 10 claims is ARS 24,000 (approximately USD 30 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 1,600 (approximately USD 2 at the exchange rate at the time of writing).

[2] Costs were calculated based on the INPI fee schedule and official exchange rate of January 2024.

Utility Model

What is protectable? The Patent Law provides that utility models are also available for any new arrangement or shape of tool, work instrument, utensil, device or object of an industrial nature, provided that it is new and entails an improvement of the way the object works.

Where to apply? Utility models applications must be filed with the INPI.

Duration of protection? Utility models are granted for a non-extendable term of ten years from the date of filing.

Cost? Application fees for utility models vary depending on if the applicant is a legal entity or human person.

The official fee for filing a utility model application of up to 10 claims is ARS 24,000 (approximately USD 30 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 1,600 (approximately USD 2 at the exchange rate at the time of writing).

For human persons, the official fee for filing a utility model application of up to 10 claims is ARS 12,000 (approximately USD 15 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 800 (approximately USD 1 at the exchange rate at the time of writing).

[3] Costs were calculated based on the INPI fee schedule and official exchange rate of January 2024.

Industrial models and designs

What is protectable? Industrial models or design registrations are granted to protect the new appearance or shape of an industrial product and which confer it an ornamental character. Single and multiple applications are available. A multiple registration may cover up to 20 different models or designs, provided that all of them belong to the same class.

Where to apply? Industrial models and designs are registered by the INPI without any substantive examination.

Duration of protection? The term of protection is five years from the filing date and can be renewed for two additional five-year terms.

Cost? The official fee for filing a single industrial model or design application is ARS 20,400 (USD 25).

INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? The Argentine Copyright Law No. 11,723 ("Copyright Law") protects the expression of ideas. The Copyright Law confers protection on a broad variety works, including scientific, literary, artistic or educational works, regardless of the process of reproduction.

Some examples include but are not limited to writings; computer programs; compilations of data; dramatic works; musical compositions; cinematographic works, choreographic works, pantomimes; drawings, paintings, sculptures and architectural works; artistic and scientific models and works of art applied to commerce or industry; printed matter, charts and maps; plastic works, photographs, engravings and phonograms.

The Copyright Law grants authors several rights, including reproduction rights, performing rights, adaptation rights, translation rights and moral rights, namely the right to be named as the author, to preserve the work and to decide upon publication, none of which can be waived. The violation of any such rights constitutes a copyright infringement.

Although copyright exists from the moment the work is created and not since its registration –as the registration is only declarative of a pre-existing right and does not create said right– the registration creates a rebuttable presumption of authorship, ownership and of the validity of the work and of the date of registration.

Where to apply? Although not mandatory, copyrightable works can be registered with the Copyright Office.

The Copyright Office has different registration processes depending on whether the work has been published or remains unpublished.

Artistic, literary and musical works, phonograms, multimedia works, websites, cinematographic works, and software can be registered as published works. Once the registration is made, there in no need for its renewal.

Unpublished works, on the other hand, are divided into musical works, non-musical works and software. If registered, unpublished works must be renewed every three years. Otherwise, the Copyright Office will destroy them.

Lastly, copyright assignment agreements must be recorded with the Copyright Office to be enforceable against third parties.

Duration of protection? Under section 5 of the Copyright Law, copyright protection is granted throughout the life of the author, and for an additional 70-year period as from 1 January of the year following the author's death. For works involving co-operation, the 70-year period begins to run as from the death of the last author. If the work was published after the author's death, the 70-year term begins to run as from 1 January of the year following the author's death. Section 34 of the Copyright Law states that photographic works are protected for 20 years as from the date of their initial publication. Cinematographic works are protected for 50 years as from the date of the death of the last co-author.

Cost? Application fees for registration of works are low and will depend on whether the work to be registered has been published or remains unpublished.

Application fees for registration of published works can vary between ARS 700 to ARS 3,000 (USD 0.86 to USD 3.68 at the exchange rate at the time of writing) plus the applicable legal rate.

Application fees for registration of unpublished works can be free and cost up to ARS 900 (approximately USD 1 at the exchange rate at the time of writing).

Various other fees may also be required during the copyright application process. A complete list of fees can be found on the Copyright Office website.

[4] Costs were calculated based on the fees published in the Copyright Office website and official exchange rate of January 2024.

INTELLECTUAL PROPERTY, CONT'D

Domain Names

What is protected? There is no legislation in Argentina dealing specifically with domain names registered under the internet country code top-level domain (ccTLD.ar). However, the Argentine Government has passed Resolution 110/2016 to regulate the domain name registration procedure. Registration of domain names with NIC-Argentina confers the exclusive right of use to the proprietor. Do-main names may be subject to dealings such as assignment, liens, and may be challenged by third parties with a legitimate interest, before both NIC-Argentina and the courts.

Where to apply? Domain names are registered with NIC-Argentina.

Duration of protection? Domains are valid for one year and can be renewed annually.

Costs? Application fees for registration of domain names range between ARS 8,500 to ARS 64,000 (USD 10.42 to USD 78.43).

[4] Costs were calculated based on the fees published in the Copyright Office website and official exchange rate of January 2024.

The following IP rights cannot be registered:

Trade Secrets

What is protected? The Confidentiality Law No. 24,766 ("Confidentiality Law") establishes that any person may prevent information that is legitimately under their control from being disclosed to third parties or from being acquired or used by third parties without their consent, as long as such information meets the following conditions: (i) it is secret in the sense that it is not, as a whole or in part, known or easily accessible to persons in that area of expertise/practise; (ii) has a commercial value because it is secret; and (iii) the person in its control took reasonable measures to keep it secret.

Moreover, it provides that those persons who, by means of their labour or business relationship, have access to information that may be considered trade secrets or is intended to be kept confidential, must refrain from using and disclosing it without legal basis or the consent of the owner of such information. The breach of this confidentiality obligation constitutes a criminal offense according to Section 156 of the Criminal Code.

Appropriate non-disclosure measures must be implemented to protect such information (i.e., marking information as trade secrets, implementing IT security measures, particularly access restriction, and concluding NDAs).

Duration of protection?
The term of duration of protection will last as long as the information meet the conditions set forth in the Confidentiality Law or as long as it was established in the agreement (when applicable).

ARGENTINA

DATA PROTECTION/PRIVACY

In Argentina, the protection of personal data is governed by Section 43 of the National Constitution, the Personal Data Protection Law No. 25,326 ("DPL"), its Regulatory Decree No. 1558/2001 ("Decree"), Convention 108 for the Protection of Individuals with respect to Automatic Processing of Personal Data (ratified by Law No. 27. 483), its Amending Protocol (approved by Argentine Law No. 27,699), also known as "Convention 108+"[1] and by the complementary rules issued by the Data Protection Authority, the Agency of Access to Public Information ("DPA") (collectively, the "Data Protection Regime").

In 2003, Argentina was recognized by the European Commission as a country that offers adequate protection for the international transfer of personal data (Commission Decision No. 2003/490/EC), and as of today it maintains that status.

The Data Protection Regime foresees certain obligations for data controllers and data processors, as well as certain sanctions in case these obligations are not complied with. Some of these obligations include:

- Database registration. Data controllers processing personal data subject to the DPL as well as its databases must be registered before the DPA as an essential condition for the valid processing of personal data.
- Having legal basis for the processing of personal data. The general rule under the DPL is that the legal basis for the processing of personal data is the consent of the data subjects, with certain exceptions that must be interpreted restrictively.
- Providing data subjects with information about the processing activities. Data subjects must be provided, at least, with the information included under section 6 of the DPL.
- Complying with DPL's guiding principles (i.e., purpose limitation, data minimization, storage limitation, lawfulness, fairness and transparency, and accuracy).
- Complying with the specific provisions regarding data assignments. Pursuant to the DPL, data controllers may only assign personal data if: (i) the object of processing serves purposes are directly related to the legitimate interest of the parties of the assignment; (ii) the prior consent of the data subjects is obtained (unless an exception to consent applies); and (iii) data subjects are provided with information regarding the identity of the assignee.
- Implementing data processing agreements. The DPL set forth that the processing of personal data by data processors must be governed by a data processing agreement, which must comply with the provisions of section 25 of the DPL and the Decree.
- Complying with specific provisions on international data transfers. The transfer of personal data to countries or to international organizations which do not grant an appropriate level of protection according to the DPA's criteria is forbidden, unless (i) the data subject consents to the transfer; or (ii) when adequate level of protection arises from (a) contractual clauses (international data transfer agreements) or (b) systems of self-regulation (as binding corporate rules).
- Ensuring confidentiality and security of personal data. The DPL states that data controllers and data processors must adopt the necessary technical and organizational measures to guarantee the protection and confidentiality of personal data, in order to prevent any adulteration, loss or unauthorized access or processing of such data.
- Assuring the exercise of the rights of data subjects. Under the DPL, data subjects are recognized with the rights of access, rectification, updating and suppression of their personal data.

[1] Convention 108+ has not yet entered into force.

DATA PROTECTION/PRIVACY, CONT'D

Penalties for non-compliance with Data Protection Regime are limited to: (i) warnings; (ii) fines from ARS 1,000 to ARS 100,000; (iii) suspensions; (iv) closure; or (v) cancellation of the database.

Infringements are graded as minor, severe or very severe:

- Minor. For minor infractions, up to 2 warnings and/or a fine of ARS 1,000 to ARS 80,000 (approximately USD 1.23 to USD 98 at the exchange rate at the time of writing) may be applied.
- Severe. For severe violations, the sanction to be applied will be up to 4 warnings, suspension from 1 to 30 days and/or a fine of ARS 80,001 to ARS 90,000 (approximately USD 98 to USD 110 at the exchange rate at the time of writing).
- Very severe. For very severe infractions, up to 6 warnings, suspension of 31 to 365 days, closure, or cancellation of the database and/or a fine of ARS 90,001 to ARS 100,000 (approximately USD 110 to USD 122 at the exchange rate at the time of writing) will be applied.

DPA's Resolution No. 244/2022 limits the fines applicable to several violations included in the same administrative procedure to: (i) ARS 3,000,000 (USD 3,676 at the exchange rate at the time of writing) in the case of minor violations; (ii) ARS 10,000,000 (USD 12,254 at the exchange rate at the time of writing) in the case of severe violations; and (iii) ARS 15,000,000 (USD 18,380 at the exchange rate at the time of writing) in the case of very severe violations.

On the other hand, the DPA maintains a public registry of individuals and legal entities that have been sanctioned for violating the DPL.

In addition to the sanctions that may be imposed by the DPA, there may be claims for damages by data subjects and/or administrative fines based on the general principles of civil liability established in the CCCN (as well as consumer regulations in certain cases), including through class actions.

ARGENTINA

ARTIFICIAL INTELLIGENCE

Argentina has no specific national regulatory regime for Artificial Intelligence (AI). Although there is no specific regulatory framework that widely addresses all applications and circumstances related to AI yet, certain general legislation (for instance regarding torts, contracts, intellectual property, consumer protection or privacy and data protection) may apply. In addition, some considerable measures have been issued in the past few months and years regarding the application and development of AI as described as follows:

- DPA's Resolution No. 4/2019: This Resolution provides that if the data controller makes decisions based solely on the automated processing of data, producing legal effects concerning the data subject or significantly affecting him or her, the data subject shall have the right to request from the data controller an explanation of the logic applied in such decisions.
- DPA's Data Protection Impact Assessment Guideline: In this Guideline, the DPA has considered, among others, the fact that a company uses or is planning to use the personal data it collects for the creation of predictive profiles and to make decisions based solely on those profiles as well as the making of decisions based solely on the automated processing of personal data, as actions that would trigger the need for the performance of a data protection impact assessment.
- Convention 108+: Although it is not in force yet, Convention 108+, recognizes, among others, the following rights to data subjects: (i) the right not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration; and (ii) to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her.
- Promotion regime: In 2020 Congress of Argentina enacted Law No. 27,506, creating the "Regime for the Promotion of the Knowledge Economy", which aims to promote economic activities that apply the use of knowledge and the digitalization of information, supported by advances in science and technology, to the production of goods, provision of services or process improvements. The law promotes several activities, including software and computer and digital services; artificial intelligence; robotics and industrial internet; internet of things; augmented and virtual reality. To this end, potential beneficiaries can receive benefits such as tax stability, income tax reduction, among others.

Moreover, recently, Argentinian authorities have issued some guidelines aiming to provide several recommendations to the **public sector** related to AI-based projects, transparency and data protection in the use of AI and to gather public agencies in the analysis of its impact on society.

- Recommendation for reliable AI: The Information Technology Subsecretariat issued Resolution No. 2/2023, aiming to compile and provide tools to be applied within innovation projects through technology, specifically focusing on those involving AI. In general, the Resolution establishes ethical principles to guarantee the protection of fundamental rights, respect democratic values, prevent or reduce risks, and foster innovation, and people-centered design. In practice, the recommendations also seek to apply those principles throughout the AI-cycle. This includes addressing measures to reduce risks, ensure transparency, accountability, and data quality, eliminate modelling biases, and ensure information security, among others. This group of stages that compose the AI-cycle encompasses a preparatory stage, a designing and data modeling stage, a verification stage, an implementation stage and an operational and maintenance stage.
- Data Protection Program for AI use: The DPA has issued Resolution No. 161/2023, creating a "Program for transparency and data protection in the Use of Artificial Intelligence". This program aims to identify good practices, seek algorithm transparency, strengthen institutional capacities and promote participative processes for AI regulatory proposals in Argentina, among others. Its general objective is to follow the development and the use of AI and guaranteeing the exercise of citizens' rights regarding transparency and personal data protection.
- Inter-Ministerial Roundtable on AI: The President's Chief of Staff also issued the Administrative Decision No. 750/2023, creating the Inter-Ministerial Roundtable on AI. This Roundtable seeks to address the progress and application of this technology in various sectors of the economy and society. It will gather different Ministries and coordinate an open dialogue and analyze the use of AI and the risks associated with it for public and private companies and individuals.

Lastly, these regulatory frameworks represent the initial stage and tend to be consistent with the recommendations of UNESCO and OECD, which Argentina adheres to, and are explicitly targeted at the **public sector**. However, these guidelines could serve as **non-binding directives** for the **private sector** and be used as a guide for implementing AI tools in any organization.

ARGENTINA

EMPLOYEES/CONTRACTORS

On a preliminary basis, we must point out that from a practical perspective, it is not materially possible for a foreign entity to hire and properly register employees without establishing a local company.

In this regard, for full compliance with local labor regulations, after establishing a local entity, the company must be registered as an employer before the tax authority, at which time it may begin to hire and duly register employees. The employees' registration process is also performed before the tax authority through an online system.

The most elementary obligations for the employer once the employee has been hired and registered are the: payment and registration of the salaries before the tax/social security authority, acting as withholding agent and payment of social security withholdings and contributions and income tax, hiring of a labor risk insurer (mandatory in order to cover employees from eventual labor illnesses or accidents), among others.

In terms of labor conditions and talent retention, due to existing foreign exchange restrictions and high inflationary context, the payment of salaries in foreign currency (mostly united states dollars) has been a widely used resource for such purposes. In addition, employers are also implementing other benefits, such as offering discount vouchers or credits in electronic wallets, however, it is strongly advisable to analyze them in particular, since, depending on how they are implemented, they might be considered as salary, and should be registered as such to avoid significant contingencies.

In Argentina, the rule is the hiring through indefinite term contracts, being -for example- the fixed-term and temporary ones, exceptions to the general rule. There is no legal obligation to execute a written employment agreement, and -in fact- it is not a typical market practice the written format.

Referring to termination of employment, the dismissal without cause triggers payment of a severance compensation calculated by considering tenure and salary. Other types of terminations are also admissible, subject to different formal and material requirements.

As regards to the hiring of contractors, it is a totally valid and legal alternative. Nevertheless, this figure should not be used in replacement to the proper registration of employees.

In this regard, provided that typical features of an employment are met, the relationship with the contractor may be reclassified as a labor relationship.

By way of illustration, typical features of an employment (pursuant to case law and scholars) are: subordination to a specific working time, correlative invoicing, provision of corporate emails, subordination to tasks and instructions, among others.

Upon misclassification claim, several and significant contingencies could be triggered. It is always advisable to analyze the hiring of contractors in particular.

It is worth mentioning that the new government issued on December 2023 a Decree (No. 70/2023), eliminating the most significant labor contingencies that may arise from a misclassification claim asserted by a contractor. However, the decree has been challenged before labor courts, and certain precautionary measures suspending its effects were issued.

The above-mentioned decree introduces other changes to relevant labor aspects and regulations, thus, it is highly advisable to monitor its eventual acceptance by the Congress and or labor judges.

Finally, in terms of work for hire regime, the Labor Contract Law No. 20,744 and the Copyright Law specifically establish that:

- The employee's personal inventions or discoveries are his/her property, even if he/she has used instruments that do not belong to him/her.
- Inventions or discoveries derived from the industrial procedures, methods or facilities of the establishment or from experimentations, research, improvements or refinement of those already employed, are the property of the employer.
- The inventions or discoveries, formulas, designs, materials and combinations obtained after the employee has been hired for such purpose are also his property.
- Any software developed by employees belongs to the employer, without the need of executing an assignment, if employees were specifically hired to develop such software (and did so while performing their work duties).

CONSUMER PROTECTION

The Argentine consumer protection regime is mainly governed by the Consumer Protection Law No. 24,240 ("CPL") and its Regulatory Decree 1798/1994; and the CCCN. There is also complimentary regulation on e-commerce. Companies will be considered suppliers and will have to comply with this bundle of regulation whenever they offer products or services to consumers. Consumers are natural persons or legal entities that acquire products or services for their own use (or their family's or social group's). So, this legal framework will be applicable to every consumer with the intent to acquire a product or service for any consumer use and as end user (i.e., one that does not involve re-introducing it into the market). Consumers are also protected by the fair-trade laws on labelling and advertising of products.

Argentine regulation will apply to products or service offered to consumers in Argentina, whether offered in the country or from abroad.

Law protects consumers with a paternalistic approach throughout the different contractual phases of a purchase, from advertising to the delivery of goods (including used goods) or performance of services. While the law provides for some clear rules (e.g., duty to inform; abusive clauses; mandatory warranty; strict liability; cooling-off period for online transactions; among others) those rules will be applied with a pro-consumer approach that provides that whenever there is doubt, the situation will be interpreted in the most favorable way to consumers.

- Generic duty to inform consumers. There is a generic duty to inform consumers. Suppliers must provide consumers with truthful, objective, and adequate information, which must be detailed, efficacious and to the point on the essential features of the goods and services supplied, and their marketing conditions. Suppliers must comply with labelling and packaging requirements, providing information to consumers at the time products are introduced into the market. Additionally, those suppliers who become aware that a product is dangerous after introducing it into the market must immediately inform this fact to the competent authorities and to consumers through adequate publications and, eventually, conduct corrective actions.

- Information must be delivered in Spanish. The font size must be larger than 2 millimeters. In the digital environment, characters size should not be below 2% of the screen irrespective of the device used, and, if applicable, with a minimum of 3 seconds of permanence on it. Some mandatory information, labels and buttons should be available in supplier's websites or apps.

- Cooling-off period. Consumers are entitled to revoke purchases and subscriptions (and any other acceptance to an offer made online) because of a mandatory 10-day cooling-off period. The period begins to run when the contract is agreed, or the good/service is delivered (whichever happens last). Any clause stating that consumers waive their right will be considered null and void and sanctions may apply. If the contract is revoked, both parties will be free of their obligations and must return what they received because of the agreement. There are only a few express exceptions to the right to revoke that applies to some products which, due to their own very nature, cannot be returned: personalized products (made following the consumer's own requests); music and video, records, software, databases, and -in general- products delivered in an electronic format that can be downloaded and used by the consumer immediately and permanently; and periodic press subscription like newspaper and magazines.

CONSUMER PROTECTION, CONT'D

- Joint and Several Liability. The product liability regime provides that any entity in the supply chain including the producer, manufacturer, importer, distributor, supplier, seller and whoever placed its brand on the product can be held liable for a defective product or service. Products must be supplied or rendered in a way that their use under regular conditions does not present a danger to consumers' health. Those products or services that may pose a risk to consumer's health must be sold according to the applicable rules (or reasonable rules if there are no such applicable regulations), mechanisms and instructions to ensure safety. The consumer and successive purchasers are entitled to a legal warranty affording protection against the defects or faults of any kind whatsoever. The whole supply chain is jointly and severally liable for granting and complying with a legal warranty.

- Advertising. Advertising is considered part of the binding offer to consumers. Advertising must not: (a) contain false indications that could mislead the consumer regarding the essential elements of the product or service; (b) use comparative advertising that could mislead consumers; or (c) be abusive, discriminatory, or induct consumers to behave in a harmful or dangerous way.

- Enforcement. Since Argentina is a federal country, there is a federal consumer protection authority, coexisting with provincial and municipal ones. The relevant authorities actively enforce the consumer protection regime by reviewing consumer contracts, prosecuting administrative proceedings, and imposing sanctions in the event of violations. Further, individual consumers, consumer protection NGO's, the Ombudsman or the Public Prosecutor have broadly standing to sue for pursuing class actions and claiming for punitive damages. Consumer are granted the right to file claims in forma pauperis which entails a waive in payment of not only court taxes but also costs and any other fees associated with the proceedings.

TERMS OF SERVICE

Terms of service (as well as privacy policies) are considered contracts of adhesion under Argentine law. Provisions in a contract of adhesion must be understandable and self-sufficient. The wording must be clear, complete, and easily legible. For the terms to be enforceable, terms must be made available in Spanish to consumers in Argentina.

In case of doubt, either the clauses or the contract itself will always be construed in favor of the consumer. Ambiguous clauses will be interpreted against the drafting party, and some clauses may be considered abusive and, so, unenforceable, even if agreed by the parties.

For online contracts, the supplier must inform the consumer, in addition to the minimum content of the contract and the right to withdraw the acceptance (see cooling-off period described above), all the necessary data to correctly use the electronic platform, so that the consumer can understand the risks arising from the sales' method chosen and who assumes those risks. Suppliers must inform in a clear, precise, and easily noticeable way, the information detailed below:

- Characteristics of the product or service offered;
- Availability of the product or service offered, as well as the conditions of the transaction and, if applicable, the applicable restrictions and limitations;
- The method, term, conditions, and liability for delivery;
- The procedures for cancellation of the contract and full access to the terms and conditions before confirming the transaction;
- The procedure for return, exchange and/or information on the refund policy, indicating the term and any other requirement or cost deriving from such process;
- The price of the product or service, the currency, the payment methods, the final value, the cost of freight and any other cost related to the contract, expressly stating that any applicable import taxes are not included;
- Warnings about possible risks of the product or service; and,
- The procedure for modifying the contract, if possible.

The general abusive clauses' regime is based on broad, open guidelines and complemented by a list of abusive clauses. The CCCN lists the following abusive clauses: (i) clauses that distort the drafting party's obligations; (ii) those that entail a waiver or restriction of the rights of the adhering party or extend rights of the drafting party resulting from supplementary rules; and (iii) those that, due to their content, wording, or presentation, are not reasonably foreseeable. For instance, early-waivers, choice of law, choice of jurisdictions might ultimately not be enforceable. The abusive clauses regime entitles consumers to claim for compensation and punitive damages. Claims can be brought individually or as class actions.

Lastly, it is highly advisable to get prior consumer consent, expressed in writing or by equivalent means, and to keep record of such acceptance (this recommendation might turn into a must in certain contests like with privacy policies). If terms are changed, let consumers know and request their consent to the changes by any sufficient means that allows to have proof of the consent. This is particularly important for substantial changes, since the amended clause may be unenforceable if the consumer has not agreed with it.

WHAT ELSE?

With a complex business landscape, Argentina offers plenty of opportunities but can also present challenges to investors. Risks common to most companies doing business in Argentina include inflation, devaluation and foreign exchange controls. General elections in Argentina were held in 2023, and Mr. Javier Milei was elected as the new president.

On December 27, 2023, President Javier Milei's new Administration submitted the comprehensive "Bases and Starting Points for the Freedom of the Argentine People" Bill to Congress. This proposal is set for discussion during Congress's extraordinary sessions until January 31, 2024. The initiative aims to reform various sectors, promoting individual freedom, fostering industrial and commercial development, safeguarding private property, and limiting state intervention.

Consumer Protection

Although modifications to the consumer protection regime have not yet been proposed or announced, the policies tend to deregulate and liberalize the market, so that some of its policies are expected to impact the consumer protection regime.

Data Protection Bill

The DPL is currently under a review process to be replaced by a new law, aligned in many aspects to EU GDPR provisions. The bill, drafted by the Data Protection Authority together with contributions from stakeholders from the public and private sectors, the civil society, and scholars, will introduce several changes to the current regime, such as the obligation to notify data breaches and to appoint a legal representative in Argentina as well as a data protection officer, among others. The bill was filed with the National Congress in June 2023 by the Executive Branch and there are good prospects that it will be passed.

Foreign Exchange Controls

Historically, inflows and outflows of funds have been subject to several restrictions and requirements as provided by the applicable foreign exchange regulations from time to time. Although in December 2015 most of such restrictions were lifted, as of September 2019, foreign exchange controls were reinstated.

Generally, all transfers of foreign currency to Argentina must be made through an Argentine financial institution or foreign exchange house.

AUSTRALIA

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AUSTRALIA

LEGAL FOUNDATIONS

Australia follows the common law, inherited from the United Kingdom. The legal system was established by the Australian Constitution in 1901 and is a federal system with laws enacted at both the Federal and State level.

The federal government, also known as "the Commonwealth", has exclusive law-making powers in relation to certain areas such as defence, telecommunications, banking, insurance, bankruptcy and foreign corporations.

However, there are also certain non-exclusive powers that are shared between the Commonwealth and State governments commonly referred to as "concurrent powers". At the State level, there are six state governments (New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia) and two territory governments (the Australian Capital Territory and the Northern Territory).

In the event of an inconsistency between Federal and State laws, the Federal law prevails to the extent of the inconsistency.

CORPORATE STRUCTURES

Common corporate structures in Australia include the following:

Proprietary Company

The most common business entity structure in Australia is the proprietary company (i.e. a private company). Registration of a proprietary company is governed at the Federal level under the Corporations Act 2001 (Cth) (**the Corporations Act**).

To register as a proprietary company, a company must be:

- limited by shares or be an unlimited company with share capital;
- have at least one shareholder; and
- have no more than 50 non-employee shareholders.

The Corporations Act also distinguishes between "small" and "large" proprietary companies, with small proprietary companies subject to reduced financial reporting obligations under the Act, as compared to large proprietary companies.

CORPORATE STRUCTURES, CONT'D

Partnerships

A "partnership" is defined an arrangement between "persons carrying on a business in common with a view to share profits" and is governed by state and territory legislation.

There are three common types of partnerships:

General partnership – where all partners are equally responsible for the management of the business, and each has unlimited liability for the debts and obligations it may incur.

Limited partnership – where the liability of general partners is limited to the amount of money they have contributed to the partnership. Limited partners are usually passive investors who do not play any role in the day-to-day management of the business.

Incorporated Limited Partnership – where one general partner has unlimited liability but the other partners have limited liability for the debts of the business.

The advantages of a partnership are that they are relatively easy to establish, have minimal reporting requirements, allow for equal / shared control by all partners over the business and are not required to pay tax on the partnership's income (i.e. each individual partner pays tax on their share of the net business income they receive).

Sole Proprietorship

A sole proprietorship, also referred to as a sole trader, is a common choice of business structure that is relatively easy and inexpensive to set up. An individual who sets up as a sole trader is legally responsible for all aspects of their business including any debts and losses, and day-to-day business decisions.

ENTERING THE COUNTRY

The primary legislation governing foreign investment in Australia is the Foreign Acquisitions and Takeovers Act 1975 (the **FATA**). The foreign investment regime is administered by the Foreign Investment Review Board (**FIRB**) and regulates both direct and indirect acquisitions of interests in Australian entities and land.

Under the FATA, a 'foreign person' includes:

- a foreign corporation;
- a foreign government and foreign government investor;
- a company or trustee where a foreign person holds at least 20% of the shares or units; and
- a company or trustee where two or more foreign persons hold at least 40% of the shares or units.

Whether a proposed transaction by a foreign person requires foreign investment approval from the Treasurer will depend on the identity of the investor, the type of investment, whether the investment is likely to raise national security concerns, the industry sector and the value of the proposed investment. To seek approval, an application which describes the proposed transaction in detail must be prepared and submitted to FIRB through an online portal.

While FIRB receives and examines foreign investment approval applications, the Treasurer is the ultimate decision-maker and has the power to approve or block foreign investment transactions that it considers are contrary to Australia's national interest or national security. Failure to notify the Treasurer prior to entering into an agreement to acquire these interests is an offence punishable by fines and, in the case of individuals, imprisonment.

Examples of proposed transactions by foreign persons that require foreign investment approval by the Treasurer include acquisitions of:

- a substantial interest (generally at least 20%) in an Australian entity (that is valued above the relevant monetary threshold);
- a direct interest (generally at least 10%) in a national security business or starting a national security business, regardless of the value of the business; and
- a direct interest in an Australian media business, or an agribusiness where the value of the foreign person's holding in the agribusiness is more than the relevant monetary threshold.

AUSTRALIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

IP Australia is the government agency that administers intellectual property (IP) rights in Australia. This is a federal government agency and Australia's intellectual property laws generally operate across the entire country. The following IP rights can be registered:

The following IP rights can be registered:

Patents

What is protectable? Any product, method or process that is new, inventive, useful and is a "suitable subject matter" (i.e. "manner of manufacture") is protectable under the Patents Act 1990 (Cth). In some cases, patents may be granted for computer-related inventions, medical devices, biological techniques and genetically modified microorganisms.

Where to apply? Patent registrations may be filed online on IP Australia's website.

Duration of protection? 20 years' protection for standard patents from the original filing date. Patents covering certain pharmaceuticals can in certain circumstances can be extended for up to 25 years.

Costs? Obtaining a standard patent in Australia can take between six months (if expedited) and otherwise about 2 years. Government fees are a minimum of $110 for a provisional patent and $370 for a standard application. Complete protection through a standard patent application may cost tens of thousands of dollars in professional fees if protection is also sought overseas.

Designs

What is protectable? A design is defined as "the overall appearance of the product resulting from one or more visual features of the product" and is protectable under the Designs Act 2003 (Cth).

Where to apply? Design registrations can be filed online with IP Australia for protection within Australia. A design application proceeds to registration without substantive examination. Seeking post registration examination is optional. However, a design registration is only enforceable once it has been certified (i.e. post examination).

Duration of protection? Maximum of 10 years from the date of registration, with renewal possible after 5 years.

Costs? Registering a design in Australia takes at least two months and costs a minimum of $250. Professional fees are in addition.

Trademarks

What is protectable? A sign used, or intended to be used, to distinguish goods or services provided by a person from those provided by any other person is protectable under the Trade Marks Act 1995 (Cth). Trade marks may take the form of a logo, phrase, word, letter, colour, sound, smell, picture, movement, an aspect of packaging or any combination of those forms.

Where to apply? Trademarks can be filed online with IP Australia for protection within Australia and with the World Intellectual Property Organization, under the Madrid System, depending on the territories in which trademark protection is sought outside of Australia.

Duration of protection? 10 years' protection from the filing date, but trademark protection can be renewed indefinitely.

Costs? Registering a trademark in Australia takes at least eight months and costs a minimum of $400 in government fees for one mark in one class. Professional fees are in addition. The overall costs depend on how many classes of goods and services are listed in your application.

Plant breeder's rights

What is protectable? Exclusive commercial rights may be granted over a new plant variety under the Plant Breeder's Rights Act 1994 (Cth). For a plant variety to be eligible for protection, it must be a product of a selective breeding process, new or recently exploited and distinct, uniform and stable.

Where to apply? Registrations can be filed online with IP Australia for protection within Australia.

Duration of protection? 20 years for most plant species, 25 years for trees and for certain vines.

Costs? Registering a plant breeder's right takes approximately two and a half years and costs about $2,300, not including professional fees.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? Original literary, dramatic, musical, and artistic works, and recordings, films, and broadcasts are protected under the Copyright Act 1968 (Cth) (**Copyright Act**). Copyright protection is granted immediately upon the creation of a work assuming the formalities are met (such as originality) — no registration is required.

Duration of protection? If the identity of an author is not known, copyright in the work subsists for 70 years after the work was first made public or, if the work was not made public, 70 years after the work was created. Otherwise, generally speaking (but with a few limited exceptions such as for television and sound broadcasts), copyright subsists for 70 years after the death of the author of the work. The rights granted to an owner of copyright includes the exclusive rights to use, reproduce, publish, and distribute their work, and moral rights.

Trade Secrets

What is protectable? Trade secrets cannot be registered for protection in Australia but can be protected as a form of confidential information in other ways including in equity (through an action of a breach of confidence) or as a contractual right in, for example, an employment contract with a restraint of trade clause or a non-disclosure agreement.

Duration of protection? Trade secrets are protected as long as the relevant information remains a secret from the general public.

DATA PROTECTION/PRIVACY

The Privacy Act 1988 (Cth) (**Privacy Act**) is the primary legislation that regulates the handling of individuals' personal information in Australia. The Privacy Act applies to Australian government agencies and organisations with an annual turnover greater than $3 million, subject to some exceptions. An "organisation" includes individuals, body corporates, partnerships and trusts, but excludes certain entities including registered political parties and some small businesses. A small business with an annual turnover of $3 million or less may still be subject to the Privacy Act, such as private sector health service providers, credit reporting bodies and businesses that sell or purchase personal information.

The Privacy Act sets out 13 "Australian Privacy Principles" (**APPs**), which are principles-based laws that govern standards, rights and obligations in relation to:

- the collection, use and disclosure of personal information;
- an organisation or agency's governance and accountability;
- the integrity and correction of personal information; and
- the rights of individuals to access their personal information.

Some of the requirements set out by the APPs include that any entity:

- can only use or disclose personal information for a purpose for which it was collected (known as the "primary purpose"), or for a secondary purpose if an exception applies (APP 6);
- must take reasonable steps to protect personal information it holds from misuse, interference and loss, as well as unauthorised access, modification or disclosure (APP 11); and
- must take reasonable steps to ensure that any overseas recipient of personal information does not breach the APPs in relation to the information (APP 8).

The Privacy Act also establishes a Notifiable Data Breaches scheme, which requires an organisation or agency subject to the Privacy Act to notify affected individuals and the Office of the Australian Information Commissioner when a data breach is likely to result in serious harm to an individual whose personal information is involved.

The Federal Government is currently conducting a review of the Privacy Act. The review was announced as part of the government's response to the Australian Competition and Consumer Commission's (**ACCC**) Digital Platforms Inquiry. One significant reform that has been enacted since the inquiry is the increase of the maximum penalty for serious or repeated interferences with privacy from AUD2.2 million to the greater of (1) AUD50 million; (2) three times the value of benefits obtained or attributable to the breach (if quantifiable); and (3) 30% of the corporation's "adjusted turnover" during the "breach turnover period".

A further 116 proposed reforms to the Privacy Act have been outlined in the Privacy Act Review Report published by the Federal Government in February 2023. On 28 September 2023, the Federal Government published its response to the report indicating that it agreed to 38 proposals, "agreed in principle" to 68 proposals and simply "noted" the remaining 10. Notably, the Federal Government agreed in-principle to proposals to amend the definition of "personal information" and remove the small business exception, both of which would create further alignment between the Australian regime and the GDPR regime. Further, the Government also agreed in-principle to amend the definition of "collection" to expressly cover information obtained from any source and by any means (including inferred or generated information). Further detail about specific legislative reform has yet to be released. It is expected that the relevant legislation to amend the Privacy Act will be introduced in mid to late 2024.

ARTIFICIAL INTELLIGENCE

Safe and Responsible AI in Australia consultation

Currently, there are no laws that apply specifically or exclusively to the use of AI, including generative AI, in Australia. However, in June 2023, the Federal Government released a discussion paper as part of a consultation into "Safe and Responsible AI in Australia", seeking submissions from the public in relation to a proposed framework for regulating AI, which largely mirrors the risk management approach adopted under the EU's AI Act.

On 17 January 2024, the Federal Government published its interim response to the discussion paper. In an effort to balance the benefits against the risks of AI, the Government indicated that it would consider developing regulation in relation to the development and deployment of AI systems in legitimate but high-risk contexts, while simulataneously ensuring that the use of AI in low-risk settings can continue to develop largely without impediment.

To complement its longer-term consideration of AI regulation, the Government stated it would at least take immediate steps in collaboration with industry on the following three initiatives:

1. Developing a voluntary AI Safety Standard (implementing risk-based guardrails for industry).
2. Considering voluntary labelling and watermarking of AI-generated material.
3. Establishing a temporary expert advisory body to support the development of options for further AI regulation.

The Government's response indicates it is very likely that new, targeted AI regulation will be enacted in Australia in the future. In the meantime, there are several other laws with more general application that may apply to the use of AI in Australia.

Privacy

The Privacy Act Review Report mentioned above includes a number of proposals in relation to automated decision making, which, if adopted, would likely impact the use of AI in Australia. The proposed reforms include imposing a requirement that privacy policies must set out the types of personal information that will be used in automated decisions which have a legal or similarly significant effect on an individual's rights, and introducing a right for individuals to request meaningful information about how substantially automated decisions with legal or similarly significant effect are made.

Further, the report proposes more generally that the collection, use and disclosure of personal information must be "fair and reasonable" in the circumstances, which may impact the processing of information by certain AI applications.

Copyright

As noted above, Australian copyright law protects original literary, dramatic, musical, and artistic works, and recordings, films, and broadcasts. The use of AI may carry with it the risk of copyright infringement where, for example, the generated output constitutes a substantial part of existing material in which copyright subsists.

Consumer laws

As set out in further detail in the "Consumer Protection" section below, Australia has a robust consumer law regime, which may apply to products or services supplied to Australian consumers which incorporate or use AI. For example, claims on the basis of "misleading and deceptive conduct" or the application of consumer guarantees (e.g. that goods and services are of acceptable quality and fit for a particular purpose) under consumer laws may apply to AI-based products or services in certain circumstances.

Online safety

The Online Safety Act 2021 (Cth) includes mechanisms to address online safety issues that may involve AI, including image-based abuse and other kinds of online content. On 25 June 2023, the Federal Government also released a draft bill intended to combat online misinformation and disinformation. While the public consultation period for the bill has passed, there have been no further updates regarding the bill, as at the time of writing this chapter. If new laws are eventually enacted in relation to misinformation and disinformation, this may increase the legal risks of using AI, where for example AI generates information the subject of such laws.

Other principles and guidelines

There are also other AI-specific principles and policies that have been published in Australia, including the voluntary "AI Ethics Principles" published by the Federal Government, which serves as a guide to businesses and governments to ensure AI is safe, secure and reliable. The New South Wales (**NSW**) state government has also published an "Artificial Intelligence Ethics Policy", which sets out overarching principles designed to ensure best practice use of AI by NSW government agencies.

EMPLOYEES/CONTRACTORS

Employment in Australia is primarily governed at the Federal level by the Fair Work Act 2009 (Cth) (the **FW Act**). The FW Act sets out the National Employment Standards (NES), which include minimum entitlements in relation to:

Annual leave (i.e. paid time off or vacation days) – full-time and part-time employees are entitled to four weeks of annual leave per year while shift workers may be entitled to up to five weeks per year.

Flexible working arrangements - some employees who have worked for the same employer for at least 12 months may request flexible working arrangements, which may include changes to the number of working hours, patterns of work or working locations.

Minimum notice period - the minimum notice period required to be given to employees ranges from one to four weeks, depending on the employee's period of continuous service with the employer.

Conversion to permanent employment – an employer must offer employees who work on a casual basis, and have worked for their employer for 12 months, the option to convert to full-time or part-time (permanent) employment.

In addition to the requirements imposed on employers under the NES, Australian employment law also mandates minimum terms and conditions for employees who work in particular industries or occupations, such as nurses, fast food industry workers and retail workers, under legal instruments called "modern awards". An unfair dismissal regime also operates to protect employees from being dismissed from their job in a harsh, unjust or unreasonable manner.

The NES, modern awards and the unfair dismissal regime do not apply to independent contractors in Australia. However, note that knowingly or "recklessly" representing to an employee that they are an independent contractor when they are not ("sham contracting") is illegal in Australia.

Australia's superannuation guarantee laws also require employers to pay superannuation contributions (i.e. payments towards an employee's retirement) of 11.0% of an employee's earnings to avoid paying a charge (which is higher than the amount for superannuation contributions), which will rise to 11.5% after 30 June 2024.

Certain areas of employment are regulated at the State level, including long service leave (**LSL**), which is a period of paid leave granted to an employee who has served a specified period of continuous employment, which varies from state to state. For example, in the state of Victoria, employees are entitled to LSL after seven years of continuous employment.

AUSTRALIA

CONSUMER PROTECTION

Consumer law is primarily governed at the Federal level by the Australian Consumer Law (**ACL**), which is contained in the Competition and Consumer Act 2010 (Cth) and enforced by the ACCC.

Avoiding unfair business practices

The ACL protects consumers against unfair business practices, including prohibiting "misleading and deceptive conduct", which is conduct that misleads or deceives, or is likely to mislead or deceive, consumers or other businesses in the course of trade or commerce. For example, a business would be engaging in misleading and deceptive conduct if it gives its customers a misleading overall impression regarding the price, value or quality of consumer goods or services or if it uses fine print to hide important information. The ACL also provides protection for consumers against unconscionable conduct and false and misleading representations.

Unfair contract terms

The ACL sets out "unfair terms" provisions, which serve to make void such terms when they are included in standard form consumer contracts. A term is considered unfair if it:

- would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- is not reasonably necessary to protect the legitimate interests of the party benefitting from the term; and
- would cause detriment to a party if it were to be applied or relied on.

An example of a term that may be unfair is one that permits a business to cancel a contract at will without it being reasonably necessary to protect the business' legitimate interests or in response to an insignificant breach of contract by the consumer.

Prior to 9 November 2023, unfair terms could be declared void and unenforceable pursuant to the ACL. However, under the current, updated regime, significant penalties may also be imposed for the inclusion of unfair terms in standard form consumer contracts that are entered into by consumers or small businesses.

The maximum financial penalty for corporations under the new regime is:

- AUD50 million;
- three times the value of the "reasonably attributable" benefit obtained from the conduct, if the court can determine this; or
- if a court cannot determine the benefit, 30 per cent of adjusted turnover during the breach period.

The recent amendments to the regime also expanded the definition of "small businesses" in this context to include businesses that employ less than 100 people or have an annual turnover of less than $10 million.

Consumer guarantees

The ACL provides a number of automatic consumer guarantees in relation to certain consumer goods and services. For example, consumers have the right to expect that purchased goods are of acceptable quality and match any description provided by suppliers or manufacturers, and that services are provided with due care and skill and within a reasonable time.

TERMS OF SERVICE

In Australia, the enforceability of online contracts largely depends on two key issues: reasonable notice and manifestation of assent. Clickwrap agreements are generally enforceable as adequate notice and evidence of assent (e.g. through the act of clicking "I accept") can typically be made out. On the other hand, the enforceability of browsewrap agreements may be more difficult to prove given such agreements are generally designed such that users are not required to take a positive act to indicate their assent to terms. The terms of online contracts must also comply with the requirements under the ACL, such as the unfair terms regime, which may render terms in standard form consumer contracts void if they are deemed "unfair" (see "Consumer Protection" section above). As mentioned above, breaches of the regime may now also attract significant penalties, following amendments to the regime in November 2023. It is therefore important to avoid including unfair terms in a Terms of Service (e.g. allowing a party (but not the other) to unilaterally limit their responsibilities under a contract or change the terms of the contract).

WHAT ELSE?

Registrations

To do business in Australia, it may be necessary to obtain certain registrations, depending on the type of business structure adopted. These registrations ensure that businesses can be identified, comply with tax obligations, avoid penalties and are able to protect their brand and ideas. Generally, businesses will register for an Australian business number (**ABN**), a business name, a Tax File Number (**TFN**) and any relevant licences and permits. Applications for these key registrations can be done through the Australian Government's Business Registration Service. Registering for an ABN and a TFN is free.

Goods and Services Tax

In Australia, a 10% tax is levied on most goods, services and other items sold or consumed in Australia (**GST**). Businesses are required to register for GST if they meet the GST turnover thresholds, which are $150,000 for non-profit bodies, and $75,000 for other businesses. Once registered for GST, entities need to lodge a Business Activity Statement, which reports amounts dealing with GST, other instalments and withholding taxes. GST registration is free and can be done online through the Australian Tax Office website, or by other means including by phone or paper submission.

Consumer law

Obligations imposed under the ACL regime (see "Consumer Protection" section above), including the prohibition on misleading and deceptive conduct, cannot be excluded or limited by contractual provision or otherwise. Further, the ACL applies to all contracts involving the supply of goods and services to Australian persons or consumers, irrespective of whether the relevant contract is governed by Australian law.

Spam Act

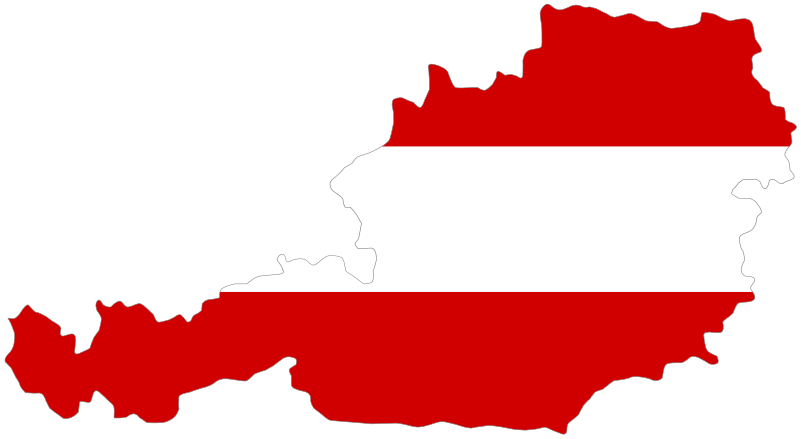
The Spam Act 2003 (Cth) (Spam Act) regulates unsolicited commercial electronic messages and is enforced by the Australian Communications and Media Authority.

Key features of the Spam Act include:

- obtaining consent of a recipient prior to sending a commercial electronic message (Australia is an opt-in regime);
- a requirement to include accurate sender information in commercial electronic messages;
- a requirement for commercial electronic messages to include a clear, conspicuous and functional "unsubscribe" facility;
- for "unsubscribe" requests to be actioned within five working days; and
- a prohibition on supplying or offering to supply software for harvesting email addresses.

Takeovers laws

A listed company and an unlisted Australian company with more than 50 shareholders (including employee shareholders) will be subject to Chapter 6 of the Corporations Act. This includes the prohibition of any acquisition of voting securities of such a company that would result in any person's voting power exceeding 20%, unless a permitted exception applies (such as an acquisition effected through a takeover bid or a scheme of arrangement). Companies should monitor the number of shareholders they have if they want to avoid being subject to Australia's takeovers laws.



AUSTRIA

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LEGAL FOUNDATIONS

Austria follows the **civil law system**. It thus relies on written statutes and other legal codes in the field of public, private and criminal law that are constantly updated:

- Austrian **public law** covers the relationship between individuals and the Austrian state and is enforced by administrative bodies (eg trade license requirements).
- **Private law** governs the relationship between individuals (eg contracts, warranty, liability etc) and is codified in various laws. The most important source of law in this context is the Austrian Civil Code (ABGB). Besides, there are many more laws for each specific field (eg employment, e-commerce, B2B relationships).
- **Criminal law** is mainly codified in the Austrian Criminal Code (StGB) and Criminal Procedural Code (StPO). Specific provisions, such as criminal sanctions in case of copyright infringements, are however included in respective laws.

However, final decisions, such as of the Austrian Supreme Court (OGH) are often used as supporting arguments and must be generally considered by lower courts. The legal structure is thus also further developed by case law.

CORPORATE STRUCTURES

Austrian Law provides the following forms of companies:

Corporations (Kapitalgesellschaften)

The Austrian limited liability company **(GmbH, Gesellschaft mit beschränkter Haftung)** has proven to be the **most popular form of companies** in Austria. As to its requirements:

- It requires at least one shareholder (individual or legal entity) for its incorporation.
- Further, the shareholders have to draw up and sign the articles of association in form of an Austrian notarial deed. Then, the managing directors have to file an application with the Austrian commercial register (Firmenbuch).
- The GmbH has a minimum statutory capital of EUR 10,000. The shareholders have to pay in a minimum capital contribution of EUR 5,500.
- As per 1 January 2024 the Flexible Company as new legal form in particular for start-ups was introduced: It is essentially a limited liability company with two major differences: (i) it offers flexible capital measures as with a stock corporation and (ii) "company value shares" for the participation of employees may be issued, which essentially correspond to shares in the company but (with a few exceptions) have no voting rights in the shareholders meeting.

CORPORATE STRUCTURES, CONT'D

Corporations (Kapitalgesellschaften), CONT'D

Advantages and disadvantages of corporations compared to partnerships:

ADVANTAGES

- Limited liability of the shareholders
- More attractive for investors.

DISADVANTAGES

- ·Minimum share capital of EUR 10,000.
- The articles of association as well as any share transfer agreement have to be in the form of a notarial deed (FlexCo: a share purchase agreement can also be certified by an attorney at law).

Further, there is a possibility to establish an Austrian stock corporation (**AG, Aktiengesellschaft**) by one or more shareholders (individual or legal entity). However, this requires a very high initial investment of at least EUR 70,000 and the establishment of a supervisory board with at least three members. It is thus no attractive options for start-ups.

Partnerships (Personengesellschaften)

Apart from the GmbH, the most common forms of partnerships for businesses are the general commercial partnership **(OG, Offene Gesellschaft)** and the limited commercial partnership **(KG, Kommanditgesellschaft)**. As to the requirements:

- In both cases, the establishment requires a partnership agreement between at least two partners (individuals or legal entities).
- For its incorporation OG and KG must both be entered into the commercial register. The partners are fully and personally liable with their personal assets.
- However different from the OG, in a KG there are two types of partners: (i) general partners, who have unlimited liability, and (ii) limited partners, who have only limited liability.
- As soon as the registration with the commercial register has been completed, the OG or the KG can start the commercial activities.

Advantages and disadvantages of partnerships compared to corporations:

ADVANTAGES

- No minimum share capital
- No formal requirements for the establishment
- No obligation to disclose the articles of association

DISADVANTAGES

- Unlimited liability; this applies to all partners in an OG and only to the general partners in a KG

Another form of a partnership is the civil law partnership (**GesBR, Gesellschaft bürgerlichen Rechts**). Its establishment requires at least two persons who have common resources and who pursue a common business purpose. The partners are fully and personally liable with their personal assets. Due to its missing legal personality, the GesBR cannot be registered with the commercial register. In sum, it is thus also not very attractive for start-ups.

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CORPORATE STRUCTURES, CONT'D

Sole Proprietorship (Einzelunternehmer)

The sole proprietorship is also a commonly used legal form in Austria. The owner of the business is a single natural person. The sole proprietorship comes into existence upon registration of the business with the competent district administrative authority. The sole proprietor is fully and personally liable with his or her private and business assets. Sole proprietors do not have to be registered in the commercial register until they reach a certain annual turnover. However, voluntary registration is possible.

ENTERING THE COUNTRY

Pursuant to the Austrian Investment Control Act, certain acquisitions by persons who are no citizen of a Member State of the European Economic Area (EEA) or of Switzerland require prior approval by the Minister of the Economy. This applies to direct or indirect acquisitions of an interest of 25% or more in undertakings active in certain critical sectors (utilities, tech, supply of critical resources). For particular sensitive areas, the threshold is 10%, only. In these cases, the Minister of the Economy may prohibit the transaction if there is a threat to security or public order. Such risk will be evaluated in review proceedings, which usually last up to five months.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which can be represented graphically and is able to distinguish the goods and services from other companies can be registered as a trademark. The registration of classes of goods and services for blockchain-based products (in particular NFTs and other token) poses challenges for applicants. Although there is now a separate Nice class for NFTs, the offices generally do not accept an application without further description.

Where to apply? Trademarks can be filed either with (i) the Austrian Patent Office, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought (Austria, EU, international extension on the basis of a national or EU trademark). The application of an Austrian trademark is very similar to the procedure before the EUIPO. However, the costs of a European trademark are significantly higher than those of a national trademark. The application can be easily filed via the online platform on https://www.patentamt.at/en/online-services/. The Austrian Patent Office then reviews the application and registers the trademark immediately if all minimum trademark requirements as mentioned above are met. With publication in the Trademark Gazette, the three months opposition period begins. Within this time period, third parties can easily and at low costs oppose the trademark.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for a ten-years-period. Renewal fees are due every ten years.

Costs? Application costs for Austrian trademarks for three classes amount EUR 280 (EUR 75 are charged per additional classes). In addition, fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in the field of technology are patentable. This requires that (i) the invention is novel, (ii) not obvious to a skilled professional and (iii) can be applied in industry.

Where to apply? Patent protection can be granted per country, meaning that applicant must register the patent in each country where protection is sought. Since 1 June 2023, it is also possible to apply for a European patent with unitary effect (Einheitspatent). In this case, the European Patent Office will grant a (single) patent with protection in up to 24 EU member states. Patent applications can be filed with either (i) the Austrian Patent Office, (ii) European Patent Office (EPO) or (iii) WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained by annual fees (rising from EUR 104 in the sixth year to EUR 1,775 in the twentieth year).

Costs? Application costs for Austrian patents for up to ten claims amount up to EUR 530. In addition, fees of the legal and technical representative apply. There are patent attorneys (Patentanwälte) who specialize in these (technology-heavy) application procedures. Total costs for a patent application range from EUR 10,000 to EUR 15,000. However, there are various funding programs that can be applied for, especially in the Blockchain or AI field (see question 6).

Employee invention and inventor bonus? According to the Austrian Patent Act, employers are only entitled to commercialize employee inventions and file patent applications, if they have agreed with employees on a right to transfer all inventions made in connection with their work (eg in the employment contract). If employer makes use of such right, employee is entitled to appropriate inventor bonus, unless the employee was explicitly employed for the inventive work. The bonus is determined primarily by the value of the invention and is thus subject to adjustments in course of the patent life time. As long as the employee is actively employed, the entitlement to an adjustment of remuneration cannot be contractually excluded.

Utility Model

What is protectable? Utility models are very similar to patents ("small patent") and can be registered for technical inventions. A major difference and advantage is the six-month novelty grace period for own publications.

Where to apply? See comments on patent applications.

Duration of protection? In contrast to patents, the term of protection is only 10 years.

Costs? Application costs for Austrian utility models for up to ten claims amount EUR 321. In addition, fees of the legal and technical representatives apply.

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design.

Where to apply? National designs may be registered with the Austrian Patent Office. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the EUIPO Austrian applicants can also file for designs with the WIPO worldwide although Austria is no party to the Hague System for registering international designs.

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Application costs for designs amount EUR 82 plus an additional fee of EUR 15.50 per class for a single design application. In addition, fees of the legal representative apply.

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INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Austrian Copyright Act (eg literary and artistic works). Copyright protection is granted immediately with the creation of a work. No registration and no label required.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the indispensable right to be named as author. The author may however grant third parties non-exclusive (Werknutzungsbewilligung) or exclusive rights to use the work (Werknutzungsrecht). Since 2021, the admissible types of exploitation (Werknutzungsarten) must be regulated in even more detail. Otherwise, only those types of use are granted that are necessary to fulfill the purpose of the contract (ie no rights grant in cases of doubt).

Trade Secrets

What is protected? Trade secrets as such are not recognized as an intellectual property asset. However, the Unfair Competition Act (UWG) protects know-how and business information of commercial value that is kept secret. Thus, protection requires that companies take appropriate non-disclosure measures (eg marking information as trade secrets, implementing IT security measures, particularly access restriction and concluding NDAs).

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

The GDPR and the accompanying amendment to the **Austrian Data Protection Act** (Datenschutzgesetz, "DSG") have brought far-reaching changes to the way data protection is handled in May 2018. Data protection has become a central, economically relevant factor. However, in the meantime, the great concern about the threat of millions in fines and the initial hype surrounding the exercise of data subjects' rights has given way to a more relaxed approach to the matter.

Since the Austrian legislator has barely made use of the opening clauses, the relevant Austrian specifics in the Austrian DSG and Telecommunication Act (Telekommunikationsgesetz 2021, "TKG 2021") are limited and may be briefly summarized as follows:

- The age for child's consent in relation to information society services has been lowered from 16 to 14 years.
- Controllers and processors are required to contractually oblige their employees to keep data confidential. This obligation must also continue after termination of the employment relationship.
- Some provisions of the Data Protection Act and the GDPR do not apply to the processing of personal data for journalistic purposes by media owners (Medienprivileg). However, the blanket media privilege was revoked by the Austrian Constitutional Court. The "old" provision applies until mid-2024. Up until then, the Austrian legislator has to adopt a new, more detailed exemption.
- Phone calls and electronic messages for advertising purposes require data subject's prior consent. "Direct advertising" is interpreted very broadly in Austrian case law and also includes, for example, satisfaction surveys. Consent for electronic messages is not required, if the controller has received the personal data (i) in connection with a transaction, (ii) the marketing communication concerns similar products and services and (iii) the data subject has been given the opportunity to opt-out when data has been collected for this purpose as well as with every communication (soft-opt-in). Due to restrictive legislation this exemption rarely applies. As a rule, prior consent must therefore be obtained. Administrative penalty proceedings (Verwaltungsstrafverfahren) before the Austrian telecommunications authority (Fernmeldebehörde) may be initiated in the event of a violation. The possible fines are up to EUR 50,000 and are imposed on each member of the controller's Executive Board/management. For a first offense, the actual fine is usually in the low vier digit area, with each subsequent offense increasing the fine.

DATA PROTECTION/PRIVACY, CONT'D

- Marketing by occasional postal mail service can be based on legitimate interests and does usually not require opt-in. According to Austrian case law, three to four mailings spread over the year had been deemed admissible. However, consent is required for regular postal mailings.
- Prior consent is required for setting cookies which are not necessary for the provision of the service, irrespective whether personal data is processed or not. Thus, opt-in is required for all marketing, tracking, functional and analytics cookies. The practical risk of complaints is very high (see below).
- Data controllers in Austria should also observe that inclusion of data protection notices in general terms and conditions (eg by a respective reference therein), triggers application of the strict consumer protection law regime. Data protection notices can then be challenged in association proceedings (Verbandsverfahren). Therefore, contract and data protection documentation should be strictly separated.
- Furthermore, the DSB conducts annual focus/sector audits (Branchenprüfungen), for example in the banking sector in 2023. In this context, the authority initiates official investigation proceedings against companies in this specific sector. The companies must then usually submit their processing records, data protection documentation and answer a questionnaire.

The Austrian Data Protection Authority (DSB, Datenschutzbehörde) is the competent supervisory authority. It follows a rather data subject-friendly approach. Due to the imbalance of power, case law is even stricter in relation to employees – eg with regard to the requirement of voluntary consent. Employee monitoring measures are regularly the subject of proceedings before the DPA. Moreover, since May 2021, the DSB is handling more than 700 complaints (!) against European companies with respect to incriminated cookie settings filed by NOYB which is led by the Austrian data privacy activist Max Schrems. The first decisions were made in late summer/autumn 2023; some of the proceedings are still pending (https://noyb.eu/en/data-protection-authorities-support-noybs-call-fair-yesno-cookie-banners; https://noyb.eu/en/noyb-files-422-formal-gdpr-complaints-nerve-wrecking-cookie-banners). Against this background, the design of the cookie banner still harbors a high practical risk of complaints.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Austria, yet. However, the general restrictions, particularly under data protection and copyright law apply. In the future, a national AI-agency will apply the upcoming AI-Act in Austria:

- The principles of data protection law – in particular Art 22 GDPR for automated individual decision-making – must be observed in relation to the development, testing and operation of AI (ie: separate legal basis, extended information obligations, additional data subject rights). Thus, the use of AI must not lead to any legal or similarly serious effects to the data subject, without any human intervention. An automated decision-making process is for example assumed, if a company uses results of an AI-application without any further quality-check and assessment.
- National copyright restrictions are particularly relevant for generative AI. This applies to both (i) the input data (especially web scraping) and (ii) the output of the specific AI application: The retrieval of data from the internet into set of training data is considered exploiting the content in a way subject to the Austrian Copy Right Act ("UrhG"). However, the newly established Sec 42h (UrhG) on Text- & Data-Mining allows such retrieval unless interdicted by the right owner. The output of AI may infringe the rights of the author of the original if the output is identical to or resembles an original source.
- The Austrian Government initiated a two-step plan for implementing a national regime for AI: First, a new AI-service center will be established within the Broadcasting and Telecommunications Regulatory Authority (RTR). Once the AI Act comes into force, an AI authority responsible for the certification and market surveillance of AI applications will be designated.

As to the start-up scene it is worth being noted that AI is one of the innovation driver and that there are currently numerous funding programs for AI-based business models in Austria.

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STARTUP LEGAL PLAYBOOK

EMPLOYEES/CONTRACTORS

General: Employer and employee must conclude an employment agreement, which stipulates their rights and obligations set forth by mandatory law, collective agreements or works council agreements. The interests of employees are represented by the works council (Betriebsrat) and require its approval for specific measures (eg introduction of control measures, which affect human dignity) if such council is established. A company may also offer a contractor agreement (freelance contract or contract for work and services) instead of an employment agreement. For these contracts, most protective provisions of labour law do not apply.

No work for hire regime: There is no work for hire regime in Austria. Therefore, each agreement should contain a clause covering the licensing of works made by the contractual partners. Such clause should be as specific as possible, as otherwise courts will usually interpret the grant of rights in a quite restrictive manner.

Registration with social security: Every employer must register employees with the social insurance carrier. Further, each employer has to pay a certain monthly amount based on the employee's remuneration into the severance pay system.

Termination: Employment contracts can be terminated under adherence to the applicable notice dates and periods. Good cause is not required. Still, employees are very well protected. They can challenge termination of their employment relationship based on one of the following grounds:

- proscribed motive for the termination (eg organizing the election of a works council, recent raising of justifiable claims against the employer); and
- ·the termination is socially unjustified (due to age and future career opportunities of the employee).

In addition, certain groups of employees (eg works council members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection requiring the approval from the competent court or public authority.

CONSUMER PROTECTION

Austrian consumer protection law is rather strict and regulated in various laws, such as (i) the Consumer Protection Act (Konsumentenschutzgesetz, "KSchG"), (ii) Civil Code (Allgemein Bürgerliches Gesetzbuch, "ABGB"), (iii) Distance Selling Act (Fern- und Auswärtsgeschäfte-Gesetz, "FAGG"), (iv) E-Commerce Act (E-Commerce-Gesetz, "ECG") and (v) as of January 2022, the Consumer Warranty Act (Verbrauchergewährleistungsgesetz, "VGG"). These laws generally apply to all activities targeted to Austrian consumers, irrespective where the entity resides.

The **core provisions** are laid down in the Consumer Protection Act and Civil Code. It provides a catalogue of clauses which are inadmissible vis-à-vis consumers. Warranty law for consumers, on the other hand, is now (only) regulated by the Consumer Warranty Act. In particular, it now contains specific provisions on digital services (eg update obligation).

In case of **distance selling contracts** (eg via webshops), the Distance Selling and E-Commerce Act must additionally be adhered. Those regulations particularly foresee various information obligations. Besides, traders must implement a withdrawal management system and ensure that consumers can exercise their right to rescind from any contract within 14 days without giving any reasons. This right can only be limited in specific circumstances. Furthermore, if consumers are not sufficiently informed about the right of withdrawal, this right is automatically extended for up to one year. In case of service provision in the financing sector the Austrian Distance Financial Services Act applies instead of the Distance Selling Act, which stipulates a similar withdrawal regime.

Consumer protection associations, such as the association for consumer information (Verein für Konsumenteninformation, "VKI") and the chamber of labor (Arbeiterkammer, "AK") are entitled to file claims for omission and request publication of judgement against companies using invalid terms and conditions. In practice, they are quite active and often challenge clauses arguing with its intransparency in order to enforce more and more favorable terms for consumers. New, innovative business models are often in the spotlight of such associations.

If consumer protection associations succeed in proceedings (which is mostly the case), business models, terms and conditions or the ordering process become invalid and have to be adjusted. This might also trigger refund obligations and cause issues if agreements are declared being invalid. As of May 2022, Austrian authorities shall also be entitled to impose fines up to EUR 2 Mio or 4 % of the companies' turnover in case of invalid clauses used in terms and conditions.

AUSTRIA

TERMS OF SERVICE

Terms of services become enforceable only, if consumers have explicitly agreed to the terms (preferably via a tick-box) and had the possibility to read, print and store them upfront. Furthermore, clauses must be in compliance with **restrictive consumer protection laws**. According to Sec 6 Consumer Protection Act and Sec 864a, 879 Civil Code, particularly the following clauses in terms and conditions or other contracts are held invalid:

- implied renewal of the contract if specific conditions are not met;
- limitations of warranty rights;
- exclusion of liability rights for death, bodily injuries, gross negligence, willful misconduct, claims under the product liability laws, damages occurred by violations of contractual core obligations;
- one-sided rights of companies to change scope of services or prices;
- severability clauses;
- ·place of jurisdiction and applicable law other than at the place of consumer; and
- any other intransparent or grossly disadvantageous clause – the broad opening clause.

As to the consequences of using invalid clauses please refer to question 8.

WHAT ELSE?

Compulsory membership in Chambers: The political and economic interests of entrepreneurs are mandatorily represented by chambers. Most entrepreneurs are represented by the Chamber of Commerce. Such membership is compulsory and trigger annual membership fees. The more trade registrations are hold by a company, the more memberships with chambers are triggered.

Strict Trade Act: Almost all businesses require a trade license. This is regulated by the Austrian Trade Act, which is, however, quite strict. It distinguishes between free and regulated trades. Free trades are easy to acquire since no specific know-how must be proven before starting a business. Whereas regulated businesses must file for a regulated trade and prove by lots of certificates their competence and qualification to act in a specific field. This is eg the case for travelling agencies, intermediary services in the insurance and financing sector, investment consulting etc.

Strict jurisdiction: Austrian courts are rather strict as it comes to protection of employees, consumers and data subjects. For businesses, the risk of non-compliance in these fields of law is rather high. It is thus recommendable to focus on these topics first, when rolling out a business in Austria.

BARBADOS

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BARBADOS

LEGAL FOUNDATIONS

The legal system in Barbados is based on general principles of the common law and on statutes and subsidiary legislation enacted by the Barbados legislature. Barbados also has a written Constitution, which is the supreme law of the land. In 2021, Barbados became a Republic, removing the British Crown as its Head of State. A new Constitution is forthcoming.

Court system. The Barbados High Court and Court of Appeal have jurisdiction in both civil and criminal matters. The civil litigation process is governed by the Civil Procedure Rules, 2008, which introduced the concept of case management into the litigation process. The Caribbean Court of Justice (CCJ), located in Trinidad and Tobago, has both original and appellate jurisdiction. In its original jurisdiction, it adjudicates, inter alia, on matters involving the interpretation and application of the provisions of the Revised Treaty of Chaguaramas, which established the Caribbean Community (CARICOM). In its appellate jurisdiction, the CCJ hears appeals from the Barbados Court of Appeal as well as from courts of appeal in Guyana, Belize, St Lucia and Dominica. Also in Barbados, the Magistrates Courts have jurisdiction in criminal, civil and family matters, including jurisdiction over contract and tort claims not exceeding $10,000 Bds. The judicial system is supplemented by specialist tribunals, such as the Employment Tribunal, which hear matters within their respective legislative jurisdiction. Since Barbados has been actively updating its laws, new Commissions and Tribunals are being established to address those particular regulatory requirements.

CORPORATE STRUCTURES

Corporations. Though there are several corporate structures available in Barbados, the most common and relevant for trading in goods and services and for holding assets is the limited liability company (identified by the letters 'Ltd', 'Inc' or Corp) within the statutory requirements in Companies Act, Cap 308 (CA) and Companies Regulations, 1984. A private company must have at least one director; a public company must have at least three directors, at least two of whom not being officers or employees of the company or any of its affiliates. Corporate governance is laid down in a company's Articles of Incorporation or the By-Laws, which regulate issues relating to the management of the business, election of directors and ownership of shares. Directors need not be locally resident. Restrictions, if any, on the number of shares or classes of shares, on transfers and on public subscriptions, on the number of directors and on the authorised type of business, must be specified in the Articles of Incorporation. There are no requirements to file a company's By-Laws with the Corporate Registry. Once a company has been formed, in addition to obtaining any relevant licences to operate, there are statutory requirements such as registering with the Barbados Revenue Authority and the National Insurance Scheme. All companies are required to file annual returns, whilst those holding assets over a statutory limit have further obligations. Provided all the required documentation is in order and filed with the Registry, incorporation of a company may be completed within five business days.

External companies may also re-register in Barbados. Companies operating under a franchise must be locally licensed to operate as such. In addition, there is sectoral legislation governing the licensing of companies' activities.

BARBADOS

CORPORATE STRUCTURES, CONT'D

Partnerships. A 'partnership' is defined in the Partnership Act, Cap 313, as an arrangement between 'persons carrying on a business in common with a view of profit' and is expressly contrasted with the relation between members of a company registered under the Companies Act, Cap 308.

Types of partnerships:

General partnership, in which all partners are equally responsible for the management of the business, and each has unlimited liability for the debts and obligations incurred by the business.

Limited partnership, established by the Limited Partnerships Act, Cap 312, in which the persons entering into such relationship are called 'A Firm'. Liability of the partners is limited to the amount of money they have contributed to the partnership. A limited partner may not take part in the management of the business but has a right to inspect the books of the firm at any time. Limited partners are therefore normally passive investors in the business.

ENTERING THE COUNTRY

There are generally no restrictions on foreign investment or on foreign ownership of businesses.

Barbados enjoys the benefit of a network of double taxation treaties and bilateral investment treaties. It is always advisable to first seek tax advice in the country of origin.

Since there is a varied regulatory approach and concessions depending on the sector, sector specific advice should always be sought.

INTELLECTUAL PROPERTY

The Patents Act, the Trade Marks Act and Regulations and the Industrial Designs Act and Regulations were amended in 2006 to ensure compliance with the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPPS).

Trade secrets, which may be defined as any type of information, useful in a business context, that is kept confidential, such as financial information, business methods, customer lists, datasets and algorithms, are protected at common law (for example, through non-disclosure agreements and restraint of trade clauses in employment contracts) and through equitable principles relating to breach of confidence.

There is statutory protection for the layout designs of integrated circuits and new plant varieties. There is also legislation for registering geographical indications which, to date, has not been widely utilised by international applicants.

In order to fulfil its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, the Barbados legislature enacted the Protection Against Unfair Competition Act in 2001. This Act provides for the civil remedies of injunctions and damages in cases of unfair competition involving such matters as damage to goodwill, discrediting of enterprises, confusion with respect to trademarks or trade names and disclosure of secret information.

Barbados is not currently on the Madrid System.

BARBADOS

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

Trademarks

What is protectable? Under the current legislation, the Trade Marks Act, Cap 319 (TMA), any visible sign or combination of signs and words, used or proposed to be used to distinguish the goods or services of one company from those of other companies, may be registered as a trademark. Collective marks and certification marks, as well as domain names, are also protected under the Act.

Barbados also recognises trademarks which have been in use in Barbados but have not been registered. Local business name registrations may take priority over trademark applications if not challenged through other procedures.

Barbados follows the Nice Classification System.

Where to apply? Trademarks are filed at the Barbados Corporate and Intellectual Property Office (CAIPO). Once the application is received, CAIPO will conduct its own searches, perform a substantive examination. and publish the application in the Official Gazette, providing an opportunity for opposition. In the absence of any opposition, the trademark will be registered.

Duration of protection? If no oppositions are filed, registration of a trademark remains valid for a period of 10 years from the date first mentioned on the certificate of registration. It can be renewed subsequently every ten years for a renewal fee.

Patents

What is protectable? The Industrial Designs Act, Cap 309A (IDA) describes an industrial design as 'any composition of lines or colours or any 3-dimensional form (whether or not associated with lines or colours) that gives a special appearance to a product of industry or handicraft, and serves as a pattern for a product of industry or handicraft.' The design must be 'new', in the sense that it was not available to the public through description, use or like manner anywhere or at any time before the priority date claimed or before the date of application.

Where to apply? Applications for registration of industrial designs are filed at the Corporate Affairs and Intellectual Property Office (CAIPO).

Duration of protection? The term of protection is 5 years from the date of registration and may be renewed for two further consecutive periods of 5 years.

Patents

What is protectable? A patent may be granted under the Patents Act, Cap 314, section 7, for an invention that is (i) 'novel' (i.e., previously undisclosed, whether by publication, oral disclosure or any other means (section 8)), (ii) 'involves an inventive step' (i.e., not obvious to a person of average skill in that field (section 9)), and is (iii) 'industrially applicable' (i.e., can be made or used in any kind of industry (section 10)).

Unpatentable inventions include, inter alia, discoveries, scientific theories, mathematical methods, methods of surgery or therapy, medical diagnostic methods, business methods, biological processes for plant production (section 11).

Where to apply? The majority of applications filed in Barbados to protect novel industrial inventions are those entering the national phase under the international Patent Co-operation Treaty (PCT) system. There is no automatic system of registration in Barbados; each application is examined for compliance with requirements under the Patents Act.

Barbados also acts as a receiving office for PCT applications.

Duration of protection? Subject to the payment of annuity fees, a patent will last for 20 years.

Copyright

What is protectable? The copyright in an original literary work (including computer programmes), artistic, musical or dramatic work, or in a film, sound recording, broadcast or cable programme, receives automatic and immediate protection (Copyright Act, Cap 300, section 6).

Duration of protection? Copyright protection terminates automatically 50 years after the death of the author or creator of a literary, musical, artistic, or dramatic work under the existing Copyright Act, Cap 300.

A new Copyright Act, 2023, has been tabled in Parliament. The proposed legislationrecognises original databases as eligible for copyright protection. The duration of protection will be extended to 70 years following the end of the calendar year in which the creator dies.

BARBADOS

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DATA PROTECTION/PRIVACY

The current Constitution of Barbados guarantees the right to protection of the law and the right to protection of the privacy of a person's home and other property.

The Data Protection Act, 2021-29, which was brought into force on the 31st March, 2021, is modelled to a limited extent on the GDPR. One of its statutory aims is to protect the privacy of individuals in relation to their personal data by creating obligations on controllers/processors regarding the processing of such data. The Act covers both personal data processed by equipment and data not processed by equipment but existing within a relevant filing system. The territorial scope of the Act extends to the processing of personal data by persons within Barbados and to the processing of personal data where goods and services are offered in Barbados by those not established in Barbados.

The principles of processing of personal data expressed in the Act are equivalent to those in the GDPR, namely: (i) lawfulness, fairness and transparency; (ii) purpose limitation; (iii)data minimisation; (iv) accuracy; (v) storage limitation; (vi) security (integrity and confidentiality).

Accountability is not specified as a principle, but may be inferred from the requirements of record keeping of the processing activities of controllers and processors.

Under the Act, 'health' data is not included within the definition of sensitive data. Included within the definition are racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, membership of a political body, membership of a trade union, genetic data, biometric data, sexual orientation or sexual life, financial records or position, criminal records, and proceedings for any offence committed or alleged. Processing of these categories of data requires the existence of additional lawful bases, as specified in section 9.

Data protection impact assessments are required where new technologies are used which result in processing which is of high risk to the rights and freedoms of an individual, such as (i) where there is systematic and extensive evaluation of personal aspects of individuals based on automated processing which produce legal effects, (ii) processing of sensitive personal data on a large scale, (iii) systematic monitoring of a publicly accessible area on a large scale.

Data privacy officers should be appointed by private organisations whose core activities consist of large scale processing of sensitive personal data, or processing that requires systematic monitoring of data subjects on a large scale. The Act requires data privacy officers to have expert knowledge of data protection law and practice.

Under the Act, data subjects have rights of:- access to personal data being processed by the data controller; rectification of data; erasure of data; restricting processing; data portability; preventing processing likely to cause damage or distress; preventing processing for the purposes of direct marketing. Data subjects also have the right to be informed by the controller that their personal data are being processed and the right to information about their personal data which are not obtained from the data subject. Further, pursuant to a 'subject access request' (SAR), a data subject has a right to a copy of any data held by the controller. Finally, a data subject has a right not be subjected to a decision affecting him based solely on automated means, including profiling.

Multinational companies should be familiar with additional obligations under Part IV of the Data Protection Act pertaining to international data transfers. Coupled with the requirement of an adequate level of protection for personal data in the territory to which the data is to be transferred are the requirements of (i) the existence of appropriate safeguards in that territory, (ii) enforceability of data subjects' rights, and (iii) effective legal remedies.

Binding corporate rules are just one of the methods of safeguarding data subjects' rights in transferring personal data outside Barbados. Other methods include standard data protection clauses, and contractual clauses between the data controller or processor and the recipient of the personal data.

Penalties for non-compliance with the Act include fines of $500,000 Bds or a term of imprisonment.

An individual who has suffered damage or distress due to a contravention of the Act is entitled to compensation from the data controller or data processor.

General administration of the Act falls within the remit of the Data Protection Commissioner, who is not functionally independent from a government ministry. The Act is in its operational infancy. At the time of writing, the Commissioner's Office has not issued appropriate codes of practice for guidance, nor recommended the development/adoption of contractual standard clauses, and it may not yet have approved any binding corporate rules; nor has any Commissioner's report of activities been tabled in Parliament.

There is provision for the establishment of a Data Protection Tribunal.

It should also be noted that, under the Barbados Identity Management Act, 2021 (BIM Act), a person who is entitled to remain in Barbados for more than six months must register in order to be issued with a chip- embedded Trident national identity card, which is intended to facilitate remote identity authentication and remote digital signing. The Data Protection Commissioner also has the remit to hear grievances on decisions taken under the BIM Act.

BARBADOS

ARTIFICIAL INTELLIGENCE

To date, there is no specific regime for the regulation of Artificial Intelligence (AI) in Barbados, other than the existing Data Protection Act, 2019-29. The creation/training on an AI algorithm on volumes of personal data and the subsequent use of that algorithm willl be caught by the legislation, since data protection principles will be engaged, as was recently noted by the European Data Protection Board (in relation to the GDPR).

Other legislation, such as the Computer Misuse Act, 2005-4 (which aims to protect computer systems and information contained therein from unauthorised access and abuse) may apply. The Cybercrime Act, 2024, when it is brought into force, together with the Mutual Assistance in Criminal Matters Act, Cap 140A (and its amendment), will replace the Computer Misuse Act, 2005-4. The Cybercrime Act is modelled on the Council of Europe's Convention on Cybercrime (EST No 185) (Budapest Convention) and is primarily aimed at combating cybercrime but also has as one of its aims 'the protection of legitimate interests in the use and development of information technologies'. The Act covers a range of crimes also committed through computer systems performing automatic processing of data, and would cover AI algorithm systems underpinning any automatic processing. The Cybercrime Act primarily seeks to address computer related crimes of fraud, forgery, child pornography, grooming, online sexual abuse, cyber bullying and cyber terrorism, interference with critical information infrastructure systems of the country and malicious communications. The Act also has a consequential effect on the Copyright Act, Cap 300.

EMPLOYEES/CONTRACTORS

Employment law in Barbados is an active area, with legislation being consistently upgraded to provide stronger protections for employees. Barbados has ratified the International Labour Organisation conventions. Private and public sector employees are unionised. There is also an Employment Rights Tribunal which adjudicates employer/employee disputes.

The main act is the Employment Rights Act, 2012 (as amended). Employers are required to provide written employment agreements outlining the full terms and particulars/conditions of employment, including those particulars which are required to be addressed under the Act. Some terms may be implied by operation of the common law or may have developed by practice, and some may be statutorily implied where the contract is silent. Other terms may be incorporated by reference in the contract of employment to the employer's Handbook or to its policies, which should all be acceptably within the law.

There is also a national minimum wage under the Minimum Wage Act, 2017, which has been supplemented by minimum wages for certain categories of workers. Allowable deductions are those permitted under the Protection of Wages Act, Cap 351.

Also of note is the Safety and Health at Work Act, 2005, as amended and supplemented by regulations, which impose statutory duties on employers regarding their employees' working environment.

CONSUMER PROTECTION

Fair Trading Commission. The Fair Trading Commission (FTC), established by section 3 of the Fair Trading Commission Act, Cap 326B, is responsible for the administration of the Fair Competition Act, Cap 326C (FCA), section 4). It also administers utility regulations, including standards, as they relate to electricity, telecommunications and water. In pursuing its functions of promoting competition and enhancing co-operation, the FTC co-operates with similarly Amandated regional institutions within the Caribbean Community (CARICOM) and with the CARICOM Competition Commission. It also receives technical assistance on competition issues from the United States Federal Trade Commission through its membership of the International Competition Network.

Consumer protection legislation. A division within the FTC, which is responsible for safeguarding consumer protection issues, actively monitors the safeguarding of consumer protection both offline and online on social media and websites. Online advertising for the sale of goods or services must comply with the regular laws for the sale of goods and services, including the prohibition against, inter alia, unfair contract terms, misleading or deceptive conduct, bait advertising and pyramid selling, as embodied in the Consumer Protection Act, Cap 326 D (CPA).
A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of supplier and consumer (CPA, section 7), and the Schedule to the CPA contains a comprehensive list of objects and effects that might render a contract term unfair. Apart from unfair trade practices, other matters governed by the CPA include product liability and consumer safety. Responsibility for the administration and enforcement of the CPA is given to the FTC, which has power to issue prohibition and warning notices, to obtain information, and to accept and enforce undertakings. The FTC may also apply to the High Court for an injunction restraining a person from engaging in conduct that would contravene certain provisions of the CPA.

BARBADOS

CONSUMER PROTECTION, CONT'D

The Consumer Guarantees Act, Cap 326E (CGA) sets forth the guarantees available to consumers in the supply of goods and services by suppliers and manufacturers. It is equally applicable to online transactions. The guarantees under this legislation cannot be ousted by any provision to the contrary in an agreement or by any written contractual terms (section 50). Goods supplied to consumers must be of 'acceptable quality' (section 6), which means that they must be (a) fit for all the purposes for which goods of the type in question are commonly supplied, (b) acceptable in appearance and finish, (c) free from minor defects, (d) safe, and (e) durable (section 7). Further, where goods are sold to a consumer by description, they must correspond with the description (section 9). Where goods are first supplied to a consumer in Barbados, there is a guarantee that the manufacturer will take reasonable steps to ensure that facilities for repair and supply of parts are reasonably available for a reasonable period after supply (section 13). Services supplied must be carried out with reasonable care and skill (section 29), and the service and any product resulting from the service must be reasonably fit for purpose (section 30). Compliance with this Act is monitored by the Office of Public Counsel.

The Fair Competition Act, Cap 326C (FCA) also contains provisions that indirectly enhance consumer protection, such as those prohibiting anti-competitive agreements and abuse of a dominant position (Part III), resale price maintenance (Part IV), and anti-competitive business conduct (Part VI).

TERMS OF SERVICE

Online contracts are enforceable in Barbados provided the requirements of reasonable notice and evidence of assent are satisfied.

A clickwrap agreement will generally be enforceable because the act of clicking, "I accept", will simultaneously constitute reasonable notice of its terms and sufficient evidence of assent. By contrast, a browsewrap agreement, where the consumer is not required to take any positive step indicating assent to its terms, may not be enforceable.

Where a sale is involved, an online contract must also comply with the provisions of the Consumer Guarantees Act and Consumer Protection Act, particular with respect to the unfair contract terms provisions of the CPA, so that an online standard form agreement will be void if its terms are deemed 'unfair' within the CPA.

Section 16A of the Electronic Transactions Act, Cap 308B requires that, when goods and services are sold or offered by electronic communication, the seller or offeror must provide such information as its legal name, principal mailing address, telephone number, electronic means of contact, and information to facilitate service of legal process. Further, consumers must be provided with accurate and accessible information describing the goods or services, so as to enable them to make an informed decision about the particulars of a transaction, including the terms, conditions and methods of payment, and conditions relating to withdrawals, termination, return, exchange, cancellation and refund policy.

An amendment to section 2 of the Act validates the electronic signature, which is defined as 'a digital or electronic method used to identify an individual and indicate that individual's approval.'

WHAT ELSE?

The laws and regulatory environment have been modernizing rapidly since 2020. There are many pieces of legislation which may affect business but which have not yet been proclaimed into law, possibly for other infrastructural reasons. A foreign entity should seek specific legal advice before investing.

FinTech services, for instance, which seek to offer financial services similar to services offered by traditional banks, may have additional licensing (such as those imposed by the Central Bank, and, for non-banking, Financial Services Commission or the Securities Commission) and corporate governance compliance requirements.

Barbados markets itself as seeking foreign direct investment in Life Sciences, the Blue Economy, Climate Resilience Projects, Agro-processing Projects, Renewable Energy, Information Technology, International Financial Services, in addition to the traditional Tourism industry.

Where a merger between two or more enterprises is proposed, an application must be made to the Fair Trading Commission under FCA, section 20 and Fair Competition (Merger) Rules, 2009, rule 2. There is a market share threshold for clearance by the FTC; namely, that the merging parties, or the merging parties combined, must not control more than 40% of any market for goods or services supplied in Barbados. The FTC may request such information as is necessary to satisfy itself that the transaction does not lessen competition or adversely affect the interests of consumers. 'Merger' is defined in FCA, section 2 as 'the cessation of two or more enterprises from being distinct, whether by amalgamation or by one or more enterprises acquiring control over another', or 'the engagement in a joint venture between enterprises which results in two or more enterprises ceasing to be distinct entities.'

BELGIUM

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BELGIUM

LEGAL FOUNDATIONS

The Constitution establishes Belgium as a parliamentary democracy with a federal structure, divided into three regions (Flanders, Wallonia, and Brussels) and three communities (French-, Flemish-, and German-speaking).

The powers of the communities and regions on the one hand and the federal government on the other are well defined. This means that each government can regulate autonomously within its areas of competence and there is no hierarchy between federal laws and regional decrees. Broadly speaking, the regions dispose of economic matters (e.g., economy, employment, foreign trade, etc.) and the communities dispose of personal matters (e.g., culture, education, health policy, etc.). Roughly speaking, the powers of the federal government include everything related to the general interest. In the general interest of all Belgians, the federal state manages, for example, finance, the army, justice, social security, foreign affairs as well as important parts of public health and internal affairs, etc. The federal government is also competent for everything that does not explicitly fall under the competence of the communities and regions.

Belgium follows the **civil law** system and relies on written statutes and other legal codes in the field of public, private and criminal law:

- **Public law** covers the relationship between individuals and the Belgian state and is enforced by administrative bodies and the Council of State (e.g., subsidies, product regulations).
- **Private law** governs the relationship between individuals (e.g., contracts, warranty, liability etc.) and is codified in various laws. The most important source of law in this context is the Code of Economic Law. The Code of Economic Law covers a wide variety of economic matters; from market practices and consumer protection to intellectual property, advertising, and enforcement. Other specific fields of law (e.g., insurance law, insolvency, and corporate law) are governed by their own legislation. The new Belgian Code of Companies and Associations of 2019 modernizes company law in order to make Belgium more attractive for both domestic and foreign businesses.
- **Criminal law** is mainly codified in the Belgian Criminal Code and Belgian Code of Criminal Procedure. Specific provisions, such as criminal sanctions in case of copyright and social infringements, are however included in respective laws.

Belgian judges are not bound by decisions of higher courts, and every judge is free to decide a case as he or she deems right. All judges are independent and subject only to the law. Belgian law does not recognize the common law concept of precedent. Decisions by higher courts do not, therefore, form a part of the law to which judges are subject.

However, in practice, decisions of higher courts are regularly followed by lower courts.

BELGIUM

CORPORATE STRUCTURES

One of the first legal steps that any entrepreneur should consider is the incorporation of a company. In Belgium, the limited liability company, either in the form of a private limited liability company ("besloten vennootschap/société à responsabilité limitée"; hereinafter "BV/SRL") or a public limited liability company ("naamloze vennootschap/société anonyme"; hereinafter "SA/NV"), are the most common legal forms.

For a start-up, the incorporators often opt to incorporate a BV/SRL, since a BV/SRL does not require minimum capital, but only a sufficient equity for the first three years, as shown in a financial plan that is filed at incorporation. The SA/NV, on the other hand, requires aminimum capital of €61,500 which has to be fullypaid up.

The benefits of forming a limited liability company include the following:

- A limited liability company has a distinct legal personality separate from its owners. It can enter into contracts with third parties, hire employees, obtain financing, etc.
- A Belgian limited liability company is incorporated through a notarial deed that is then filed with the competent court. The notarial deed grants authenticity to and confirms the legality of the incorporation of the company and its articles of association.
- A limited liability company enables incorporators to control their exposure to financial risk since partners' liability is limited to the amount contributed. Whilst an incorporator's investment in the start-up may be lost, an incorporator's home and other assets will in principle be protected although certain forms of incorporator's liability exist (e.g., in case of bankruptcy within three years due to insufficient equity foreseen at the moment of establishment).
- A limited liability company can serve as a vehicle for intellectual property to be pooled and protected. If intellectual property has been developed with a group of colleagues, a company enables the incorporators to allocate a share in the ownership of the company and regulate its use and income.

Any choice of business structure should be considered from a tax perspective. It is advisable to consult a legal and tax advisor for more detailed advice on which company structure is best suited to specific needs.

ENTERING THE COUNTRY

The cooperation agreement of 1 June 2022 between the Federal State, the Communities and the Regions implements a screening mechanism for foreign direct investment in Belgium. The Agreement, which is expected to take effect in 2023, intends to safeguard national security, public order, and the strategic interests of the Federal Government, the various Communities, and Regions. The cooperation agreement lays down the procedures and terms regarding the screening of foreign direct investments. A foreign investor is either a (i) natural person with its main residence outside the EU, (ii) an undertaking established outside the EU or (iii) every undertaking of which the ultimate beneficial owner has its residence outside of the EU. Foreign investments are classified into two types:

- The first type are investments that directly or indirectly result in the acquisition of at least 25% (which can be lowered to 10%) of the voting rights in companies or entities that are based in Belgium and whose business activities relate to the listed vital infrastructure, technologies, and raw materials that are essential for the interests relating to security and public order, the provision of critical input, access to sensitive information, the private security sector, freedom of press, and technologies of strategic interest in the biotechnology sector if they meet certain extra conditions;
- The second type are investments that directly or indirectly result in the acquisition of at least 10% of the voting rights in companies that are based in Belgium and whose business activities relate to the sectors of defense (including energy, cyber security, etc.) and whose annual turnover in the financial year before the acquisition of at least 10% of the voting rights was more than EUR 100 million.

ENTERING THE COUNTRY, CONT'D

The screening process has three phases:

1. Notification: The parties must submit transaction documents to the Interfederal Screening Committee (ISC) secretariat for review. If information is missing, the ISC will notify the parties. The notification should include information on the ownership structure, investment value, products/services, activities, financing, and closing date.
2. Assessment: The ISC will review the file and determine if there is a risk to public order, security, or strategic interests. If no risks are identified, the parties can proceed with the closing of the transaction. This phase may take up to 40 calendar days.
3. Screening: If risks are identified, the ISC will further analyze the transaction and draft an advice for each government. A consolidated decision will be communicated to the parties, which can either approve the transaction with conditions or refuse it. The duration of this phase varies based on the complexity of the transaction and the number of governments involved.

Investors who fail to comply with the screening procedure, such as failing to notify or providing false information, may face fines of 10-30% of the transaction value. The ISC may still conduct an assessment and screening up to two years after acquiring voting rights, with a possible extension of three years in case of bad faith.

There are instances where structural modification or mitigatingmeasures may suffice. These measures include guidelines for the transfer or sharing of sensitive information. The ISC may request access to confidential information related to the transaction, and it is important to ensure that this information is protected and not disclosed to unauthorized third parties. Other possible mitigating measures include ensuring that certain operations are located only in Belgium, and divesting all or part of the Belgian business. Locating certain operations in Belgium can provide assurance that sensitive information and operations are not accessible to unauthorized third parties outside of Belgium. Another option is to divest all or part of the Belgian business, which can reduce the level of control or influence that the foreign investor has over sensitive operations or assets in Belgium. These mitigating measures can help to alleviate the ISC's concerns about national security or public order, while still allowingthe investment to move forward.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which can be represented graphically and is able to distinguish the goods and services from other companies can be registered as a trademark.

Where to apply? Trademarks can be filed either with (i) the Benelux Office for Intellectual Property, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application of a Benelux trademark for the three Benelux countries (Belgium, the Netherlands and Luxembourg) is very similar to the procedure before the EUIPO. The Benelux Office for Intellectual Property ("BOIP") then reviews the application and registers the application for the trademark immediately if all minimum trademark requirements as mentioned above are met. As of the publication in the BOIP trademark register, the three months opposition period begins. Within this time period third parties can easily and at low costs oppose the trademark.

Duration of protection? IIf no oppositions are filed, the trademark registration remains valid for a ten-years- period counting from the filing date.

Costs? As per 2024, application costs for Benelux trademarks for two classes amount to €271 with €81 charged per additional class (exempt from tax).

BELGIUM

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in the field of technology are patentable. This requires that the invention is novel, not obvious to a skilled professional and can be applied in industry.

Where to apply? Patent protection will be granted only per country, meaning that the applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Belgian Intellectual Property Office, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs. The procedure for granting a Belgian patent is relatively straightforward, as the patent is granted regardless of the outcome of the examination of the patentability conditions. While the EPO conducts a novelty search, its results do not determine whether or not a Belgian patent is granted.

Duration of protection? The term of protection is in any case a maximum of 20 years from application.

Costs? As per 2024, application costs for Belgian patents at the Belgian Intellectual Property Office amounts up to €425 and must be maintained by annual fees. The fees for European and international applications vary depending on the choice of country for which it will be granted.

Employee invention? Patent law does not resolve the issue of ownership of patent rights to inventions realized by employees or officials. If there is no clear written arrangement, the court must rule in case of dispute. To determine who - employer or employee - enjoys the right to apply for a patent on the invention, the court will normally distinguish between three categories of inventions:

- Service inventions: these are the result of a research task that is part of the employee's normal duties (or of a specific task entrusted to him). The employer acquires the rights to this invention. The employee does have a moral paternity right to the invention.
- Dependent inventions: there is a demonstrable link between the company's activities and the invention, e.g. because the employee has used the employer's resources to arrive at his invention, such as machinery or company know-how, with or without permission. It is not clear who then becomes the owner of the invention. Case law sometimes designates the employer, and sometimes the employee. Even if the employee becomes the owner of the invention, he will often not be able to fully exploit it, due to obligations arising from compliance with trade secrets or from his employment contract. In any case, a paternity right is granted to the employee.
- Free inventions: these are inventions on the employee's own initiative, by his own means and outside his working hours. Since there is no connection to the work or the company, the employee naturally becomes the full owner of the invention.

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design.

Where to apply? National designs may be registered with the Benelux Office for Intellectual Property. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. The scope and terms of protection are quite similar to those of Benelux design law. The Hague system for the international registration of industrial designs allows designs to be protected in several countries by filing a single application in a single language with the World Intellectual Property Organization ("WIPO") or a national office such as the Benelux Office.

Duration of protection? The term of protection is five years and can be renewed four times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? As per 2024, application costs for designs amount €150 (exempt from tax). Feesare degressive with multiple filing. In addition, fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered, but are automatically created when certain conditions are met:

Copyright

What is protectable? Original expressions of the intellectual creation in a concrete form of an author are protectable under the Belgian Code of Economic Law (i.e., literary and artistic works). Copyright protection is granted immediately with the creation of a work. No registration and no label required.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Exploitation of copyright protected work? CCopyright owners have the exclusive right to exploitthe work and the indispensable right to be named as author. The most important property rights are the right to make reproductions of the work and the right to communicate it to the public. The author may however grant third parties non-exclusive or exclusiverights to use the work under a license.

Ownership of copyright on software in employment context? The basic principle here is that the employeris presumed to acquire the property rights to software, unless the employer and the employee have agreed otherwise. Thus, there is a legal presumption of transferof intellectual propertyrights to the employer.It is up to the employee to provide evidence that the presumption does not apply, for example because the work was not created under the employmentcontract.

Trade Secrets

What is protected? A trade secret refers to know-howand business information that is valuablebecause it is secret and intended to remain confidential. Appropriate non-disclosure measures must be taken to keep the information confidential e.g., marking information as trade secrets, implementing IT security measures, particularly access restriction and concluding NDAs. Trade secrets can cover a lot of different types of information, such as: a customerdatabase, work processes, technical knowledge, a concept, software, etc.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

Other specific rights may apply such as those on databases, geographical indications, industrial designs, etc.

DATA PROTECTION/PRIVACY

Since 25th May 2018 the General Data Protection Regulation ("GDPR") applies. The GDPR gives some leeway to EU Member States to implement a few provisions (implemented through the Belgian Act of 30 July 2018 on the Protection of natural Persons with Regard to the Processing of Personal Data) such as:

- **Child consent** - Consent from a child in relation to online services will only be valid if authorized by a parent. Belgium reduced the age from which a child may consent alone to the processing of his/her personal data in the context of online services from 16 years to 13 years.
- **Employees** - Belgium has not implemented any specific national rules (through an Act or collective bargaining agreement) as a result of the entering into force of the GDPR in relation to the processing of personal data of employees. Such processing is therefore based on legal obligations (such as social security legislation), the performance of the employment contract or the employer's legitimate interest. Existing specific employment rules may also apply to the processing, for example, in relation to camera surveillance, the introduction of new technologies or the monitoring of electronic communications.

Other relevant data protection legislation includes the Telecommunications Act of 13 June 2005, the Code of Economic Law and the Royal Decree of 4 April 2003 on the sending of advertising by e-mail. The latter may be briefly summarized as follows:

- **Cookies** – cookies are only possible to use if: (i) clear and specific information has been provided to the individual regarding the purposes of the data processing and their rights, all in accordance with the general requirements of the GDPR; and (ii) the individual provides consent after receiving this information. These restrictions do not apply if consent has already been given by existing customers nor to cookies that are strictly necessary for a service requested by an individual. Lastly, users must be allowed to withdraw their consent free of charge.
- **Direct marketing by mail** - The Code of Economic Law prohibits the use of e-mails for advertising purposes without prior, free, specific, and informed consent of the addressees. Such consent can be revoked at any time, without any justification or any cost for the addressee. It is permitted to send e-mail for the purposes of direct marketing if the similar products and services exemption applies. The Code of Economic Law also prohibits direct marketing e-mails from being sent if: (i) the identity of the sender is disguised or concealed; or (ii) an opt-out address is not provided. The sender must also include the eCommerce information.

ARTIFICIAL INTELLIGENCE

Legislation

No specific legislation has yet been adopted as regards AI in Belgium (except for certain limited rules on the use of algorithms by governmental authorities). The proposed AI Act of the European Union aims to regulate AI systems, prioritizing safety and adherence to fundamental rights. It adopts a risk-based approach, classifying systems into four categories depending on the level of risk, subjugating the providers, distributors and users of these systems to specific requirements. A conformity assessment procedure would also be introduced. GDPR-like penalty systems will be imposed by the supervisory authorities in each country. While a political compromise text has been reached by the Council of the EU's Committee of Permanent Representatives, the EU Parliament holds the final vote on 10 or 11 April 2024 before the AI Act is adopted. Once adopted, the AI Act would enter into force 20 days after publication in the official journal. There are several application dates, including those for prohibited AI systems, high-risk AI systems, among others.

Navigating the realm of artificial intelligence involves more than just the AI Act. Consider the impact of various laws like GDPR, amendments to the Product Liability Directive, and intellectual property regulations. While the AI Act plays a role, it is just one piece of the larger legislative landscape. Companies aiming to enhance their AI usage should broaden their focus beyond the AI Act, as it may not have a direct impact on your business. Belgian law that could potentially apply to AI can take many forms. In general, and in the absence of a specific definition of AI, when applying existing laws and qualifying AI products or services, AI will be considered as a software or more generally a digital service.

ARTIFICIAL INTELLIGENCE, CONT'D

Intellectual Property

The use of personal data to train AI systems: Rules governing the use of personal data for AI system training are not explicitly outlined in Belgium. However, existing legal frameworks, such as the GDPR and sector-specific laws enshrining the constitutional principle of non-discrimination, could potentially be applicable.

Copyright protection of AI systems: Copyright law is dealing with two main questions with regard to AI:

- How can works created by AI be protected?
- Who can be held liable if copyright relating to a certain work is violated by an AI system?

Under Belgian law, copyright protection is enjoyed by the physical author who effectively creates the work. Such work must be in a concrete form (e.g., ideas cannot be protected, but texts or websites can) and it must constitute an original creation (which is understood as a human creation that is sufficiently original, in which the author included his personality and intellectual work).

Hence, the (human) author of a work created with the use of AI will enjoy copyright protection if a direct connection is established between his input (the efforts to create a concrete and original work) and the output (the work itself). The AI system itself, created by a human, will also enjoy copyright protection.

In principle, the copyrights on works created by employees in fulfilment of their employee obligations are held by the employee himself and not by the employer. Consequently, the employer cannot use or transfer these creations without the consent of the employee. To avoid this, the employer can include the transfer of copyrights in the respective employment agreement of the employee. This must be done expressly and in writing. Such a transfer can also be included in the work rules of the company, whereby it must be proven for the transfer to be valid that the employee gained effective knowledge of the transfer under the work rules. All these agreements must be drafted in clear terms, as, in case of doubt, they will be interpreted to the benefit of the employee. Moral rights, however, cannot be transferred.

However, the regime applying to copyrights on computer programs (software) and certain databases is different. For these types of work, unless agreed otherwise, the employer and not the employee will be presumed automatically to hold the copyrights (at least the patrimonial rights in relation thereto). This exception is thus important with respect to companies that develop AI and other related systems.

By contrast, a work that is created by a self-learning AI system may not be protected by copyrights in favour of the creator. After all: (i) it will not be created by a human author; and (ii) it will not show an element of creativity in the form of an inclusion of the author's personality in the work.

Trade secrets: Pursuant to Directive 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, a trade secret: (i) is a secret that is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (ii) has commercial value because it is secret; and (iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret (e.g. contractual confidentiality obligations, security measures).

If an AI system or similar technologies are kept secret and are not generally known by other persons dealing with AI technology, the provisions of this Directive and the transposed provisions of Belgian law may apply. More specifically, the company that holds the AI technology may act against unlawful acts such as unauthorised access to the documents or electronic files concerning the AI system, the copy thereof, or the breach of a confidentiality agreement. The owner of the technology can also act against third-party recipients of the trade secrets, provided that such third party, at the moment of receipt, uses or discloses a trade secret which was unlawfully obtained and where the third party had knowledge of or should have had knowledge of the unlawful character of the trade secret.

The legitimate owner of the trade secret may, amongst others, obtain a cease-and-desist order against the unlawful user of the trade secret and/or claim damages for all losses caused by the unlawful obtaining, use or disclosure of the trade secrets.

ARTIFICIAL INTELLIGENCE, CONT'D

Board of directors/governance

Management needs a basic understanding of the opportunities and risks associated with these technologies. When implementing AI, the board must conduct impact assessments, assess privacy risks, and ensure accurate data interpretation through sufficient testing.

With the upcoming AI Act, boards of companies using AI systems must ensure compliance. Directors should anticipate changes and challenges, such as data quality obligations and transparency requirements. Given GDPR-like sanctions are stipulated in the AI Act, directors must act with due diligence.

AI can assist the board in processing and reviewing complex data. However, the board remains ultimately responsible for company management, including AI use. Directors could be held liable for AI mistakes due to a lack of oversight. Delegating decision-making powers to AI, especially in fully automated or autonomous systems, may complicate the board's monitoring function as the reasoning behind AI decisions may not always be clear.

Privacy and data protection

The rise of AI systems hinges on the availability of vast datasets. Consequently, data protection regulations like the GDPR will gain even more significance, attempting to govern the use of the extensive data essential for these technologies.

This shift introduces new risks for individuals and entities. AI systems, capable of complex data analysis, may lead to decisions that are challenging for individuals to comprehend or challenge due to unclear reasoning. Privacy loss, mass surveillance facilitation, and potential discrimination are concerns. Article 22 of the GDPR grants individuals the right to contest decisions made solely through automated processing.

Despite AI's opaque reasoning, transparency is crucial under GDPR principles. Explainable AI, providing insight into decision-making processes, is suggested to address the "Black Box" problem. However, the proposed AI Act may lack transparency obligations for high-risk AI systems.

Ethical considerations surrounding AI, especially when handling sensitive personal data, require oversight in compliance with the law and evolving ethical guidelines. Boards of directors must supervise AI's use of personal data, necessitating data protection impact assessments.

Use in the workplace

Biases: Biases in AI systems have the potential to amplify and institutionalize existing human biases and inequalities. This can occur through the formalization of rules based on inadequate or outdated data, especially in hiring processes, leading to unfair employment decisions. AI programs may also contribute to harassment by making inappropriate comments about a worker's appearance, sex, or race, potentially resulting in legal consequences.

Autonomy and surveillance: The reliance on AI-informed decision-making in the workplace, particularly in hiring, can diminish workers' autonomy and representation, possibly standardizing worker profiles. Additionally, the legitimate control and monitoring of workers by employers using AI must respect the fundamental rights and well-being of workers, with the risk of discrimination when employing AI systems for surveillance.

Liability in AI-related dismissals: Liability in AI-related dismissals may be deemed manifestly unreasonable under Belgian Collective Labor Agreement (CLA) no.109. The use of AI in the workplace, considered a new technology with significant collective consequences, falls under Belgian CLA no.39. Employers with at least 50 workers must provide information and consult with workers' representatives on the social consequences before introducing AI. Failure to do so restricts unilateral termination if AI is employed for assessing worker performance.

ARTIFICIAL INTELLIGENCE, CONT'D

Liability

Legislation that applies to defective AI systems: Belgium currently lacks specific legislation addressing defective AI systems. However, existing regulations governing defective products or services may be applicable to AI systems. Notably:

- **Privacy and Data Protection:** given that AI systems often process personal data, defects in these systems may lead to privacy breaches or violations of data protection laws. In Belgium, the EU General Data Protection Regulation (GDPR) applies and imposes obligations on organizations handling personal data. In cases where a defective AI system results in unauthorized access, data breaches, or other privacy violations, affected individuals may seek compensation or other remedies under the GDPR.
- **Product Liability (Law of 25 February 1991):** defective AI systems could potentially fall under the jurisdiction of product liability laws in Belgium. Essentially, manufacturers may be held responsible for damages resulting from defects in their products. If an AI system qualifies as a product and is deemed defective, especially when integrated into a tangible item, the manufacturer may be held liable for any harm or damage inflicted on individuals or property.
- **Consumer Protection and Legal Warranty:** the handling of defective AI systems may also be approached from a consumer protection perspective in Belgian law. Specifically, the incorporation of EU Directive 2019/770 and EU Directive 2019/771 within Article 1649bis to 1649octies and Book III, Title VIbis of the old Belgian Civil Code is noteworthy. These provisions assess the conformity of digital content or services, including AI systems, against both objective criteria (meeting general expectations) and subjective criteria (compliance with consumer agreements). In instances where an AI system is deemed non-conforming, consumers have the right to pursue remedies such as bringing the AI system into conformity, obtaining a price reduction, or terminating the contract.

Civil and criminal liability in case of damages caused by AI systems: In Belgium, the legal landscape concerning civil and criminal liability for damages caused by AI systems lacks specific rules, relying instead on general provisions of the law.

- **Manufacturer's Liability:** The Law of 25 February 1991, aligning with EU Directive 85/374/CEE, governs product liability in Belgium. Under this framework, manufacturers of AI systems may be held accountable for harm or damage caused by defects in their products, covering both tangible goods and software.
- **Seller's Liability and Warranty Regime:** Belgian law, articulated in Article 1582 et seq. of the former Civil Code, imposes an obligation on sellers to provide goods in conformity with the agreement. Sellers can be held liable for hidden defects and non-conformities, with additional responsibilities in B2C sales where consumer protection rules may restrict the seller's ability to limit liability (Article 1649bis of the former Civil Code).
- **User's Liability in Contract:** General contract law rules, such as Article 5.230 of the New Civil Code, hold the person using an item to fulfill contractual duties liable for breaches caused by defects in the item used. This principle gains relevance in scenarios where contractual services involve the use of a (defective) AI system, such as automated asset management services. Parties may deviate from this principle through contractual agreements.
- **User's Liability in Tort:** Under Article 1384 of the old Civil Code, users of defective items may bear liability for damages caused by the item's defect, even without direct wrongdoing. While traditionally applied to tangible goods, this concept could extend to damages caused by a tangible good incorporating an AI system (e.g., a robot). Users may also be held liable if they wrongfully employ a (non-defective) AI system to cause harm (Article 1382 of the former Civil Code).

Concerning criminal liability, there are no specific provisions addressing damages caused by AI systems, making it challenging to establish accountability. The application of existing criminal legislation in cases involving AI-induced damages awaits clarification from the Belgian legislator and the courts.

BELGIUM

EMPLOYEES/CONTRACTORS

General – The rights and obligations of employer and employee set forth by mandatory law, collective bargaining agreements or work agreements must be set forth in a signed employment agreement. Neglecting to include these provisions must be avoided at all costs since the Belgian legislator has imposed high fines and sanctions on their infringement. A company may also conclude an independent contractor agreement – a freelance contract or contract for work and services – instead of an employment agreement. What fundamentally distinguishes the self-employed worker from an employee is the existence or absence of a relationship of authority in the performance of his/her professional activity. For these contracts, the protective provisions of labor law do not apply.

Mandatory rules of Belgian labor law - Posting of workers or secondment

Posting occurs when a company based abroad temporarily employs its employees in another country (here Belgium). Several formalities are important when employing personnel in Belgium. It is necessary to verify that the employee has access to the Belgian labor market, which may require a labor card. Checking the conditions of entry to the territory and residence is also essential, although this is usually not a problem for Dutch and other EU citizens. In addition to applying for an A1 form, a LIMOSA notification must be submitted for personnel employed in Belgium so that the Belgian authorities are aware of the employment. Furthermore, a liaison must be appointed as a contact point for questions from the Belgian labor inspectorate regarding posting. Additional formalities may apply in specific sectors such as construction or meat processing. When posting within the EU, the principle is that a level playing field applies to prevent unfair competition. The foreign employer posting workers to Belgium must therefore comply with mandatory Belgian employment conditions, including regulations on working time, wages, public holidays, vacation, welfare, protection of pregnant women, non-discrimination, temporary employment, posting of workers, and conditions from generally binding collective bargaining agreements. Belgian rules should be applied unless conditions in the Netherlands are more favorable to the posted worker.

Prohibited practices – Hiring out of workers

Hiring out of workers refers to the situation in which an employee is "lent" by his employer to a user, who employs the employee and exercises over him (part of) the employer's authority that normally belongs to the actual employer. By employer authority, we broadly understand the exercise of management and supervision and the giving of instructions. Because such hiring out of workers can lead to abuses, it is prohibited in Belgium to make personnel available. This means that it is not allowed to give instructions, manage, or supervise employees of another employer. In practice, the boundaries between employers are sometimes blurred, for example when (sub)hiring in sectors such as construction, IT projects, or maintenance services. Exceptions to the prohibition are possible if the instructions relate to welfare at work, or are subject to strict conditions such as a written agreement with detailed instructions, compliance with the agreement in practice, and retention of employer authority. It is crucial to make clear agreements with the client and comply with them. Derogations are also possible in the case of temporary workers through authorized Belgian temporary employment agencies, or with prior notification to the inspection or permission from the inspection after agreement between social partners. Breaches of the prohibition may result in indefinite employment contracts between the user and posted workers, joint and several liability for social security contributions and financial penalties for the employer.

Prohibited practices – Sham self-employment

Those who adopt the social status of the self-employed, while they carry out their professional activity under the authority of an employer, can be re-qualified as employees with substantial consequences. The Social Security Authorities will demand payment of employer contributions and employee contributions. These contributions can be increased by negligence interest and a one-time contribution surcharge of 10%. It goes without saying that the client/employer cannot recover these employee contributions from the requalified employee.

The employee could also claim payment of salary elements - such as end-of-year premiums, holiday pay, salary increases/indexation in arrears - with retroactive effect since the start of the period of services within the Company. The deemed employer would also have to pay the double holiday pay and end-of-year premiums, for which the statute of limitations period is five (5) years. Other aspects of Belgian employment law will also apply (e.g., legislation concerning the termination of an employment contract). The statute of limitations for the Social Security Authorities to make a claim (e.g., holding pay) is three years – in the case of fraud even up to 7 years - while the employee has five years to make their claims.

EMPLOYEES/CONTRACTORS, CONT'D

No work for hire regime – it is important to be aware that there is no general "work for hire" doctrine in Belgian copyright law. This means that if you commission someone to create a work for your startup, such as a logo or website design, the individual author(s) will automatically hold the copyright to that work. However, it is possible to transfer the copyright to your startup if certain conditions are met. Specifically, if your startup is active in the non-cultural sector or in advertising, the commissioned work is intended for such activity, and the transfer of rights is explicitly agreed upon, then the copyright to the commissioned work can be transferred to your startup. It is important to have a clear and explicit agreement in place to ensure that your startup has the necessary rights to use and commercialize the commissioned work.

Intellectual property: employer or employee? – While the law around intellectual property rights in software, databases, and topographies on semiconductors (chips) is based on copyright, the issue of creations in an employment context is regulated completely differently. The basic principle here is that the employer is presumed to acquire the property rights to software, databases, and topographies unless the employer and the employee have agreed otherwise. Thus, there is a legal presumption of transfer of intellectual property rights to the employer. It is up to the employee to provide evidence that the presumption does not apply, for example, because the work was not created under the employment contract.

Registration with social security – Every employer must register employees with a social insurance carrier, have work accident insurances in place, and pay a certain monthly amount based on the employee's remuneration into the severance pay system.

Termination of protected workers – The employer (or the employee) can immediately terminate the employment relationship without notice or compensation when there is an urgent reason. Urgent reason means the serious fault that makes any further professional cooperation between the two parties immediately and definitively impossible. The party invoking the urgent reason must prove its existence. Certain employees are protected from being fired except for urgent or economic reasons. These employees include pregnant women, employees on career breaks or time credits, employees who have filed a complaint of violence or harassment, and union delegates or employees exercising a politicalmandate.

Specifically, the pregnant worker may not be dismissed from the moment the employer was informed of the pregnancy until one month after the end of post-natal maternity rest, except for reasons foreign to the physical condition resulting from pregnancy or childbirth. Similarly, employees on certain types of leave, including adoption leave and leave on the occasion of the birth of a child, may not be dismissed except for reasons foreign to the leave.

In addition, employees who have filed a complaint or legal action regarding equal treatment, violence, harassment, discrimination, or other protected categories may only be dismissed for reasons that are foreign to the complaint or claim.

If an employer fails to comply with these protections and dismisses an employee without proper cause, the termination is unlawful, and the employer will owe a termination fee in addition to a lump sum protection fee. These fees are not cumulative with compensation for manifestly unfair dismissal. It is important to understand and comply with these protections to avoid legal and financial consequences.

Language requirements - Language requirements in Belgium are a complex matter. As a basic principle, it must be kept in mind that Belgium is divided into four language areas: the Dutch-, French-, German-speaking areas, and bilingual area of Brussels-Capital region. To determine the applicable language regime, the area in which the company's operating headquarters is located is decisive. In Brussels, the language of the employee is defining. The operating headquarters was defined by the Constitutional Court as any establishment or center of activity with some constancy and to which the employee is attached. In principle, it is at the operating headquarters that social contacts between the parties take place; in other words, it is usually the place where orders and instructions are given to the employee, where communications are made to him, and the place where the employee addresses his employer. If certain employment agreements or documents are not drafted in the required language, the employer may not be able to use them in relation with his employees. The employees can only apply these to their benefit. Nonetheless, an informal English translation of the contract can always be drafted.

BELGIUM

CONSUMER PROTECTION

The core provisions in relation to consumer protection are laid down in the Code of Economic Law and the Civil Code. Some important themes may be briefly summarized as follows:

Guarantee Rules – The supplier is obliged to provide the consumer with products (including digital content and services) in conformity with the contract, meeting certain conformity requirements. These are both subjective conformity requirements (as set out in the contract) and objective conformity requirements.

The guarantee period is in principle two years from the time of delivery of the goods. This period applies to digital content and services acquired through a single supply transaction (or series of individual supply transactions), such as e-books, online film purchases, or music downloads. However, the guarantee may be extended in certain cases, in particular where the contract provides for the continuous supply of digital content and services over a period of time (e.g. subscription to streaming or cloud services for a period of several months or years, membership of a social media platform for an indefinite period of time).

Distance selling contracts – The Code of Economic Law foresees various information obligations of the trader and a right of withdrawal from any contract within 14 days without giving any reason. Consumers' right of withdrawal is automatically extended, save for a number of exceptions, for up to one year in case they are not sufficiently informed.

TERMS OF SERVICE

Before a consumer is bound by a contract, the company must deliver clear and understandable information about the main characteristics of the product (good or service) that the consumers wishes to purchase, the total price, the payment methods, consumer rights, etc. and the terms of service. The terms of service are enforceable if consumers have had the possibility to read, print and store them upfront and (explicitly or tacitly) agreed to the terms (preferably by ticking a box).

There is no language requirement for general terms and conditions. However, you are required to provide your general terms and conditions in an understandable language, otherwise they are not legally valid.

Both consumers and businesses are protected against unfair contractual terms that are manifestly to their disadvantage and impair minimum contractual rights. The Code of Economic Law has a blacklist for contractual terms with consumers that are null and void in any case. For example, clauses by which the company grants itself the right to unilaterally increase the price in contracts of fixed or indefinite duration, without objective criteria and clauses by which the company grants itself the right to unilaterally determine or change the delivery period.

Contractual terms with another business are subject to a similar blacklist in addition to a grey list presumed to be unlawful unless proven otherwise and a general standard of unfairness. Examples of the blacklist include giving the company the unilateral right to interpret certain terms of the contract (e.g., termination rights) or, in the event of a dispute,to cause the other party to waive any remedy against the company on beforehand.

In any case, the contract remains binding on the parties if it can survive without the unlawful terms.

WHAT ELSE?

Regulatory and procedural requirements of digital versus brick-and-mortar businesses – No particularities apply to digital companies compared to 'normal' companies, and digital businesses can therefore be established in the same way. In principle, there is no authorization or permit required to provide digital content and services, unless the company is operating in a regulated sector (e.g., financial services or gambling).

Government approach – Belgium is a highly digitalized and modern country with many innovative businesses. It ranks high in the list of most innovative economies in the world and has one of the best digital infrastructures in Europe. The federal and regional governments support further growth of the technology sector with national and regional support strategies and plans on technologies such as artificial intelligence, Internet of Things, robotics and cybersecurity. There is a wide array of tax incentives and subsidies available for research and development and investment in innovation. Universities and other educational institutions also obtain important funding to provide support to digital businesses, train the next generation of technology specialists and conduct important research on technological developments. Digital business is, therefore, seen as a positive factor that strongly contributes to the economy and therefore its growth must be stimulated.

Domain name registration procedure - At international level, the non-profit organization Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the management of domain names. A domain name must be requested from an authorized agent. At European level, several regulations govern the legal framework surrounding domain names with the .eu extension. EURid, a Belgian non-profit association with its head office in Brussels, takes care of the management. These domain names can only be requested by European Union (EU) citizens or persons or companies who have their residence or establishment within the EU. At national level, the Belgian Association for Internet Domain Name Registration (DNS Belgium) is only responsible for the management of domain names – not for requesting the domain name; that must be done through an authorized agent or 'registrar' who has entered into an agreement with DNS Belgium. The nationality of the party requesting the domain name is irrelevant, nor are there any other special restrictions. Foreign agents can request the registration of a domain name from DNS Belgium. Likewise, Belgian agents can addressrequests from Belgian and foreign customers to the relevantmanager in anothercountry.

It is interesting to note that the Belgian Data Protection Authority and DNS Belgium have concluded an agreement, dated 1 December 2020, pursuant to which certain restrictions can be placed on websites with a Belgian domain name that do not comply with the General Data Protection Regulation (GDPR), even possibly leading to a cancellation of the domain name. This procedure makes it possible to redirect .be domain names to a warning page of the government body that has the legal authority to act against serious breaches of certain rules of law. For instance, if the processing of personal data, via a website linked to the domain name, constitutes a violation of the GDPR, the Data Protection Authority can issue an order to freeze or stop that processing. Also, subsequently DNS Belgium can revoke the website linked to the .be domain name.

Funding instruments – Belgian corporate law provides a wide array of instruments to finance a company. Convertible notes are for instance a type of debt instrument that converts into equity at a later date, usually at the time of a future financing round. This allows start-ups to raise capital without immediately diluting equity, and provides investors with the opportunity to convert their investment into ownership of the company at a later date. Convertible notes have become a popular way for start-ups to raise seed funding and bridge financing.

Warrants and bonds are another important aspect of start-up financing. A warrant is a promise made by the company to the investor that certain facts are true, and if they are not true, the company will take steps to rectify the situation. Bonds, on the other hand, are legally binding commitments that the company makes to the investor. Both warrants and bonds can be included in the terms of the investment agreement, and are typically used to provide investors with greater protection and security for their investment.

Start-ups should carefully consider the terms and conditions of each instrument, and work with experienced legal counsel to ensure that they are properly structured and executed.

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LEGAL FOUNDATION

As an introduction it should be noted that Bosnia and Herzegovina **(BH)** is complex and decentralized state, and it consists of two entities and one self-governing administrative unit:

- Federation of Bosnia and Herzegovina **(FBH)**;
- Republika Srpska **(RS)**, and
- Brcko District of Bosnia and Herzegovina **(BD)** (FBH, RS and BD together referred as **Entities**).

The Entities constitute separate jurisdictions which in some matters hold exclusive competence to legislate while some matters are regulated at state level. A minor part of the competencies is delegated to local governance units such as cantons, municipalities and cities. For the purpose of this guide, we have given unified answers where appropriate, whereas we have separately emphasized any relevant differences in the legislation.

BH legal system relies on sets of codified legal norms in the field of public, private and criminal law with the BH Constitution at the top.

BH public law covers the relationship between individuals and public authorities.

BH private law governs the relationship between individuals and is codified in various laws. The main legislation in this field is the FBH Law of Contracts and Torts, RS Law on Contracts and Torts and BD Law on Contracts and Torts, with various laws for each specific field (e.g., family, employment, real estate, company law, intellectual property).

BH criminal law is codified on state and Entities level. Material provisions are regulated by (i) BH Criminal Law, (ii) FBH Criminal Law, (iii) RS Criminal Law and (iv) BD Criminal Law. Criminal procedure is regulated by (i) BH Criminal Procedure Law, (ii) FBH Criminal Procedure Law, (iii) RS Criminal Procedure Law and (iv) BD Criminal procedure.

Applicable criminal laws are in the main part aligned. In addition to the abovementioned, execution of sanctions, treatment of minors in the criminal procedure, witness protection etc. are regulated by specific legislation.

BOSNIA AND HERZEGOVINA

CORPORATE STRUCTURES

Business activities can be performed in several corporate structures prescribed by applicable legislation in BH.

Limited liability company (društvo sa ograničenom odgovornošću – d.o.o.)

The most common corporate structure for startup companies is the Limited liability company **("LLC")**. The laws regulating the LLC are FBH Companies Law, RS Companies Law and BD Companies Law.

The main characteristics of LLC:

- it can be established by one or more domestic or foreign individuals - natural persons or legal entities;
- the minimum share capital is BAM 1,000.00 (approx. EUR 500) in FBH and BAM 1.00 (approx. EUR 0.50) in RS and BD (the share capital must be paid before the incorporation of the company before the court);
- LLC is fully liable with its all asset for its obligations, and this liability does not transfer to the shareholders except in the cases of piercing the corporate veil;
- the shares in LLC are transferable;
- governing bodies of the LLC include shareholders assembly, management board and supervisory board (required if company has more than 10 shareholder or if the share capital amounts to BAM 1 million (approx. EUR 500,000).

The incorporation procedure is very straightforward, and it usually takes up to 10-15 business days. The cost of the incorporation may vary depending on the seat of the company.

Entrepreneur (obrtnik/preduzetnik)

Entrepreneurs are natural persons registered with the competent registries in Entities for performance of business activities that are fully and personally liable for all obligations incurred in connection with the performance of their business activities, with all of their property (personal and accrued through performance of business activities).

For small businesses this form is very common due to the straightforward incorporation procedure and lower costs involved. Usually, after reaching a certain level of expansion, entrepreneurs change the corporate structure to limited liability company.

BH offers different incentives for startups under certain conditions. Incentives for the agriculture and IT sectors are the most common.

ENTERING THE COUNTRY

The BH Law on Foreign Investment Policy governs foreign investment. Under this law, foreign investors are granted the right to invest under the same conditions and in the same manner as domestic investors. However, there are exceptions in certain sectors where the involvement of foreign capital is restricted, and it may not exceed 49% of the company's share capital (in industries such as sale of arms, ammunition and explosives).

Foreign investors have the right to transfer abroad, freely and without delay, in freely convertible currency, proceeds resulting from their investments in BH, including but not limited to:

- gain from investments received in the form of profit, dividends, interest and other forms;
- funds earned after the partial or full liquidation of the investments in BH or from the sale of equity or proprietary rights;
- compensation received in case of expropriation or measures with similar consequences.

Aforementioned transactions are carried out through commercial banks upon fulfilment of all tax and other statutory liabilities with respect to public revenues in BH.

Foreign investors are protected against nationalization, expropriation, requisition, or measures having similar effect.

BOSNIA AND HERZEGOVINA

INTELLECTUAL PROPERTY

BH law recognizes various intellectual property rights including (i) trademarks, (ii) patent and (iii) industrial design as most relevant for start-ups.

Trademark

What is protectable? Any sign suitable for distinguishing the goods and/or services of one participant in the economic circulation from the same or similar good and/or services of another participant in the economic circulation.

Where to apply? Trademarks can be filed with the BH Intellectual Property Institute (**BH IPI**). Trademarks granted under the provisions of the BH legislation are only effective in the territory of BH, however the same trademark may be simultaneously protected in several countries in case the goods and/or services will be marketed in other countries, provided that it is internationally registered, for which filing with the World Intellectual Property Organization (**WIPO**) through the BH IPI will be needed.

Duration of protection? Trademark protection lasts 10 years from the date of filing the application. It can be renewed an unlimited number of times for 10-year periods, with payment of the corresponding fees.

Costs? The trademark application fee is BAM 50 (approx. EUR 25) for up to three classes.

Industrial Design

What is protectable? Appearance of a product, meaning the two-dimensional or three-dimensional appearance of the whole or a part of a product resulting from its features, in particular the lines, contours, colors, shape, texture, and/or materials of the product itself.

Where to apply? Industrial design application is filed with the BH IPI.

Duration of protection? The validity period for industrial design is 5 years from the date of filing the application and it can be renewed 4 more times.

Costs? The industrial design application fee is BAM 30 (approx. EUR 15).

Patent

What is protectable? Any invention in any field of technology in case it meets the following requirements: (i) novelty, (ii) inventiveness and (iii) industrial applicability.

Where to apply? Patent application is filed with the BH IPI.

Duration of protection? Patent protection lasts 20 years from the date of filing the application, while for consensual patent the term of protection is 10 years.

Costs? The patent application fee is BAM 60 (approx. EUR 30).

DATA PROTECTION/PRIVACY

The main law governing data protection in BH is BH Law on Personal Data Protection (DPL).

Personal data is defined as any information related to the natural person that is identified or identifiable.

In accordance with the DPL the following principles apply:

- personal data should be processed for specified, explicit and legitimate purposes;
- processing should be carried out lawfully and fairly;
- processing should be limited to data which is necessary for realization of the processing's purpose/-s;
- processed data should be accurate and, where necessary, kept up to date, and incorrect and incomplete data must be deleted or corrected;
- processed data should not be retained longer than necessary for the purpose/-s for which they are processed and
- personal data obtained for various purposes may not be combined or merged.

The above-mentioned requirement of carrying out the data processing lawfully means that, among other, it should be based upon adequate legal ground. Such legal ground is either a data subject's consent (relating to specified, explicit and legitimate purpose/-s) or one of the remaining grounds explicitly prescribed by the DPL, including: (i) necessity for compliance with a legal obligation to which the data controller is subject, (ii) necessity of a particular processing for the performance of a contract to which a data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, (iii) necessity for realization of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, etc.

In addition to the above, the special categories of personal data under the DPL include data revealing racial, national or ethnic origin, political opinion or political party's affiliation, religious or philosophical or other beliefs, trade union membership, genetic code, biometric data, health condition related data, data concerning a natural person's sex life and personal data related to criminal convictions. The processing of special categories of personal data is generally prohibited, however, processing is allowed in certain exceptional cases prescribed by the DPL, such as if a data subject has given explicit consent to the processing of such data, or if their processing is necessary for the purposes of carrying out the obligations/exercising specific rights of the data controller in the field of employment, etc.

The state authority competent for data protection matters in BH is the BH Data Protection Agency ("Agency"). The Agency is seated in Sarajevo and its official website is www.azlp.ba.

The DPL is not GDPR compliant law, however, the new data protection law aligned with the GDPR is expected to be adopted.

ARTIFICIAL INTELLIGENCE

Regulatory framework for artificial intelligence is yet to be discussed and adopted in BH. The local authorities such as BH Data Protection Agency and the Institute for Intellectual Property are yet to recognize the importance of the topic and associated risk and issue any form of guidelines. However, in accordance with the Stabilization and Association Agreement between European Union and BH, BH has taken the obligation to harmonize all its legislation with EU Acquis Communautaire, therefore it is expected that BH will follow the EU regulatory approach, once adopted.

EMPLOYEES/CONTRACTORS

Employer and employee must conclude an employment agreement in written form which defines their rights and obligations. Employees are entitled to the following rights stipulated by the applicable legislation: (i) right on minimal salary, (ii) working conditions which ensure health and safety at work, (iii) personal dignity, (iv) annual leave, (v) sick leave, (vi) rest period during working day, etc.

Employment can be established as indefinite term employment or fixed term employment. In regard to the fixed term employment, it may be established on one or more consecutive employment agreements with a maximum duration up to 3 years in FBH and 2 years in RS and BD. In case the term is not stated in the employment agreement (even though this is one of the mandatory elements of every employment agreement), the agreement is considered as an indefinite term agreement. If the employee continues working for the employer after the expiry of a fixed term employment agreement, the employment is considered extended for an indefinite term.

The employer is obliged to register an employee before the competent tax authority of FBH/RS/BD and to calculate and pay monthly social contributions.

Employer may terminate the employment relationship unilaterally only due to the limited numbers of reasons:

- due to the technical, economical or organizational reasons of the employer, whereas it cannot be reasonably expected from the employer to employ the employee on another work post or to educate, qualify or train the employee for another work post;
- due to the personal abilities of the employee (e.g., the employee cannot continue work due to an illness);
- due to a breach of duties by the employee.

Regardless of the specific reason for employment termination, the employer is obliged to render a decision in writing containing a detailed explanation of the reason as well as information on the employee`s post-termination rights and obligations such as notice period duration, severance payment (if any), non-compete obligations (if any) and similar issues.

CONSUMER PROTECTION

Consumer protection in BH is regulated by BH Law on Consumer Protection and RS Law on Consumer Protection (**Consumer Protection Laws**).

Consumer Protection Laws provide the following set of right of the consumers: (i) right of access to main goods and services/right to satisfaction of basic needs, (ii) right to consumer education, (iii) right to safety and protection of life and health, (iv) right to be informed, (v) right to choose, (vi) right to be heard and be represented, (vii) right to damage compensation, (viii) right healthy environment.

In addition to the abovementioned set of rights, applicable legislation also prohibits unfair commercial practices, that is deceptive commercial practices containing inaccurate information that deceive or may deceive the average consumer. Furthermore, advertising cannot contain any statement or visible representation that would directly or indirectly, by omission, vagueness or exaggeration, mislead consumers, especially in relation to properties of products or services, value of the product or service and the total price, delivery, replacement, return or maintenance, warranty conditions etc.

Consumer Protection Laws among other, also regulate distance agreements providing that consumer is entitled to terminate an agreement within 15 days after receipt of the product without obligation to provide any reasoning.

EMPLOYEES/CONTRACTORS

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TERMS OF SERVICE

Terms of service oblige the contractual party only if the content of the terms was made known to the other party or must have been known to it at the time of conclusion of the agreement.

Terms of service should not contain so called unfair contractual provisions among other including the following provisions:

- by which the contracting party reserves the right to inappropriately long or insufficiently defined deadlines for accepting or rejecting an offer or performing an action;
- by which the contracting party foresees to release itself from the obligation without justified reason;
- by which the contracting party foresees that the agreed action can be changed or deviated from it solely taking into account its interest;
- which excludes or limits the right of the other contracting party to terminate the contract or to demand compensation for damages due to non-fulfillment of the contract;
- which excludes the right of the other contracting party to claim damages due to non-fulfillment of the contract, etc.

The online terms of service are usually communicated to the customer via a tick-box option.

BRAZIL

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BRAZIL

LEGAL FOUNDATION

Brazil has adopted a **civil law** system.

The main normative source of the Brazilian legal system is the **Brazilian Federal Constitution**, which stipulates the core foundations and purposes of the republic. It presents a comprehensive list of fundamental rights and guarantees, social rights, and principles to be applied by lawmakers and enforcers, in addition to stipulating the powers detained by the government.

The Constitution adopts a **federative model** based on the division of powers among the federal government, the states, and the municipalities, all of which have their competence limited by the constitutional text.

The Brazilian Federal Constitution divides the government functions among these branches, each one having specific attributions:

- executive
- legislative; and
- judiciary

Executive: Responsible for administrative functions and management of government entities. It needs to observe the roles defined in the Brazilian Federal Constitution and infra-constitutional law.

Legislative: Responsible for drafting, discussing, and approving laws. The Legislative Branch is composed by Senate and House of Representatives at the federal level. The legislative branch is also present at the state and municipal levels.

Judiciary: Exercises the role of judging conflicts between individuals, companies, and the government to enforce the Federal Constitution and law in concrete cases and, thus, mitigate conflicts.

BRAZIL

CORPORATE STRUCTURES

Legal entities that conduct commercial activities in Brazil and do not rely on the so-called shareholders' intuitu personae aspect, i.e., personal attributes of such shareholders are usually structured as limited liability companies or corporations. Below is a description of the main aspects of each type of entity and the advantages and disadvantages usually considered by investors/entrepreneurs:

Limited Liability Companies

Regulated by the Brazilian Civil Code (Law n. 10,406/02), the Brazilian Limited Liability company is the most common type of legal entity incorporated under Brazilian Legislation. Differently from joint stock corporations (which have their capital stock divided into shares), such entities have their capital stock divided into quotas. The main characteristic of this type is the responsibility of each quota holder, which is limited to the value of the quotas subscribed by such quota holder, although all of them are jointly liable for the payment of the corporate capital. In general, this corporate structure has some significant differences when compared with a corporation; for example, there is less formal obligations, as in connection with publicity, as limited liabilities companies have no obligation to publish their financial statements in official gazettes or major private newspapers, there is no obligation to have corporate books, the possibility of disproportionate distribution of profits, possibility of leaving the company without justifiable reason, among other differences.

Below are some of the usually considered advantages and disadvantages of this type of structure:

ADVANTAGES

- Reduced personal risk establishing a distinction between the company's assets and the assets of each partner.
- Each quota holder's liability is related to the value of the quotas subscribed within the capital stock. The distribution of profits is facilitated since each partner is entitled to profit according to their stake in the company. Withdrawal or distribution of profits to the partners is forbidden if there are solely losses in a fiscal year (which is also a mechanism to protect the stability of the business).
- The legislation does not stipulate a maximum limit of quota holders.
- Partners cannot use company's assets for private matters.
- A partner can be excluded when they are remiss, that is, when they do not pay up their part of the capital within the determined period or when they jeopardize the functioning and/or existence of the company.

DISADVANTAGES

- No requirement to create a fiscal council.
- There is no minimum amount to start a company.
- Naming formalities must be considered, as to have such an entity registered before the Board of Trade, its company name must include the abbreviation Ltda. (from Limitada)
- According to the law, although liability is limited to the value of each subscribed quota, partners are jointly liable for the company's capital.

CORPORATE STRUCTURES, CONT'D

Corporations

The Brazilian joint-stock company is the type of entity that most closely resembles the US subchapter C corporation. Such entities are regulated by the so-called Brazilian Corporations Law (Law n. 6,404/76).As previously mentioned,the Corporations have their capital stock divided into shares, which can be issued into different classes, such as voting and non-voting shares. Shareholder's liability is limited to the payment of the shares subscribed. In other words, once the issue price of the shares is paid, the shareholder's liability for company debts ceases, both towards the company and its creditors. Therefore, differently from limited liability companies, such entities have no joint liability between shareholders. Foreign shareholders must have legal representatives in Brazil to act on their behalf. It is important to highlight that corporations' shareholders general meetings are the highest deliberative body of the entity and is the forum where the most relevant matters to the business may be addressed and decided. A board of officers shall also be mandatorily appointed by shareholders with officers that are fiscal residents in Brazil or have a permanent visa, while the creation and appointment of a board of directors is optional for non-public corporations. When created, the Board of Directors can be composed of foreign members, not necessarily residents in Brazil.

Brazilian Corporations Law, even though it is older than the Brazilian Civil Code - which was amended and renewed in the year 2002 - is generally considered more technical and effective. It explicitly embraces, for example, the existence and enforceability of shareholders' agreements, which is generally accepted within the sphere of limited liability companies but not provided for in the applicable law. Indeed, the Brazilian Civil Code leaves quota holders free to provide in the company's articles of association that Corporations Law shall apply whenever the Brazilian Civil Code or respective articles of association are silent regarding any given matter.

This structure has both advantages and disadvantages which should be considered by entrepreneurs:

ADVANTAGES

- Shareholders liability is confined to the value of their stake, and they are not jointly liable to other shareholders contribution to the corporation capital stock.
- There is greater ease to assigning securities, whether by private or public subscription.
- Shareholders are not liable to other shareholders obligations towards the corporation in connection with the capital stock contribution.
- Brazilian Corporations Law provides for mandatory distribution of dividends to shareholders, giving greater certainty to the distribution of dividends in return to a successful investment.
- An additional layer of corporate governance, with the obligations to keep records of certain documentation and books in connection with the conduct of the business, and based on them, at the end of each fiscal year, financial statements must also be prepared: balance sheet, statement of accumulated profits and losses, result for the year, cash flow.
- Easier fundraising since it has at its disposal the possibility of creating debentures (credit title) and going public on the stock exchange market.

DISADVANTAGES

- A corporation is not entitled to opt for the Simples Nacional, a differentiated, lower and simplified tax regime, authorized to a Brazilian Limited Liability Company with annual incomes lower than R$ 8,700,000.
- Corporate restructurings may entail additional costs due to the necessary to present an appraisal report in the payment of capital with corporations' assets.
- Corporations are prevented to distribute disproportionate profits to shareholders' interest in the capital, except for preferred shares, which may have certain privileges concerning common shares. However, this must be previously determined in the bylaws.

CORPORATE STRUCTURES, CONT'D

Other Structures

While the above structures are most commonly used, especially from a business perspective, there isa variety of other structures available within the Brazilian Law.

The Brazilian Civil Code provides for other types of entities, such as sociedade em nome coletivo,sociedade em comandita simples or sociedade em comandita por ações. Both the so-called sociedades em comandita permit a system where stockholders directly involved in the conduct of the company matters are unlimitedly liable to companies' obligations, while members with an investor profile (not involved in the administration) have limited liability up the value invested in their shares. None of such forms of entities is currently widely used.

Sociedades simples, on the other hand, are nonentrepreneurial companies, where the shareholders' intuitu personae aspect (personal skills or attributes) are more relevant than the perpetuity of the business activities.

ENTERING THE COUNTRY

The Brazilian government regulates some industries in such a way as to restrict or prohibit foreign capital. **Foreign capital is prohibited in activities relating to nuclear power, mail and telegraph services, and the aerospace industry** (launching satellites and placing them in orbit, vehicles, aircraft, and other activities).

Foreign capital is also restricted in the following activities:

- **Mineral resource prospecting and mining in border areas (a band stretching 150 kilometers from Brazil's international borders)**: The exploitation and use of mineral resources in Brazil can only take place under a specific federal authorization or concession, and only Brazilian citizens or companies organized under Brazilian laws with headquarters and an administrative body located in the country can engage in these activities.
- **Telecommunications**: Companies with licenses to provide telecommunications services must be organized under Brazilian law and have their principal place of business and administration in Brazil. The majority capital of the company's parent company must be owned by an entity domiciled in Brazil.
- **Healthcare**: Direct or indirect participation of foreign companies or capital in health assistance in the country is forbidden, except in the following cases: (i) donations of international bodies associated with the UN; (ii) technical cooperation entities; and (iii)credit and loans.
- **Rural land**: The acquisition of rural land by Brazilian entities controlled by a non-citizen, a non-citizen residing in Brazil, or a foreign entity authorized to operate in Brazil is subject to specific legal requirements. These restrictions also apply to corporate transactions resulting in the direct or indirect transfer of rural land.
- **Financial institutions**: Participation of foreign capital in financial institutions is limited to specific situations, such as a presidential decree attesting to the importance of foreign capital for the national financial system or non-voting stock.

BRAZIL

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign or combination of signs and words that are visually perceptible, used, or proposed to be used to distinguish the goods and services and not otherwise included within the legal prohibitions can be registered as a trademark. Trademarks are commonly divided into three categories: nominative, figurative, or mixed. If, due to any distinctive sign of a product or service that, for whatever reason, cannot be classified into one of the categories above, the trademark may be defined as a "non-traditional trademark".

Where to apply? Trademarks can be filed with the Brazilian Patent and Trademark Office (Instituto Nacional da Propriedade Industrial – "INPI", in Portuguese) for trademark protection within Brazil. If the goods or services will be marketed in other countries, Brazil is also part of the World Intellectual Property Organization (WIPO) under the Madrid System since 2019, which allows international applications. An application for trademark registration can be filed with the INPI Trademarks e-Filing service. Once the application is received, INPI will conduct its own searches, ensure compliance with legislation, and publish the application in a Trademarks Journal ("RPI") to allow the public to oppose the application. The trademark will be registered if no one opposes the application or if an opposition has been decided in the applicant's favor.

Duration of protection? The trademark registration remains valid for 10 years from the date that its registration is granted. It can be renewed every 10 years after that for a fee.

Costs? Application costs for Brazilian trademarks submitted online through INPI's website are R$ 355.00. In addition to the filing fee, when the INPI grants the registration, the holder still needs to pay a fee of R$ 298.00 or R$ 745.00 for companies that do not benefit from the discount granted by the government.

Patents

What is protectable? Patent protection in Brazil is provided for in the Federal Constitution and the National Industrial Property Law (Law n° 9.279/2016), which ensures the right to prevent third parties from producing, using, offering for sale, selling, or importing with such purposes a particular invention. This protection may be granted to (i) inventions that present a novelty, inventive activity, and industrial use and (ii) utility models if the objects (in whole or in part) are for practical use, have industrial use, present a new format or pattern that involve an inventive act and results in a functional upgrade its use of manufacture.

Where to apply? The applicant for patent registration is the creator of the invention, and he may be granted the rights to patents in whole or in part. Recognition of joint ownership is also possible. The Intellectual Property Law also allows the patent holder or applicant to enter a license agreement for exploitation. Patent licensing consists of the authorization granted to companies to manufacture and market a patented product. Mandatory licenses can be granted to ensure free competition or to prevent abuse of rights or economic power by the holder of the right if the object of the patent is not being exploited or if the market needs are not being met. Records and contracts must always be registered with the National Institute of Industrial Property (INPI).

Duration of protection? The duration depends on the type of patent. For cases of inventions, the duration of protection is 20 years from the date of application, provided that the concession period is not less than 10 years; for utility model cases, the duration of protection is 15 years from the date of application, provided that the grant period is not less than 7 years.

Costs? Application costs for Brazilian trademarks submitted online through INPI's website are R$ 355.00.

INTELLECTUAL PROPERTY, CONT'D

Industrial Designs

What is protectable? It is registerable as an industrial design, the ornamental plastic form of an object or ornamental set of lines and colors that can be applied to a product, providing a new and original look in its external configuration, and serving as a type of industrial manufacture. Industrial designs that are contrary to morality and good customs that offend the honor or image of people or violate freedom of conscience, belief, religious worship, or ideas and feelings worthy of respect and veneration are excluded from any protection. Purely artistic objects or patterns are also exempt from industrial design registration, that is, objects that cannot be reproduced on an industrial scale.

Where to apply? Any natural or legal person who has legitimacy can apply for registration, which will only be valid in the national territory. The owner of the industrial design has the right to prevent third parties from producing, selling, using, or importing the industrial design object of the registration without his consent. The request can be made through the INPI website, electronic petition, or at one of the Institute's units throughout Brazil.

Duration of protection? The protection is granted for 10 years and can be renewed 3 times for 5 years.

Costs? The cost of the initial deposit of the registration request made through the INPI website is R$ 170.00. Throughout the process, other fees may apply.

Copyright

What is protectable? Copyright protection is available under Brazil's Copyright Act for "creations of the spirit," expressed by any means or fixed in any medium, tangible, or intangible, now known or invented in the future, such as original literary, artistic, dramatic, or musical works. Copyright protection arises immediately upon the creation of a work. No registration is required to assure copyright protection, but registration is available to provide evidence that the copyright exists, and that the person registered is the owner.

Where to apply? Applications can be filed in different places depending on the work registered.

Duration of protection? In general, economic rights in copyrighted works remain valid for 70 years, counted from January 1st of the year following the year of the author's death. For software, protection of the copyrights remains valid for 50 years, counted from January 1st of the year following the year of the software's publication or, if unpublished, of its creation.

Costs? The registration fee can vary from R$ 20.00 to R$ 80.00, in addition to possible costs for sending the physical copy of the work and documentation.

The following IP rights cannot be registered:

Trade Secrets

What is protected? Although trade secrets are not protected as property, Brazilian law rebukes any breach of trade secrets. When dealing with unfair competition, the Brazilian Industrial Property Law criminalizes conduct involving the unauthorized use of trade secrets.

Duration of protection? Not applicable to this jurisdiction.

How to keep trade secrets secret? In case of violation of trade secrets, holders may hold those responsible liable in the criminal sphere (i.e., arrest and monetary fine) and civil (i.e., injunction to prevent further infringements and damages).

BRAZIL

DATA PROTECTION/PRIVACY

Law nº 13.709/2018, known as the General Law for Personal Data Protection ("LGPD" in Portuguese), was enacted to unify the laws and regulations that provide for the use of personal data and strengthen the protection of the fundamental rights of freedom and privacy.

This legislation was drafted under the strong influence of the General Data Protection Regulation (GDPR) of the European Union (EU). The LGPD provides for the data subjects' rights and obligations for companies that process data, establish legal bases for the collection and processing of data, and requires a high degree of preparation, adequacy, and compliance for companies.

The law defines "personal data" as any information related to "an identified or identifiable natural person." The most important distinction is identifiable data that can be aggregated with other data to identify a person.

In addition to this category, the LGPD defines a more specific category that cannot be subject to any treatment: sensitive data. This refers to personal data whose treatment may give rise to discrimination against its holder.

Due to its distinctiveness compared to the GDPR, is that the LGPD applies to all legal entities - public or private - and individuals who process personal data for commercial purposes, whether in the digital or physical medium. Any company that collects, uses, transfers, stores, or otherwise processes the personal data of a Brazilian customer or employee is subject to the LGPD unlimitedly.

Regarding the application in the territory, the LGPD has extraterritorial jurisdiction, which means that it must be observed by the company or organization regardless of its location. In this sense, the legislation provides that it should be applied when (a) data collection or processing takes place in Brazil; (b) data is processed to offer goods or services to individuals in Brazil; or (c) data collected in Brazil is processed.

The legislation was also concerned with pointing out the cases in which it should not be complied with. It should not be applied to the processing of personal data (i) carried out by a natural person for exclusively private and non-economic purposes; (ii) carried out exclusively for journalistic, artistic, or academic purposes; (iii) carried out for only government purposes (such as public security and national defense); or (d) performed for private, non-commercial purposes.

Another point of attention in applying the LGPD is the legal bases, which determines the circumstances in which data processing can be carried out. The legislation provides for 10 legal bases that include consent, the legal or regulatory obligation of the controller, the execution of a contract, and the protection of the life or safety of data subjects.

After its publication, the legislation suffered some changes, including an article on the creation of the National Data Protection Authority (ANPD) - the public administration body responsible for overseeing, implementing, and supervising compliance with this law throughout the national territory.

The ANPD is an independent government entity endowed with technical and decision-making autonomy, its assets, and headquarters and jurisdiction in the Federal District. The ANPD is responsible for enforcing the LGPD and guiding compliance and interpretation. It has available several enforcement mechanisms outlined in the LGPD, including fines up to 2% of a company's gross revenue, with a maximum fine of R$50 million per violation, public disclosure of the violation, prohibition of data processing activities, suspension of the database operations or processing activity involved in the violation

Although the work and enforcement by the ANPD is recent, several court cases involving data protection matters have already been filed. In addition to ANPD, regulatory agencies and public prosecutors have been active in enforcing the law.

ARTIFICIAL INTELLIGENCE

Since 2019 the National Congress has been discussing certain bills of law to regulate Artificial Intelligence ("AI"). In March 2022, the Federal Senate proposed Bill of Law No. 2,338/2023 ("PL 2338/2023"), consolidating previous bills of law in one.

The purpose of Bill No. 2,338/2023 is to establish a regulatory framework for the development and offering of Artificial Intelligence (AI) in Brazil. Among the different proposals on the final wording, the following aspects are under discussion:

- New principles for the development and use of AI systems.
- Criteria and system for risk assessment to be used in the development, operation, and use of AI, based on the probability and negative impact classification criteria, and resulting in limitations to develop and operate specific AI systems.
- Specific rights for affected individuals.
- Obligation to notify the start of development of AI systems and share assessment reports with the competent authority.
- Obligation to include watermarks in content generated by AI systems.
- Civil liability regime to developers, operators, and users based on the risk of the AI system.
- Regulation on the use of works protected by copyright, for training AI and operating AI systems.
- Creation of the National Council on Artificial Intelligence (CNIA), designed to guide and supervise the development and application of AI.

Congress and the executive branch are undergoing a discussion to choose and appoint a specific authority to be designated by the federal government as responsible for overseeing compliance with this upcoming AI Law throughout the national territory.

PL 2338/2023 establishes sanctions for noncompliance with of AI regulation such as warnings, simple or daily fines, partial or total suspension of activities, publication of the violation, and prohibition of participation in the regulatory sandbox.

In addition to PL 2338/2023, consumer protection authorities, public prosecutors, and regulatory agencies from different sectors (particularly the Central Bank and health-related agencies) will continue to have jurisdiction to regulate AI-specific applications and enforce existing laws such as consumer protection laws, sectorial ordinances, data protection and other laws on companies that offer AI systems.

Companies doing business in Brazil have started to establish AI governance programs to mitigate risks associated to the use of AI in their business and compliance with existing and upcoming legislation.

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EMPLOYEES/CONTRACTORS

General: In general terms, Brazilian labor law is set out in the Consolidation of Labour Laws ("CLT"), The Federal Constitution, and Collective bargaining agreements. Startups are also subject to the labor rules applicable to any other company (CLT).

Employee/worker: A worker is a naturalperson who regularly works for compensation, is subordinate to someone, and work is undertaken personally. A written contract is highly recommended for an employee and a service provider (legal entity). The contract stipulates certain conditions, such as compensation and benefits, job description, working hours and work regime (remote, in-person, hybrid), place of work, and duties (confidentiality, non-disclosure, and non-competition obligations, etc.). The legislation directs working hours to be eight hours per day and 44 hours per week. Brazilian labor law describes any hours worked more than eight hours a day as overtime. Overtime is paid at the rate of adding at least 50% of an employee's regular hourly compensation. Some positions are exempt from overtime and working day compensation control. These include positions of trust, such as managers and executives, and employees who usuallywork outside the office, such as workingfrom home or in the field. Employees are liable for personal income tax (IRPF) and social security deductions (Source Deductions).

Some employee rights: Holiday entitlement (30 paid days per year plus one-third of the monthly remuneration paid), 13th salary (one extra monthly salary per year)—a remunerated weekly day off. There is a requirement to pay social security. Legal benefits are often provided for in collective bargaining agreements and with trade unions. Pregnant employees are entitled to 120 days (up to 180 days) of paid maternity leave in Brazil. The employer directly pays the employee, but Brazil's social security system reimburses employers. Employees are entitled to five days (up to 15) of paternity leave, fully paid by the employer. The Brazilian Social Security regime (INSS) maintains old-age retirement pensions, death pensions, illness and injury benefits, disability benefits, and parental leave. Monthly deposits of 8% of an employee's gross compensation made by the employer into an escrow account with a governmental bank (Brazilian Government Severance Indemnity Fund Law - FGTS)

Contractors/Other forms of employment/hiring: A company may also offer a contractor agreement (freelance contract or contract for work and services, independent contractor/self-employed) instead of an employment agreement (worker). It is also possible to hire a legal entity whose partner will provide service. For these contracts, some protective provisions of labor law do not apply. In contracting, taxes, labor charges and social security are much lower for the company and the employee. The distinction between an "employee/worker" and a "contractor" is a question of fact and not solely determined by what the parties agree to call themselves. In these contracts, the requirements for the configuration of "worker" (employee, properly speaking) and subject to the labor legislation (CLT) cannot be present, especially subordination, personality, control of working hours, and habituality. These modalities require more attention so as not to configure a labor relationship and not to generate fines and inspections from the ministry of labor and labor lawsuits. These other contracts, as a rule, are governed by the Brazilian Civil Code. Although this risk exists, in the case of startups, considering the possibility of business instability and labor costs, hiring in the form of partnerships can be evaluated, such as vesting contracts, service contracts, and stock options, among others, according to interest.

Termination: Workers are very well protected by the CLT (Consolidation of Labour Laws). Notice periods for resignations in Brazil are 30 days which can be reduced by mutual consent from both the employer and employee. Notice periods for dismissals in Brazil must be at least 30 days, with three days added per year of service, limited to 90 days. The employer may provide pay instead of notice and release the employee from working. If an employee is dismissed without cause, the employer must pay 40% of the accumulated balance inside the employee's Unemployment Compensation Fund (FGTS). Additionally, 10% must be paid on behalf of the government as a tax. For all other types of contracting, the conditions for termination must be agreed upon in advance by the parties and provided for in the contract.

CONSUMER PROTECTION

The Consumer Defense Code, enacted by Law No. 8078 of September 11th, 1990, ensures and reinforces the need for consumer protection and regulation of consumer relations, as provided for in the Constitution of the Federative Republic of Brazil.

The Brazilian legal system enshrines consumer protection not only as a fundamental right but also as one of the basic principles of the economic order, which must be observed as a legitimate limitation to free enterprise.

The special legislation defines the consumer as the end user of products and services. On the other hand, the supplier is every natural or legal person, public or private, national or foreign, that produces, assembles, creates, builds, transforms, imports, exports, distributes, or sells products or services – terms also conceptualized by the law.

Thus, any business model in which a company, for example, sells its product or service to the consumer must comply with the various obligations imposed on suppliers, according to the Consumer Protection Code. Otherwise, in cases where the product or service is contracted to implement an economic activity, the legislation will not be applied since the final recipient of the consumption relationship would not be configured.

Suppliers have strict liability based on the risk of the activity carried out and earned by verifying two criteria: (i) actual damage and (ii) a causal link between the damage and the product or service. Therefore, the duty and obligation to respond to the damage arise regardless of fault. The legislation also provides, for cases involving a production chain, the joint and several liabilities of all parties involved in the stages of production or provision of the service. Suppliers may not be liable for damages if the consumer or a third party is held solely responsible.

For the hypotheses of non-compliance with obligations, the legislation provides for the repair of damages resulting from unlawful acts, breach of contract, and violation of rules related to consumer rights, also providing for the possibility of applying the "disregard of legal personality" to protect consumers from abusive and fraudulent acts.

Brazilian courts are very strict in applying this law to promote balance among supply market participants. In addition to the judicial system, consumer rights are protected by consumer bodies or associations and the Public Ministry.
The provisions and rules in the Brazilian Consumer Protection Code are similar to those in other countries. Brazilian courts are pro-consumer and, consequently, are very strict in applying this law to ensure that it fulfills its main objective.

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TERMS OF SERVICE

"General Terms and Conditions": the document that establishes rules and conditions for a given service, focusing on transparency. Once the user has read and accepted the terms and conditions provided, he is bound by the clauses. The "General Terms and Conditions" must inform the user about the service provided by the body or entity and the ways of accessing these services: formation of the contract, compensation, obligations, and covenants, among other service characteristics.

"Privacy Policy": the document that the service provider makes available to the user with information on how the service processes personal data and how users' privacy is guaranteed. Privacy Policies are legally required in most countries, including Brazil.

WHAT ELSE?

Portuguese Language Requirements: It is generally acceptable to enter into contracts in another language (e.g., English); however, if the contract is to be taken to any Brazilian authority, including courts, only versions in Portuguese or sworn translations will be accepted. It is also important to mention that both the Consumer Defense Code and the General Data Protection Law require that any information be presented in Portuguese and a precise and clear manner.

Strict jurisdiction: Brazilian courts are rather strict regarding protecting consumers, employees, and data subjects. The risk of non-compliance in these fields of law is rather high for businesses. It is thus recommendable to focus on these topics first when rolling out a business in Brazil.

E-Commerce: E-Commerce Law No. 7962/2013 regulates e-commerce activities in Brazil. In this context, every online store, marketplace, and other similar formats that sell products or some type of service over the web need to follow the terms of the legislation to avoid headaches strictly. This law is an extension of the Consumer Defense Code but more focused on the digital universe.

Software: Law No. 9,609/98 guarantees the software creator the same protection of intellectual property endorsed to authors of literary works. The device deals with software protection and its ballot and stipulates rights and duties about use. Software protection in Brazil does not result from registration and lasts 50 years from January 1st of the year after its creation. Infringement of software rights is subject to sanctions ranging from fines to imprisonment. The law also regulates software ownership created during an employment or contractual relationship. If the employee or contractor has created the software during contractual and employment relationships, commercial exploitation will be the responsibility of the employer/contractor.

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LEGAL FOUNDATIONS

Bulgaria follows the **civil law system**. It relies on the written statutes and other legal codes in the field of public, private and criminal law that are constantly updated.

- Bulgarian **public law** covers the relationship between individuals and the Bulgarian state and is enforced by administrative bodies (eg. trade license requirements, taxation) which are subject to judicial review by the administrative courts.
- **Private law** governs the relationship between individuals (eg. contracts, warranty, liability, etc.) and is partially codified in various codes and laws. Some important sources of law in this context are the Obligations and Contracts Act, the Property Act, the Commercial Act, the Labour Code etc. There are many more laws for each specific field (eg. family relations, inheritance, e-commerce, copyright etc.).
- **Criminal law** is codified in the Criminal Code and the Criminal Procedural Code.

However, final decisions, such as of the Supreme Cassation Court and the Supreme Administrative Court are often used as supporting arguments and must be generally considered by lower courts. The legal structure is thus also further developed by case law.

CORPORATE STRUCTURES

Bulgarian Law provides the following forms of companies:

Capital Companies

The Bulgarian limited liability company **(OOD, Дружество с ограничена отговорност)** is the most preferred form of company in Bulgaria. Its core characteristics may be summarized in the following manner:

- It requires at least one shareholder (individual or legal entity) for its incorporation.
- Further, the shareholders have to draw up and sign articles of association and minutes/decision for its incorporation which require an ordinary written form. Then, the director(s) or their attorney/proxy have to file an application with the Bulgarian commercial register together with a notarized specimen of their signature and certain declarations.
- The OOD has a minimum statutory capital of BGN 2 (circa EUR 1). The shareholders must pay in at least 70% of the capital for the company to be registered. The capital can be "paid in" in the form of kind contribution of tangible or intangible assets (equipment, real estate, transferable intellectual property, receivables, etc.)
- The founders can start the commercial activities even before the company is registered but will be jointly liable for any obligations until the company is registered.

CORPORATE STRUCTURES, CONT'D

Capital Companies, CONT'D

ADVANTAGES

- Limited liability of the shareholders
- Director(s) is/are bound by the instructions of the shareholders.
- Very low minimum statutory capital.

DISADVANTAGES

- Shares are transferred with a written contract with notarized signatures.
- A shareholder can be expelled from the company by the other shareholders.

Further, there is a possibility to establish a Bulgarian joint stock company (**AD, Акционерно дружество**) by one or more shareholders (individual or legal entity). This requires a capital of BGN 50,000 (circa EUR 25,600) of which at least 25% has to be paid in at the time of filing the application for registration and the rest not later than 2 years thereafter. The AD must form a Management Board which consists of at least three members (can be individuals or legal entities) and if the company decides, a supervisory board can be established with at least three members.

ADVANTAGES

- Limited liability of the shareholders
- Board members are bound by the instructions of the shareholders.
- Relatively low minimum statutory capital
- Allows easier funding by investors and greater flexibility in the balancing of the interests of founders and investors

DISADVANTAGES

- Requires at least three members of the management board.
- Relatively higher costs for setting up and maintaining the company compared to the OOD.

In 2023 a new type of company– the variable capital company (DPK, Дружество с променлив капитал) was introduced, although due the still pending adoption of certain secondary legislation governing the DPK it will not be possible to establish such a company before the second half of 2024. A DPK can be established by one or more shareholders (individual or legal entity). It may have up to 50 employees and up to BGN 4,000,000 (circa EUR 2,045,000) of annual turnover and/or the value of its assets does not exceed BGN 4,000,000 (circa EUR 2,045,000). Once these thresholds are exceeded the DPK must be transformed either in a OOD or AD or otherwise it will be winded up. The capital does not need to be paid in to register the company. The DPK can be managed either by a single director (individual or legal entity) or a board of directors (individuals or legal entities).

ADVANTAGES

- Limited liability of the shareholders
- No minimal capital is required to set up the company.
- Allows easiest funding by investors and greatest flexibility in the balancing of the interests of founders and investors.

DISADVANTAGES

- Must be transformed into an AD or OOD once certain thresholds of number employees and relatively low turnover/asset value are reached.

It is expected that the DPK will be become the most preferred option by start-ups.

CORPORATE STRUCTURES, CONT'D

Partnerships

Apart from the OOD and AD, the most common forms of partnerships for businesses are the general partnerships (**SD, Събирателно дружество**) and the limited partnerships (**KD, Командитно дружество**) and limited partnership with shares (**KDA Командитно дружество с акции**). As to the requirements:

- For both the SD and the KD the establishment requires a partnership agreement with notarized signatures between at least two partners (individuals or legal entities).
- For its incorporation a SD, a KD and a KDA must both be entered into the commercial register.
- The partners in the SD are jointly and personally liable with their personal assets and property.
- In the KD and the KDA there are two types of participants: (i) general partners, who have unlimited liability, and (ii) limited partners in the KD or shareholders in the KDA, whose liability is limited to the investment they have made in the KD respectively the KDA.
- The founders can start the commercial activities even before the partnership is registered but will be joinly liable for any obligations until the partnership is registered.

ADVANTAGES

- Certain benefits from tax law perspective in a very limited number of cases

DISADVANTAGES

- Unlimited liability; this applies to all partners in an SD and only to the general partners in a KD and KDA

Another form of a partnership is the civil law partnership **(DZZD- Дружество по Закон за Задълженията и договорите)**. Its establishment requires at least 2 persons who have common resources and who pursue a common business purpose. The partners are fully and personally liable with their personal assets. Due to the lack of legal personality, the DZZD cannot be registered with the commercial register. In sum, it is thus also not very attractive for start-ups.

Sole Trader (ET, Едноличен търговец)

The sole trader is also a possible legal form to do business in Bulgaria. The owner of the business is a single natural person. A natural person becomes a sole trader upon registration in the commercial register. The sole trader is fully and personally liable with his or her private and business assets.

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ENTERING THE COUNTRY

Bulgaria has recently adopted a foreign direct investments screening mechanism implementing the EU's Foreign Direct Investment Regulation. Under the new rules any investments (i) coming from investors from countries which are not members of the European Union (ii) which exceed EUR 2 million or represent an indirect acquisition of an interest of 10% or more in (iii) undertakings active in certain critical sectors (utilities, tech, defence, supply of critical resources, etc.) are subject to preliminary approval. The investment screening authority may prohibit the transaction if there is a threat to national security or public safety. Such risk will be evaluated in review proceedings, which may last up to 75 days. If the investment screening authority does not issue a decision within the set deadline the investment will be considered approved. By way of exception from the above general rules, investments coming from the following countries are treated in the same manner as investments coming from EU Member States: USA, UK, Canada, Australia, New Zealand, Japan, Korea, UAE and Saudi Arabia.

There are also certain limitations for investments coming from companies registered in offshore jurisdictions. Such companies are in general prevented from applying for access to public resources such as certain types of licenses, concessions, public procurement procedures, etc. unless they meet certain transparency and ultimate beneficial ownership requirements.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which can be represented graphically and is able to distinguish the goods and services from other companies can be registered as a trademark.

Where to apply? Trademarks can be filed either with (i) the Patent Office of the Republic of Bulgaria (BPO), (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application to the BPO can be filed online (https://portal.bpo.bg/tm-e-filing). The BPO then reviews the application. The application goes through two checks. The first check relates to whether all the formal legal requirements for the proper processing of the application have been met.

If incorrect, applicants are given a period to correct their application. The second check relates to the sign itself. The BPO verifies that none of the absolute grounds for refusal are applicable. This check is carried out within 2 months of the completion of the formal check. With publication in the Trademark Gazette, a three month opposition period begins. Within this time period third parties can easily and at low costs oppose the trademark.

Duration of protection? Trademarks are registered for a period of 10 years from the date of filing the application for registration. Registration may be renewed an unlimited number of times for consecutive 10 years eperiod.

Costs? In Bulgaria a trademark may be registered for Good and Services in each of the 45 classes from the Nice Classification, established by the Nice Agreement. Depending on the number of classes the costs differ. The range of the costs is between BGN 570 and BGN 1830. In addition, fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? IInventions in the field of technology are patentable. This requires that the invention is novel, not obvious to a skilled professional and can be applied in industry.

Where to apply? Patent protection will be granted only per country, meaning that applicant must register the patent in each country where protection is sought. The only exception is the Unitary European Patent - the new system is expected to enter into force on 1st of June 2023. Bulgaria is one of the 17 Member states that have ratified the European Patent Convention, i.e., a Unitary European Patent will have an effect on its territory. Patent applications can be filed with either the BPO, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs. (Expected on 1st of June 2023)

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained by annual fees.

Costs? Application costs for Bulgarian patents may differ depending on many factors such as the number of the inventions, the number of pages of the description of the invention, Priority claimed from a previous request etc. The Bulgarian law also provides for various financial reliefs in certain circumstances (ex.:50% discount for individual inventers, micro- and small enterprises, etc.), the costs varies broadly. The price for an application with up to 10 pages and up to 10 claims without any discounts would amount to approx. BGN 250. The cost for maintaining the validity of the patent grows significantly through the years starting at BGN 40 for the 1st year and ending at BGN 1700 for the 20th. In addition, fees for the legal and technical representative apply.

Employee invention and inventor bonus? According to the Bulgarian Patent legislation, employers are entitled to file patent applications for all inventions made in connection with the employee's work for a 3-month term as of the received notification for the invention from the employee. After the 3-month term has expired the right of application is transferred by operation of law to the employee. If the employer makes use of the right during the 3-month period, the employee is entitled to an appropriate inventor bonus. The bonus is determined primarily by the value of the invention and is thus subject to adjustments in the course of the patent lifetime.

Utility Model

What is protectable? The legal protection granted by utility model registration applies to inventions in all fields of industry and technology A major difference and advantage is the 12-month novelty grace period for own publications.

Where to apply? See comments on patent applications above.

Duration of protection? The term of the utility model registration is four years from the date of filing of the application. It may be extended for two successive periods of three years each, i.e., a total term of protection not exceeding ten years from the date of filing of the application.

Costs? Application costs may vary depending on who the applicant is and the number of pages of the description of the utility model. The lowest application cost is BGN 200. In addition, fees of the legal and technical representatives apply.

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INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? The visible appearance of a product or part of a product determined by the characteristics of its shape, lines, design, ornamentation, colour or combination of all of the above.

Where to apply? Applications for registration of a Bulgarian industrial design may be filed with the BPO directly, by mail, by fax or electronically. The Application may also be filed with either the European Patent Office (EPO) or WIPO.

Duration of protection? The validity of the Bulgarian registration of an industrial design is 10 years from the date of filing of the application for a Bulgarian design. The registration may be renewed for 3 consecutive periods of 5 years, up to a maximum of 25 years from the date of application.

Costs? ? Application costs for designs amount BGN 40.- plus an additional fee of BGN 20 per class for a single design application. In addition, fees of the legal representative apply.

The following IP rights cannot be registered:

Copyright

What is protectable? Any literary, artistic and scientific work resulting from a creative endeavor and expressed by any mode and in any objective form is the object of copyright according to the Bulgarian Copyright and Related Rights Act. Copyright protection is granted immediately with the creation of a work. No registration and no label required.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Exploitation of copyright protected work? Typically, the copyright in a work created in the course of an employment or service relationship belongs to the author. The employer may, however, benefit from the creation without the need to compensate the author and/or may be considered a copyright holder, depending on the contract. By Exception the copyright holder of computer programs and databases, created under an employment relationship, is the employer. The author may grant third parties non-exclusive or exclusive rights to use the work.

Trade Secrets

What is protected? Trade secrets as such are not recognized as an intellectual property asset. However, the Competition Protection Act and the Trade Secret Protection Act protect know-how and business information of commercial or technological value that is kept secret. Examples for such information are formulas, practices, processes, designs, patterns, method of marketing, or combination of similar information that is not publicly known or available with reasonable effort and by which a business enterprise can obtain an economic advantage over competitors or customers.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

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DATA PROTECTION/PRIVACY

Since 25th May 2018 the GDPR applies. Following the adoption of the GDPR, the Bulgarian law plays the role of complementing and specifying the main regulation at European level. Of practical relevance for business are the rules of the Data Protection Act, which are related to data protection in the context of employment relationships. They aim to limit the amount of sensitive data that employers collect and the time for which the data of unsuccessful job applicants is processed. The legislator also focuses on the drafting of written rules and policies on the processing of personal data both in the workplace context and in any case of large-scale and systematic collection of information.

- The age for child's consent in relation to information society services has been lowered from 16 years to 14 years.
- An important rule is that the copying of identity cards or driving licenses is not allowed unless provided for by law.
- Special rules are also foreseen for the processing of personal data for journalistic, scientific, and literary purposes. The main rule provides that processing in these cases must be done after balancing freedom of expression with the right to information and the right to protection of personal data.
- If an employer uses breach reporting systems or access control systems to monitor working time and discipline, and if it has restrictions on the use of internal resources, it must adopt specific rules and procedures for the data processed and make them known to its employees.
- Employers must set a retention period for job applicants' personal data. According to the law, it must be a maximum of 6 months, unless consent is given for a longer period.
- There is a fine for violation of the Personal Data Protection Act in the amount of BGN 5,000 and in case of repeated violation the fine is double. The main difference with GDPR is the different time limit for the controller to respond to the data subject upon request and exercise of his rights. According to the GDPR this period is 1 month, while the PDPA extends it to 2 months.
- Phone calls and electronic messages for advertising purposes require the data subject's prior consent. Consent for electronic messages is not required, if the controller has received the personal data in connection with a transaction, the marketing communication concerns similar products and services, and the data subject has been given the opportunity to opt-out when data has been collected for this purpose as well as with every communication (soft-opt-in).
- Prior consent is required for setting cookies which are not necessary for the provision of the service, irrespective whether personal data is processed or not. Thus, opt-in is required for all marketing cookies.

The Commission for Personal Data Protection (CPDP) is the competent supervisory authority. The commission deals with all kinds of violations connected to personal data in all areas. It provides additional advice relating to the processing of personal data, and in certain cases this advice is mandatory. It regulates processing operations carried out by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and it also specifies the types of processing activities that the Commission may consider posing a high risk to the rights and freedoms of data subjects.

BULGARIA

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STARTUP LEGAL PLAYBOOK

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Bulgara. However, the general restrictions, particularly under **data protection and copyright law** apply. In the future, a national AI-agency will apply the **upcoming AI-Act** in Bulgaria:

- The principles of data protection law – in particular Art 22 GDPR for automated individual decision-making – must be observed in relation to the development, testing and operation of AI. Thus, the use of AI must not lead to any legal or similarly serious effects to the data subject, without any human intervention. An automated decision-making process is for example assumed, if a company uses results of an AI-application without any further quality-check and assessment.
- National copyright restrictions are particularly relevant for generative AI. This applies to both (i) the input data (especially web scraping) and (ii) the output of the specific AI application: The retrieval of data from the internet into set of training data is considered exploiting the content in a way subject to the Bulgarian Copyright and Neighboring Rights Act which in general allows such retrieval unless forbidden by the right owner in an appropriate way. The output of AI may infringe the rights of the author of the original if the output is identical to or resembles an original source.

EMPLOYEES/CONTRACTORS

General: The relationship in the provision of labour should be governed only as an employment relationship. An employment contract should be concluded in writing between an employee and an employer. The law requires that the employment contract be concluded before the work commences, i.e. before the actual performance of the work commences. Nevertheless, if this requirement is not met and there is no concluded employment contract before the work commences, the individual is still considered an employee and there is a valid employment relationship. The employer however will face an administrative sanction for not complying with mandatory legal norms. A company may also offer a contractor agreement (freelance contract) but only for a particular piece of work or certain service for a relatively limited time. If it is found that the freelance contract is used to hide an employment relationship these contracts will be treated as employment agreements and the employer will be sanctioned.

No work for hire regime: There is no work for hire regime in Bulgaria. Bulgarian Law explicitly distinguishes the figures of author and copyright holder. Copyright in a work created in the course of an employment belongs to the author. However, the employer has the economic rights to use the work without paying further remuneration to the employee. In case however the economic benefits for the employer for utilizing the works (other than computer programs) of the author is manifestly disproportionate to the remuneration paid to the employee/author for creating such works, the latter can request additional remuneration. However, generally the law does not allow the employer to obtain the moral right of copyright, namely, to be called the author of the work. In the case of a freelance contract there should be a clause covering the rules for allocating the copyrights and licensing of works created by the contractual partners. Such clause should be as specific as possible, as otherwise courts will usually interpret the grant of rights in a quite restrictive manner and there is significant risk that the created IP (including the economic rights) is vested in the contractor/freelancer.

Registration with social security: Every employer must register employees with the government social security scheme plus a private mandatory social insurance carrier. Further, each employer has to pay a certain monthly amount based on the employee's remuneration into the social security system.

Termination: Employees are very well protected. The employer can terminate a contract only in certain circumstances listed in the Labour Code which are quite strict must be clearly evidence by the employer (for example continued reduction of the volume of work of the company, closing down of the employees' position, persistent inability of the worker to perform its duties, etc.). In addition, the employment contract of a female factory or office worker, who is the mother of a child, an occupational-rehabilitee factory or office worker, a factory or office worker suffering from a disease designated in an ordinance of the Minister of Health etc. can be terminated only after the permission of the Labour Inspection. In all cases of an illegal termination of a contract the employee can seek legal redress and be restored to work and compensated.

BULGARIA

CONSUMER PROTECTION

The consumer protection in Bulgaria is regulated in various laws which are mostly based on the latest EU legislation, such as the Consumer Protection Act, the Provision of Digital Content and Digital Services and for the Sale of Goods Act, the Electronic Commerce Act, Commerce Act, Civil Procedure Code etc. and some sector specific legislation – Insurance Code, Electronic Communications Act, Provision of Financial Services from a Distance Act, Consumer Lending Act, etc.

The **core provisions** are laid down in the Consumer Protection Act. They include:

- Right to information about goods and services.
- The right to protection against risks from the acquisition of goods and services that may endanger consumers' life, health, or property.
- The right to compensation for damage caused by defective goods.
- Right to protection of economic interests.
- The right of access to judicial and non-judicial procedures for the resolution of consumer disputes.
- Right to compensation for damage caused by defective goods.

All consumers have the right to cancel a contract concluded at a distance (over the phone, on the Internet, etc.). The right of withdrawal may be exercised within 14 days without giving any reason for the consumer's decision and without the consumer being liable for damages or penalties. This period starts to run (1) from the date of conclusion of the contract, where the subject matter of the contract is the provision of services, or (2) from reception of the goods by the consumer. The trader must inform the consumer of his right of withdrawal, including the time limit and the form in which he may exercise it. If the trader has not complied with this obligation, the period for exercising the right of withdrawal extends by one year.

The enforcement of consumer protection legislation is done by the Consumer Protection Commission and a number of sectorial regulators which have quite broad powers for example to resolve consumer related disputes, impose sanctions, block the sale of harmful goods, ask for amendment of the terms and conditions of the merchants, make inspections, file class claims etc.

There are some consumer protection associations in Bulgaria which however are not very active compared to similar organizations in other EU member states. These associations are not-for-profit entities. Their main function is to alert the relevant public authorities – usually the Consumer Protection Commission and sectorial regulators in the event of breaches of consumer rights, to propose to all inspection bodies the carrying out of checks, analyses and tests of goods and services, to assist in the resolution of disputes arising between consumers and traders, to conclude collective agreements with traders' associations, to file class actions for suspension of violations of consumer protection legislations and class actions for compensations on behalf of consumers, etc.

BULGARIA

TERMS OF SERVICE

Yes. Terms of services become enforceable only if consumers have explicitly agreed to the terms (preferably via a tick-box) and had the possibility to read, print and store them upfront. Further, clauses must be in compliance with stringent consumer protection laws. According to the Consumer Protection Act, particularly the following clauses in terms and conditions or other contracts are held invalid:

- for unilateral amendment of the contract by the merchant in cases which have not been explicitly agreed in the contract
- for automatic renewal of the contracts in case the consumer does not object before an unreasonably early moment in time before the renewal date;
- for discharging the merchant from liability for death or injury of the consumer;
- for demanding excessive penalties from the consumer
- for excluding or restricting the statutory rights of consumers in case of breach by the merchant
- for forcing consumers to accept clauses which have not been made known to them in advance
- for allowing the price to be determined when the goods/service are received and not when they are ordered without the right of the consumer to terminate the contract in case of significant price increase
- for obliging the consumer to fulfil its obligations under the contract even if the trader has not fulfilled his
- for allowing the trader to transfer its rights and obligations under the contract without the consumer's consent,
- for effectively excluding the consumer's ability to sue, etc.

WHAT ELSE?

Taxes: Bulgaria has very business-friendly tax levels:

- 10% Flat Corporate Profit Tax
- 10% Personal Income Tax
- 0 or 5% Dividends Tax
- Double Taxation avoidance treaties with 80 countries
- Social security contributions are also relatively low compared to EU levels

CANADA

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LEGAL FOUNDATIONS

The two orders of legal governance in Canada are **Federal** and **Provincial**. The Federal laws of Canada have national application, and are enacted by the Federal Parliament, while the Provincial are enacted by legislatures in each of Canada's 10 provinces(west to east, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island) and only applicable within those jurisdictions. Canada is a **common law** jurisdiction at all levels, with the exception of the Province of Québec, which maintains a **civil code** system.

The Federal jurisdiction includes matters of criminal law, banking, immigration, inter-provincial trade and commerce, as well as transportation such as rail, air and marine transport, and delegation of powers to Canada's three Territories (Yukon, Northwest Territories, and Nunavut). The Provincial domain is focused on property and civil rights, which includes various forms of property law, contract law, natural resources, education, municipal and healthcare matters.

Canada's constitutional doctrine of paramountcy provides that where there is necessary overlap between Federal and Provincial laws, the Federal laws prevail to the extent necessary to resolve conflict between such laws.

CORPORATE STRUCTURES

Entities may be formed at either the Federal level, or at any Provincial or Territorial level. The rules and requirements for formation vary in each jurisdiction, and a company must be registered in any Province or Territory in which it does business (which will generally be any jurisdiction in which it has a boots-on-the-ground presence, or into which it has directed sales). Extraprovincial registration can be done with relative ease for any Canadian-formed entity.

Some jurisdictions (including Federal corporations) require a minimum of 25% of directors (at least 1) be Canadian residents. British Columbia has long had no such residency requirement for directors, and residency requirements have been recently removed by Alberta and Ontario as well.

CORPORATE STRUCTURES, CONT'D

Typical structures for Canadian entities are as follows:

Corporations

The most common form of entity which you will find in Canada is the limited liability corporation, identified by the synonymous extensions Ltd., Inc. or Corp. A corporation in any jurisdiction may be formed by at least one shareholder, and must have at least one director. Governance is set out in the Articles of Incorporation or the By-Laws, depending on jurisdiction, and shareholders may enter into additional agreements to regulate issues such as the election of directors, management of the business, and other matters related to share ownership. In some jurisdictions, these shareholder agreements must be unanimous in order to be in compliance with legislation.

There are no minimum capital investment amounts, and the share structures within corporations can be customized in many ways, depending on the plans and needs of the company.

Sole Proprietorship

A sole proprietorship is any single nature person engaged in business. While an individual does not need to register in order to conduct business as an individual, a sole proprietorship is generally where the individual registers a name in connection with their business. A sole proprietor remains fully and personally liable with all of their private and business assets. Unsurprisingly, the sole proprietorship is generally only favoured at a very early startup stage, or for low liability risk small business endeavours.

Partnerships

Partnerships are quite common in Canada as well and take a few different forms:

- **General Partnerships** in which all partners share a common purpose and have unlimited liability.
- **Limited Partnerships** in which typically one partner (the general partner) holds all liability, while the remaining partners (the limited partners) have limited liability.
- **Limited Liability Partnerships** in which all of the partners have a limited liability.

All forms of partnership are governed by applicable legislation, and are formed by entering into partnership agreements (and in certain cases, require registration).

Partnerships are most typically used in real estate investments, investment funds (such as a typical venture capital fund), and professional organizations (such as law firms or accounting firms).

Other common structures

While the above structures are most commonly used, there are a variety of other structures available within Canadian corporate law.

British Columbia has Community Contribution Corporations, similar in some ways to the UK Community Interest Company, and the Benefit Corporation, similar in most ways to the US B Corp model, however neither form of entity is currently widely used.

Alberta, British Columbia and Nova Scotia all provide for an Unlimited Liability Company. This form of entity is specifically useful for cross-border ownership, particularly with US LLCs, as they allow for certain tax flow-through treatment.

CANADA

ENTERING THE COUNTRY

The Investment Canada Act (ICA) requires notification where there is investment by non-Canadians to (a) establish a new business in Canada, or (b) acquire control of a Canadian business (whether or not currently controlled by Canadians prior to acquisition). Notification involves filing a form with Innovation, Science, and Economic Development Canada (ISED) within 30 days following the investment.

A direct acquisition may require pre-closing review by ISED if the enterprise value of the Canadian business hits an annually indexed financial threshold (in 2024 this threshold ran from CAD$1.326 billion to CAD$1.989 billion, for WTO member states and free trade partners).

Review may also be required where the Canadian business being acquired is a "cultural business", including by way of an indirect acquisition. A cultural business is defined in the ICA, and generally includes publication, distribution, sale or exhibition of various forms of media. Additional review may also be required where there are national security concerns, such as aerospace, defence, network and data security, telecommunications and sensitive technology.

The Competition Act require pre-closing notification or review where (a) the parties to the transaction have an aggregate book value of assets in Canada or gross revenues from sales in, from or into Canada, in excess of CAD$400 million, and (b) the transaction value is greater than CAD$93 million (subject to various qualifications based on the transaction type).

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign or combination of signs and words, used or proposed to be used to distinguish the goods and services from other companies, can be registered as a trademark.

Where to apply? Trademarks can be filed with the Canadian Intellectual Property Office (CIPO) for trademark protection within Canada. If the goods or services will be marketed in other countries, a filing with the World Intellectual Property Organization (WIPO) under the Madrid System may also be required. An application for trademark registration can be filed with the CIPO Trademarks e-Filing service. Once the application is received, CIPO will conduct its own searches, ensure compliance with legislation, and publish the application in a Trademarks Journal to provide the public with an opportunity to oppose the application. The trademark will be registered if no one opposes the application or if an opposition has been decided in the applicant's favour.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for 10 years from the date of registration. It can be renewed every 10 years after that for a fee.

Costs? Application costs for Canadian trademarks submitted online through CIPO's website is $336.60 (2021) for the first class of goods or services and $102.00 (2021) for each additional class of goods or services.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions that are new (first in the world), useful (functional and operative), and inventive (showing ingenuity and not obvious to someone of average skill who works in the field of the invention) are patentable. The invention must also be a product, a composition, a machine, a process, or an improvement on any of those. A computer code by itself is not something physical and therefore is not patentable by law. A computer program may be patentable if it offers a new and inventive solution to a problem by modifying how the computer works.

Where to apply? The services of a registered patent agent should be used to register a patent in Canada. Applications require use of clear and specific terms to describe the patent and protection could be voided if it is not properly described.

Duration of protection? The term of protection is, in any case, a maximum of 20 years from the application and must be maintained by annual fees.

Costs? The application fee for Canadian patents is $408.00 (2021). The fee for entities qualifying as a "small entity" under the Patent Rules is $204.00 (2021). A "small entity" is defined as one that employs 50 or fewer employees or an entity that is a university.

Industrial Designs

What is protectable? Aesthetic features of commercial designs can be registered as an industrial design. If the design has never been published, there is no time limit for filing an application. However, if the design has been published, then a filing must be made within 12 months of publications or exclusive right to the design will be lost.

Where to apply? Industrial design rights are only valid in the country or region where they are registered. If protection is required in multiple jurisdictions, the industrial design will need to be registered in each jurisdiction's intellectual property office. In Canada, an application can be submitted through CIPO. An application can also be submitted through the Hague System, which may protect the design in multiple countries at the same time.

Duration of protection? The term of protection begins on the date of registration and ends on the later of the end of 10 years after registration and 15 years from the Canadian filing date. After the initial five years, a maintenance fee of $364.85 (2021) is required to maintain the exclusive right to the design.

Costs? The application fee for registration of an industrial design is $416.98 (2021).

Copyright

What is protectable? Original literary, artistic, dramatic, or musical works are protectable under Canada's Copyright Act. Copyright protection is granted immediately with the creation of a work. No registration is required but registration is available to provide evidence that the copyright exists and that the person registered is the owner.

Where to apply? Applications can be filed electronically, by mail or by facsimile to the CIPO Copyright Office.

Duration of protection? Copyright protection ends 70 years after the author has passed away for literary, dramatic, musical or artistic works.

Costs? The application fee for registration of a copyright is $50 (2021). If the application and fee are not submitted online through the Copyright Office, via the CIPO website, an additional fee of $15 is required. Various other fees may also be required during the copyright application process. A complete list of fees can be found on the CIPO website.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Trade Secrets

What is protectable? Trade secrets include any business information that has commercial value derived from its secrecy. At a minimum, the information must have commercial value, the information must be secret, and the information must have been subject to reasonable measures by the business to maintain secrecy. In Canada, there is no federal trade secrets act or equivalent statute. Instead, trade secrets are protected under common law principles enforced in the courts.

Duration of protection? Trade secrets protection can last as long as the information actually remains a secret.

How to keep trade secrets secret? Some methods to protect trade secrets include having anyone you disclose your business information to sign a non-disclosure agreement, including confidentiality clauses in employment agreements, encrypting any valuable business information, using passwords to protect valuable business information, and storing valuable business information in a secure location.

DATA PROTECTION/PRIVACY

In Canada there are 28 federal, provincial and territorial privacy statutes (excluding statutory torts, privacy requirements under other legislation, federal anti-spam legislation, criminal code provisions etc.) that govern the protection of personal information in the private, public and health sectors. Although each statute varies in scope, substantive requirements, remedies and enforcement provisions, they all set out a comprehensive regime for the collection, use and disclosure of personal information.

Privacy and data protection in the private sector is governed by the federal Personal Information Protection and Electronic Documents Act (**"PIPEDA"**) unless substantially similar provincial private sector legislation exists. As of writing, only British Columbia (British Columbia Personal Information Protection Act), Alberta (Alberta Personal Information Protection Act), and Québec (An Act Respecting the Protection of Personal Information in the Private Sector) have such private sector privacy law (collectively including PIPEDA, the **"Canadian Privacy Statutes"**.

The Canadian Privacy Statutes set out the overriding obligation that organizations only collect, use and disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Subject to certain limited exceptions prescribed in the Canadian Privacy Statutes, consent is required for the collection, use and disclosure of personal information. Depending on the sensitivity of the personal information, consent may be opt in or opt out. Organizations must limit the collection of personal information to that which is necessary to fulfil the identified purposes and only retain such personal information for as long as necessary to fulfil the purposes for which it was collected.

DATA PROTECTION/PRIVACY

Each of the Canadian Privacy Statutes have both notice and transparency requirements. With respect to notice, organizations are generally required to identify the purposes for which personal information is collected at or before the time the information is collected. With respect to transparency, generally Canadian Privacy Statutes require organizations make information about their personal information practices readily available. This is generally done through a privacy policy.

Each of the Canadian Privacy Statutes also provide individuals with the following:

- A right of access to personal information held by an organization, subject to limited exceptions
- A right to correct inaccuracies in/update their personal information records.

In 2020, the Canadian federal government introduced Bill C-11 as a comprehensive reform to Canada's private sector privacy legislation. The Bill proposed to replace Part 1 of PIPEDA with the new Consumer Privacy Protection Act, enact the Personal Information and Data Protection Tribunal Act and make consequential and related amendments to other Acts. However, in 2021, Parliament was dissolved in advance of a Federal Election and Bill C-11 died on the order paper. A new Bill C-27 was introduced in 2023 which resurrected these privacy reforms, and notably included the addition of the Artificial Intelligence and Data Act (AIDA).

Bill C-27, better known as the Digital Charter Implementation Act (DCIA), proposes to put forward some key changes:

- new administrative monetary penalties imposed up to 3% of global revenue or $10 million for non-compliance, and 5% of global revenue or $25 million for the CPPA contravention;
- a new administrative tribunal to hear appeals of Commissioner's orders;
- a private right of action for consumers to sue organizations for the CPPA contravention;
- new data mobility rights allowing individuals to transfer their personal information from one organization to another and a right of erasure;
- requirement for service providers to provide the same protection to personal information transferred;
- disclosure requirement for automated decision systems;
- de-identified Information requirement; and
- confirmations of the consent-based model and new exceptions.

Québec has passed amendments to its provincial laws, similar to Bill C-27, but without the AIDA components. British Columbia and Alberta are currently reviewing in light of the originally proposed Bill C-11, and there are proposals in Ontario (which does not currently have its own provincial private sector privacy law) to enact a similar consumer privacy regime.

ARTIFICIAL INTELLIGENCE

As in many jurisdictions around the world, as of early 2024 the regulation of Artificial Intelligence and the systems in which it may be operated remains unsettled. Currently, the Canadian Federal government is in the process of adopting the DCIA, and through it the AIDA, however there may still be amendments made prior to any adoption, and the necessary regulations in support of the legislation must still follow.

AIDA introduces the notion of "high-impact systems" where these systems are subjected to significantly more restrictive requirements, particularly relating to harm reduction and transparency. Currently proposed amendments to AIDA would see these high-impact systems classified by intended use, which enumerated list would be amended by regulation. The current list includes:

- for employment and hiring decisions;
- to determine (a) whether to provide services to an individual; (b) the type or cost of services to be provided to an individual; or (c) the prioritization of the services;
- for the use of an artificial intelligence system to process biometric information in various matters
- to moderate or prioritize content in online communication platforms;
- for health care and emergency services;
- when used by courts or administrative bodies to make decisions; and
- to assist law enforcement.

Generally, AIDA is intended to align with the European Union's Artificial Intelligence Act and frameworks under the Organization for Economic Co-operation and Development. This is aimed at ensuring that Canada's legislation is interoperable and consistent with international best practices. The changes lay out the responsibilities of and accountability frameworks required to be created by personnel involved in the various stages of the AI system.

Given that it may be some time before a final form of AIDA becomes enforceable law, Innovation, Science and Economic Development Canada (a department of the Federal government) haa issued a Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems. Signatories to the code commit to achieving the outcomes of accountability, safety, fairness and equity, transparency, human oversight and monitoring, validity and robustness. Signatories also commit to develop and deploy AI systems in a manner that will drive inclusive and sustainable growth in Canada, "including by prioritizing human rights, accessibility and environmental sustainability".

CANADA

EMPLOYEES/CONTRACTORS

General: With the exception of those employed within Federally regulated industries, employment is generally regulated at a provincial level, in the jurisdiction where the employee primarily provides their services. Employment laws will generally cover minimum employment standards, occupational health and safety, human rights and privacy legislation. While there is no legislated requirement that employees have written employment agreements, it is highly advisable that all employment terms be in writing in order to avoid future confusion and ambiguity.

Work Made in the Course of Employment: There is a deeming provision in the Copyright Act which provides that copyright ownership of a work created by an employee in the course of their employment belongs by default to the employer. While this is a rough equivalent to other work for hire regimes, best practice in Canada is to ensure that employment agreements contain fulsome assignment of intellectual property language. This is in part to ensure certainty around copyright ownership, and also because there is no such similar deeming provision with respect patents or other intellectual property rights.

Source Deductions: Every employer must deduct and remit income tax installments to the Canada Revenue Agency on behalf of their employees. Employers must also make deduct and remit contributions for Canada Pension Plan and Employment Insurance.

Termination: Canada is not an "at will" jurisdiction, and all employees will generally have a right notice or payment in lieu of notice in the event of termination, unless they are terminated for "just cause", which is a very high bar. It is crucial to understand that this right to notice arises from two distinct sources: employment standards legislation and the common law.

Employment standards legislation provides for a minimum notice of termination which may be provided to an employee, based generally upon their tenure with the employer. Employees cannot contract out of this minimum notice.

Common law provides for reasonable notice, which may take into account various factors determined to be relevant in the specific circumstance, commonly including tenure, age, seniority, availability of similar employment in the local market and enticement. Employees can contract out of this reasonable notice if it their written employment agreement specifically provides, however this must be done with care

Contractors: Companies may also engage independent contractors to perform services. The distinction between an employee and a contractor is a question of fact, and not solely determined by what the parties agree to call themselves. Factors taken into account in this determination will generally include control over the time, place and manner in which services are performed, ownership over tools and equipment, ability to subcontract/hire assistants, degree of financial risk the worker takes, responsibility for the project, opportunity for profit. These factors may vary from province to province, and depending on who is making the determination (i.e. the Canada Revenue Agency and a provincial employment standards branch could make different determinations).

Dependent contractors are also recognized in Canada, and fall somewhere in between employees and independent contractors. A dependent contractor will generally be more economically dependent on a single contracting company, and may also be afforded reasonable notice in the event of termination, unless a contract expressly provides otherwise.

CONSUMER PROTECTION

Canada's provincial, territorial, and federal consumer protection laws are quite strict. At the provincial and territorial level, each jurisdiction has its own consumer protection legislation. While these acts differ, they address common matters, including prohibiting engaging in unfair practices and making false representations regarding goods or services, as well as voiding consumer contracts that do not comply with the legislative requirements. Some of the acts also provide consumers with certain deemed warranties (e.g., that services are of a reasonably acceptable quality).

Businesses selling directly to consumers in Québec will be subject to additional requirements. These include identifying where certain standard terms and conditions would not apply to consumers in Québec (e.g., mandatory arbitration) and providing all contractual documents in French (e.g., order confirmation emails and receipts). Contractual documents can be provided in a language other than French if the consumer expressly requests it.

While the provinces and territories set out many key consumer protection requirements, there are also a number of federal statutes. These include: the Competition Act, which has both criminal and civil provisions targeted at preventing anti-competitive practices, such as price fixing and misleading advertising; the Canada Consumer Product Safety Act, which imposes a variety of obligations on manufacturers, importers, vendors, testers, packagers, and advertisers of consumer products, most notably with respect to human health and safety; and the Consumer Packaging and Labelling Act, which addresses packaging and labelling requirements for prepackaged non-food consumer products.

As in other jurisdictions, sales contracts entered into over the Internet have specific requirements and offer unique protections. For example, in British Columbia and Ontario, in addition to other cancellation and rescission rights, a consumer may cancel a distance sales contract within: (a) 30 days after the date that the contract is entered into if they are not provided with a copy of the contract within 15 days after the contract is entered into; and (b) 7 days after they receive a copy of the contract if the contract does not contain certain prescribed information (e.g., the supplier's address, a detailed description of the goods or services to be supplied, delivery arrangements, etc.).

There are myriad consumer protection councils and associations in Canada. These organizations often assume a variety of roles, including educating and advocating for consumers.

TERMS OF SERVICE

Terms of services are generally enforceable in Canada whether as "click-wrap" or "browse-wrap" style terms, noting however that where a sale is involved, consumer protection laws discussed in question 7 come into play.

In order to be enforceable, a user must have notice of the terms of service. Depending on context, this can include conspicuous posting of the terms on a website or app being used, or specific linking and reference to the terms when working through a check out process.

Terms of service must also incorporate some sort of agreement or incorporation language (i.e. by continuing to use this website, you agree to be bound). Where possible, it is best practice to obtain actual agreement through an affirmative action (i.e. a checkbox or button), particularly where consumer protection, indemnification, liquidated damages, or other issues critical to a company are included in such terms of service.

WHAT ELSE?

Aggressive Anti-Spam/Malware Law: Canada has one of the world's most aggressive, punitive laws addressing unwanted communications (colloquially, "spam"), malicious software and other electronic interactions. Unfortunately, the law is not limited to "spam" or "malware", and instead regulates all commercial electronic interactions. In Canada, when engaging in any commercial purpose (even if not the only purpose), a person must first have **express, opt-in consent** before (1) electronically communicating with a person, (2) installing software (including updates) on their computing device (anything that can process instructions), or (3) altering any transmission data. Because asking someone for that permission electronically would also require such advance consent, it can be very complicated to collect consent outside of commercial interactions: as such, express consent should be separately collected during an interaction if one intends to communicate with a person or their computing device as part of commercial messages or software installs. That consent must comply with specific content and implementation rules. Additional rules apply to ensure that people can withdraw consent (unsubscribe), and that businesses handle these consents appropriately. These rules should be taken very seriously: violations of this law can include administrative fines up to C$10 million and personal director and officer liability. Businesses should seek specific advice on engaging in any of these electronic interactions.

Limited Intermediary Liability Shields: While Canada shares many cultural technologies (streaming services, social media, app stores, video games, and other Internet technologies) with the United States, it does not offer US-like, broad-based protections from liability to intermediaries like online/internet services or similar providers. Canada's Charter of Rights and Freedoms and Criminal Code, for example, draw a line between acceptable and unacceptable expressions that are far less permissive than the United States Constitution's First Amendment (for example, forbidding grossly indecent discussions and hate speech). Canada does not have an analogue to the United States' Communications Decency Act protections, and so intermediaries like online services providers can, in fact, be found to be publishers of defamatory, hateful, or other illegal content even when that content is only posted by users. While the common law may provide some defences or protections, this results in Canadian service providers being much more willing to pull down content when any controversy arises, and to closely monitor and filter user content. Last, Canada's Copyright Act does not have broad intermediary liability protections for copyright infringements, instead providing protections only for the specific acts of providing means of telecommunications, providing digital memory storage, or caching—thus, these shields potentially do not apply to many services that do more than those limited acts.

Promotional Contests and Gaming: Canada's laws prohibit or regulate offering promotional contests, betting, or anything involving the distribution of prizes by way of chance, and are in serious need of an overhaul in the Internet era. Because of this, businesses need to carefully consider and navigate these laws, a mixture of competition law, consumer protection law and criminal law (including potential jail sentences), before offering any service that offers an opportunity for people to obtain valuable results using any mechanism of random chance (i.e., games or contests with any chance element) or external contingencies (i.e., betting). For many years, it was typical for many national contests to exclude residents of Québec based on heightened requirements in that province, however recent legislative changes have aligned Québec's contest laws, opening the door for simplified national contests.

WHAT ELSE?, CONT'D

French Language Requirements: Generally speaking, companies operating in Canada are not required to serve customers in any particular language, except in the province of Québec. Companies that offer goods or services to consumers in Québec must respect their right to be informed and served in French. In addition, companies that offer goods or services to a public other than consumers (i.e. a business to business context) must inform and serve that other public in French. Consequently, companies must be able to provide customer service to individual consumers and companies in Québec to whom they provide goods and services in French. Under risk of being declared null and void, contracts of adhesion, contracts containing standard clauses, and their related documents must be presented to the adhering party in French first. Similar requirements exist for employment agreements, which must be presented in French first. Only after the adhering party has had the opportunity to examine the French version can the parties then jointly choose to be bound by a version drawn up in a language other than French. For software, where a French-language version exists, it must be made available to Québec users. Even if no French version exists, the associated documentation (including instructions, catalogues and brochures) and any advertising of the game in Québec (including a website and social media) would have to be made available in French on terms that are at least as favourable. While the Charter creates an exception for news media, there is no similar exception for software or online services. We note two things: (1) the Office québecois de la langue française's ability to enforce the Charter against foreign businesses with no Québec establishment is extremely limited—however, consumers have a private right of action that would allow them to institute an action before the civil courts (usually by way of a class action); and (2) Canadian courts have acknowledged that applying Québec law, simply by virtue of a service being available online including to Québec people, is functionally unworkable, requiring instead a "real and substantive connection" that requires complex analysis. Before offering English services into Québec, a business is well-advised to seek specific advice on this topic.

CHILE

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CHILE
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CHILE

LEGAL FOUNDATIONS

Chile follows the civil law system. It can be structured in three main branches of law:

Public law: its purpose is the creation, organization, operation, and suppression of public services, as well as the regulation of the legal activity of the State Administration and the determination of the powers and duties of the State towards its inhabitants. In Chile, this area of law is regulated mainly by the Constitution, special laws and their regulations.

Private Law: This includes the set of legal principles and norms that regulate, among other matters, the general requirements of legal acts and obligations, private property, and the regime of property in terms of its ownership, use, possession, and usufruct. Within private law, we can also include commercial law, which is that area of law whose purpose is to regulate the relationships that arise from the performance of commercial acts, as well as to prescribe and apply to those who perform them (the merchants) the rules governing their capacity, rights, and obligations. Among the most important norms that regulate this branch are the Civil Code and the Commercial Code, which are constantly modified or complemented through the reform of said codes or special laws.

Procedure Law: It regulates the organization, attributions, and operation of the courts of justice, and the most or least solemn form in which they propose to discuss and resolve the issues, which according to the law are subject to their knowledge. Procedural law in Chile can be subclassified into: (i) civil procedural law, which is mainly regulated by the Code of Civil Procedure, and (ii) criminal procedural law, regulated by the Code of Criminal Procedure and procedural law regulated by special laws such as labor procedural law.

As Chile follows the civil law system, the rulings of the courts of justice, including the superior courts (Court of Appeals and Supreme Court) do not constitute precedent and are not binding for third parties outside the trial. However, the jurisprudence of the Courts of Appeals and Supreme Court may be considered to resolve a similar conflict.

CORPORATE STRUCTURES

Stock Company ("Sociedad por Acciones")

In Chile, the most common type of company is a Stock Company ("SpA"). SpAs are considered the simplest of all types of companies in Chile, and largely used for StartUp businesses. The flexibility is offered by its structure, including its administration, number of shareholders, segmentation of activities, entry of new shareholders, capital increase, etc. As so its requirements:

- It only requires a minimum of one shareholder (individual or legal identity, Chilean or foreigner, resident or not) for its incorporation.
- The shareholders' liability is limited to the amount of their contribution in the shares.
- The articles of incorporation must be signed by all Shareholders, before a Public Notary, or by private deed, in which case the signatures must be authorized by a Public Notary.
- An excerpt of the Articles of Association must be recorded in the Registry of Commerce and published in the Official Gazette.
- The capital is divided into shares.

ADVANTAGES

- Structural flexibility.
- Because of its flexibility and ease of incorporation SpAs are considered the simplest of all types of companies in Chile.
- Ease to amend the Company, either to increase or decrease its capital, change its corporate purpose, etc. This usually caried out by a General Shareholders Meetings, minutes of which are reduced to public deed.
- Fast Registration Process.
- There is no obligation of a minimum capital.

DISADVANTAGES

- By not having the obligations of formalities in the administration (unlike in a Corporation), there is some risk of controversy amongst the shareholders relating to the management of the company.

Limited Liability Company ("Sociedad de Responsabilidad Limitada")

Besides the SpAs, one of the most commoun forms of partnership are the Limited Liability Company ("SRL"). The liability of the members of an SLR is limited to the amount of their contributions or the higher amount established in the bylwas. Equity rights can only be transferred with the unanimous approval of the partners. As so its requirements:

- The Articles of Assosiation must be granted by public deed before a Public Notary.
- It requires two or more partners.
- An exceprt of the public deed of the Articles Association must be recorded at the Registry of Commerce and published in the Official Gazzette.

ADVANTAGES

- The partners of a SRL have limited liability to the contributed capital, protecting their personal assets.
- Management Flexibility. The SRLs may be managed by and individuals or Companies.
- There is no obligation of a minimum capital

DISADVANTAGES

- The SRL have a limit on the number of partners (50).
- Lower Financing Capacity, as they cannot issue shares, SRLs may face limitation in obtaining external financing.
- Any change to the bylaws must be unanimously agreed upon by the partners, which may result in immovability if there is no agreement.

CORPORATE STRUCTURES, CONT'D

Corporation ("Sociedad Anónima")

It is a type of business entity characterized by having a capital divided into shares, and the liability of the shareholders is limited to the capital contributed. In other words, the shareholders are not personally liable for the debts of the corporation beyond the amount invested in the purchase of shares. The requirements of its incoporation are:

- The Articles of Assosiation must be granted by public deed before a Public Notary.
- An except of the public deed must be registerd in the Registry of Commerce and published in the Official Gazzette.
- It requires at least two or more shareholders.

ADVANTAGES

- Limited liability. The shareholders have limited liability, meaning their responsibility is limited to the amount of their investment in shares.
- Ease of share transfer. The shares of an S.A. are essentially transferable, representing for the shareholder the right to participate in the funds.
- Access to Financing: S.A.'s have greater access to financing due to their ability to issue shares.
- There is no obligation of a minimum capital

DISADVANTAGES

- It requires two or more shareholders for its incorporation.
- Lack of flexibility in terms of management, since they must be managed by a board of directors and holding at least one annual shareholders' meeting.

Since 2013, the One-Day Business Registration ("Sistema de Empresa en un Día") has been in effect. This is a governmental platform designed to facilitate the creation of companies in a quick and simple manner, coordinating different governmental entities to facilitate the incorporation of companies. The three types of companies mentioned above can also be incorporated in this platform, aside of the traditional notarial registries. Although it is a very quick system to establish a company, since it is not assisted by an attorney nor registered by a Notary Public, legal issues are not uncommon when companies start operating using the platform, especially with the powers structures and bylaws approval by banks and other financial institutions.

ENTERING THE COUNTRY

Law No. 20,848 of 2016 is the main regulatory body governing foreign direct investment in Chile (the "Foreign Investment Law") and which provides several benefits for investments in the country that complies with the requirements set forth in it. In addition to the benefits established by the Foreign Investment Law, Chile has signed a series of agreements, treaties and conventions that grant additional benefits to foreign investors, such as Double Taxation Avoidance Agreements, Free Trade Agreements, among others.

In general terms, prior authorization is not required for foreign direct investment in Chile, except in the specific case of certain strategic sectors.

Investments contemplated in Chapter XIV of the Summary of Foreign Exchange Regulations of the Central Bank of Chile do not require further authorization and are only reported to the Central Bank. Thus, transfers of foreign capital entering the country in the context of credit operations, deposits, investments or capital contributions, the amount of which exceeds USD 10,000 or its equivalent in other currencies, must be made through the formal exchange market and reported by such entities to the Central Bank of Chile.

There are certain formal obligations that foreign investors must comply with in order to invest in Chile, relating to obtaining a tax identification number ("RUT") before the Chilean tax authority and appointing a local representative before the same authority.

CHILE

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trade Secrets

What is protectable? Any sign which is able to distinguish goods or services on the market can be registered as a trademark. Thus, our system admits protection for both traditional and non-traditional trademarks.

Where to apply? The process of registering a trademark in Chile consists of three fundamental stages. First, the application is submitted, which can be filed via the online platform. The application can also be submitted in person at our TMO. Next, a formal examination is conducted to verify compliance with legal and regulatory requirements. Once this examination is approved, the application is published in the Official Gazette, allowing third parties to oppose if they believe there is a ground for refusal. The opposition term is of 30 business days and no extension of this term is allowed. Once the opposition term is closed, the substantive examination is performed. Finally, after passing the substantive examination, the National Director of our Trademark Office (INAPI) issues the administrative resolution that accepts or denies the trademark registration. In case of rejection, there is the possibility to appeal to the Industrial Property Court.

Duration of protection? The trademark registration remains valid for a ten-years-period. Therefore, the renewal period is of 10 years.

Cost? Registering new trademarks in Chile involves fees of 3 Monthly Tax Units[1] (UTM) per requested class. These fees are split into two stages: an initial payment together with the filing of the application and a final payment once the application is accepted to registration. The initial payment is of 1 UTM[2], and the final payment amounts to 2 UTM[3]. If the trademark is rejected, the initial payment is non-refundable.

[1] Approximate amount: USD 198. [2] Approximate amount: USD 66. [3] Approximate amount: USD 132.

Patent

What is protectable? A patent of invention is granted when an invention is novel, involves an inventive step and is capable of industrial application. The novelty requires that the solution provided by the invention must be new to the world's body of technical knowledge. The inventive step requires that the invention is not obvious to a person of ordinary skill in the relevant area. Industrial applicability is satisfied when the invention can be manufactured or incorporated into practice in the respective industry.

Where to apply? ·First, the application is submitted, which can be filed via the online platform. The application can also be submitted in person at our TMO. Then follows with a preliminary exam, publication of the application at the Official Gazette, the payment of the expert fee, appointment of the expert, issuance of the expert report, report of the examiner and then the final resolution in the first instance. The application must include the complete particulars of the applicant, the complete particulars of the inventor and its representative (if any), the title of the invention, the priority right details if it is claimed, an affidavit of novelty, property and utility of the invention, and the signature of the applicant and its representative (if any).
The application must be submitted together with the claims, a complete description of the invention with a drawing and proof of payment of the government application fee. If the application has more than 80 pages, an extra fee must be paid.

Duration of protection? The protection granted by a patent is territorial and temporary. The protection is valid for a period of twenty (20) years for a patent of invention.

Cost? The filing fee is 1 UTM[4]. There is also a charge for each additional page exceeding 80 pages, corresponding to 1 UTM[5] for each 20 pages or fraction thereof. In addition, there is a relatively low fee for the publication of the patent and a fee for the expert opinion, the latter corresponding to 697.000[6] Chilean pesos at the date of issue of this report. After acceptance for registration, an amount of 3 UTM[7] must be paid, which operates for the first period of validity -corresponding to 10 years. Once the first decade has elapsed, an amount of 4 UTM[8] must be paid to ensure the second period of validity of another 10 years.

[4] Approximate amount: USD 66. [5] Approximate amount: USD 66.
[6] Approximate amount: USD 718. [7] Approximate amount: USD 198. [8] Approximate amount: USD 256.

INTELLECTUAL PROPERTY

Utility Model

What is protectable? A utility model protects inventions, but with less creative value or less radical innovation than a patent. Under utility models, commonly, are protected apply to inventions with less technical complexity, for which reason they are also known as "petty patents", as the requirement of inventive level does not apply to them. Utility Models can only be products, processes cannot be protected under this category.

Where to apply? See comments on patent applications above.

Duration of protection? In contrast to patents, the term of protection is only 10 years. The protection is not renewable.

Cost? The filing fee is 1 UTM[1]. The additional charge for each additional page over 80 pages also applies to this matter, however, it is unlikely that an utility model application exceeds such extension. In addition, there is a relatively low fee for the publication of the patent and a fee for the expert opinion, the latter corresponding to 532.000[2] Chilean pesos at the date of issue of this report. After acceptance for registration, an amount of 1 UTM[3] must be paid, which operates for the first period of validity -corresponding to 5 years-. Once the first decade has elapsed, an amount of 2 UTM[4] must be paid to ensure the second period of validity, of another 5 years.

[1] Approximate amount: USD 66. [2] Approximate amount: USD 548.
[3] Approximate amount: USD 66. [4] Approximate amount: USD 132.

Designs

What is protectable? This category includes industrial designs and industrial drawings. The difference between an industrial design and an industrial drawing is that the latter is two-dimensional, while designs are three-dimensional.

An industrial design (ID) refers to any three-dimensional form, colored or not, and any industrial or craft product that serves as a pattern for the manufacture of others like it and is distinguished from similar products either by its form, geometrical shape or decoration, or a combination of these, insofar as those characteristics give it a special appearance perceptible to the eye in such a way that a new character result.

An industrial drawing (IDr) refers to all arrangements, collections or combinations of figures, lines or colors developed on a plan or diagram for incorporation in an industrial product for the purpose of decoration and to give said product a new appearance. IDr is two dimensional.

ID and IDr are required to be novel, without prejudice the others common requirements applicable to all industrial property rights. ID and IDr are considered novel if no identical or similar design has been made public before the filing date of the design's application.

Where to apply? Regarding the ID and IDr, the registration system consists of depositing the design in the INAPI. It can also be filed via the online platform. It is the mere deposit of an application, which is submitted only to a formal examination (there is no substantive examination).

Duration of protection? The term of protection is 15 years. The protection is not renewable.

Cost? The filing fee is 1 UTM[1]. The additional charge for each additional page over 80 pages also applies to this matter, however, it is unlikely that an industrial design or industrial drawing application exceeds such extension. In addition, there is a relatively low fee for the publication of the patent and a fee for the expert opinion, the latter corresponding to 444.000[2] Chilean pesos at the date of issue of this report. After acceptance for registration, an amount of 1 UTM[3] must be paid, which operates for the first period of validity -corresponding to 5 years-. Once the first decade has elapsed, an amount of 4 UTM[4] must be paid to ensure the second period of validity, of another 10 years.

[1] Approximate amount: USD 66. [2] Approximate amount: USD 457.
[3] Approximate amount: USD 66. [4] Approximate amount: USD 265.

INTELLECTUAL PROPERTY

Copyright

What is protectable? Copyright protects in Chile all intellectual works that are creations of literary, artistic, and scientific works, whatever their form of expression is. Only concrete expressions are protectable and not ideas. Copyright protection includes artistic, literary, and scientific expressions, text, music, works of art, such as paintings and sculptures, videogames, magazines, films, as well as technological works, for example, computer programs and electronic databases.

There are two types of rights granted by our copyright system:

- "patrimonial rights", which provide to the holder the right to obtain financial return from the use and exploitation of the work and
- "moral rights", which emphasize the existing personal link between the author and the work.

According to our local law, "patrimonial rights" can be transferred to third parties. "Moral rights" cannot be transferred to third parties.

Where to apply? Registration is not mandatory. If the work is original, it will be afforded copyright protection regardless the registration. The Chilean Copyright Law protects the rights of the author by the mere fact of the creation of the work.

National and foreign authors can register their work. The institution in charge of the registry is the Department of Intellectual Property Rights.

Although it is not required to register copyright material, copyright registration is recommendable as a way to evidence authorship.

Duration of protection? The protection granted by the Chilean Copyright Law lasts for the life of the author and is extended up to 70 years from the date of his death.

Plant Variety Protection

What is protectable? Any creator of a new plant variety, whether in Chile or abroad, wishing to protect it in Chile can enter it into the Register of Protected Varieties. Current legislation recognizes the right that the creator has over the variety created, granting the exclusivity to propagate and commercialize the seed or plant of the protected variety throughout the duration of the protection.

According to PVP Law, plant variety consists in a set of plants of a single botanical taxon, that is, the distinctive element, of the lowest known rank that, regardless of whether it fully meets the conditions of the granting of a breeder's right, can:

- Be defined by the expression of the characteristics resulting from a certain genotype or from a certain combination of genotypes.
- Be distinguished from any other group of plants by the expression of at least one of said characters.
- Be considered as a unit, considering its ability to spread without alteration.

To be subject of protection, the plant variety must be new, distinct, homogeneous, and stable:

- New: a plant variety that has not been commercialized in Chile; those that has been commercialized without the consent of the breeder; those that has been commercialized in Chile with the consent of the breeder for not more than a year prior to the date of the application for protection; and those that has been commercialized in other jurisdiction with the consent of the breeder for the following period of time prior to the date of the filing application: not more than 6 year for protection for forest trees, fruit trees and ornamental trees, and for not more than four years for other species.
- Distinct: a plant variety that can be distinguished by one or more important characteristics from any other variety with a well-known character at the time of requesting the protection.
- Homogeneous: a plant variety that is uniform enough in its relevant characteristics.
- Stable: a plant variety which essential characteristics remain unaltered after successive reproductions or multiplication, or after the final of the cycle defined by the breeder for reproductions or multiplication purposes.

INTELLECTUAL PROPERTY, CONT'D

Plant Variety Protection, CONT'D

Where to apply? To protect a new plant variety, an application must be submitted before the Department of Seeds of the SAG, depending on the Agriculture Ministry. This application should include background information and documents proving that the variety meets protection requirements. Additionally, a representative sample of the plant variety must be provided, and the applicant commits to maintaining control specimens during the registration's validity period.

Each plant variety requires a unique denomination that serves as its generic name. This name must differ from existing varieties of the same or similar botanical species. It cannot consist solely of numbers and should accurately represent the variety's characteristics.

Accepted applications are published in the Official Gazette, initiating a 60 business days term for potential oppositions. If opposition arises, the applicant has additional time to respond, especially if parties are in different jurisdictions. This process safeguards breeder rights and encourages plant variety development in Chile.

If no opposition is filed or if it is resolved in favor of the applicant, the Qualifying Committee will issue orders for inspections, tests, and trials related to the plant variety.

Upon determining that the variety meets legal requirements, the Qualifying Committee instructs the Department to register the variety in the Registry of Protected Varieties and grants the corresponding title. This is done upon payment of the required fee.

Duration of protection? The protection of the plant variety shall be effective for a period of fifteen (15) years counted from the date of grant of the breeder's protection, except for vines and trees, for which the term shall be eighteen (18) years.

The breeder's right will remain in force as long as the breeder pays the fees and costs for the registration and validity of the right, in the opportunity indicated by regulations.

Cost? The cost of protecting a plant variety in Chile is divided into two parts: registration and annual maintenance.

The registration fee is paid only once, at the time of application and it has a cost of 6.9 UTM[1] per variety. Subsequently, Distinctness, Homogeneity, and Stability Tests (DHS) are conducted on plant samples to verify compliance with physical requirements. These tests span the first 2 years, with additional costs for subsequent years. The specific values vary based on where the tests occur (either at the Agricultural and Livestock Service or the applicant's facilities) and the plant species (fruit, forestry, or others)[2 Table].
The annual maintenance fee is payable from the date of definitive registration of the variety and is charged every year, corresponding to 3.1 UTM[3] per variety to keep the registration active.

Type of DHE (distinction, homogeneity and stability) test according to location	RATE (UTM - approximate value in USD / variety)
Execution of DHE test at SAG facilities	Base test (2 years) | 11 UTM/ $731 USD Additional Year | 5,5 UTM/ $365 USD
Execution of DHE test in the interested party's facilities for fruit and forestry species.	Base test (2 years) | 23,5 UTM/ $1,562 USD Additional Year | 11,75 UTM/ $781 USD
Execution of DHE test in the interested party's facilities for fruit and forestry species.	Base test (2 years) | 23,5 UTM/ $1,562 USD Additional Year | 11,75 UTM/ $781 USD

[1] Approximate amount: USD 617.
[3] Approximate amount: USD 199.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protected? Trade secrets include all knowledge of products or industrial procedures that, by being kept secret, gives to their possessor a competitive advantage, enhancement, or breakthrough.

The knowledge that may be subject of protection is usually defined in broad terms including supplier lists, client lists, distributor lists, marketing strategies, consumers' profiles, manufacturing processes, among others.

Chilean law does not establish any specific requirements for the protection of trade secrets. Therefore, article 39.2 of the TRIPS Agreement should be attended: (a) the information must be secret; (b) the information must be valuable; and (c) the holder must take reasonable precautions to keep the information secret.

The illegitimate acquisition of a trade secret, its disclosure or exploitation without authorization from the holder and its disclosure or exploitation of trade secrets to which there has been legitimate access but under a confidentiality obligation, shall constitute a violation of the trade secret, provided its violation was intended to obtain advantage for one's own benefit or that of a third party or to injure its holder.

The violation of trade secrets is considered an unfair competition behavior. Moreover, in addition to the corresponding criminal liability, the IPL grants civil actions in case of violation.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies without a specific term.

DATA PROTECTION/PRIVACY

In Chile data privacy is regulated by Privacy Protection Law N° 19.628 (1999) which among other matters regulates the following:

- Legal basis for processing of personal data: Both the law and data subjects' explicit consent are the main legal basis for data processing. This regulation also sates several exceptions regarding consent, such as, the processing of personal data collected from sources accessible to the public.
- Data subjects' rights: information, cancellation, opposition or blocking and rectification rights. The data controller has a term of two working days to respond to these types of requests by the personal data titleholder.
- Authority: currently there is no specific authority specialized in data privacy. Claims must be filed before civil courts.
- Penalties: current fines are limited to 50 UTM (each "monthly tax unit" is equivalent to app. US$70) and data subjects may file claims demanding compensation for pecuniary and moral damages caused by the improper data processing, notwithstanding the request delete, modify, or block the data as ordered by the corresponding civil court.

In 2018, data privacy was incorporated as a fundamental right in the Chilean Constitution. Therefore, constitutional actions are currently available for Data Privacy-related arbitrary acts or illegal privacy rights affectation.

On December 24, 2021, the so-called Pro-Consumer Law (Law 21.398) was published, which amends Law 19. 496 on Consumer Protection, incorporating among its provisions Article 15 bis, which gives supervisory powers to the National Consumer Service (SERNAC) regarding the personal data of consumers in a consumer relationship, according to the following text: "Articles 2 bis, 58 and 58 bis of the consumer protection law shall be applicable to the personal data of consumers, within the framework of consumer relationships, unless the powers contained in those articles are within the scope of legal powers of another body".

Article 2 bis of the consumer protection law contemplates class actions and diffuse interests. Articles 58 and 58 bis of the same law provide for the supervisory powers of SERNAC. Therefore, in the case of personal data in the context of a consumer relationship, SERNAC may supervise compliance with Law 19.628 and may exercise collective actions for diffuse interests.

Moreover, there is a Bill of Law that increases the regulatory standard of the current law approaching the European GDPR, incorporating a personal data authority. Is expected to be approved during 2024 and considers the enforcement of a new Chilean Data Privacy Agency, higher penalties depending on the infringers' profits and two years of transition for local entities to adapt to the new standards.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Chile, yet.

However, the Ministry of Science in December 2021 published a National Artificial Intelligence Policy, which contains the strategic guidelines to be followed by our country in the next ten years with the aim of empowering people in the use and development of artificial intelligence (AI) tools and to participate in the debate on their legal, ethical, social and economic consequences. Since Chat GPT launch, the government has been working to adjust this policy regarding risk related to generative AI and particularly with a focus in consumers.

Moreover, there is a bill (Bill 15869-19) currently being discussed in the Chilean Congress that regulates artificial intelligence systems, robotics, and related technologies, in their different fields of application. The Bill of Law aims to establish a legal framework regarding the development, commercialization, distribution, and use of artificial intelligence systems, ensuring the protection of fundamental rights guaranteed by the State.

EMPLOYEES/CONTRACTORS

Regulation of the employment relationship

The main requirement for foreign entities to be able to hire personnel in Chile is that they must be domiciled in Chile in order to allow the government entity that oversee the correct application of labor regulations to supervise them. The government entity who is responsible for this supervision and also interpreting and applying labour law is the Labour Directorate (Dirección del Trabajo), which has regional bodies all over the country, called Labour Inspectorates (Inspecciones del Trabajo).

Regarding the hire of employees, all companies need to know that the employment contract must be in writing. Under Article 10 of the Labour Code, there are several essential elements which must be included in every contract. These include the name and nationality of all parties, and the employee´s address and e-mail, date of birth, duties, place of work, work hours, remuneration and starting date. The employer must put the contract in writing within 15 days of the worker's hiring date or within five days if the job involves a specific project or service or if the contract will last for less than 30 days. Failure to do so may result in a fine payable to the Public Treasury.

All workers have the right to receive remuneration that may be fixed, variable or mixed. In the case of fixed remuneration, the base salary cannot be less than the Minimum Monthly Income determined by Law on an annual basis. Additionally, provided a company has profits, Chilean Law establishes a mandatory annual profit-sharing bonus (Gratificación Legal). The general rule is that the employer must distribute 30% of its profits to its employees, prorated to the remunerations of the employees during the respective year. However, there is an alternative way of complying with this obligation, by means of paying the workers 25% of their remuneration, with a cap of 4.75 minimum monthly income. Most companies opt for the alternative system.

The components of the Socia Security System in Chile are:

- Pension System: for the purposes of financing old age, disability and survival pension, a percentage of each employee's remuneration must be withheld, declared and paid by the employer to the employee´s Pension Fund Administrator (AFP).
- Health insurance: employees must contribute 7% of their monthly remuneration, in the same way that the pension is withheld form the employee's remuneration.
- Unemployment insurance: This insurance is a system based on creating individual savings accounts to cover the risk of unemployment. It has three-way financing: by the employees, employers and the State.

EMPLOYEES/CONTRACTORS, CONT'D

Work for Hire Regime

Law 19,039 stipulates that the right to apply for the registration of, and property rights pertaining to, the inventive or creative product of works performed under labour and service contracts, belongs exclusively to the employer or the person who ordered the service, except when expressly stated otherwise.
This also applies to software, which in Chile is protected under the Copyright Statute Law 17,336.
An employee who, according to his or her labour contract is not obliged to perform an inventive or creative function, is entitled to apply for this type of registration, and all industrial property rights arising from any inventions belong exclusively to the employee. However, if in order to accomplish the invention, the employee evidently benefited from knowledge acquired at the company, using means provided by the company, the aforementioned rights will belong to the employer and the employer must give the employee additional retribution to be mutually agreed upon. The above also applies to a person who makes an invention by exceeding the task required of him.
Chapter II of Law 17,336 deals particularly with software intellectual property rights created in the context of a labour relationship. Specifically, this law stipulates that the intellectual property rights of software created by employees while performing their labour tasks belong to the employer, except when expressly stated otherwise.

Termination of employment

Dismissal is treated on a case-by-case basis, even in cases where many employees are dismissed at the same time. Chilean Law has no special rules in the case of mass dismissal.

An employer may validly dismiss an employee because of "company needs" (redundancy dismissal). Article 161 of the Labour Code authorises the employer to terminate the work contract on "company, establishment or service needs" grounds, such as those resulting from streamlining or modernisation, drops in productivity, or changes in market or economic conditions which make it necessary to dismiss one or more employees. Executives with management authority – with at least general powers of administration – may be dismissed by means of a notice (Desahucio), without justification. Also, this applies to employees of exclusive trust that arise from the nature of the hired services.

In this case, the employee is entitled to a severance for years of service which amounts to one month's worth of remuneration per year of service with a cap of 90 UF per year and a cap of 11 years.

Should an employee challenge such decision in court, and a labour court find that a dismissal for "company needs" was not justified, the company will be required to pay an additional 30% over the years of service compensation.

Furthermore, the contract can end by mutual agreement, resignation, death of the employee, expiry of the period agreed in the contract, completion of the work or service which gave rise to the contract, or due to force majeure. It can also end on several grounds that relate ultimately to faults by the employee. In all of the above cases the employee will have no right to compensation.

However, if an employee challenge one of these grounds of dismissal "by fault of the employee" before the Labour Courts and is successful, severance for years of service must be paid with an 80% surcharge to the employee. If the dismissal was based on grounds that do not entail "fault of the employee" (e.g. expiry of the period agreed in the contract or completion of the work or services which gave rise to the contract or force majeure) and is declared unjustified, the employer will have to pay the severance of years of service with a 50% surcharge for any of the other reasons mentioned above.

The law provides that the employer, in the case of dismissal because of "company needs" or Desahucio, must give the employee a 30-day advance termination notice. If the employer does not wish to give such notice, it must make a payment, in lieu of notice, equal to the last monthly salary, with a 90 UF cap.

EMPLOYEES/CONTRACTORS, CONT'D

Termination of employment

Chilean Law contains the following established administrative procedure for putting an end to an employment contract:

- The employer must give the dismissal notice and reasons in writing, delivered either personally or by means of a letter sent by registered mail. This notice must be sent within three days of the employee´s dismissal date. At the date of dismissal, all social security payments must have been made (with certain minor exceptions). If the company owes any social security payments in relation to the employee, the dismissal can be validated by paying the amounts due plus the wages and the social security obligations accrued up to the date that the debt is paid.
- In order for the dismissal to be valid, the company must attach to the letter either a certificate from the relevant social security institutions stating that the employer is up to date on social security payments in relation to the employee, or a copy of all the relevant social security payment receipts.
- In addition, the company must advise the corresponding labour authority in writing about the employee's dismissal.
- Finally, the employer must provide the employee with a release document (Finiquito) stating the reason for terminating the employment contract, the amounts paid upon severance and a statement indicating that the employer has no further monetary obligations towards the employee with respect to the employment relationship.

For the release document to be valid for the employer, the employee must ratify it with his or her signature before an authorized witness (a notary public, a Labour Inspectorate Inspector, the labour union president, etc.). This is usually done before a notary public.

Dismissal does not require prior approval from any government agency.

CONSUMER PROTECTION

In Chile, Consumer Law (Law 19,496), regulates relations between suppliers and consumers, states infringements, sanctions and creates a consumer body called SERNAC (National consumer service) its mission is to educate, inform, supervise, dictate rules (only applicable to its officials), protect Chilean consumers, and encourage citizen participation through Law 19.496. This authority is also responsible for mediating in consumer disputes between companies and consumers.

The following is a summary of the main provisions of this law:

- Establishes consumer´s rights and duties.
- Existence of consumer associations that watch over the interests of consumers.
- Obligations of suppliers.
- Abusive clauses in adhesion contracts.
- Complaints may be filed before the corresponding local police court.
- SERNAC and consumer associations may file class actions when there are more than 50 consumers affected by law infringement.
- Failure to comply with the law results in fines ranging from 50 to 2,250 Monthly Tax Units.

TERMS OF SERVICE

Yes. Terms of services become enforceable only, if consumers have given explicit and inform consent, and must be in compliance with the Chilean Consumer Protection Law. Particularly the following clauses are held invalid (if written they will not produce any effect):

- Grant the provider the power to cancel or modify the contract at its sole discretion or to unilaterally suspend its performance.
- Unilateral price increases for services, accessories, financing, or surcharges, unless such increases correspond to additional services that may be accepted or rejected in each case and are specifically stated separately.
- Charge the consumer for the effects of deficiencies, omissions, or administrative errors, when they are not attributable to the consumer.
- Reverse the burden of proof to the detriment of the consumer.
- Contain absolute limitations of liability, that may deprive the consumer of his right for compensation for the product or service deficiencies.
- Include blank spaces.
- Contrary to good faith.
- Among others regulated for specific services, such as, financial services.

WHAT ELSE?

For additional information or assistance in Chile, please contact ITechLaw's member partner:
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ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

COLOMBIA

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COLOMBIA

LEGAL FOUNDATIONS

Colombia is organized as a unitary republic, decentralized and with autonomy of its territorial entities. Although it is divided into 32 territorial entities called departments, there is only one legislative body, which is responsible for issuing rules that apply throughout the territory.

Colombia follows the **civil law system**. It relies on a codified system of written law which regulates different areas, such as civil, commercial, criminal, procedural, labor law, among others.

The main codifications are the followings:

- **Colombian Civil Law** is responsible for regulating the rights and obligations of individuals, which includes regulating the personal and property relationships that arise between them. The main source of law in this matter is the Colombian Civil Code (Law 57 of 1887).
- **Colombian commercial law** regulates commercial acts, the rights and obligations of merchants, the commercial registry, the commercial authorities, among other related matters. The main source of law is the Commercial Code (Decree 410 of 1971). In corporate matters, the regulations issued by the Superintendence of Corporations have also an important role.
- **Criminal Law** is codified through two major codes: the **Criminal Code and the Code of Criminal Procedure**. In the first one (Law 599 of 2000), all the behaviors contrary to law are collected, as well as the sanctions established for them. The second code (Law 906 of 2004) regulates the rules and principles that guide the criminalprocess.
- **Colombian procedural law** regulates the procedural activity in civil, commercial, family and agrarian matters. The main norm in this matter is the General Code of Procedure.
- **Colombian labor law** regulates the relationship between employers and workers and is codified in the substantive labor code.
- **Jurisdictions:** A recent amendment to the Colombian Constitution, Legislative Act No. 03 of 2023, recently created the Agrarian jurisdiction, the sixth jurisdiction. The other jurisdictions are the civil or ordinary, the labor, the constitutional, the administrative and the administrative contentious, and the special jurisdiction for Peace. The new jurisdiction is related to disputes about land and related agrarian conflicts.

COLOMBIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Owning interests or having investments in Colombia does not create the obligation to be legally established in the country. However, if the investor intends to conduct permanent activities in Colombia, they will be required to establish a local branch or Colombian company. The Colombian Commerce Code provides for a number of corporate forms, ranging from partnerships to stock corporations. The principal corporate structures are the following:

Limited Liability Companies

These companies, known as Sociedades de Responsabilidad Limitada in Spanish, are identified with the abbreviation "Ltda.", which must be included in the corporate name. The partners' liability is limited to the amount of their respective capital contributions, except for labor and tax liabilities. Partners will be held responsible in a subsidiary manner, albeit jointly, with the company for such liabilities A minimum of 2 partners and a maximum of 25 are required for its incorporation. There is no minimum capital requirement, but it must be paid in full at the time of incorporation.

It must be incorporated by means of a public deed, or private document for small companies, and then be registered in the commercial registry of the Chamber of Commerce. Likewise, the corporate purpose must be determined, which means that it can only carry out those activities established in the bylaws.

ADVANTAGES

- It is not mandatory to have a board of directors
- Only two partners are required for incorporation.

DISADVANTAGES

- Quotas are not freely negotiable since any transfer requires a public deed and registration.
- There is no limitation of full liability since partners are jointly and severally liable when the company's resources are insufficient to satisfy the payment of tax and labor debts. Unlimited liability; this applies to all partners in an OG and only to the general partners in a KG.

Stock Corporations

In Stock Corporations, known as Sociedades Anónimas, shareholders' liability is limited to the face value of their stockholdings. While Stock Corporations may negotiate their shares on local capital markets, the bylaws may establish preemptive rights for the subscription or negotiation of shares issued by the corporation. Preemptive rights for the negotiation of shares will be deemed suspended if the company's shares are negotiated in any stock exchange.

Stock Corporations may be formed by at least 5 shareholders, there is no minimum capital requirement, unless the purpose of the company is to engage in financial activities.

Its incorporation is made by means of a public deed (unless its assets are less than 500 minimum wages, or it has a maximum of 10 employees) and must be registered in the commercial registry at the chamber of commerce of the place where it was incorporated.

A term of duration of the company and a specific corporate purpose must be established.

Corporations are required to have: a board of directors, a legal representative, and a statutory auditor.

ADVANTAGES

- Limitation of shareholder liability.
- Shares are freely tradable.

DISADVANTAGES

- A minimum of 5 shareholders is required for its incorporation, as well as a board of directors and statutory auditor.
- A term of duration of the company and a specific corporate purpose must be established.

CORPORATE STRUCTURES, CONT'D

Simplified stock company

Known as Sociedades por Acciones Simplificadas, or "SAS", this type of corporation is known for being the most flexible type of vehicle, allowing shareholders to freely agree on the terms of the company's bylaws. The liability of shareholders is limited to the amount of their capital contribution and the corporate veil is especially protected. This is currently the most popular type of Corporation in Colombia.

Only one shareholder is required for incorporation and there is no maximum number of shareholders that may participate. It can be incorporated by means of a private document or through a public deed, which must be registered in the commercial registry of the chamber of commerce of the company's domicile.

There is no minimum capital requirement and shareholders have no personal liability.

The corporate purpose may be undetermined. Although there must be a legal representative, it is up to the shareholders to decide whether or not to have a board of directors.

ADVANTAGES

- Can be incorporated with a single shareholder.
- No public deed is required to incorporate this type of company.
- Shareholders are only liable up to the amount of their contributions.
- It is not necessary to establish a term of duration of the company and the corporate purpose should not be determined.
- Is the most flexible corporate structure. No minimum share capital.
- No formal requirements for the establishment.
- No obligation to disclose the articles of association.

DISADVANTAGES

- The shares cannot be registered in the Registro Nacional de valores y Emisores or traded on the stock exchange.

Branch Offices of Foreign Companies

Foreign entities conducting permanent activities within Colombian territory, who do not wish to incorporate a Colombian company, may incorporate a branch office in Colombia. Branch offices are considered as commercial establishment of the parent company and not as an independent legal person.

The parent company is directly liable for all liabilities incurred in connection with activities undertaken by the Branch Office in Colombia.

To open a branch, a public deed needs to be executed before a public notary with the following information: (i) the by-laws of the parent company, (ii) a copy of the decision issued by the parent company to open a branch in Colombia, and (iii) evidence that the directors have the authority to represent the company. The deed must then be registered before the local Chamber of Commerce.

Once the branch is established, all the assigned capital must be paid. Additional contributions may be made through supplementary investment to the assigned capital, which does not require any formality other than registration as foreign investment with the Central Bank.

COLOMBIA

ENTERING THE COUNTRY

The cornerstone of foreign investment regulations in Colombia is the principle that foreign investors will receive the same treatmentas national investors(and vice-versa).

Foreign investment is generally permitted in all economic sectors except for (i) national defense, and (ii) the processing or disposal of hazardous waste not produced in Colombia. There are also limitations applicable to the oil and gas, financial, public television, private security and surveillance sectors.

There are 2 types of foreign investment: foreign direct investment and portfolio foreign investment.

Foreign direct investment is defined as: (i) equity contributions made to the capital of local companies or branches with non-Colombian head offices, (ii) the acquisition of real estate by foreign investors, or (iii) the investment in private equity funds. Foreign direct investment may be made via currency and/or assets.

Portfolio foreign investment is investment made through local capital markets, which must be made through specially designated managers who hold portfolio foreign investment funds composed of investments made by individuals or legal persons. Permitted portfolio investment managers are stock brokerage entities, trust companies and any investment management company regulated by the CFS.

With very few exceptions, direct foreign investment is automatically registered with the Central Bank (Banco de la República) when the corresponding foreign exchange form is filed with a local bank or financial entity.

Registration of foreign investment grants the investor a legal right to remit proceeds and other returns (i.e., dividends) from the investment outside of Colombia.

Additional rights include the reinvestment of all proceeds, if desired by the investor. o capitalization of investment proceeds, the remittance of investment sale proceeds or remaining funds after the local company is wound up or liquidated.

Generally, there are no limits to the percentages of foreign investment. However, there are exceptions to this rule, such as investment in television services, where it may not exceed 40% of the total capital stock of the service concessionaire.

COLOMBIA

INTELLECTUAL PROPERTY

Intellectual property rights are divided into two main categories: (i) Industrial Property right (IP) and (ii) copyrights.

Intellectual Property protection grant their owner the exclusive right to use industrial property rights, such as distinctive signs and new creations. Regulations for industrial property rights are unified for all Andean Community Countries (Bolivia, Colombia, Ecuador and Peru).

Distinctive signs

Protection over a distinctive sign is obtained, generally, by means of its registration before the national regulator: in Colombia, the Superintendence of Industry and Commerce (SIC). The registration of a distinctive sign grants its owner an exclusive right of use and the ability to prevent others from using and/or registering similar or identical signs which cover identical or related goods or services. The most common types of distinctive signs that can be legally protected in Colombia are:

Trademarks

What is protectable? Trademarks are signs that are capable of distinguishing goods and services of one manufacturer from those of another. In Colombia they are classified according to the Nice International Classification of Goods and Services which has 45 classes, and it is possible to apply for the registration of multi-class applications.

Where to apply? Trademarks may be registered with the Superintendence of Industry and Commerce (SIC), either in person at the offices of the SIC, or digitally through the SIC website. If the goods or services are to be marketed in other countries and, therefore, the trademark wants to be protected in those regions, it may also be necessary to register the trademark under the Madrid system guidelines.

Duration of protection? The exclusive right to use a trademark is granted for an initial period of 10 years, renewable indefinitely for subsequent 10-year periods.

Cost? The value of a trademark application filed online is approximately COP$1,222,500 (Approx USD$314) (2024), for those of first or single class. For each additional class there is a fee of approximately COP $611,500 (Approx. USD $157.00) (2024).

Slogans

These consist of a word or phrase used together with a trademark. Slogans are subject to the same provisions as trademarks, except that a trademark must be associated to the slogan.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? There are two types of patents: invention patents and utility model patents. The invention patent protects new products or procedures that improve existing techniques or establish a new way of executing the technique.

On the other hand, the utility model patent protects any newform/configuration/improvements on already existing inventions, which allow a better performance of the existing one or which provide an advantage or effect that was not previously available.

For an invention to be patentable, it must meet the following requirements: (a)novelty: that it is not in the knowledge base of mankind; (b) creative potential: the invention cannot be only a product of knowledge, it requires that the inventor has made an intellectual effort; (c)industrial application: the invention must really solve a technicalproblem.

Where to apply? Protection is held on a territorial basis, which means that it is only valid in Colombian national territory.

In Colombia, the national patent office is the Superintendency of Industry and Commerce; therefore, patent applications are filed before this entity. In the case of wanting to obtain a patent in other countries, you can file an application through the Patent Cooperation Treaty (PCT), where, by means of a single patent application, you can initiate the process in any of the countries that are part of the treaty.

Duration of protection? Invention patents are protected for 20 years. On the other hand, utility model patents are protected for 10 years.

Cost? The invention patent application has an approximate value of COP $107,000 (Approx. USD $28) (2024) Additionally, the Patentability Examination of a Patent of Invention application has a cost of COP $1,660,500 (Approx. USD$ 427) (2024).

In the case of utility model patents, the application costs approximately COP $95,500 (Approx. USD $25) (2024). The Patentability Examination of a Utility Model Patent application has a cost of COP $938.500 (Approx. USD $241) (2024).

INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? Copyright protection is granted to creators of scientific, literary and artistic works (including software which is not patentable in Colombia).It protects the way ideas are expressed, not the ideas themselves. Copyright protection arises automatically when the work is created. Although it is not necessary to acquire the right, we advise registering works with the National Direction of Copyright,as this provides a legal presumption of authorship and evidence of the date of creation. Authors acquire individual moral rights and economic rights. Copyright should not be registered, but it is advisable to do so for evidentiary and protection purposes.

Moral Rights: These protect the author's right to be mentioned as the author of the work, of deciding whether or not to publish it and of preserving its integrity. They are perpetual, nonnegotiable, and non- transferrable.

Economic Rights: These are the author's exclusive right to use, authorize or forbid the use or exploitation of the work, and receive payment for its use.

Where to apply? The administration of the National Copyright Registry is in charge of the registration process. Registration can be done in person or online. In both cases, the author must go to www.derechodeautor.gov.co and download the corresponding forms according to the category of the work.

Duration of protection? Economic rights are granted throughout the author's life and for 80 years after his or her death.

Where the owner of economic rights is a legal entity, protection is granted for 70 years from the final day of the calendar year of the first authorized publication of the work. If an authorized publication has not been made after 50 years of the work's creation, the protection will be granted for 70 years from the final day of the calendar year of the creation of the work.

Cost? There is no processing fee.

Trade Secrets

What is protectable? Trade secrets are regulated by Decision 486 of 2000 of the Andean Community. According to the regulation, trade secrets protect all undisclosed information that may be used in a productive, industrial or commercial activity, and that may be transmitted to third parties.

In order for information to be protected through trade secret, it must meet three requirements: (i) it is neither known to third parties nor easily accessible by the persons who normally have access to this type of information. (ii) being secret, the information has a commercial value. (iii) the holder of the information must have taken reasonable measures to keep the information secret.

Duration of protection? The period of protection depends on how long the company is able to keep the information secret.

How to keep trade secrets secret? Some ways of keeping trade secrets secret are signing nondisclosure agreements and trade secret protection contracts with those who may have access to the information, restricting the number of people who may have access to it and even set up passwords for employees or third parties who have access to the information.

In Colombia the disclosure or exploitation of a trade secret without the authorization of its owner is considered an act of unfair competition and can be sanctioned by the Superintendence of Industry and Commerce.

DATA PROTECTION/PRIVACY

The Protection of Personal Data is a system designed so that natural persons can have access and control over the use given to the information that distinguishes them directly or potentially as individuals. Since the issuance of Laws 1266 of 2008 (financial habeas data) and 1581 of 2012; Decree 1074 of 2015; and External Circular 02 of 2015 ("Data Protection Regulation" or" DPR") Colombia has embarked on the development of a comprehensive protection system, which provides adequate levels of Personal Data protection, in accordance with international standards on the matter.

The Colombian regime distinguishes different types of personal data, which, according to their classification, receive adifferent level of protection, such classification is as follows:

- **Public Data:** Is Data that the law or the Political Constitution have determined as such. The consent of the owner of the information is not required for its collection and processing.

- **Semi-private data:** Is Data that are not of an intimate, reserved, or public nature. The disclosure of such data may be of interest not only to its owner but also to a certain group of people.

- **Private Data:** Data whose nature is intimate or reserved, therefore, it is only relevant to the owner of the information; for its disclosure and processing, authorization of the owner is required.

- **Sensitive Data:** Data that affect the privacy of the owner, which is why they enjoy special protection. An improper use of this information can generate discrimination; therefore, they can only be processed if it is necessary to safeguard a vital interest of the holder or, being this incapacitated, has expressly authorized its collection.

Data Subjects have the following rights in relation to Data Controllers and Data Processors: (i) to know, update and rectify their Personal Data; (ii) to request proof of the authorization that they rendered to Data Controllers; (iii) to be informed about the use that has been given to their Personal Data; (iv) to file claims before the Superintendence of Industry and Commerce ("SIC"); (v) to revoke the authorization or ask for the suppression of their Personal Data; and (vi) to freely access their Personal Data which is subject to processing.

The entity in charge of supervising compliance with the regulations related to personal data protection is the Superintendence of Industry and Commerce ("SIC"). It is also empowered to exercise vigilance in this matter and impose sanctions for non-compliance with the regulation.

In accordance with the DPR, Controllers (Natural or legal person, public or private, who by himself or in association with others decides over determined database and / or Data processing) have, among others, the following responsibilities: (i) request and keep the Authorization given by the Data Holder; (ii) maintain Data under security measures that prevent its loss, adulteration or unauthorized use; (iii) rectify information that is incorrect; (iv) adopt an internal manual for the correct processing of Personal Data; (v) provide the Processor with allthe information required for the processing in acomplete and accurate manner; (vi) ensure that the Processor maintains the security and integrity of the Personal Data entrusted to it; and, (vii) report to the SIC any Personal Data related security incident.

DATA PROTECTION/PRIVACY, CONT'D

On its turn, Processors (Natural or legal person, public or private, that by itself or in association with others, carries out the Processing of Personal Data on behalf of the Controller) have, among others, the following responsibilities: (i) keep the information under security conditions that prevent its loss, adulteration or unauthorized use; (ii) update the information when so requested by the Controller; (iii) address queries, complaints and claims made by the Data Controllers; (iv) adopt an internal manual for the correct processing of Personal Data; (v) adopt the necessary measures to prevent the circulation of Data disputedin a judicial process or whose blocking has been ordered by the SIC; and (vi) report to the SIC any Personal Data related security incident.

There are regulations and obligations with respect to the national and international transfer of personal data, the registration of databases in the National Data Base Registry and with data bases containing information related to national security and defense, intelligence and counterintelligence information, journalistic information and editorial content, credit history information (financial habeas data) and State census.

ARTIFICIAL INTELLIGENCE

Bills to regulate AI presented to Congress and in process:

Bill No. 59 of 2023 - Senate
This bill emphasizes public policies for the development of AI, as well as its use. The creation of an international commission for AI in Colombia is proposed, as well as certain parameters that AI developments must have, such as inclusion, climate change and protection of personal data.

Bill 91 of 2023 - Senate
This bill wants to establish ethical criteria in the creation of AI, the obligation of transparency and information about the projects, as well as the guarantee of security, equality and equity in them. It proposes creating a duty of information for those who use AI for economic activities, ordering the national government to create an ethical framework for the development of AI systems, creating an action plan to regulate the responsible use of AI and encouraging international cooperation to close the technological gap.

Bill 130 of 2023 – Senate
This project seeks to protect the rights of workers against the impact that AI can generate in some jobs. The project is based on the constitutional rights of employees, such as stability and the right to work. It regulates, among others, issues such as the use of robotics, algorithms for the selection of employees and their promotions, the control, management and evaluation of performance, the training of employees in AI and the harmonization of AI with the right to job.

Statutory Law Bill No. 156 of 2023 – Chamber
This bill deals with the personal data protection regime and the rules on data circulation, in order to protect fundamental rights and guarantees of natural persons in a context of IA.

Bill No. 200 of 2023 - Chamber
The main motivation of this bill is to adjust the uses of AI to respect and guarantee human rights. Likewise, promote its development and establish limits on its use.

This bill adopts, although modified, the system of the European Union AI Law (Artificial Intelligence Act). For Colombia the risk classification system of unacceptable, high, low or minimum of European law was slightly amended to unacceptable, high, limited and null. The risks that affects security, subsistence and human and fundamental rights are unacceptable, therefore, prohibited. The risks of automation activities that could eventually limit some human or fundamental rights are high. The risks resulting from the use of chatbots or robots are limited in accordance with the principles of article 4 of the project. And there is zero risk derived from the use of AI that does not affect the rights and safety of users. The project contains a long list of activities excluded from AI, such as behavior manipulation, police prediction of criminal behavior, extraction of facial images from the Internet, biometric identification, definition of judicial sentences and limitations on certain fundamental rights, such as freedom expression.

ARTIFICIAL INTELLIGENCE, CONT'D

In Europe, uses of AI that violate EU values or violate fundamental rights are classified as unacceptable. Other prohibited uses are police tools to predict crime. The uses considered high risk are, among others, those intended for critical infrastructure, educational environments, employment and management of workers, access to public services, administration of justice, electoral processes. These uses require quality management systems and careful risk matrices. The Colombian project is not as detailed as the European one.

The aforementioned bills built on previous policies and legal regulations, such as Law 1712 of 2014 on open data strategy, to allow the use of data from the state and state entities. This involves allowing the use of data by regulating access, exchange, reuse and exploitation of data. All this within a Digital Government project, in a context of transparency. This law was mainly regulated by Resolution 1519 of 2020, on publication and dissemination of public information.

In 2018, the National Council for Economic and Social Policy published document CONPES 3920, which established the national data exploitation policy (Big Data), to increase the use of data to generate social and economic value. Subsequently, in 2019, CONPES 3975 was issued, on digital transformation and artificial intelligence, in order to promote the strategic use of digital technologies in the public sector and the private sector, in the context of the 4th industrial revolution.

These policy documents were followed in 2021 by the CONPES document 4023 on reactivation and sustainable and inclusive growth and then in 2022 Resolution 460 of the Ministry of Information and Communications Technologies (MinTIC), creating the National Data Infrastructure Plan, to promote the digital transformation of the state and the development of a data-based economy. As a complement, Decree 1389 of 2022 on the Data Infrastructure governance model was issued, establishing three levels of governance: strategic, tactical and operational.

Regarding AI, in March 2022 the UNESCO Recommendation on the Ethics of Artificial Intelligence was adopted, promoting the adoption of the principles for the development of AI: Transparency, Human Control of the decisions of an AI system, Responsibility, Explanation, Privacy, Security, Non-discrimination, Inclusion, Prevalence of the rights of children and adolescents, Social benefit.

These recommendations were adopted for Colombia in the document "Ethical Framework for Artificial Intelligence", dated August 2020.

EMPLOYEES/CONTRACTORS

General: The applicable labor regime in Colombia is the one established in the Substantive Labor Code. Under this regime, the employer and the employee must enter an employment agreement, which can be entered into verbally or in writing and are classified mainly according to their duration. In Colombian law there are the following types of contracts:

- **Indefinite term contract:** Any contract that is not a fixed-term or does not refer to an occasional or transitory job, will be an indefinite term contract. In this type of contracts there is no obligation to give prior notice for termination, except when the termination is based in certain causes provided for in the labor law.
- **Fixed term contract:** It must be in writing and cannot exceed 3 years. It can be renewed indefinitely if the initial term is equal to, or more than, 1 year. If the initial term is less than 1 year, the contract may only be successively extended for up to 3 equal or shorter periods, after which the renewals are indefinite for terms that cannot be shorter than 1 year and so on.
- **Contract for work or labor:** It must be in writing; it is subject to the specific work and ends at the time the work is completed.
- **Occasional, accidental, or temporary contract:** It cannot last more than a month and are designed to meet extraordinary, temporary, or other special needs of the employer.

The ordinary salary consists in a fixed ordinary compensation monthly paid; and in extraordinary compensations represented by overtime work, percentage on sales and commissions, additional salaries, regular bonuses, and permanent travel expenses intended to provide meals and lodging to the employee. The parties are free to agree any salary amount, as long as it is above the legal minimum wage, which for 2024 is COP$1.300.000 (approx. USD 334) for full-time employees.

EMPLOYEES/CONTRACTORS, CONT'D

The ordinary week in Colombia consists of a maximum of 48 working hours, with a daily maximum of 8 working hours, which will be decreased gradually from 2023 (47) to 2026 (42). The daytime working day goes from 6:00 a.m. to 9:00 p.m. The work done between 9:00 p.m. and six 6:00 a.m. is considered night work.

Hours worked in addition to normal workday are compensated as overtime. Overtime may not exceed 2 hours per day and 12 hours per week. For the employees to be able to work overtime, the company will have to obtain an authorization from the Ministry of Labor, unless an exception applies, such as force majeure situations, domestic employees, or those in positions of direction, trust or management.

Social Security: In the case of workers who are bound by an employment contract, the employer is responsible for the affiliation to the social security system.

Employers are obliged to make the payment of social security contributions on a monthly basis, as follows:

- **Pensions:** It is a monthly contribution equivalent to 16% of the monthly salary earned by the employee. 12% is paid by the employer, and the rest 4% is assumed by the employee.
- **Fellowship fund**: Employees who earn more than 4 MMLW are required to make an additional contribution, which ranges between 1% and 2% of their average income.
- **Health:** It is a monthly contribution equivalent to 12.5% of the monthly salary earned by the employee. 8.5% is paid by the employer, and the rest 4% is assumed by the employee.
- **Labor risks:** Employers must make a monthly contribution to a Labor Risk Administrator ("Administradora de Riesgos Laborales"), intended to cover the risk of work accidents/illnesses. The payments depend on the company's level of risk and the activities performed by the employees.

There are additional charges to employers regarding the payment of payroll taxes and fringe benefits to the employees.

Termination: The employment contract can be terminated by several factors: the employer can terminate it unilaterally either for just cause, where there will be no payment of compensation, or without just cause by paying the corresponding indemnity.

Likewise, the employee may decide to resign from his position for any reason, thus constituting a unilateral resignation on the part of the employee or there is also the possibility of termination by mutual agreement.

However, there are a series of limitations at the time of termination of the contract with respect to certain subjects, such as the following:

- **Pregnant or on maternity leave:** There is a constitutional protection related to pregnancy and maternity leave. In these cases, although the worker may resign or the contract may be terminated by mutual agreement, the contract may not be terminated without just cause and, if there is just cause, the employer must request authorization from the Ministry of Labor.
- **Union rights:** For certain workers with union privileges, there is a restriction to terminate the contract without just cause. If there is a just cause, it must be authorized by an ordinary labor judge.
- **Harassment:** Workers who file claims for harassment at work may not be dismissed without just cause for a period of 6 months from the filing of the claim.

CONSUMER PROTECTION

The regulatory provisions relating to consumer protection are included in the Colombian Constitution and other several regulations, the most important being the Law 1480 of 2011 (Consumer Protection Statute).

This body of law seeks to regulate consumer relations that arise within the chain of marketing of goods and services, as well as the exercise of consumer rights in areas such as legal guarantees, right to repair of goods and services, information, protection against abusive clauses or misleading advertising, among others.

Consumer protection and, therefore, the application of the Statute extends to several areas, such as: telecommunications, breach of warranties, product failure or low quality, misleading information and more.

Some of the most important provisions regulated in the aforementioned regulation are:

- Joint and several liability of the producer and the retailer for the payment of damages caused by defects of the product.
- The liability of the producer or supplier for the quality, safety, and suitability of the good.
- The possibility of reversing the payment when the purchase is made online or remotely through electronic payment instruments, in cases where the consumer has not received the product or is delivered a product different from the one ordered, or in cases of fraud or unsolicited transactions.
- The full ineffectiveness of unfair terms. This category includes clauses limiting the producer's or supplier's liability imposed by law, implying the waiver of the right of the consumer to receive the product or the delivery of a product different from the one ordered, or in cases of fraud or unsolicited transactions, among others.

In case the producers or retailers do not comply with the established provisions, they may be sanctioned by the Superintendence of Industry and Commerce.

Consumers, in order to protect their rights, may resort to both judicial and administrative proceedings and have several types of actions: popular and group actions to defend collective or individual homogeneous rights of a group of persons; product liability action for defective products and consumer protection action, which proceeds in cases where consumer rights are violated.

TERMS OF SERVICE

The terms and conditions of web pages or online services are the general contractual relationship existing between the consumers and the producers or owners of the online services.

In order for the terms of serviceto be binding, the consumermust accept them. Tacit or impliedacceptance is not sufficient, there must be an expressacceptance, although it can be expressed by a click. Theseterms must comply with the duty of information, as well as include the description of the productor service, the method of payment, the conditions of the purchase or service, the identification of the company,the rates, the limitations to the service, the provisions on intellectual property and the legislation applicable in cases of dispute. It goes without saying that, in these cases, the consumer protection statute is stillapplicable.

WHAT ELSE?

Regarding foreign investments: All of the foreign investment must be registered with the central bank of Colombia (Banco de la República) and must be updated according to the deadlines established by the entity. Investment operations must be carried out through an intermediary in the foreign exchange market.

In financial matters: the preparation of annual financial statements as of December 31 of each year is mandatory.

Tax: Key taxes in Colombia for 2024include: (i) Income and Capital Gains Tax; (ii) Wealth Tax (iii) Value Added Tax (VAT) (iv) Consumption Tax; (v) Financial Transactions Tax (GMF); (vi) Industry and Commerce Tax (ICA); (vii) Real Estate Tax.

Entrepreneurship: In 2020, a law to support entrepreneurship was passed. Through this, the creation and development of small and medium-sized companies is encouraged through several benefits. Among these benefits are differentiated rates, and more access to public procurement processes and the financing of projects. The law has a special interest on social, green and sports companies, as well as those that favor clean energies or belong to the agricultural sector. Creative industries, such as artistic, literary, musical and related activities are given certain tax benefits, as well as other creative activities such as software development under the special provisions issued under the concept of 'orange economy'.

Bank account: A corporate bank account must be opened, for which the following documents must be submitted to the bank: the certificate of existence of the company issued by the Chamber of Commerce, tax certificate (NIT), the identification number of the legal representative and the initial balance of the company's account.

COSTA RICA

CONTRIBUTORS

COSTA RICA

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COSTA RICA

LEGAL FOUNDATIONS

Costa Rica is a Republic, with division of powers and follows a Civil Legal System. It has a Constitution and follows a pyramidal system of regulations: International Treaties, Laws and Codes, Regulations and judicial rulings for certain cases.

CORPORATE STRUCTURES

In Costa Rica, we have two common usually incorporated types of companies, which are:

1. Sociedad Anónima, en adelante S.A.
2. Sociedad de Responsabilidad Limitada (Limited Liability Company, SRL).

For both of them, there are some general requirements to meet.

GENERAL INFORMATION

Companies in Costa Rica must be registered before the Mercantile Registry, a section of the Public Registry. The company's name must be different from any other company's name, and its identification card number can also be its name. The aforementioned section is in charge of registering the articles of incorporation of all companies in Costa Rica, as well as future corporate amendments. Once the company is duly registered, it may begin its operation.

According to the Costa Rican laws, a minimum of two persons, who will be the initial shareholders, must grant the articles of incorporation of a company. Once the company is duly registered, there will be no restrictions on the number of shareholders of the company (e.g. sole shareholder).

All companies must have duly authorized corporate books. Said authorization shall be granted with the authorization of the company. The corporate books consist of a Shareholders Registry Book, Shareholders Meeting Minutes Book, companies will also require a Board of Directors Meeting Minutes Book. Please be informed that these Books are needed in order to amend the articles of incorporation or in order to transfer the corporate shares or any other important matter or authorization to be granted by the shareholders.

Costa Rican companies shall have a determined Management Structure, which will vary depending if it is a Sociedad Anónima or a Limited Liability Company, as indicated below. The directors will be empowered with the faculties granted through the articles of incorporation. However, the company may also grant powers of attorney or administrative capacities to additional persons who are not part of the Management Structure, such as employees or counselors.

CORPORATE STRUCTURES, CONT'D

GENERAL INFORMATION, CONT'D

If the company's representatives do not have a domicile in Costa Rica, a Resident Agent must be appointed. Said Agent shall have enough faculties to receive judicial and administrative notices on behalf of the company, and who must be a duly incorporated lawyer in Costa Rica. Its appointment and revocation shall be agreed at the Stockholders Meeting.

If the company will conduct a business activity in Costa Rica, its dividends shall only be distributed if an approved Profits and Losses Statement, determines that the company's activity has generated profits. The Statement must be approved by a Stockholders Meeting. For such purpose, the company's fiscal year normally ends on December 31st, as ordered by law. Please take note that the bankruptcy of an S.A. or a S.R.L does not imply the bankruptcy of its shareholders, since their responsibility is limited to the payment of their initial contribution to the corporate stock.

Since January 2019, a new law entered into force for all companies, which is to yearly declare the stockholders of the Company. The legal representative, which must have a local electronic signature, or by means of a power of attorney to a third party, must register the Company before Ministry of Finance and make a sworn declaration of the stockholders of the company, owned percentages, and personal information.

Companies must also pay, on a yearly basis, a legal entity tax, which must be paid every year on January. The final tax amount will depend on the company if it is commercially active or not, and the tax amount will be published every year.

The following aspects shall be useful in order to differentiate an S.A. and a S.R.L.:

SOCIEDAD ANÓNIMA (S.A.)

Corporate Stock: The corporate stock shall be composed of a determined amount of common stock shares, with voting rights. Preferential shares may be also issued, with limited or additional rights. Shares in an S.A. may be transferred by endorsement or any other binding documents. Such transfer shall also be registered on the Shareholders Registry Book.

Administration: The Stockholders Meeting is the maximum corporate authority. Representation for said Meeting may be authorized through proxy letters.
The Board of Directors acts as the Board of the company and also performs the duties of a corporate Executive Committee as it would in a U.S corporations. Said Board must have a minimum of three members, which are President, Secretary and Treasurer; their faculties shall be established in the articles of incorporation.
A comptroller must be appointed to oversee the adequate management of the company.

LIMITED LABILITY COMPANY (SOCIEDADES DE RESPONSABILIDAD LIMITADA (S.R.L.))

Corporate Stock: The corporate stock shall be composed of a determined amount of nominative shares. Shares in a S.R.L. shall not be transferred by simple endorsement. Transfer is performed by means of a Share Transfer Agreement, which is subject to the approval of the remaining shareholders. Such transfer shall also be registered on the Shareholders Registry Book. Please take note that the remaining shareholders have the right of first to buy or to refuse over an eventual share transfer.

Administration: The Shareholders Meeting is the maximum corporate authority. Representation for said Meeting may be authorized through proxy letters. S.R.L. are managed by a one or more managers or vice-managers. Said representatives shall be empowered with the faculties granted through the articles of incorporation, but they are not authorized to delegate their faculties. In addition, Costa Rican law prohibits such managers or vice managers to represent other companies with similar economic activities, or to carry out such activities on their personal behalf.

COSTA RICA

CORPORATE STRUCTURES, CONT'D

INCORPORATION REQUIREMENTS

Stockholders and percentage of shares complete name, address, occupation, marital status (if married or divorce how many times), nationality, passport number, complete address.

Company´s name. Previous availability search must be done (please note that identification card number can also be the company´s name)

Commercial address. The commercial address mut be in Costa Rica.

Legal representation. Who or whom are going to be the legal representatives and if they will have full or limited representation

Board of Directors (President, Secretary and Treaurer) and Comprtroller (for S.A.): (complete name, address, occupation, marital status (if married or divorce how many times), nationality, passport number, complete address.

Managers or Vice Managers (for SRL) (complete name, address, occupation, marital status (if married or divorce how many times), nationality, passport number, complete address.

If the stockholders and/or legal representatives lives abroad, a Resident Agent must be appointed. Passport or identity card copies are required.

BASIC OBLIGATIONS

Legal entities annual tax payment: Due on January every year.

Final Beneficiaries annual declaration: A declaration of the shareholder of the company must be done every year.

Annual taxes sales and income declaration: Fiscal period ends on December every year and payments and declarations must be done on or before March 15th, of every year

Monthly taxes – valued added tax (IVA for its initials in Spanish) declaration and payment, due on or before the 15th day of each month.

ENTERING THE COUNTRY

Pursuant to the Costa Rican Constitution, all people within Costa Rica, nationals or foreigners, are treated equal before the Law. Thereby, there is no restrictions to be applied to foreigners, except for Maritime Zone.

The Immigration and Foreigners Law Act, Law N°7033 is the legal body that regulates the different forms of residing in Costa Rica. The main categories are:

- Parents with born child in Costa Rica.
- Temporary Labor permit.
- Executive labour permit.
- Investment in Costa Rica.
- Retirement in Costa Rica.
- Enough personal income.

All of these categories are regulated, and different requirements must be met to obtain the Costa Rican Residence.

Main requirements:

- Notarized with Apostille of the birth certificate.
- Notarized with Apostille of the criminal record.
- Requirements may vary depending on the category of residence to apply.

COSTA RICA

INTELLECTUAL PROPERTY

Costa Rican legal regulations begins with article 47 of the Constitution, and thereof according to International Treaties, Law, Regulations decrees, and certain administrative and judicial rulings.

Thereby, Costa Rica has an Intellectual Property Registry where, Patents, Industrial Designs, Trademark and other distinctive signs, Copyrights are registered pursuant to the Law.

- Patents are protected for 20 years.
- Trademarks are protected for 10 years and can be renewed indefinitely for periods of 10 years.
- Copyrights are protected for lifetime and 70 years after death.

Costa Rica, besides its regulatory IP Laws, it also has enacted its Intellectual Property Enforcement Act, called "Ley de los Procedimientos de Observancia de los Derechos de Propiedad Intelectual", Law N°8039.

This Law establishes the procedures and sanctions for any Intellectual Property violation. Mainly, it establishes:

- Border Measures granted by the Customs Authorities.
- Civil procedures, including sanctions as compensation and destruction of merchandise.
- Criminal sanctions. These cases are filed before the prosecutor's office

Costa Rican enacted the "Ley de Información No Divulgada" Trade Secrets Act, Law #7975.

Costa Rica is not a signatory member of the Madrid Protocol.

ARTIFICIAL INTELLIGENCE

No, there is no specific regime for AI regulation in Costa Rica.

DATA PROTECTION/PRIVACY

Ley de Protección de la Persona frente al Tratamiento de los Datos Personales, Ley #8968; Data Protection Act. This law has the objetive to guarantee each person, national or foreigner, regardless of the nationality, domicile, the respect of their fundamental rights; particularly their rights of data self determination regarding is private life, personality rights, and the management of their personal data.

This law is based in several principles of law:

- Self determination of the personal data information.
- Information consent.
  - To be informed about the data requested.
  - The right to grant or not the consent.
- Quality of the information.
  - Recent
  - True
  - Exact

It also develops certain rights of the right holders, such as:

- Access to the data information
- Right to rectify the personal data.

The law also regulates the type of personal data:

- Sensible data.
- Restricted access to personal data.
- Unrestricted access to personal data.

It is particularly important to mention that the Law establishes the duty of confidentiality and security of the data protection, and therefore, data base management needs to comply with enforcing protocols of security.

It is not very well developed under local law due to the usage of the directives of GDPR.

COSTA RICA

EMPLOYEES/CONTRACTORS

Any company must register itself before the Social Securities authorities, called, "Caja Costarricense de Seguro Social) (Caja or CCSS). This regime applies to regular employees and independent professionals.

All employers must pay the dues to the CAJA:

- 26.67% corresponds to the employer.
- 10.67% is paid by the employee, but retained by the employer.
- The employer must pay a 13 salary, without deductions every end of the year for every 12 months of labor or the proportion part.
- If severance applies in favour of the employee, the employer must pay approximately about 1 month of salary for every year of work, up to 8 years.
- Vacations are granted, 12 days per year, 1 day per month worked.
- The daily shift of work is 8 hours, up to 48 hours a week.

It is strongly recommended that employers comply with all labor regulations, otherwise, it may constitute a serious legal inconvenient between the company and government institutions.

There is a special regime for work for hire in Costa Rica which is regulated in the Labor Law Act and Copyright Act.

CONSUMER PROTECTION

Costa Rica has a Consumer Law Act, law "Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor"; Ley 7472. This Law regulates both Competition and the Protection to the consumers.

There is a sophisticated entity to protect the Consumers when there is a complaint about consuming products. The companies must discharge the complaint in an administrative procedure.

TERMS OF SERVICE

The same law above establishes the regulation in favor of the consumers, thereby Terms and Conditions T&C must be complied with according to the law.

WHAT ELSE?

There is no particular or specific regulation, unless the kind of company to be settle needs certain kind of permit, such as Municipal permits, Health authorities permits, among others.

CROATIA

CONTRIBUTORS

CROATIA

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CROATIA

LEGAL FOUNDATIONS

Croatia is a civil law country. Thus, its legal system is based on written statutes and other legal codes in the field of public, private and criminal law, which are constantly amended.

Croatian public law covers the relationship between natural and/ or legal persons and the Croatian state, while enforced by various governmental agencies and competent administrative bodies including (e.g., tax administration).

Private law governs the relationship between individuals (including legal persons) in matters such as contracts or liability and is codified in various laws. The most important source of law in this context is the Croatian Civil Obligations Act. In addition, forspecific areas, additional laws and regulations are applicable (employment relation, insurance agreements etc.).

Criminal law is mainly codified in the Croatian Criminal Act. In addition, certain laws (e.g., Croatian Commercial Companies Act) set out specific infringements as criminal deeds. In addition, misdemeanour liability is governed by the Croatian Misdemeanour Act on the procedural side, whereas specific infringements are envisaged within various acts (e.g., Employment Act).

Nevertheless, final judgements of the Croatian Courts (especially adopted by the Croatian Supreme Court) are often used as supporting arguments in court cases and in general should be considered by lower courts.

CORPORATE STRUCTURES

In Croatia there are several types of commercial companies.

The most common vehicle for launching business in Croatia is alimited liability company. Joint stock company is also an option but is used in practice only if there are imperative reasons of legal (where law allows only joint stock companies to carry out certain activities, for instance credit institutions) or other nature (e.g., public offerings, crowdfunding, complex vesting programmes). Unless there are specific reasons for opting for a joint stock company, start-ups generally opt for setting up a limited liability company.

CORPORATE STRUCTURES, CONT'D

Limited liability company (LLC) is a most common type of company in Croatia and has the most flexible structure. For its setting up, generally:

It requires at least one shareholder (natural or legal person) who has to prepare Incorporation Deed (or Articles of Association if there is more than one shareholder) in a form of a notarial deed.

As for the company's bodies, normally, there is ageneral assembly and the company's management (board of directors). Limited liability companies can also have a supervisory board, but this the case only where there are specific practical reasons for having one (e.g., number of shareholders, trusts related schemes); Auditors are required by the law if the company's assets, annual income and/ or number of employees exceed certain thresholds. A company may be subject to audit on a consolidated basis as a sub of a mother company. Voluntary audits are also possible.

Minimum share capital amounts to 2.500,00 EUR (contributions in cash at least ¼ per shareholder/ total share capital amount), whereas all in-kind contributions have to be fully entered into the company and usually trigger the necessity for formal assessment and/or auditing of the value of in-kind contribution.

A simple limited liability company is a type of the limited liability company, which may be founded in a simplified manner, and it can consist of a maximum of five shareholders and one member of the management board. The company is formed in line with prepared forms in front of the notary public.

The minimum amount of initial share capital may not be below EUR 1,00, which is also the lowest nominal amount of a business share. Thus, if there is more than one shareholder, the share capital increases accordingly. All contributions must be in cash, whereby specific obligations apply with respect to statutory reserves of the company which should generally be used for share capital increase (at least up to the amount of the limited liability company).

On the other hand, the minimum amount of initial share capital in joint stock companies may not be lower than EUR 25,000. Share capital is divided into stocks (which may be listed on a regulated market). In comparison to LLC's, joint stock companies have a substantially stricter structure and lack flexibility which is generally much wider in case of LLC's. Therefore, unless there are specific (sector-specific or investor-related) reasons for opting for a joint stock company, start-ups generally opt for setting up a limited liability company.

In Croatia there are also partnerships (such as personal or limited partnership), which are however used rarely as a form for starting business. In addition to the above, in Croatia as a simpler form for conducting business is also used the Sole proprietorship (Cro. "obrt"), owner of which is one or more natural persons, fully and personally liable for all obligations with respect to the Sole proprietorship.

This is also to note that any additional permission requirement(s) is triggered only for specific regulated activities, such as in the financial market. For most of the regular commercial activities there are no restrictions of the kind, i.e., the registration of the company with the competent registry is sufficient.

CROATIA

ENTERING THE COUNTRY

Croatia has implemented the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union by way of a separate Regulation adopted by the Croatian Government and published in the official Gazette of the Republic of Croatia. In line with the aforementioned, Ministry of Economy may require a foreign (non-EU/EEA) investor to deliver a specific set of information (such as source of financial funds etc.).

In addition, Croatian national bank collects and processes certain data regarding domestic and foreign (non-Croatian) investments, which triggers reporting requirements for the resident entities involved. In this respect, foreign direct investments include equity capital, reinvested earnings and debt relations between ownership-related residents and non-residents.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? A trademark may consist of any signs, particularly words, including personal names, or designs, letters, numerals, colours, the shape of goods or of their packaging, or sounds, provided that such signs are capable of distinguishing the goods or services of one undertaking from goods or services of another undertaking.

Where to apply? Trademarks can be filed either with (i) the State Intellectual Property Office of the Republic of Croatia (SIPO) online, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, dependingon the territories in which trademark protection is sought. The minimum requirements for filing trademark applications with the SIPO are as follows:

- A sufficiently defined representation of the trademark
- Information on the applicant, name, and address
- The goods/services. The 11th edition of International Classification of goods and services is in force in Croatia
- The priority data (date, country, and number), if claimed.

Procedure
Upon filing a new application with the SIPO, the SIPO assigns the application number. If all formal elements of filing are satisfied, as well as absolute grounds for rejection are examined and found in compliance with the Croatian Trademark Law, the trademark application is published in the Croatian IP Gazette within a few months from the application date. In case nobody opposes the published application within three months from the publication date, the SIPO requests the applicant to pay the registration fees for the first 10 years of validity, i.e., the ten years period of the duration of protection.

After the payment of the fees, the SIPO registers the trademark in the Registry and issues an official decision on the trademark registration whereby the right holder is informed, among other things, on the registration number and date of validity of the trademark. On the basis of this Decision the trademark is granted, and the applicant can then request the official Certificate of Trademark Registration. It takes approximately 6-8 months from application until registration.

Costs

- Filing an application including publicationfees in one class = off. fees EUR 66,36
- Each additional class = off. fees EUR 19,91
- Registration fees in one class = off.fees EUR 159,27
- Each additional class = off. fees EUR 39,81
- Request for issuance of Certificate of registration (optional) = off. fees EUR 33,18

In addition, fees of the legal representative apply..

INTELLECTUAL PROPERTY, CONT'D

Industrial Designs

What is protectable? The appearance of the whole or a part of a product resulting from its features, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation. Product means and industrial or handicraft item, including, inter alia, parts intended to be assembled into a complex product, packaging, get-up of books, graphic symbols and typographic typefaces, but excluding computer programs.

Requirements for protection
A design shall be protected by an industrial design to the extent that it is new (novelty requirement) and has individual character. Novelty means that the registration procedure is to be initiated before the product has been put into circulation or before the design, which is the subject of protection has been made available to the public otherwise. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public prior to the date of filing the industrial design application.

Where to apply? National designs may be registered with the SIPO online. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the WIPO Croatian applicants can also file for designs for the countries that are members of Hague Agreement. Minimum requirements for filing a design application are:

- Payment of official fees
- Information on the applicant i.e. his name and address or legal seat
- Drawings and/or photographs. The photographs must have the quality that they can be used for reproduction and printing.
- Indication of the product to which design is applied to in accordance to Locarno classification
- Data and evidence on priority right if it is claimed.

Procedure
The Croatian SIPO shall formally examine the contents of the applications and if it is found to be incomplete, shall request its completion from the applicant. If the design application is in conformity with the formal and absolute grounds requirements, the applicant will be invited to pay maintenance fee for the first five years. After the payment of the maintenance fees, the Croatian SIPO will issue the Decision on registration and the design will be published within three months since the date of registration. The design protection lasts for 5 (five) years. It can be renewed before expiration date (or in 6 months grace period) but no longer after expiration of 25 years since the application date. Please note that multiple applications are allowable, and that the application could be published in colour.

In addition, it is possible to claim the priority on the basis of design application from another country which is member of the Paris Union for the Protection of Industrial Property or member of the World Trade Organization (including Community Design), within six months from the date of application in respective country.

Costs

- Preparing and filing a design application = official fees EUR 26,54
- Second and each further design in a multiple application = official fees EUR 6,64
- Request for first five-year validity period and publication = official fees EUR 53,09
- Second and each further design in multiple application = official fees EUR 26,54.

In addition, fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in the field of technology are patentable. A patent does not protect an idea, but a concrete solution to a technical problem. In order to achieve patent protection, the invention in any field of technology must be new, i.e. it must not be shown to the public in any way, anywhere in the world, before filing an application for protection; have an inventive step, i.e. it must not arise from the state of the art in an obvious manner to a person skilled in that state of the art; be industrially applicable, i.e. be practically (not just theoretically) applicable and suitable for production or use in the industrial scope.

Where to apply? Patent protection will be granted only per country, meaning that applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the SIPO, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection as a rule, may not exceed 20 years from the date of filing the patent application and must be maintained by annual fees.

Costs? Application costs for Croatian patents are as follows:
The timeline in order for CSIPO to issue a decision on grant will depend on the results of the substantive examination of the patent application. The related fees are:

- EUR 159,27 * - official fee. These fees also cover maintenance for the first 2 years
- EUR 0,66 ** - official fee per each additional page above 30
- EUR 1,33 ** - official fee per each additional claim above 10
- EUR 265,45 ** official fee - request for substantive examination for applications filed after the 2020-02-20.

Remarks:
* the official filing fee is reduced by 50% when online filing + additional reduction of 50% is applicable in case the applicant is also the inventor (both reductions will be cumulated)
** in case the applicant is also the inventor the official fee is reduced by 50% In addition, fees of the legal and technical representative apply.

Utility Model

What is protectable? Simpler inventions. Because it is registered without a substantive examination procedure, the process of registering a utility model is simple, fast and cheaper compared to the procedure for granting a patent. It therefore facilitates the protection of inventions for individual inventors and small and medium-sized enterprises. The law prescribes limitations in terms of protection by having the utility model referring exclusively to a product that shall not be an invention in the field of biotechnology, a chemical or pharmaceutical substance or an invention the commercial exploitation of which would be contrary to public order or morals, nor an invention relating to a process. Another limitation is the number of claims the Application can contain only 10 claims. Holder of a registered utility model may request the substantive examination to determine whether the invention in question is new, inventive and industrially applicable. Such a request may be submitted no later than upon expiry of the seventh year of duration of the utility model.

INTELLECTUAL PROPERTY, CONT'D

Utility Model, CONT'D

Where to apply? See comments on patent applications above.

Duration of protection? The protection of an invention by a utility model is valid for a maximum of 10 years from the date of filing the application of the utility model.

Costs? The timeline in order that SIPO issues a decision on registration is approximately 3-4 months and the related fees are as follows:

- EUR 100 * - official fees filing and examination of a request for utility model including the first two annuities
- EUR 65** - official fees Printing and publication
- EUR 60 official fees - Conversion of a Utility Model into a national Patent.

Remarks:
* the official filing fee is reduced by 50% when online filing + additional reduction of 50% is applicable in case the applicant is also the inventor (both reductions will be cumulated)
** in case the applicant is also the inventor the official fee is reduced by 50%
In addition, fees of the legal and technical representatives apply.

The following IP rights cannot be registered:

Copyright

What is protectable? Copyright does not protect an idea but a copyright work, expressing the idea of the human mind, irrespective of the form or quality of such expression. Further to the Croatian Copyright and Related rights Act, a copyright work is an original intellectual creation in the literary, scientific and artistic field, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose.

Copyright protection is granted to the author immediately with the creation of a work, without completing any formalities such as registration or deposit of the work. No label required either.

Duration of protection? Copyright protection lasts for the life of the author and 70 years after his death. In the case of a co-authored work, copyright lasts for 70 years from the death of the co-author who has lived the longest.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work (economic copyrights) and the indispensable right to be named as author (moral copyrights). Copyrights cannot be transferred. However, in respect of the economic copyrights, author may establish on behalf of another person "right to use the copyright". No such possibility is envisaged in regard of the moral copyright.

Trade Secrets

What is protectable? The Croatian Law on the Protection of Unpublished Information with Market Value Unfair defines trade secret as information (such as know-how, business information and technology) which meets all of the followingrequirements: it isnot generally knownamong or readilyaccessible to personswithin the circles that normally deal with the kind of information in question; it has commercial value (for example when its unlawful acquisition, use or disclosure could harm the financial, business or other interest of the person who lawfully controls it) because it is secret and it has been subject to reasonable steps/appropriate measures, by the person lawfully in control of the information, to keep it secret. Reasonable steps/appropriate measures to preserve the confidentially of information may include the creation of an internal act on the handling of trade secrets, the circle of persons and their rights and obligations in the handling of trade secrets, or measures of physical or virtual protection of access to and handling of trade secrets and concluding NDAs.

Duration of protection? As long as appropriate measures are in place and the above requirements for trade secret are met, trade secret protection applies.

CROATIA

DATA PROTECTION/PRIVACY

Since May 25, 2018, the GDPR applies. The relevant Croatian specifics in the GDPR Implementation Act and Electronic Communication Act may be briefly summarized as follows:

- The age for child's consent in relation to information society services is 16 years.
- The processing of personal data through video surveillance can only be carried out for a purpose that is necessary and justified for the protection of persons and property, if the interests of the data subjects that are in conflict with the processing of data through video surveillance do not prevail.
- Video surveillance of workplaces – the processing of personal data of employees through video surveillance system can only be carried out of, in addition to the above conditions, the conditions envisaged by the regulations on occupational safety are met and if the employees were adequately informed in advance of such measure and if the employer had informed the employees before the adoption of the decision on installing video surveillance system. Video surveillance of workplace cannot include rest rooms, personal hygiene and changing rooms.
- The processing of biometric data in the private sector can only be carried out if it is prescribed by law or if it is necessary for the protection of persons, property, classified data, business secrets or for the individual and secure identification of service users, taking into account that the interests of the data subjects that are in conflict with the processing of biometric data do not prevail.
- The legal base for processing of biometric data for the secure identification of service users is the explicit consent of data subjects given in accordance with the requirements for the same envisaged in the GDPR.
- Processing of biometric data of employees for the purpose of recording working hours and for entering and leaving official premises is allowed, if it is prescribed by the law or if such processing is carried our as an alternative to another solution for recording working hours or entering and leaving official premises, provided that the employee has given explicit consent for such processing of biometric data in accordance with the provisions of the GDOR.
- Some provisions of the GDPR do not apply to the processing of personal data for purposes of carrying out official statistics by the authorized bodies.
- The use of automated calling and communication systems without human intervention, facsimile machines or electronic mail, including short messaging system (sms) and multimedia messaging services (mms), for the purposes of direct marketing and sale require data subject's prior consent. Consent for electronic messages is not required, if the controller has received the personal data in connection with a transaction, the marketing communication concerns similar products and services, and the data subject has been given the opportunity to opt-out when data has been collected for this purpose as well as with every communication (soft-opt-in).
- Prior consent for the above communications for the purposes of direct marketing and sale to legal persons is not required. However, this is only applicable if such communications do not involve personal data (i.e. if you cannot identify an individual either directly or indirectly).
- All electronic mails (including sms and mms) send for the purposes of direct marketing and sale must correctly display and not conceal the identity of the sender on whose behalf the electronic mail or message is made, as well as should always have a valid electronic mail address or number to which the recipient may free of charge send a request that such communications cease.
- Prior consent is required for setting cookies which are not necessary for the provision of the service requested by the user, irrespective whether personal data is processed or not. Thus, opt-in is for example required for all marketing cookies.

In addition, the Croatian Consumer Protection Act envisages provisions in connection to unsolicited communication via telephone and/or messages. Namely, it is prohibited to make calls and/or send messages by telephone to consumers who have entered the Registry of consumers who do not want to receive calls and/or messages in the context of advertising and/or sales by telephone ("do not call" registry). The Registry is held by Croatian Regulatory Authorities for Network Industries, and it is available online at https://rnz.hakom.hr/.

"Do not call" registry applies only to consumers. Consumers are defined by Croatian Consumer Protection Act as any natural person who enters legal transaction or operates on the market outside of its trade, business, craft, or professional activity.

CROATIA

ARTIFICIAL INTELLIGENCE

Currently, there is **no specific national regime** in Croatia regulating artificial intelligence. However, being an EU Member State, Croatia will be subject to the **upcoming AI Act** and comprehensive obligations it imposes, once the same is adopted and enters into force.

In the meantime, in cases of automated individual decision-making, including profiling, **Article 22 GDPR** applies accordingly. This implies implementing appropriate safeguard measures and ensuring that the data subject has (at least) the right to obtain human intervention, to express his/her point of view and to contest such decision. In addition, special rules for certain specific data processing activities (e.g., processing of biometric data, genetic data, video surveillance, etc.) have been introduced by the Croatian GDPR Implementation Act. Its provisions must be taken into consideration in development or testing AI tools based on data processing activities that fall within its scope.

The Digital Croatia Strategy for the period until 2032 has placed a strong emphasis on introduction of new technological solutions (AI, machine learning, 6G, etc.), both in private and public sector. The Croatian Government has initiated the development of a **National AI Strategy** that should establish a national framework for strategic development of AI. However, detailed specifics and final version of the National AI Strategy are yet to be published.

In addition to government and regulatory efforts, the Croatian academia and civil society have also been very active regarding AI technologies. Two **University centres for AI research and development** (Zagreb and Rijeka) have been established, while the Croatian AI Association has published guidelines proposing different measures for a competitive national and EU framework that supports start-ups developing innovative solutions based on AI.

EMPLOYEES/CONTRACTORS

General: Written employment agreement is a must. Agreements with indefinite term, definite term, part-time and similar are normally used and negotiable. There are restrictions for the maximal duration (and number) of the agreements entered for a definite term, rules prohibiting fictional work for hire contracts that essentially represent employment agreements and similar. Generally speaking, the local labour law is developed in a very detailed manner and generally considered as relatively conservative in certain specific aspects, such as termination. The employer is considerably free to determine the terms offered to a potential employee. These can be negotiated depending on the circumstances. However, the terms must satisfy the minimum requirements provided in the Labour Act and other relevant laws. If there are different sources of law governing the same issue differently, for instance Labour Act, employment rulebook, collective agreement, employment agreement, the terms most beneficial for the employee prevail. There is also a possibility to set out the trial period in the employment agreement which may last up to 6 months.

Entry into an employment agreement must be followed by the registration of the employment with the Pension Fund and Health Insurance Fund, performed by the employer. Currently, a single application is enabled for the two funds and it must be submitted before the actual starting date of the employment relation.

Termination: Employees are very well protected. They can challenge termination of their employment relationship (depending on the reasoning for termination), for example, due to:

- proscribed motive for the termination (e.g., organizing the election of a works council, recent raising of justifiable claims against the employer),
- discrimination issues,
- termination decision's lack of explanation or not following prescribed procedure for termination,
- the termination is socially unjustified (due to failure to apply social criteria incl. age, term of work with the employer or maintenance obligations of the employee in connection with other employees at the same work position where 20 or more employees are employed).

In addition, certain groups of employees (e.g., works council members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection.

EMPLOYEES/CONTRACTORS, CONT'D

There are four different grounds for unilateral regular termination by the employer:

- termination dueto business reasons ("in case when employer has no longer the need for performance of the particular job, due to reasons of economy, technical or structural reasons"),
- termination due to personal reasons ("in case the employee is not capable of performing its duties arising out of the employment relation due to certain permanent character attributes or capabilities"),
- termination caused by employee's fault ("in case of breach of duties/obligations undertaken in the employment contract by the employee"), as well as
- termination due to failure to satisfy during probation period.

The Croatian Labour Act prescribes the termination procedure, remedies and other rights of the employee as well as the related termination notice periods that the employer must adhere to in each of these situations.

Digital labour platforms (DLPs)

The amendments of the Employment Act which came into effect on January 1, 2024, have introduced platform work into the Croatian employment legislation. Platform work is defined as compensated work carried out by individuals under contract for a DLP or an aggregator, utilizing digital technology either remotely through electronic means (such as a web page or mobile app) or directly on-location. A DLP is defined as a natural or legal person providing services at the request of a service recipient through digital technology, involving remote work through electronic means or on-location. On the other hand, an aggregator (representative) is defined as a natural or legal person engaged in representation or intermediation for DLPs.

Employment contracts involving DLPs must include prescribed content amongst others related to work tasks, conditions, monitoring, communication, expenses and insurance. In addition, contracts requiring on-call work have to outline the variable work schedule, reference period, minimum paid working hours, and conditions for the employee's right to refuse tasks on short notice.

There is also a legal presumption that if a DLP or aggregator contracts with an individual for work resembling an employment contract, the DLP or aggregator is considered to have concluded an employment contract as an employer. Stated presumption can be challenged only based on exhaustively prescribed facts, with the burden of proof lying with the DLP or aggregator rebutting the legal presumption. It is important to note that regulations apply not only to DLPs but also to aggregators operating within the European Union, regardless of their location and applicable law. It should be noted that the regulations exclude service providers primarily focused on asset sharing or resale of goods and services.

Works Made in the Course of Employment: The latest amendments to the Copyright Act provide the general clause that copyright ownership of a work created by an employee in the course of their employment belongs by default to the employer. However, best practice in Croatia remains to ensure that employment agreements contain provisions whereby the legal assignment of all intellectual property related rights is explicitly confirmed.

Works Made in the Course of contracting relations: Where the entity decides to appoint students or contractors for provision of certain services (there are strict provisions relating to the prohibition of fictional work for hire which are in their substance employment agreements under supervision especially by the labour inspection and Croatian Tax Administration), each agreement should contain a clause covering the licensing of works made by such contractual partners. Such clause should be as specific as possible, in order to ensure that relevant intellectual property rights have been assigned.

CONSUMER PROTECTION

Croatian consumer protection law is rather strict and regulated in various laws, such as the Consumer Protection Act, Civil Obligations Act, E-Commerce Act and Service Act. The core provisions are laid down in the Consumer Protection Act.

Croatian Consumer Protection Act regulates a distance consumer contract prescribing also the requirements for such contracts. These requirements include the obligation of the trader to provide the prescribed information to the consumers prior to entering into the contract in a clear and comprehensible manner (we hold that it is acceptable to provide such information by means of the Terms of Use and any information not contained herein, e.g. regarding price of services, by means of a separate notification) (the same information principally correspond to the information requirements as laid down under Art. 6 and 8. of the Directive 2011/83/EU on consumer rights) and to provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins.

Below is the list of information which are required to be provided to the consumer prior to entering into the contract as prescribed by the Croatian Consumer Protection Act:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

(b) the identity of the trader, such as his trading name;

(c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;

(d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;

(e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

(f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;

(g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;

(h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right, as well as the model withdrawal form;

(i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;

(j) that, if the consumer exercises the right of withdrawal after having made a request, the consumer shall be liable to pay the trader reasonable costs ;

(k) where a right of withdrawal is not provided for, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;

CONSUMER PROTECTION, CONT'D

(l) a reminder of the existence of liability for material defects of the goods and liability for conformity of digital content and digital services with the contract;

(m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;

(n) the existence of relevant codes of conduct, and how copies of them can be obtained, where applicable;

(o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

(p) where applicable, the minimum duration of the consumer's obligations under the contract;

(q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

(r) where applicable, the functionality, including applicable technical protection measures, of digital content;

(s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;

(t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) above.

In case of distance selling contracts (e.g., via webshops), E-Commerce Act and Service Act must additionally be adhered. Those regulations particularly foresee various information obligations.

Please see below under Terms of Service for more details.

CROATIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

TERMS OF SERVICE

Under the Croatian Civil Obligations Act civil obligations law, terms of services are generally enforceable in Croatia if published in "usual" manner (e.g., on a website or in app), and if the content of the same has been known to the customer or must have been known to the customer. For that reason, both "click-wrap" and "browse-wrap" style terms are acceptable. However, where possible, it is a good practice to obtain customer confirmation through an affirmative action (i.e., a checkbox or button), particularly where consumer protection, warranties, liabilities, or other issues of importance to a company are included in such terms of service.

In case of service agreements, including agreements on provision of "information society services" (any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services, such as web hosting, online sales of goods and online commercial communication, social networks and internet connection services), minimum mandatory content is prescribed by the law in the field of services and e-commerce (E-Commerce Act and Service Act), and includes:

- company name,
- seat and address,
- contact information, including email address,
- registration body and registration number,
- vat number (if the service provider is entered into the vat system),
- applicable general terms and other clauses to which the terms refer to,
- price of services and/or the manner of determination of the same,
- principal characteristics of service,
- existence of guarantees, that applies in addition to the legal warranty.

Additional formalities and mandatory content related to online terms of service apply in case of regulated industries, such as telecoms and finance, as well as in case of distance consumer contracts, as discussed in question 7 above.

In addition, consumer protection law prescribes certain clauses which are held invalid if included in consumer contracts, including distance consumer contracts, such as:

- implied renewal of the contract if specific conditions are not met,
- limitations of warranty rights,
- exclusion of liability rights for death, bodily injuries, gross negligence, willful misconduct, claims under the product liability laws, damages occurred by violations of contractual core obligations,
- one-sided rights of companies to change scope of services or prices,
- severability clauses,
- place of jurisdiction and applicable law other than at the place of consumer,
- any other non-transparent or grossly disadvantageous clause.

WHAT ELSE?

The market entry must be well prepared. Apart from legal advice, this in any case includes competent tax advisors. Local bureaucracy is often perceived as slower and not as efficient as in some other countries (on the other hand, some local units are known for greater efficiency and investor focused approach). In addition, certain sectors of the economy currently have issues with workforce, due to the intense emigration of certain categories of citizens from Croatia into other EU countries.

CYPRUS

CONTRIBUTORS

CYPRUS
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CYPRUS

LEGAL FOUNDATIONS

Cyprus was a British colony until 1960, when the Republic of Cyprus was established as an independent state.

Cyprus is a common law jurisdiction. The Constitution of the Republic of Cyprus preserved the British laws applicable before independence (formally referred to as 'CAP's) in force until their amendment or repeal by the House of Representatives. As a result, many Cyprus laws applicable today are remnants of British colonial laws, as amended by the House of Representatives after 1960 (including the Companies Law, CAP 113 as amended).

The laws applied by the Cyprus Courts today are the following:

- The Constitution of the Republic of Cyprus
- The Colonial laws retained in force by virtue of Article 188 of the Constitution, to the extent these have not been amended and/ or repealed,
- The principles of Common Law and Equity, as long as they are not incompatible with any law or the Constitution, and
- The Laws enacted by the House of Representatives.

In 2004 the Republic of Cyprus became a full member of the European Union and as a result European law has supremacy over the Constitution and national legislation.

There are three levels of courts in the Republic of Cyprus. The Supreme Court and the Supreme Constitutional Court, which hear, inter alia, cases at third instance, based on the authority conferred on them by the Constitution and relevant legislation, the Court of Appeal, which hears cases at second instance in which appeals are lodged against a decision of a court of first instance, and the following courts of first instance:

- Administrative Court
- District Courts (Nicosia, Limassol, Larnaca, Paphos, Famagusta, Kyrenia)
- Assize Courts
- Family Court
- Rent Control Tribunal
- Industrial Disputes Tribunal
- International Protection Administrative Court
- Military Court
- Commercial Court and
- Admiralty Court

CYPRUS

CORPORATE STRUCTURES

The main types of corporate structures a start-up might consider in Cyprus are the following:

The limited liability Company

This is the most common form of corporate structure used for carrying out business in Cyprus due to the many advantages offered, such as the limited liability, the separate legal personality and the significant tax benefits associated with this type of corporate structure.

There are 2 main types of limited liability companies which can be incorporated in Cyprus, as follows:

Companies limited by shares (Private/ Public)
This is the most common type of company. A private company limited by shares has a share capital, and the liability of its members is limited by its memorandum of association to any unpaid amount, for the shares they hold. A private limited liability company by shares must have at least one shareholder but no more than fifty, a secretary and at least one director. A public company limited by shares must have at least seven shareholders and a minimum authorised and issued capital, which is offered for subscription, must be €25.629.

Companies limited by guarantee
This type of company does not have a share capital and its members act as guarantors rather than shareholders. The liability of its members is limited by its memorandum of association, up to the amount that the members have undertaken to contribute respectively to the assets of the company in case of dissolution. This type of company is most commonly formed as a charitable or a non-profit company.

It is also possible to register a branch of a foreign company to carry on business directly in Cyprus. The following must be filed with the Registrar of Companies within one month from establishing a place of business or branch:

- a certified copy of the Memorandum and articles of association,
- a list with all directors and secretary,
- the name and address of its Cypriot representatives.

It should be mentioned that overseas companies that establish a place of business in Cyprus have an obligation under the Companies Law to register with the Registrar of Companies within one month of establishment.

Partnership

In a partnership, individuals jointly and severally share profits, responsibility, debts, and liability of the partnership as partners. There is no share capital, but the partners must contribute an amount into the partnership as capital. There is no minimum requirement of capital for registering a limited liability partnership in Cyprus.
There are two types of partnerships which can be registered in Cyprus, the general partnership and the limited partnership.

A general partnership can have between 2 and 20 partners, with the exception of banking partnerships, where the maximum number of partners is 10.

In a limited partnership one or more of the general partners have unlimited liability and the rest of the partners have limited liability.

Sole Proprietor/ Business Name

Individuals who own a business on their own account can trade under a registered business name but will remain personally responsible for all the liabilities and debts of the business. No limited liability and no separate legal personality are established with the registration of a Business Name in Cyprus.

CYPRUS

ENTERING THE COUNTRY

As regards corporate structures, there are no nationality or residence requirements or restrictions relating to the shareholders and directors of a Cyprus company. Any individual or corporate entity can hold shares in a Company registered in Cyprus, however, for tax purposes the tax residence of the company is identified by determining where the management and control is exercised. There are several factors which are used to identify a company's location of management and control, however, as a general rule the board of directors is responsible for exercising the central management and control of a company's business.

To take advantage of the favourable corporate tax regime in Cyprus it is therefore recommended that the majority of the directors of a Cyprus registered company should be residents of Cyprus and the meetings of the board of directors should also take place in Cyprus.

As regards investment in real estate, non-EU nationals (including corporate entities or entities controlled by non-EU nationals) who wish to purchase real estate property in Cyprus must obtain a special permit from the Council of Ministers before the property can be transferred in their name.

A non-EU national or a couple of non-EU nationals may be granted a permit to acquire:

1. A Plot or land that has not been divided into plots with an area of up to 4000 sq.m., for the construction of a house for owner occupancy.
2. In the case of a couple, only one permit is granted as above.

OR

1. Up to two units which may be in a different development. These units can be either two residential units or one residential unit and a shop up to 100 sq.m. or a residential and office unit with an area of up to 250 sq.m.
2. In the case of a couple, the above limitation applies to the couple as a whole.

A citizen or legal person of an EU member state does not need a permit to acquire immovable property and no restrictions apply to any such person.

INTELLECTUAL PROPERTY

Cyprus law recognises the following IP rights which may be registered.

Trademarks

What is protectable? A trademark to be registrable must be distinctive, capable of distinguishing the products or services of an enterprise from those of other enterprises and determine the object of the protection provided to its beneficiary with clarity and accuracy. Both individuals and businesses may submit an application for trademark registration in Cyprus.

There are various types of marks which may be registered in Cyprus, depending on their characteristics, including Word marks, Figurative marks, Colour marks, Sound marks, Motion marks, Multimedia marks, Hologram marks, Certification marks and Collective mark.

Where to apply? Trademarks can be filed either with (i) the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. Before submitting the application, the applicant may apply to the Intellectual Property Section for a preliminary opinion regarding the possibility of safeguarding the trademark, by submitting, either through the trademark's trademark's e-filing system or by hand / post, a form Ε.Σ. 01 accompanied by the relevant fee of ninety nine euro (€99) and an additional fee of seventy seven euro (€77) for every class beyond the first one. Provided the mark meets all the prerequisitesfor protection and provided an availability check has been made among the registered trademarks and the applications for trademark registration, the application for its registration can be submitted either through the trademark's e-filing system or by hand / post, accompanied by the relevant documentation.

Duration of protection? Once registered, the trademark remains protected for an indefinite period, subject, however, to renewal every 10 years.

Costs? The application costs for registering a trademark in Cyprus are €100,00 euro and additionally €150 per class (including the certificate's issuance cost). Additional fees may apply, if applying for registration through a legal or other representative.

CYPRUS

INTELLECTUAL PROPERTY

Patents

What is protectable? A Patent is an intellectual property right over an invention, which may concern a product, method, process, material etc. For a patent to be granted, the relevant invention must be new, involve an inventive step and be susceptible of industrial application.

Where to apply? Patent protection will be granted only per country, meaning that an applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs. The application for granting a national patent (form Π.9) is submitted, by hand/ post, to the Department of the Registrar of Companies and Intellectual Property, accompanied by the relevant documentation.

Duration of protection? The term of protection of a patent in Cyprus is 20 years, while in the case of pharmaceutical or plant-protection products, protection can be extended up to 25 years and in case of paediatric pharmaceutical products, up to 25 years and 6 months.

Costs? Application costs are €230 for registering a national patent (including certificate's issuance cost and excluding international search fee), and €100 euro for European Patent validation in the Republic of Cyprus. International patent registration cost varies per year. Additional fees may apply, if applying for registration through a legal or other representative.

Industrial Designs

What is protectable? An Industrial design or a model is the external design or the appearance of the whole or part of a product, which arises from its particular characteristics, such as, its outline, shape, form, colours, line, texture, materials, decoration, etc. Natural products, ideas, sounds, music and scents do not constitute designs or models.

Where to apply? National designs may be registered with the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property. To make sure that a design or model is "new" and "unique", it is advisable to search among the registered industrial designs or models filed both in the Republic of Cyprus and abroad. You may submit the application for filing an industrial design or model (form ΒΣΥ1) by hand/post accompanied by the relevant documentation. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Furthermore, a design may be registered as a national Industrial Design or sample in any other country or territory which enables such registration. In such case, it is advisable firstly to obtain information regarding the national law and the conditions for registration and protection applicable in the said countries.

Duration of protection? The maximum period of protection of a design under Cyprus law is 25 years, subject, however, to renewal every 5 years.

Costs? The application costs for the registration of a design in Cyprus are €85,43. Additional fees may apply, if applying for registration through a legal or other representative.

Copyright

What is protectable? Copyright constitutes an intellectual property right that grants exclusive protection to the creator of a work (scientific or literary work). Copyright is acquired automatically, without the need to file the work or submit an application and the exploitation right can be exercised automatically.

Duration of protection? Protection of copyright under Cyprus law varies depending on the nature of the work up to 70 years from the creator's date of death.

Exploitation of copyright protected work: the copyright owner has the exclusive right to exploit the work, including reproduction, advertising, sale, lease, distribution, etc. In addition, copyright over scientific, literary, musical or artistic work (including photographs) and films, provides to the creator the so-called "moral right". This right includes the creator's right, for his/her's entire lifetime, to claim the authorship of the work and to object to any distortion, mutilation or other modification of the work, that would detract the honour or reputation of the author.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protectable? Trade secrets as such are not recognized as an intellectual property asset under Cyprus law. The Law on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure of 2020 (Law No. 164(I)/2020) allows individuals and companies to protect secret information which has a commercial value from unlawful acquisition, use or disclosure. According to this law, to ensure protection of a trade secret the relevant holder should undertake all reasonable steps to protect its secrecy, including the use of non-disclosure agreements (NDAs) and the implementation of internal policies and procedures.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

Data protection in Cyprus is primarily governed by the General Data Protection Regulation (Regulation (EU) 2016/679) ('GDPR') which has been implemented into Cypriot law by Law 125(I) of 2018 Providing For The Protection of Natural Persons with regard to the Processing of Personal Data and for the Free Movement of Such Data. This law is supplemented by the The Law Regulating Electronic Communications and Postal Services 112(I)/2004, as amended (the "Telecoms Law"). There are a few national particularities (derogations) under Cyprus law, the most notable of which include the following:

- The age for minor's consent in relation to information society services is 14 years
- The Controller can be exempt, wholly or partly, from the responsibility of communicating the personal data breach to the data subject, for one or more of the reasons stated in Article 23(1) of the Regulation provided that a prior impact assessment and prior consultation with the Commissioner have taken place. The Commissioner can also impose terms and conditions to the Controller, in respect of any such exemption.
- Processing of genetic and biometric data for health insurance purposes is prohibited.
- The processing which is carried out by a controller or a processor for archiving purposes in the public interest, scientific, or historical research purposes or statistical purposes shall not be used for taking a decision which produces legal effects concerning the data subject or similarly significantly affects them.
- Under the Electronic Communications Law, the use of electronic mail for the purposes of direct marketing is permissible only in the case of addressees who have given their prior consent. The only exception in Cyprus where the principle of 'opt-out' applies is where a sender has been provided by a customer with an email address in the course of a sale of goods or services. Individuals or legal entities that obtain their customers' personal data (e.g. e-mail addresses) in the course of the sale of a product or service may use these data for direct promotion of their own similar products or services so long as customers are aware of this practice and given the opportunity to decline receipt of communications in the future.
- When the controller or the processor intends to transfer special categories of personal data to a recipient in a third country or to an international organisation and the intended transfer is based on appropriate safeguards provided for in Article 46 of the GDPR or on binding corporate rules ('BCRs') provided for in Article 47 of the GDPR, the controller or processor must inform the Commissioner of the intended transfer before the data is transferred.
- The processing of special categories of data laid down in Article 9 of the GDPR is permitted and is lawful when it is carried out for the purpose of publishing or issuing a decision of any court or when it is necessary for the purpose of delivering justice.
- The right to be informed and the right of access under Articles 14 and 15 of the GDPR shall apply to the extent that they do not affect the right to freedom of expression and information and the press confidentiality.

The regulatory authority for data protection in Cyprus is the Commissioner for Personal Data Protection, established in 2002. The office of the Commissioner is currently staffed by nine officers and five administrative members of staff.

EMPLOYEES/CONTRACTORS

General

Employment contracts are not required under Cypriot law, although they are considered advisable. Employers are required to provide employees with specific information in writing, within one month of the commencement of employment, including the identity of the parties, the place of work and registered address, the position or specialisation of the employee and the nature of his duties, the date of commencement and duration of employment, annual leave entitlement, termination notice periods, salary and benefits, working hours, and details of any collective agreements that may apply to the employee.

Employment contracts can be for a fixed term or an indefinite term, provided that employment that exceeds 30 months will be automatically considered to be of indefinite term unless the employer can show that the fixed term is justified by objective reasons (such as the temporary nature of the requirements of the position, the temporary replacement of another employee, special characteristics of the position, etc). Furthermore, the termination of employment at the end of a fixed term may be considered unlawful if the Industrial Disputes Court considers that, as a matter of fact, the employment relationship was for an indefinite term.

Work for hire

There is no statutory work for hire regime under Cyprus law. Unlike employment agreements, which although contractual in nature are regulated by a wide range of employment laws and regulations, agreements for services are exclusively governed by contract law.

To determine whether a person is an employee or an independent contractor, the entire arrangement between the parties should be considered, particularly the parties' rights and obligations.

Under Cyprus law, rights to intellectual property which are recognised by law initially belong to the creator. However, when the creation of a work is performed during the employment of the creator, as part of the terms and conditions of his employment contract, the intellectual property right is deemed to be transferred to the creator's employer, subject to any agreement between the parties to exclude or limit such transfer.

Registration with Social Insurance

Every employer has a legal obligation to register its employees with Social Insurance and make contributions based on their salary to the Social Insurance Fund. In addition to Social Insurance contributions, employers in Cyprus are required to make certain other contributions for the employee to the General Health System, the Redundancy Fund, the Social Cohesion Fund and the Industrial Training Fund.

Termination

Employment law in Cyprus is a form of social legislation, a term commonly used to describe statutory provisions which protect weaker members of the society.

Under Cyprus law termination of employment is lawful only if it can be justified based on one of the below grounds:

- where the employee does not perform his or her duties in a reasonably satisfactory manner (excluding temporary incapacity for work due to illness, injury or childbirth),
- where the employee has been made redundant in accordance with statute,
- where the termination is due to force majeure, act of war, civil commotion, act of God, destruction or similar event,
- where the employment is terminated at the end of a fixed period of employment,
- where the employee displays conduct such as to render him- or herself subject to summary dismissal, or
- where the employee has displayed such conduct as to make it clear that the relationship between employer and employee cannot reasonably be expected to continue, committed a serious disciplinary or criminal offence, behaved indecently during the performance of his or her duties or repeatedly violated or ignored the rules of his or her employment.

In addition, certain groups of employees (e.g. pregnant employees, employees on maternal or paternal leave and employees on sick leave) enjoy special termination protection.

Statutory compensation for unlawful dismissal is payable by the employer depending on the period of the employee's continuous employment. Depending on the circumstances an unlawfully dismissed employee may also claim damages for breach of contract or loss of career prospects.

CONSUMER PROTECTION

Cyprus consumer protection law is a consumer-friendly statutory regime which harmonizes the national law E.U. law and the requirements of Regulation (EU) 2017/2394. It also consolidates various other relevant consumer protection laws (such as the unfair terms to consumers law) into a single statutory instrument.

Under Cyprus law, consumers have certain rights, depend on whether they are buying goods or services in commercial stores or entering into distance selling contracts, as the case may be.

Such rights include the disclosure of certain information by the seller, including the main characteristics of the goods or services, the identity of the trader and its geographic address,the total price of the goods or services, including taxes, or if, due to the nature of the goods or services, the price cannot reasonably be determined in advance, the manner in which the price is to be calculated and, where appropriate, all additional shipping, delivery or postal charges or, where such charges cannot reasonably be calculated in advance, the fact that such additional charges may be required, etc.where applicable, the possibility of recourse to an out-of-Court grievance mechanism and redress to which the trader is subject, as well as the ways to access it, etc.

In the case of distance selling contracts the consumer may, within a period of 14 days, withdraw from the distance contract without stating the reasons and without any charge other than any charges relating to a delivery method other than the cheapest standard delivery method offered by the trader, if the consumer expressly chose such delivery method. If consumers are not sufficiently informed about the right of withdrawal, this right is automatically extended for up to one year.

The Consumer Protection Service of the Ministry of Energy, Trade and Industry has as its mission the assurance of a high level of consumer protection in the liberalized and competitive market. This is achieved through a network of actions that ensure the empowerment of consumers and concern the effective compliance control of the market based on the legislative framework, the strengthening of consumer safety and the improvement of information and education of consumers and businesses.

The main responsibilities of the Service, as derived from its mission, include, inter alia, modernization and effective implementation of the legislative framework for consumer protection and the operation of the market surveillance system for effective enforcement.

TERMS OF SERVICE

Yes, the trader must provide the information required by law to the consumer on paper or, if the consumer agrees, on another durable medium and this information must be legible and worded in simple and understandable language for the terms to be enforceable.

Furthermore, the trader should provide the consumer with a copy of the signed contract or confirmation of the contract on paper or, if the consumer agrees, on another durable medium.

Abusive clauses in a contract between a trader and a consumer do not bind the consumer, however, the contract continues to bind the parties, unless it cannot continue to exist without the abusive clause.

Appendix IV of the of the Consumer Protection Law of 2021 includes an indicative list of clauses which may be considered abusive. This list includes clauses which have the following purpose or result:
·Exclude or limit the trader's statutory liability in the event of death or personal injury to a consumer resulting from the trader's own act or omission;

- exclude or improperly limit the consumer's statutory rights against the trader or other contracting party in the event of non-full or partial performance or defective performance of any of the contractual obligations on the part of the trader;
- exclude the consumer's right of withdrawal, while the fulfilment of the trader's obligations is subject to a condition, the fulfilment of which depends on his will alone;
- allow the trader to withhold the sums paid by the consumer when the consumer withdraws and does not accept to conclude or perform the contract, without providing for the right of the consumer to receive equivalent compensation from the trader when the latter withdraws;
- impose disproportionately high compensation on the defaulting consumer;
- allow the trader to terminate the contract at his discretion, while the same option is not granted to the consumer;
- allow the trader to terminate without reasonable notice an open-ended contract, unless there is good cause;
- irrevocably infer the consumer's acceptance of clauses of which he had no real possibility of knowing before entering into the contract;
- allow the trader to unilaterally modify the terms of the contract without a serious reason which is provided for in the contract;
- allow the merchant to unilaterally and without serious reason modify the characteristics of the product to be delivered or the service to be provided;
- provide that the price of the goods is fixed at the time of delivery or give the trader the right to increase his prices, without the consumer having, in either case, a corresponding right to terminate the contract in the event that the final price is too high in relation to the price agreed at the conclusion of the contract;

WHAT ELSE?

Engagement of foreign workers: In order for a third-country national to be employed as a worker in the Republic of Cyprus, they must hold a temporary residence and work permit. The employment of a third-country national in Cyprus depends on the specific employment category. For certain categories (agriculture and animal husbandry, seasonal workers, etc.), the employer must hold a permit to employ third-country nationals from the Department of Labor. Where the third-country national has free access to the labor market (i.e. third-country nationals who are family members of a Cypriot citizen or an EU citizen and long-term residents), the employer is not required to hold an employment permit for third-country nationals from the Labor Department.

The Ministry of Labour and Social Insurance is responsible for establishing policies for the employment of third-country nationals and for granting approvals to employers. The most basic criterion for granting approval to employers for the employment of foreigners is the impossibility of satisfying the employer's specific needs with labour either from the local labour market or from Member States of the European Union.

Foreign interest companies: For companies of foreign interest to employ third country nationals an approval from the Business Facilitation Unit (BFU) operated by the Ministry of Energy, Commerce and Industry is required.

A company of foreign interests who wishes to employ foreign nationals in the Republic of Cyprus must ensure that the foreign nationals obtain a temporary residence and employment permit from the Civil Registry and Migration Department of the Ministry of Interior, which entitles the foreign national to work in a specific occupation and for a period of time that is specified in the permit. If the holder of the permit begins another job, the employment permit ceases to be valid and is considered cancelled.

Strategy for attracting companies to operate and/or expand their activities in Cyprus: The Council of Ministers, with its Decision dated 15.10.2021, approved the New Strategy for attracting companies to operate and/ or expand their activities in Cyprus. The new Strategy is in force since 2.1.2022. According to the provisions of the New Strategy:

- Companies can freely employ any number of highly paid third-country nationals without going through a labour market check.

The existing categories of Directors, Key Personnel and Specialists are maintained for reasons of administrative structure/ statistics.

Specialists are not limited to specific professions or skills.
However, all companies commit to invest 30% of their total staff in Cypriots/EU citizens over a period of five years. In five years, that is after 2.1.2027, the ratio for new hires will be checked. If a company does not adhere to the 70:30 ratio, the case will be evaluated on its own merits and put before the management for an administrative decision.

- The examination time of applications for residence and employment is set at one month.

Non-compete provisions: Under Cyprus Contract law, 'any agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void'.

This provision is subject to three specific exceptions concerning restrictions imposed on the sale of the goodwill of a business and between partners in a partnership and the Supreme Court of Cyprus has acknowledged that only agreements in restraint of trade that fall within one of the specific statutory exceptions can be valid and that Cypriot law is thus a substantial departure from English common law, under which an agreement in restraint of trade is valid if it is reasonable and not injurious to the public.

However, courts in Cyprus have held that during employment, employees owe a duty of loyalty to their employers, which includes the duty not to compete with their employer thus providing an alternative means to the enforcement of non-compete provisions to obtain compensation or interim relief in the Cyprus courts, where, for example there is evidence that an employee made preparations to set up a competing business while still employed.

CZECH REPUBLIC

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CZECH REPUBLIC

LEGAL FOUNDATIONS

The Czech Republic has a civil law system based on written acts of law, taking the form of statutes passed by a two-chamber Parliament and secondary regulations passed by the Government and administrative and local bodies. The international treaties and EU laws take precedence in case of a conflict with Czech national laws.

Case law is traditionally not recognized as a formal source of law. However, decisions from higher courts, such as the Czech Constitutional Court (Ústavní soud), Supreme Court (Nejvyšší soud), and Supreme Administrative Court (Nejvyšší správní soud) are often used as supporting arguments and must be generally considered by lower courts.

Although the Czech Republic comprises of 14 regions (kraje), the entire territory forms one unitary state (i.e., not a federation). Local bodies may regulate only matters of local significance and not in contradiction with national laws.

CORPORATE STRUCTURES

The two most relevant types of companies that start-ups should consider when starting their business in the Czech Republic are the Limited Liability Company (s.r.o., společnost s ručením omezeným) and the Joint-Stock Company (a.s., akciová společnost).

Limited Liability Company (s.r.o., společnost s ručením omezeným)

The most common form of company in the Czech Republic. The requirements of the Limited Liability Company are as follows:

- It requires at least one founder (shareholder), who may either be a natural or legal person. There is no maximum limit for the number of shareholders as well as no restrictions on foreign shareholders.
- Each shareholder must pay a minimum capital contribution of CZK 1 (approximately EUR 0.04). i.e., in the case of a sole shareholder, the minimum registered capital amounts to CZK 1. Before the filing of the application for registration of the company in the Commercial Register, 100% of all non-monetary contributions and at least 30% of the amount of every cash contribution must be paid up. Registered capital must be paid up in full within 5 years from the company's establishment.
- The shareholder(s) must adopt the foundation documents (Memorandum of Association) in the form of a Czech notarial deed.
- For the establishment, the limited liability company must be registered in the Czech Commercial Register.
- In order to carry out business activities, in the vast majority of cases, a relevant business license needs to be obtained. The company which obtains the trade license will be registered in the Trade Licensing Register (Živnostenský rejstřík).

CORPORATE STRUCTURES, CONT'D

Limited Liability Company (s.r.o., společnost s ručením omezeným)

The shareholders are liable for the company's debts only to a limited extent, i.e., they are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligations to the registered capital, pursuant to the record in the Commercial Register (Obchodní rejstřík) at the time when fulfilment (of the debt) was demanded by a creditor.

ADVANTAGES

- Limited liability of the shareholders.
- Flexible structure of corporate governance.
- Minimum capital contribution of CZK 1.

DISADVANTAGES

- The Memorandum of Association must be in the form of a notarial deed.
- Since the ownership interest is not represented by a security by default, contractual equivalents need to be set up for some of the mechanisms commonly used in startup investing.

Joint-Stock Company (a.s., akciová společnost)

The second most popular form of a company in the Czech Republic. The requirements of the Joint-Stock Company are as follows:

- It requires at least one founder (shareholder), who may either be a natural or legal person. There is no maximum limit for the number of shareholders as well as no restrictions on foreign shareholders.
- The minimum registered capital is set to an amount of CZK 2,000,000 or EUR 80,000. Registered capital must be paid up in full within 1 year from the company's establishment. The establishment of the company is effective when 100% of all non-monetary contributions and at least 30% in aggregate of the subscribed shares have been paid up by shareholders.
- The shareholder(s) must adopt the foundation documents (Articles of Association) in the form of a Czech notarial deed.
- For the establishment, the Joint-Stock Company must be registered in the Czech Commercial Register.
- In order to carry out business activities, in the vast majority of cases, a relevant business license needs to be obtained. The company which obtains the trade license will be registered in the Trade Licensing Register.

Participation in a Joint-Stock Company is embodied in shares (type of security). Besides the physical form, shares might be issued as book-entry securities (which is more and more common these days). The company issues shares either in the form of bearer shares or registered shares.

The company's internal organisation may be either dualistic (Board of Directors and Supervisory Board) or monistic (Administrative Board).

ADVANTAGES

- No liability of the shareholders.
- Transferability of the shares may not be excluded.
- Ownership structure is not publicly accessible (unless there is a sole shareholder).

DISADVANTAGES

- The Articles of Association must be in the form of a notarial deed.
- The minimum amount of the registered capital amounts to CZK 2,000,000 or EUR 80,000.

CORPORATE STRUCTURES, CONT'D

Partnerships (osobní společnosti)

The partnerships include **Unlimited Partnership** (v.o.s., veřejná obchodní společnost) and **Limited Partnership** (k.s., komanditní společnost).

In the case of the **Unlimited Partnerships**, the shareholders are not obliged to provide a contribution to the registered capital and the company does not have to create a registered capital. All shareholders are jointly and severally liable to the full extent with their private and business assets.

The **Limited Partnership** has at least one general partner (komplementář) and one limited partner (komanditista). Only the limited partners are obliged to provide contribution to the registered capital, and they are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligations to the registered capital, pursuant to the record in the Commercial Register at the time when fulfilment (of the debt) was demanded by a creditor. The general partner is liable to the full extent with their private and business assets.

Sole Proprietorship

The sole proprietor is a single natural person who is liable to the full extent with their private and business assets. This form of operating business is the most common one in the Czech Republic. In order to carry out business activities, usually a relevant business license needs to be obtained. The proprietor who obtains the trade license will be registered in the Trade Licensing Register (Živnostenský rejstřík). This form is available also to foreign nationals, provided they have adequate residence permits.

ENTERING THE COUNTRY

Non-EU foreign direct investments may be subject to **mandatory clearance by the Ministry of Industry and Trade** (Ministerstvo obchodu a průmyslu). That is to prevent a gain of control over certain strategic sectors or access to sensitive technology and information. The threshold for control includes, among others, controlling at least 10% of a company's voting rights. Mandatory screening also applies to non-EU foreign direct investments that may threaten the security or internal or public order of the Czech Republic.

Foreign direct investments in certain sensitive sectors, such as arms, certain dual-use goods, critical infrastructure, and universal services are always subject to prior approval by the Ministry of Industry and Trade.

Foreign direct investments that are not subject to mandatory approval may be reviewed **ex-post**. The Ministry of Industry and Trade may initiate a screening proceeding up to five years after the completion of the foreign direct investment, with the possibility of retroactively restricting or annulling the investment. In order to avoid being subject to a subsequent mandatory clearance, a foreign investor may choose to apply to the Ministry of Industry and Trade for a **voluntary consultation on the contemplated investment**. The Ministry will carry out a screening and state in advance whether the investment is permissible.

CZECH REPUBLIC

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

Czech trademark law is based on and consistent with EU trademark law. The EU trademark directive has been fully implemented in the Czech Republic with no major deviations.

What is protectable? Any sign which is capable of distinguishing the goods and services of one person from those of another and which can be expressed in the Trademark Registry in a way which enables clear and precise determination of the object of the protection granted to the trademark owner.

Where to apply? Trademarks can be filed either with:

1. The Czech Industrial Property Office (Úřad průmyslového vlastnictví - ÚPV) in cases of national trademarks and of international trademark applications to the World Intellectual Property Organization (WIPO) under the Madrid System, which the Czech Republic is part of; or
2. the European Union Intellectual Property Office (EUIPO) for EU trademarks.

The application of a Czech trademark can be filed digitally via electronic databox submission, online via ÚPV user account, by post, or in person at the Industrial Property Office.

Duration of protection? The registration remains valid for a 10-years-period and may be renewed repeatedly for additional periods of 10 years.

Costs? The administrative fee for applying for a Czech national trademark for three classes of goods and services is CZK 5.000 (approx. EUR 200). CZK 500 (approx. EUR 20) is charged for each additional class of goods and services.

Patents

What is protectable? Patents may be granted for inventions, which are novel, not obvious to a skilled professional, and can be applied in industry.

Where to apply? Patent applications can be filed with either:

1. The Czech Industrial Property Office (ÚPV) in cases of national patents and international patent applications under the Patent Cooperation Treaty (PCT) to the WIPO; or
2. the European Patent Office (EPO) in case of European patents.

The registration procedures before these offices slightly differ from each other, particularly as to costs. Patent protection is valid only per country, meaning that applicant must register (or validate in case of European patents) the patent in each country where protection is sought. The registration procedures before offices differ from each other, particularly as to costs.

Duration of protection? A patent may remain valid and offer protection for a maximum of 20 years from application and must be maintained by annual fees.

Unitary Patent and Unified Patent Court? (Jednotný patent a Jednotný patentový soud) The Czech Republic is party to the Unified Patent Court Agreement, however, it has not yet ratified it for its entry into effect. A unitary patent therefore currently does not offer protection in the Czech Republic and may not be enforced with effect here.

Costs? Administrative fees for applying for Czech patents for up to ten claims start at CZK 5.200 (approx. EUR 200), but the total fees vary depending on several other factors and may be higher. The patent holder must also pay gradually rising annual fees to keep the patent in effect.

CZECH REPUBLIC

INTELLECTUAL PROPERTY

Utility Models

What is protectable? Technical solutions, which are novel, extend beyond mere technical skill, and can be applied in industry. Although similar to patents, utility models are registered without an investigation of whether the technical solution is protectable, so long as the formal requirements of the application are met. A major difference and advantage is also the 6-month novelty grace period for own publications of the technical solution and the fact that a utility model may be granted within just a few months, whereas patent registration proceedings may last up to several years.

Where to apply? A Czech utility model may be applied for with the Czech Industrial Property Office (ÚPV).

Duration of protection? Once registered, a utility model offers protection for 4 years, which can be renewed twice by a period of 3 years each time. In contrast to patents, the maximum term of protection is only 10 years.

Costs? Administrative fees for applying for Czech utility models for up to ten claims start at CZK 500 (approx. EUR 20), but the total fees vary depending on several other factors and may be higher. The fees for each renewal amount to CZK 6.000 (approx. EUR 240).

Topographies of Semiconductor Products

What is protectable? A separate protection and related registry are recognized for topographies of semiconductor products, which are the result of the creative activity of their creator, and which are not common in the semiconductor industry. However, this form of protection is not commonly used in the Czech Republic with last application filed in 1993.

Designs

What is protectable? The visual appearance of products or their parts, such as their outlines, colours, shapes, structure, materials, or decorations.

Where to apply? Design applications can be filed with either:

1. The Czech Industrial Property Office (ÚPV) in cases of national designs.
2. The European Union Intellectual Property Office (EUIPO) to obtain protection throughout the EU in the form of a Community Design. Through the EUIPO, Czech applicants can also file for international protection of their designs in the WIPO Hague System, although the Czech Republic is not a party to the Hague System itself.

Duration of protection? The term of protection is 5 years and can be renewed 5 times for another 5year periods by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? The administrative fee for applying for designs is CZK 1.000 (approx. EUR 40) for a single design application. If renewed, the design holder must pay a rising renewal fee each 5 years.

Geographical Indications and Designations of Origin

What is protectable? Both Designation of Origin (označení původu) and Geographical Indication (zeměpisná označení) protect certain territory that is used to designate goods originating in the territory, where the quality or other characteristics are attributable to that territory. In case of Designation of Origin, a stronger link to the area of origin is required. There is also an equivalent form of protection available at the EU level for food and wine products and from 16 November 2023 also for craft and industrial products (e.g., jewellery, glass, textiles). The national form of protection for the latter will cease to exist on 2 December 2026 unless the registrations are transferred to the EUIPO.

CZECH REPUBLIC

INTELLECTUAL PROPERTY

Domain Names

What is protectable? A previously unregistered name of a domain enabling the hosting of a website accessible to internet users.

Where to apply? Domain names under the Czech top-level domain (.cz) may be registered at CZ.NIC through a registrar.

Duration of protection? Domains are valid for 1 year and can be renewed annually.

Alternative dispute resolution? The Czech Arbitration Court is one of the accredited forums for alternative dispute over domain names, including .cz, .eu and top-level domains such as .com.

The following IP rights cannot be registered but may be protected:

Copyright

What is protectable? Objectively perceivable expressions, which are unique results of an author's creative activity. This definition from the Czech Copyright Act is interpreted in accordance with the approach of Court of Justice of the EU, which affords protection to expressions of author's own intellectual creation. These include various literary, artistic, or scientific works, as well as computer programs (software). Copyright protection is granted immediately upon the creation of a work. No registration or posting copyright notices is required.

Duration of protection? The copyright protection (specifically the economic rights) last for the life of the author and 70 years after their death. However, even after that the works may not be used in any derogatory way.

Exploitation of copyright protected work? The author has exclusive:

- moral rights to the work, including the right to be named and the right of integrity to their work; and
- economic rights to the work, including the right to use the work (i.e., commercially exploit it).

Both moral and economic rights themselves may not be transferred by the author onto third persons. The authors may nevertheless transfer the exercise of their economic rights or issue exclusive or non-exclusive licenses enabling third persons use of the work. The author may also give consent for uses, which affect their moral rights.

Neighbouring/other rights? The Czech Copyright Act recognizes the rights of performing artists, phonogram producers, rights of audiovisual producers, rights of radio or television broadcasters, rights of publishers, and rights of press publishers. Each of these bears similarity with copyright protection, but typically differs in certain aspects, such as duration of protection and transferability.

Right to databases? Separately from copyright, the Copyright Act also offers protection to databases consisting of copyrighted works, data, or other materials, which are arranged in a systematic or methodical way and which are individually accessible. The right may be transferred by the database's creator onto third persons and lasts for a period of 15 years.

Trade Secrets

What is protectable? Information relating to a person's business, which is competitively significant, identifiable, can be priced, and which is not commonly available in the relevant business circles. To be protected, the secrecy of the information must be secured using appropriate measures by its owner.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies. This can be an advantage over registered rights, whose protection expires with time. A disadvantage is that a revelation of a trade secret thwarts its protection going forward.

DATA PROTECTION/PRIVACY

The GDPR applies in the Czech Republic since 25 May 2018. Effective from 24 April 2019, new Act No. 110/2019 Sb., on Processing of Personal Data implements some of the GDPR provisions. However, the Czech legislator has made rather limited use of the opening clauses of the GDPR.

There are several other national laws regulating privacy matters, in particular, Act No. 127/2005 Sb., on Electronic Communications, which implements the EU ePrivacy Directive), and Act No. 480/2004 Sb., on Certain Information Society Services, which implements the EU ePrivacy Directive).

The relevant Czech specifics may be briefly summarized as follows:

- The age for a child's consent in relation to information society services has been lowered from 16 years to 15 years.
- When processing personal data for journalistic purposes or purposes of academic, artistic, or literary expression, the data controller can also fulfil its information obligations by informing the data subject about the identity of the controller in any appropriate way (for example graphically, orally, or in another appropriate way). Information about the data controller's identity is sufficient if the data controller's information about the data subject's rights and other information is publicly available in a way that enables remote access.
- Since 1 January 2022, prior consent is required for setting cookies or using other tracking technologies unless they are (i) used for technical storage, (ii) used to access information for the sole purpose of transmission of a communication over an electronic communications network, or (iii) strictly necessary in order to provide an information society service explicitly requested by the end-user. This rule applies irrespective of whether personal data is processed or not.
- As a rule, electronic direct marketing to individuals is allowed with the individual's prior consent. Consent for sending marketing communication is, however, not required if the data controller has received the contact information from its customer in connection with a previous transaction, the marketing communication concerns similar products or services offered by the same data controller, and the customer has been given the opportunity to opt-out (easily and free of charge) when contact information has been collected for this purpose and in each subsequent marketing communication.

The Czech Office for Personal Data Protection (Úřad pro ochranu osobních údajů) is the competent supervisory authority. In recent years, we have seen an increase in the amount and number of fines imposed. In 2024, the Czech Office for Personal Data Protection will focus its controls on recording of telephone calls, sending marketing communications by providers of delivery services, and data subject access requests. Furthermore, according to its press release, it has proceeded to impose fines on website operators for unlawful use of cookies and other tracking technologies, because these have had sufficient time to bring such use into compliance with applicable rules since the beginning of 2022.

ENTERING THE COUNTRY

There is currently no specific national regulation of AI in the Czech Republic. The upcoming **EU AI Act** regulation will apply.

The Czech Republic has adopted a **national strategy on AI** in 2019, which is currently being updated after a round of public consultations in 2023. Among others, the strategy deals with making financial support available for the further development of AI projects and the AI ecosystem in the Czech Republic.

Legal constraints to the use of AI may include Czech copyright law, in particular with respect to generative AI models. Restrictions may exist with respect to the use of input data, if the respective materials used are protected by copyright. In this respect, the Copyright Act contains **exceptions for text and data mining** under certain conditions. Copyright law may also affect the use of the output material, as copyright protection is unlikely to extend to output generated by AI. This has so far been confirmed in one court decision by the Prague Municipal Court.

EMPLOYEES/CONTRACTORS

Obligations Preceding the Employment Relationship
Before concluding an employment contract, the employer must inform the future employee of the rights and obligations arising from the employment contract, and their working and remuneration conditions. Job applicants must also undergo an occupational health examination administered by the employer and be instructed on occupational health and safety. The contract itself must specify the type of work, the place of performance of work and the work commencement date. It must be concluded in writing.

Mandatory Insurance
The employer is obliged to take out liability insurance against a potential bodily injury caused to the employee or damage arising in connection with an accident at work or occupational disease. It is the employer's responsibility to ensure that the conditions in the workplace meet the requirements of a safe and hygienic workplace.

Registration and Notification Obligations
The employer is obliged to register with several administrative authorities and must register themselves and their employees with the relevant tax office (finanční úřad), social security administration (okresní správa sociálního zabezpečení) and health insurance company (zdravotní pojišťovna). The employer is also obliged to make the payment of income tax or insurance premiums on behalf of their employees to these authorities monthly. Any changes to the information provided must be notified to the respective authority within the time limit laid down by law.

Work for Hire Regime
There is a work for hire regime in the Czech Republic. Unless the parties agree otherwise, the author's (employee's) property rights in the work shall be exercised by the employer in their own name and on their own account. However, the employee's moral rights as author shall remain unaffected.

Termination
Employees are highly protected and can only be terminated for reasons set out by law (e.g., for a breach of their duties, for redundancy or underperformance - subject to further conditions). The law protects some employees from termination altogether during the so-called protection period (e.g., during pregnancy or sick leave).

Agreements on Work Performed Outside the Employment Relationship
As an alternative to the employment contract, it is very popular to conclude the so-called agreements on work performed outside the employment relationship (dohody o pracích konaných mimo pracovní poměr), which reflect the need to perform work activities of a smaller scope that otherwise meet the characteristics of dependent work. These are the **agreement to complete a job** (dohoda o provedení práce) and the **agreement to perform work** (dohoda o pracovní činnosti), where the difference is mostly is the nature of the work obligation. Generally, the same rules apply to these agreements as to the traditional employment relationship, with some exceptions (e.g., the limitations on termination stated above do not apply).

Engaging Contractors
When engaging contractors, the contractual relationship must not be used to disguise an employment relationship. Such an approach is subject to administrative fines and the legal relationship established is considered as employment (i.e., the Labour Code's rules apply irrespective of the formal name of the contract).

CZECH REPUBLIC

CONSUMER PROTECTION

The Czech Republic has an overall high level of consumer protection, which largely draws from EU consumer protection laws. It is regulated across various laws, mainly the **Civil Code** and the **Consumer Protection Act** (Act. no 634/1993 Sb.).

The consumer protection applies to anyone who is acting outside of their business or freelance activity and is entering into contracts or otherwise dealing with an entrepreneur. Relevant rights and obligations include:

- The consumer's right to information regarding the product, service, identity of the entrepreneur, terms of the sale, pricing and past discounts, and the consumer's rights with respect to their purchase;
- Consumer contracts must not contain provisions that are in significant disbalance against the consumer or deviate from statutory consumer protection provisions. Such provision would be void.
- The prohibition of unfair commercial practices and the consumer's right to withdraw from a contract within 90 days if it is subjected such practice.
- The consumer's right to withdraw from a contract concluded at a distance (e.g., online contracts) within 14 days without giving reason;
- The consumer's rights from defective performance and the entrepreneur's obligation to resolve the requests (e.g., by repairing the goods) within 30 days;
- The consumer's right to have their dispute resolved in alternative dispute resolution (ADR) proceedings.

The public body responsible for ADR proceedings is the Czech Trade Inspection Authority (Česká obchodní inspekce – ČOI). The ČOI is also responsible for public compliance oversight and may issue administrative sanctions if breach of consumer protection regulation is found.

TERMS OF SERVICE

Commercial Terms
Generally, the contract may be supplemented by a reference to commercial terms if the terms are either attached to the offer or if they are known to the parties. Provisions of the terms which the other party could not have reasonably expected are not effective unless the other party have accepted them expressly.

Online Terms with Consumers
In case of online contracts with consumers, the general commercial terms (GCT) are binding if the consumer was either provided with the GCT prior to the execution of the contract and the contract includes a clear reference or if the consumer had an opportunity to read them and agreed with them (e.g., by a tick box). The consumer must be provided with the GCT in a text form, which is either on paper or other medium which allows the consumer to keep the terms and make copies (e.g., in PDF).

Prohibited Terms
The GCT and the contract with the consumer may not include any abusive terms, which include for example terms which would exclude the rights from defective performance or liability for damages, allowing the entrepreneur to change the rights and obligations or to withdraw from the contract for convenience without a corresponding right of the consumer, or imposing on the consumer a disproportionate sanction.

WHAT ELSE?

Financial support for startups: Launching a startup may be aided by the many forms of financial support available in the Czech Republic. These are for example offered by government agencies such as CzechInvest, the Ministry of Industry and Trade or the Technological Agency of the Czech Republic, as well as private corporations or NGOs. Further support may be found through numerous innovation centres, incubators and accelerators.

Strict protection: Czech law and courts are rather strict in the protection given to weaker parties, in particular employees and consumers. Entrepreneurs should therefore be mindful of ensuring compliance with regulation in these areas when carrying out business in the Czech Republic.

Trade Licenses: Almost all businesses require a trade license to carry out business in the Czech Republic. Trade licenses are regulated by the Czech Trade Act. It distinguishes between notifiable and permitted trades. The notifiable trades are further divided into vocational, professional, and unqualified trades. The unqualified trades are easy to acquire since no specific know-how must be proven before starting a business. Whereas regulated businesses must file for a vocational, professional, or permitted trade and prove their competence and qualification to act in a specific field, or even a positive statement from relevant government authority.

DENMARK

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DENMARK

LEGAL FOUNDATIONS

Denmark is a civil law country, with only one national jurisdictional layer governing the whole country and no local state, provincial or other laws supplementing the national jurisdictional layer.

The Danish courts are organized in a three-tier system, with 24 local city courts covering the major cities as the default first venue, 2 high courts covering the east and west respectively as the court of appeal and a supreme court which only takes on principled cases.

CORPORATE STRUCTURES

Startups incorporating in Denmark would in almost all cases choose a private limited liability company ("Anpartsselskab" or abbreviated to "ApS"). The shareholders have no liability for the obligations of the ApS, it is uncomplicated to issue shares, warrants, options, and convertibles and it is a well-known corporate form.

An ApS has the lowest minimum share capital of DKK 40,000 (approximately EUR 5,380) vs a public limited liability company ("Aktieselskab" or abbreviated to "A/S"), which has a minimum share capital of DKK 400,000 (approximately EUR 53,800). The main differences between the two are that only an A/S can IPO and become publicly traded and that an A/S must have a board of directors, which is optional for an ApS. Most startups prefer the lower minimum share capital and flexibility of governance structure of an ApS, and can always convert into an A/S in case an IPO is being considered.

It is also possible to incorporate as a limited partnership ("Partnerselskab" or abbreviated to "P/S") with limited personal liability for the shareholders or an unlimited partnership ("Interessentskab" or abbreviated to "I/S"), but neither corporate form is well suited to take in investors and give employees equity, as the shareholders are liable for the obligations of the company (with a limited amount for each shareholder except for one unlimited partner, whose liability must be unlimited for a P/S), the shareholders are taxed directly on their share of the results of the entity and it would be very unusual for a startup to be a partnership.

It is very common to have a personal holding company holding the shares in the startup.

DENMARK

ENTERING THE COUNTRY

The Danish Foreign Direct Investment ("FDI") regulation of 2021 has introduced a mandatory approval process for screening prospective foreign direct investments into certain Danish companies.

The purpose of the FDI-regulation is to secure the Danish nation against foreign investments or activities which may have impact on sensitive areas of importance to the national security and public order. When a foreign investor acquires more than 10 % of the equity, or control though other means, of a Danish company acting within critical sectors, the investor must obtain prior approval before investing.

Particularly sensitive sectors and activities are generally limited to the following:

- Companies in the defence sector.
- Companies in the field of IT security functions or the processing of classified information.
- Companies that produce dual-use products
- Companies within critical technology other than those under nos. 1-3
- Companies and public authorities and institutions within critical infrastructure.

As the FDI-regulation is relatively new, only limited guidance for determining the Danish authorities' administration and practice is available. For more information, please refer to this link from the Danish Business Authority on the FDI scheme in Denmark Foreign investment - Activities covered by the Investment Screening Act | Business in Denmark (virk.dk)

Further, there are a number of regulated industries such as banking, payment services, healthcare, infrastructure, gambling, auditors, lawyers etc. with special rules and permits that need to complied with and obtained.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign, which is able to distinguish the goods and services from other companies, which is neither descriptive of the nature of the goods/services nor other characteristics of them, and which does not mislead consumers or violate the law, can be registered as a trademark.

Where to apply? Trademarks can be filed either with (i) the Danish Patent and Trademark Office, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application can be easily filed via the online platform on https://www.dkpto.dk/ansoeg-om-en-rettighed. The Danish Patent and Trademark Office then reviews the application and registers the trademark, if all minimum trademark requirements as mentioned above are met. The average case processing time is 6 weeks. With publication in the Danish Trademark Gazette, the three months period for filing complaints begins. Within this period third parties can easily and at low costs oppose the trademark.

Duration of protection? The trademark registration remains valid for 10 years from the date of registration if no complaints are filed. It can be renewed every 10 years by paying a fee.

Costs? The price for registering depends on how many countries it must apply to and how many product categories your trademark must be protected for. However, the basic price is around 2000 DKK (EUR 269).

DENMARK

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions that are novel, differs significantly from existing solutions and inventions in the field, and can be applied in industry, can be patented.

Where to apply? Patent applications can be filed with either the Danish Patent and Trademark Office, European Patent Office (EPO) or WIPO, and depends on which and how many countries the patent shall be valid in.

Duration of protection? Up to 20 years, but this requires renewal by paying a fee every year.

Costs? The costs for an application of a patent in Denmark are:

- Basic fee for application: DKK 3000 (EUR 403) Publication: DKK 2000 (EUR 269)
- An annual fee for every year the patent shall remain in force. The annual fee increases every year (1st year DKK 500 (EUR 67) and 20th year DKK 5150 (EUR 692).

In addition, fees of legal and technical representatives apply.

Design

What is protectable? Designs, which is novel and has individual character, can be registered.

Where to apply? National designsmay be registered with the Danish Patent and Trademark Office. To obtain protection throughout the EU, registration can be made with the EUIPO. Via the EUIPO Danish applicants can also file for designs with the WIPO worldwide, as Denmark is party to the Hague System for registering international designs.

Duration of protection? Up to 25 years, if a renewal fee is paid every 5th year.

Costs? DKK 4700 (EUR 632)

The following IP rights cannot be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Danish Copyright Act (e.g., literary and artistic works). Copyright protection is granted at the creation of the work. Therefore, no registration and no label are required.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Trade Secrets

What is protectable? Trade secrets include any business information that has commercial value derived from its secrecy. The information must not be generally known or direct available, the information must have commercial value because of its secrecy, and the information must have been subject to reasonable measures by the business to maintain secrecy. In Denmark trade secrets are protected under the Danish Trade Secrets Act against illegal acquisition, use and disclosure. Trade secrets are also protected outside the law, e.g., in the employment a duty of loyalty applies (even if it does not appear in the contract of employment and also in the employee's spare time) requiring employees to be loyal to their employer and workplace. Disclosure of trade secrets is a disloyal act, which gives the employer a right to compensation from the employee as well as the right to dismiss them. The duty of loyalty also applies after retirement.

Duration of protection? Trade secrets protection can last as long as the information actually remains a secret.

How to keep trade secrets secret? Following methods can be used to protect trade secrets: Get cooperators to sign a non-disclosure agreement, insert confidentiality clausesin employment agreements, introduce encrypting of any valuable business information, use passwords to protect valuable business information, and store valuable business information secure locations.

DATA PROTECTION/PRIVACY

The GDPR (Regulation (EU) 2016/679) entered into force on 24 May 2016 and applies since 25 May 2018, also in Denmark. At the same time, the following Danish acts were enacted to implement the parts of GDPR that were left to the Member States:

- The Data Protection Act (Act No. 502 of 23 May 2018)
- The Danish Law Enforcement Act (Act No. 410 of 27 April 2017 as amended by Act No. 503 of 23 May 2018 and Act No. 506 of 23 May 2018)

The Danish acts include few variations from GDPR, some of the most significant ones being:

- The Data Protection Act and the GDPR also applies to deceased individuals for a period of ten years after their death.
- The Data Protection Act does not apply where it is contrary to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or Article 11 of the EU Charter on Fundamental Rights.
- The Data Protection Act does not apply to the processing of data performed by intelligence services as a part of the parliamentary work (Folketinget) or to the processing of data covered by the Act on information databases operated by the mass media.
- Section 12 of the Data Protection Act governs the processing of personal data in an employment context with a special mention made to the widely used collective agreements in Denmark, but also establishing consent given by the data subject in accordance with Article 7 of the GDPR as a valid legal basis for processing.

The Data Protection Act also extends the scope of the GDPR to credit agencies. Other than this, no special variations of the legal basis for processing are implemented.

The Danish Data Protection Agency (Datatilsynet) is the authority in relation to data protection, overseeing all types of processing relating to the GDPR and the abovementioned acts. The agency also advises, handles complaints and carries out inspections. Most notably, the agency recently imposed a ban on the use of Google Workspace in Elsinore municipality.

The Danish Data Protection Agency has issued a list regarding the processing operations subject to the requirement of a data protection impact assessment, cf. Article 35 (4) GDPR. In some cases, this list must be presented to the Agency before the processing may be commenced.

The Agency has published several guidelines on compliance with the rules, mostly in Danish, but also in English, including guidance on the use of cloud services, standard contractual clauses setting out the rights and obligations of the data controller and the data processor to ensure compliancewith Article 28(3) of the GDPR, a template for joint data responsibility agreements, and accreditation requirements for GDPR code of conduct monitoring bodies and certification bodies.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Denmark. There are however national laws that presuppose the use of digital solutions, including AI-solutions, in certain public sectors, such as the public health sector.

Furthermore, the general restrictions under data protection and copyright law apply to the use of generative AI:

- The principles of data protection law, in particular Art 22 GDPR for automated individual decision-making, must be observed in relation to the development, testing and operation of AI. The use of AI must not lead to any legal or similarly serious effects to the data subjects without any human intervention. An automated decision-making process is for example assumed if a company uses results of an AI-application without any further quality-check and assessment.
- National copyright restrictions are particularly relevant to the training of AI-models because of the required use of copyrighted material for the purpose of training the AI-model to produce new creations (text and datamining). According to the Danish copyright act, text and datamining is only legal under the condition that there exists a legal access to the copyrighted material and that the copyright owner has not explicitly reserved the right to use the material in an appropriate manner.

Several Danish national authorities have published legal guidances regarding the use of generative AI. These include:

- The Danish Agency for Digital Government has published guidances tailored to both public authorities and private corporations. These guidances provide inspiration for what to consider when deciding which types of generative AI tool are relevant for the organization, how to compose internal guidelines for the organization's use of generative AI, and how to support responsible use through organization frameworks.
- The Danish Data Protection Agency has published a guidance tailored to public authorities. The guidance explains the basic considerations that public authorities should be aware of before they start developing AI solutions. These include fundamental data protection principles such as lawfulness of processing, transparency and data protection impact assessments.
- Local Government Denmark (KL) has published a guidance tailored to municipalities. The guidance provides general guidelines about the use of publicly available services with generative AI such as ChatGPT.

It is also worth noting that the upcoming AI Regulation (EU) will apply to Denmark. The AI Regulation will be relevant in many aspects of the use of AI and will apply parallel with GDPR. Furthermore, I should be noted that the public and administrative laws, human rights law as well as specific sector legislation in Denmark apply to AI- solutions depending on the sector in which the AI-solution will be used, e.g., health care, employment, finance etc.

Denmark is currently in the process of establishing a regulatory sandbox in which public sector bodies and private corporations can test digital solutions based on AI.

DENMARK

EMPLOYEES/CONTRACTORS

Employees

Generally, the Danish mandatory rules covering employees are less burdensome and strict than in many other countries as the Danish "flexicurity" system lets employees and companies terminate the employment relationship with relatively little risk and bureaucracy, which in turn leads to a more dynamic job market where employers are more willing to hire new employees as the downside is relatively limited.

The Danish Salaried Employees act primarily protects the employees with more than 1 year seniority against unjustified dismissal (with normal penalties for breach in the range of1-3 months worth of salary, butwith up to 12 months if the dismissal was the result of discrimination as per Danish Non-Discrimination Laws).In addition, other regulation entitles the employee to e.g. maternity/paternity leave, paid vacation andother benefits.

IPR generated by an employee in connection with their work for an employer is by default assigned to the employer without further compensation or documentation needed.

Employees can only be subject to non-compete clauses in specific circumstances where the employee has a special position justifying the non-compete, the employee is provided with some specific information in writing, and where the employee is being paid both a lumpsum compensation for the non-compete clause (irrespective of whether the non-compete is waived by the employer in connection with the employmentterminating). The compensation is either 40 % or 60% (depending on the length of the obligation) of the employees' normal monthly salary in the time period where the non-compete is in force. The non-competemay not be longer than 12 months if only a non-compete is enforced (if on combination with a non-solicit clause, then maximum is 6 months). Non-solicitation of customer clauses is regulated by the same set of rules as non- compete, however, with minor variations. Usually startups choose to not have non-competes/non-solicitation of customer clauses when realizing how complicated the rules are and that there is mandatory compensation to the employee, including a lump-sum payment which is payable even if the employer waives the non- compete/non-solicitation of customer clauses.

Contractors

Contractors are not subject to any specific regulation in Denmark, so the parties are free to agree to the terms that can be negotiated with respect to salary, termination notice, place of work, non-compete, transfer of IPR etc.

The main things to be aware of when hiring contractors in Denmark is (i) be sure to have the generated IPR properly transferred to the company and (ii) limit the risk of the contractor being reclassified as an employee due to the nature of the relationship between company and contractor, with the risk of not being able to enforce non-compete, short termination notice and having to pay the contractor various employee benefits.

Working environment

The Danish regulation on working environment in the workplace is typically as strict as or stricter than rules in other EU countries. It is the company's responsibility as an employer to ensure compliance with the working environment rules and to ensure that the employees can carry out their tasks without compromising healthand safety in the workplace e.g. by giving them the necessary instructions. Find more information on the Working Environment Authority's webpage for foreign service providers; Workplace Denmark.
The WEA has a priority focus on five key areas within working environment:

- Preventing accidents
- Preventing muscle and skeleton problems
- Psychological working environment
- Chemical safety
- Social dumping

CONSUMER PROTECTION

Consumer purchases are governed by special rules in Denmark. Purchases are in scope when the trader is acting for business-related purposes within the trader's profession, while the customer (consumer) is not. Foreign entities are considered to market themselves to Danish customers, inter alia, when the price of the product is indicated in Danish kroner (DKK).

The Danish Consumer Contracts Act (Act No. 1457 of 17 December 2017) builds on the Consumer Rights Directive and regulates the information that the consumer must have before and after a sale, including the trader's identity, contact information, terms and conditions, special withdrawal forms and arrangements for handling complaints.

The Danish Sale of Goods Act (Act No. 237 of 28 March 2003) (which corresponds to the Consumer Sales Directive) stipulates a two-year legal warranty for consumers, meaning the consumer has a right to complain about faulty goods for a period of two years, regardless of whether the product was sold online or in a physical store. The protection is mandatory, as most consumer-protective laws in Denmark. Special rules apply to digital content/services, including products received on an ongoing basis, e.g., on a subscription basis.

The Sale of Goods Act governs the concepts of defects, burden of proof, withdrawal, and guarantee. Most notably, consumers have a general right of withdrawal for 14 days when an item is sold online or by telephone, meaning that the consumer can withdraw from the contract, without specifying any reasons.

If a foreign entity establishes in Denmark, the consumer has a right to receive a guarantee in writing, according to the Danish Marketing Practices Act (Act No. 427 of 25 April 2017).

The relevant authorities, in relation to most consumer protection laws, are located within The Ministry of Industry, Business and Financial Affairs, including the Danish Competition and Consumer Authority and the Danish Consumer Board of Appeal. The Ombudsman, however, is an independent authority with the power to bring civil and criminal actions on behalf of complainants and to request the police to initiate investigation and prosecution. The Ombudsman has issued several guidelines in English, including on marketing and advertising, distance selling and publication of user reviews.

Consumer protective legislation is enforced in several other areas, such as financial services, acquisition of property, credit agreements and payment services.

DENMARK

TERMS OF SERVICE

There isn't a single law that determines how Terms of Service or other contracts should be drafted. Danish law operates with a principle of freedom of agreement, as long as it does not contravene with mandatory legislation (includingspecial rules on consumerprotection).

However, there is different requirements for the content of the Terms of Service in the Danish Consumer Contracts Act, the E-commerce Act, the Danish Marketing Practices Act, the Contracts Act and the Danish Sale of Goods Act. As regards contracts the area is largely based on practice, but inspiration can also be found in various standard contracts as for example K02-K04 and D17 in the IT industry.

Terms of Services are generally enforceable in Denmark. In relation to consumers relevant consumer protection laws also apply.

Particularly the following clauses in terms and conditions or other contracts are usually held invalid or changed:

- Certain exemptions of liability
- Huge Agreed penalties linked to non-competition clauses and non-solicitation clauses
- Clauses that cause a significant imbalance in the rights and obligations of the parties to the detriment ofthe consumer
- Any other unreasonable clause or clause at variance with the principles of good faith to enforce it

WHAT ELSE?

Branch in Denmark

A foreign company is obliged to register or establish a branch in Denmark if the company wants to carry out its business directly in Denmark, cf. the Danish Companies Act (Act No. 1952 of 11 October 2021) section 349. The branch may not conduct any business until registered. The following activities does not require a foreign entity to register in Denmark or establish abranch (the list is not exhaustive):

- Taking orders, where invoicing etc. is performed in the home country
- One-off contracts or other activities of limited duration in relation to a single contract partner
- Administrative work concerning entry (market analysis and preparation)

Initially, it is up to the foreign entity itself to assess whether a branch needs to be set up. The following factors are indicators of the need for registration:

- Large-scale activities
- Activities from an address in Denmark Invoicing from an address in Denmark
- Complaints are to be directed at an address in Denmark

The Danish Government funds an initiative called Start-up Denmark for innovative and scalable businesses with a clear growth potential, which provides a gateway for foreign entrepreneurs (non-EU/EEA resident) wishing to establish in Denmark. The program includes a startup visa scheme (work and residence permits) and free access to guidance from public business experts. The program does not provide funding, but startups based in Denmark can apply for a range of public and private funding schemes.

Public Procurement

All public entities, including independent public enterprises, are obligated toadhere to the relevant rules on public procurement. The Public Procurement Act (Act No. 1564 of 15 December 2015) implementsthe Procurement Directive and regulates the conclusion of publiccontracts above certainthresholds. The thresholds can be found on the Danish Competition and Consumer Authority's webpage.
The Tender Act (Act No. 1410 of 7 December 2007) regulates the awarding of public works contracts below the threshold.

The Danish Complaints Board deals with complaints, in accordance with the Act on the complaints board (Act No. 593 of 2 June 2016). In addition to the abovementioned acts, several consolidation acts are in place to implement the Utilities Directive, the Concession Directive and the Defense and Safety Directive.

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LEGAL FOUNDATIONS

Ecuador operates under a legal system primarily based on civil law principles, influenced by the Napoleonic Code, deriving from the Spanish colonial era. In a civil law system, statutes and regulations form the backbone of legal provisions, are enacted by the legislature or other governing bodies authorized by each country's constitution.

One of the fundamental pillars of the Ecuadorian legal system is the Civil Code (Código Civil), governing civil relationships and obligations, including contracts, property, family law, and inheritance. Additionally, specialized codes and laws regulate specific areas such as labor, commercial transactions, and administrative procedures.

Jurisdiction in Ecuador is divided among various judicial bodies, comprising ordinary and specialized courts, each playing a distinct role in the administration of justice.

- **Ordinary Courts:** Ordinary courts are categorized by subject and geographical jurisdiction (including civil, criminal, family, and traffic courts).
- **Provincial Courts:** Provincial Courts function as intermediate appellate courts in specific Ecuadorian regions, overseeing appeals from Ordinary Courts within their respective provinces. These courts play a vital role in facilitating access to justice and ensuring uniformity in legal interpretation and application within their jurisdictions.
- **National Court:** National Courts are responsible for adjudicating extraordinary appeals and possesses the authority to judge the most prominent figures in the country.

On the other hand, Alternative dispute resolution (ADR) mechanisms play an increasingly important role in Ecuador's legal system. These out-of-court procedures aim to resolve disputes in a more flexible, cost-effective and expedient manner compared to formal court litigation.

The most commonly used ADR methods in Ecuador are mediation and arbitration. The increasing caseloads in courts coupled with lengthy delays provide a major impetus to develop efficient ADR mechanisms that can enhance access to justice.

Overall, Ecuador's jurisdictional framework is designed to ensure access to justice and effective resolution of disputes through a tiered system of courts with varying levels of authority and specialization. Each level of the judiciary plays a crucial role in upholding the rule of law and safeguarding the rights of individuals within Ecuadorian society.

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CORPORATE STRUCTURES

Ecuadorian Law provides the following forms of companies:

Simplified Joint Stock Companies (Sociedades por Acciones Simplificadas)

The Ecuadorian Simplified Stock Company (Sociedad por Acciones Simplificadas) is a new type of commercial company regulated by the Superintendence of Companies, that can be formed by one or several natural or legal persons through a simplified procedure. It has become an alternative for the formalization of entrepreneurial ventures and new businesses.

ADVANTAGES

- Can be incorporated with a single shareholder
- Broad corporate purpose: these types of companies can engage in any permitted activities.
- They can be incorporated through private documents.
- Legal representation: Legal representation falls upon a single individual, eliminating the need for the positions of “General Manager” and “President”
- Share Capital: They do not require a minimum of capital for their constitution.
- If incorporated electronically, it can be completed within 48 hours.

DISADVANTAGES

- Non-tradable Stocks: The shares of the SAS cannot be listed on the stock exchange, with the exception of bond issuances.
- They are prohibited from engaging in activities related to financial operations, securities market activities, insurance, and other activities deemed special activities.
- Electronic incorporations limit the inclusion of specific clauses in the constitution.

Foreign shareholders must appoint an Ecuadorian representative with power of attorney and the company's legal representative must hold a valid visa.

Corporations (Compañías or Sociedades Anónimas)

In Ecuador, companies operating as corporations are known as "Compañías Anónimas" (S.A.). This business structure features capital divided into negotiable shares, formed by shareholder contributions. Shareholders are only held liable for the amount of their shares.

ADVANTAGES

- Limited liability of the shareholders
- There is no minimum or maximum number of shareholders for its constitution and operation
- They can be incorporated through private instruments
- The shares will always be nominative and may be common or preferred. The former confer all the fundamental rights recognized by law to the shareholders, while the latter will have no voting rights but may confer special rights regarding dividend payments and the liquidation of the company

DISADVANTAGES

- Minimum share capital of US 800$
- These companies must have a General Manager and a President who will hold legal, judicial, and extrajudicial representation, either jointly or subsidiarily.
- The constitution of the company must be registered in the Mercantile Register.
- The appointments of the directors must be registered at the Mercantile Register.

Financial, stock market, and insurance companies must incorporate and amend their bylaws by public instruments.
Foreign shareholders must appoint an Ecuadorian representative with power of attorneyand the company's legal representative must hold a valid visa.

CORPORATE STRUCTURES, CONT'D

Limited Liability Companies (Compañías de Responsabilidad Limitada)

In Ecuador, companies operating as corporations are known as "Compañías Anónimas" (S.A.). The partners of the limited liability company are only liable for corporate obligations up to the amount of their individual contributions.

ADVANTAGES

- Limited liability of the shareholders
- There is no minimum number of members for its constitution.
- They can be incorporated through private instruments
- The company's shares can be transferred freely among the LLC's partners.
- The transfer to third parties requires the unanimous approval of the capital shares.
- The shares will always be nominative and may be common, that is that they confer all the fundamental rights recognized by law to the shareholders.

DISADVANTAGES

- Minimum share capital of US 400$
- These companies must have a General Manager and a President who will hold legal, judicial, and extrajudicial representation, either jointly or subsidiarily.
- A foreign company issuing bearer shares is prohibited from being a partner of an LLC.
- An LLC. can have a maximum of 15 partners.
- The constitution of the company must be registered in the Mercantil Register.
- The appointments of the directors must be registered at the Mercantile Register.

Limited Liability Companies may only participate in the securities market by issuing bonds.
Foreign shareholders must appoint an Ecuadorian representative with power of attorney and the company's legal representative must hold a valid visa.

ENTERING THE COUNTRY

Foreign investors looking to invest in Ecuador should be aware of several rules and restrictions related to taxation and foreign exchange transactions:

- General Income Tax Regime: Companies established in Ecuador, as well as branches of foreign companies domiciled in the country and permanent establishments of non-domiciled foreign companies, are subject to a 25% tax rate on their taxable income. There are also specific regimes, such as the RIMPE regime for individuals and companies with annual gross income up to $300,000, which have different tax rules and exemptions.
- Special Regimes: Certain industries or activities, like sports betting operators, have their own unique tax rules. For example, sports betting operators are subject to a 15% tax rate on their total income.
- Exemptions and Tax Benefits: There are various exemptions and tax benefits available, such as exemptions for dividends and profits distributed by resident or non-resident companies in Ecuador to other national companies, or for income generated from the occasional sale of real estate by individuals for residential purposes.
- Deductions: Businesses can benefit from deductions, such as 150% deductibility for sponsoring artistic and cultural proposals or 100% deduction for expenses on private medical insurance and/or prepaid medicine for their employees.
- Value Added Tax (VAT): VAT applies to the transfer of ownership or the import of tangible personal property, with a general rate of 13%. However, certain products and services are zero-rated, including most food products, medicines, and health services.
- Foreign Exchange Exit Tax: A tax applies to the transfer of foreign exchange abroad, with the current rate at 3.50% (expected to be 2% from December 1, 2023). There are exemptions for specific payments made abroad, such as for the amortization of credits or dividends distributed by certain companies.
- Income Tax Credit for ISD Paid: Payments made for foreign exchange exit tax on the import of raw materials, inputs, and capital goods can be considered as income tax credit for the payment of income tax for the year and the following four years.

Foreign investors should carefully review these rules and restrictions to ensure compliance and to optimize their investment strategy in Ecuador.

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

Ecuador has a well-developed Intellectual Property Law that protects trademarks, patents, copyrights, trade secrets, and industrial designs through the National Intellectual Rights Service (SENADI). Additionally, Ecuador has the Organic Code of the Social Economy of Knowledge (COESCCI). Despite facing specific challenges, Ecuador ensures compliance with regional and global standards, primarily in alignment with the Andean Community.

Industrial property rights fall into two main categories: industrial property and copyright. Industrial Property protects invention patents, utility models, and designs under invention rights. Also, Industrial Property protects trademarks, which include commercial slogans, trade names, distinctive signs, geographical indications, and plant varieties. Conversely, copyright law focuses on safeguarding artistic creations and ensuring they can be marketed exclusively by our clients, even from their initial stage.

One convenient and cost-effective solution for registering and managing trademarks worldwide is the Madrid System. Unfortunately, Ecuador is not part of this system.

Distinctive Signs

What is protectable? The legal framework governing intellectual property in Ecuador defines trademarks and distinctive signs as any sign capable of distinguishing products or services in the market and susceptible to graphic representation. These signs can include words, images, symbols, logos, sounds, smells, and colors defined by shape. There are six classifications for distinctive signs and trademarks: certification marks, collective marks, three-dimensional marks, trade names, commercial slogans, and geographical indications. Each type of mark applies to different situations and products.

Where to apply? The registration of a trademark in the National Service of Intellectual Rights (SENADI) grants various benefits and rights to the holder, including the exclusive use of the sign, the right to act against third parties using the mark without authorization, protection throughout the territory of Ecuador, and priority in countries of the Andean Community of Nations. It also allows restricting the importation of goods with similar marks that may infringe intellectual property rights. The trademark holder can also grant licenses, charge royalties, franchise their product or service, and assign rights to the mark to third parties.

Duration of protection? A trademark registered in Ecuador has an initial protection of 10 years, but this period is renewable indefinitely.

Costs? The application fee for trademarks in Ecuador is USD $208,00.

Invention Patents, Utility Models, And Industrial Designs

What is protectable? A patent is a type of legal protection granted to products or methods that are new, original, and useful in industry. Utility models refer to new forms, designs, or arrangements of parts of an object that improve its performance, use, or manufacture, providing technical advantages that it did not have before. Registering a utility model must be new, innovative, and have industrial applications. Industrial designs relate to the outward appearance of a product, including its shape, colors, and textures, if they do not change its purpose or utility.

Where to apply? Invention patents, utility models, and industrial designs are registered in the National Service of Intellectual Rights (SENADI).

Duration of protection?

- Patent rights last 20 years from registration with the competent authority and cannot be extended afterward.
- Utility model rights last for ten years from the date of application and cannot be renewed.
- Industrial designs are not renewable and are protected ten years from the application date.

Costs?

- Patent rights registration fees in Ecuador are USD $495,33. Title fees: USD 204,00.
- Utility model registration fees in Ecuador are USD $136,00. Title fees: USD 136,00.
- Industrial design registration fees in Ecuador are USD $526,46. Title fees: USD 136,00.

INTELLECTUAL PROPERTY, CONT'D

Co[yrights

What is protectable? Copyrights are like a kind of "property" belonging to both a work's creator and artist. Under Ecuadorian law, various creations can be protected, from literary works to scripts for film or theater, including process manuals, software, codes, projects, plans, models, and architectural and engineering designs.

Where to apply? Copyrights are registered in the National Service of Intellectual Rights (SENADI).

Duration of protection? These rights are cared for and safeguarded throughout the author's life and up to seventy (70) years after their death. On the other hand, if a legal entity (Foundation, Company, etc.) registers these rights, their protection extends for seventy (70) years from when the work is disclosed.

Costs? Registration fee for Copyrights in Ecuador is USD $20,00 if they are database records, audiovisual works, and computer programs, and if they are other kinds of Copyrights, the cost is USD 12,00. There are additional fees if there is the need to register contracts, documents, or accessory modifications by Resolution No. 002-2019-DG-NT-SENADI.

IP and Fintech

In the Fintech industry, software is protected under Copyright laws, unlike other forms of Industrial Property. Computer programs or software are eligible for the same legal protection as literary works. The National Service of Intellectual Rights (SENADI) provides mechanisms for software protection through registration as works. The holder of the rights to the software, the producer, holds the ownership of the rights to the software, which grants them the exclusive right to prevent third parties from making successive versions of the software and derivative software. Fintech business models and software cannot be protected through patents as they do not meet patentability requirements. Additionally, the employee or contractor who develops the software owns the intellectual property rights unless stated otherwise in the assignment contract. The owner or any legitimate software user has the power to make necessary adaptations for its use, provided that these adaptations are not intended for commercial purposes.

ECUADOR

DATA PROTECTION/PRIVACY

Ecuador has implemented the Organic Law on Personal Data Protection (LOPDP), which came into effect on May 26, 2023, following its publication through the Fifth Supplement No. 459 of the Official Registry. This legislative framework was influenced by the European Union's General Data Protection Regulation (GDPR) and establishes a comprehensive regime for the protection of personal information.

The LOPDP sets legal frameworks for the collection and processing of data, necessitating companies to uphold high levels of preparedness, suitability, and adherence to regulatory standards. Some key aspects of the LOPDP include:

- **Data Controller Obligations:** Data controllers must inform the Data Protection Authority about various aspects of data processing, including database identification, processing purposes, security measures, and data retention periods.
- **Legal Bases:** Various legal bases authorize data controllers to process personal data, including consent from data subjects, compliance with legal obligations, court orders, missions of public interest, and pursuit of legitimate interests.
- **Data Subject Rights;** Data subjects have rights to access, rectify, erase, and object to the processing of their personal data, as well as the right to data portability. The response time is within a 15-day period.
- **Special Categories:** Sensitive data, data concerning children and adolescents, health data, and data concerning individuals with disabilities receive special treatment under the law.
- **Data Processor Responsibilities:** Data processors must implement technical and organizational measures appropriate to the nature and context of the processing and formalize the controller-processor relationship through a contract specifying responsibilities.
- **Record of processing activities:** Mandatory for controllers with over 100 employees, with exceptions for smaller entities engaged in occasional processing or processing involving special data categories.
- **Data protection by design and by default:** Controllers must implement measures that prioritize privacy, ensuring that only essential personal data are processed for specific purposes.
- **International Data Transfers:** Compliance with protection standards established by the Data Protection Authority is required. Uncovered international transfers require authorization from the Data Protection Authority.
- **Data Protection Officer (DPO):** Mandatory for public sector entities and for activities requiring systematic control due to volume, nature, scope, or purposes. Voluntary appointment is encouraged for other entities as a best practice. DPOs must meet specific requirements.
- **Data Breach Notification:** The LOPDP establishes the obligation to notify the competent authorities and affected data subjects of any breach of personal data security within a specific timeframe.
- **Penalties:** Violations are classified as minor and severe for data controllers and processors. Sanctions may include fines proportionate to the turnover of the infringing entity.
- **Data Controllers and Processors Offenders Registry:** The LODPD regulations require a public registry, maintained by the Data Protection Authority, detailing offenders' names, violations, and imposed sanctions for data controllers and processors.
- **Competent Authority:** The Superintendence of Personal Data Protection is responsible for overseeing compliance with the law, investigating complaints, and imposing sanctions for violations.

Currently, the President of Ecuador has submitted a shortlist of candidates to the CPCCS (Council for Citizen Participation and Social Control) for the decision-making process regarding the appointment of the supervisory authority, who will serve as the Data Superintendent within the Data Protection Superintendence. Once the best candidate for the superintendent is selected, the sanction regime will be established and come into effect.

ECUADOR

ARTIFICIAL INTELLIGENCE

Currently, Ecuador lacks a specific national regulatory framework for Artificial Intelligence (AI). Nevertheless, general restrictions are applicable, particularly in areas such as data protection. The government is in the process of establishing a National Committee on Artificial Intelligence Ethics, involving both the public and private sectors with a keen interest in these matters. The aim is to formulate guidelines based on international regulations for the future development of AI laws in Ecuador.

- From an international perspective, the principles of data protection law, particularly Article 22 of the GDPR regarding automated individual decision-making, must be upheld in the development, testing, and operation of artificial intelligence. This entails ensuring that the use of AI does not result in any legal or similarly significant effects for the data subject without human intervention.
- Ecuadorian jurisdiction, adhere to the Data Protection Law, which aligns with the fundamental principles of the GDPR but is tailored to the Latin American context. This legislation includes Article 20, which grants individuals the right to not be subject to decisions based solely or partially on automated assessments. This article specifically addresses automated profiling, representing a practical application of AI tools. Individuals have the right to request an explanation, submit observations, request evaluation criteria, and challenge the decision. However, this right does not apply when the decision is necessary for a contract, authorized by law, based on explicit consent, or poses no serious risks.

The Ecuadorian Government initiated the creation of an Artificial Intelligence Ethics Committee within the Ministry of Telecommunications and Information Society, with a focus on promoting AI regulation to avoid barriers to innovation that jeopardize trade secrets and competencies. Its goal is not to establish regulation but guidelines to promote the use of AI in Ecuador. This will be done based on international guidelines as they emerge.

AI stands out as a key driver of innovation, with numerous funding programs currently supporting AI-based business models in the country.

EMPLOYEES/CONTRACTORS

Foreign entities engaging employees or contractors in Ecuador should be aware of the following key points:

General: Labor relations in Ecuador are governed by the Labor Code, which outlines the rights and obligations of employers and employees. The code specifies that an employment relationship is established when there is the provision of lawful and personal services, remuneration, and subordination. The current unified basic salary is $460. Additionally, Ecuadorian legislation recognizes various types of contracts, including individual employment contracts, collective employment contracts, and special contracts.

Contract Types: Ecuador recognizes various types of contracts, including individual employment contracts, collective employment contracts, and special contracts. These contracts must comply with the requirements set forth in the Labor Code.

- **Employment contract:** An employment contract is an agreement where one person agrees to provide services to another for a fixed remuneration. It can be express or implied, by salary or day, indefinite or for a certain work, and individual or group-based.
- **Indefinite Employment Contract:** This contract is indefinite, with a 90-day probationary period allowing termination without compensation. Termination after the probationary period must adhere to the Labor Code.
- **Emergency Special Contract:** This contract allows either party to terminate it early, with the worker entitled to pending remuneration and other benefits. It allows for part-time or full-time work up to 40 hours per week, with a minimum weekly rest of 24 consecutive hours, and can last up to 1 year, renewable once.

EMPLOYEES/CONTRACTORS, CONT'D

Benefits of the Contract:

- Thirteenth Salary: Equivalent to one-twelfth of the annual remuneration, payable by December 24.
- Fourteenth Salary: Equivalent to a unified basic salary, can be received cumulatively until March 15 or August 15.
- Profit Sharing: Employers must distribute 15% of net profits to workers, with 10% paid directly and the remaining 5% distributed based on family burdens.
- Working Hours: Maximum of eight hours per day, not exceeding forty hours per week, unless provided otherwise by law.
- Annual Vacations: Workers entitled to 15 days of annual vacation, including non-working days.
- Maternity leave and other permits: Female workers are entitled to 12 weeks of paid leave for childbirth, extendable by 10 days; fathers receive 15 days of paid leave, which can extend to 20 or 23 days.
- Social Security: Employers and workers contribute to the Ecuadorian Institute of Social Security (IESS), with employers contributing 11.15% of remuneration and workers 9.45% of earnings. This Mandatory General Insurance provides coverage for illness, maternity, work risks, old age, death, disability, and unemployment.

Work for Hire Regime: Ecuador does not have a specific "work for hire" regime. Instead, the terms of employment are typically outlined in the employment contract between the parties.

Termination of Employment: There are restrictions on the termination of employees in Ecuador. The Labor Code sets out specific causes for termination, such as mutual agreement, completion of work, or fortuitous events. Employers must adhere to these causes and follow the proper procedures for termination to avoid legal issues.

Furthermore, it's important to note that in Ecuador, there is the possibility of hiring individuals as professional services, where the labor benefits established by law do not apply. This type of contract, known as a "professional services contract," allows companies to hire independent professionals for specific projects without incurring the costs associated with hiring traditional employees. However, it is essential to ensure that this type of contract complies with the labor and tax regulations in force in the country to avoid potential legal conflicts.

CONSUMER PROTECTION

In Ecuador, consumer protection is governed by several laws, including the Organic Consumer Defense Law, the Civil Code, and the Electronic Commerce Law. It's important for foreign entities to understand key aspects such as:

Main obligations and requirements:

- Advertising Regulations: Misleading or abusive advertising that deceives consumers is prohibited.
- Price Transparency: Prices and basic commercial information must be displayed publicly, with the final price clearly indicated.
- Invoicing: Suppliers of goods and services must issue invoices to support transactions.
- Warranty and Repairs: Consumers have the right to repairs or changes within 90 days of receiving goods or services.
- Concerning goods or services rendered: repairs, deterioration: Consumers have a right to, in 90 days after the reception of goods or services, for repairs or changes without any cost.
- Promotions and Offers: Promotions must be clearly documented, indicating duration, previous prices, and new prices or benefits.
- Contractual protection: See Terms of Service and adhesion contracts
- Credit System: If goods or services are acquired through a credit system, the total amount to be paid must be clearly stated.
- Debt Collection: Harassment or intimidation in debt collection processes is prohibited.
- Prohibition of speculation.
- Health and Safety: Suppliers must inform consumers of potential risks related to their products or services.

CONSUMER PROTECTION, CONT'D

Consumer rights:

- Consumers have the right to life, health, and safety, access to basic services, goods of optimal quality, freedom of choice, transparent information, non-discriminatory treatment, education, reparation, compensation for damages, and access to administrative and judicial protection.
- Consumer associations, established under the Consumer Defense Law, can be formed by individuals or legal entities (non-profit) to protect consumer rights, requiring registration with the Ministry of Social Welfare, legal status, at least 50 members, and a non-commercial focus.

Penalties:

- The Ombudsman's Office is responsible for addressing user complaints for non-compliance, but lacks authority to impose sanctions or collect fines despite the law setting a pecuniary sanction of up to $100,000 for certain violations. However, consumers can seek compensation through civil actions for damages, including free repairs, replacement, or refunds, within a 12-month statute of limitations.

TERMS OF SERVICE

In Ecuador, online service terms are carried out through adhesion contracts. These contracts are standardized and pre-formulated agreements by one contractual party that must comply with specific and mandatory requirements according to the Organic Law for Consumer Protection. The law details the following characteristics in article 41, the adhesion contracts must have legible characters and do not contain documents or texts as an appendices. In relation to the language, all the online terms of service must be written in Spanish, and must not contain prohibited clauses, that entail renunciation of rights or exempt the service provider from liability, such as the following:

- Impose the mandatory use of arbitration or mediation, unless the consumer expressly manifests their consent;
- Allow the provider to unilaterally vary the price or any contract condition
- Solely authorize the provider to unilaterally resolve the contract, suspend its execution, or revoke any consumer rights arising from the contract, except when such resolution or modification is conditioned on the consumer's attributable breach;
- Include blank spaces that have not been filled in or used before the contract is subscribed, or are illegible.

In general, the prohibited clauses avoid any other stipulation that causes defenselessness to the consumer or is contrary to public policy and good customs.

Concerning the early termination of an adhesion contract in services such as telephony, prepaid medicine, satellite or cable television in Ecuador, it is not allowed to impose fines, penalties, or sanctions on the consumer. In the case, the service provider stipulates any of these clauses, the law automatically places no legal effect against the consumer. It is important to add that the services effectively rendered up to the date of unilateral termination of the contract, as well as the amounts owed for the acquisition of goods necessary for the provision of the service, must be paid to the service provider. The effects of the early termination will be executed only after fifteen (15) days of the formal notification among consumer and provider.

And finally, regarding the refund, exchange, prepayment and credit or credit card procedure. This is a right that must be exercised by the consumers within a period of fifteen (15) days following the receipt of the goods or services[1]. The effect of the right of refund will be the immediate termination of the service.

[1] Ley del consumidor Art 45

WHAT ELSE?

Decentralization and Autonomy: Ecuador recognizes political, administrative, and financial autonomy for decentralized autonomous governments, including municipal governments. This means that municipalities have the authority to create, modify, exempt, or eliminate fees and special contributions for municipal services and improvements.

Municipal Taxes: Municipal or metropolitan taxes in Ecuador include property taxes (urban and rural), alcabala tax (tax on the transfer of real estate), vehicle tax, registration and patent tax, tax on public spectacles, tax on profits from the transfer of urban properties, gambling tax, and the 1.5 per thousand tax on total assets. Each of these taxes has specific rules and rates set by municipal councils.

Compliance and Reporting: Foreign entities should be aware of compliance requirements, including the obligation to keep accounting records and comply with tax laws. Compliance with regulations related to economic crimes, money laundering, and financial controls is particularly important.

Chambers of Commerce: While membership in chambers of commerce is not mandatory, they can provide benefits and serve as a platform for resolving disputes and promoting trade interests.

Superintendent Offices and Regulatory Agencies: Various superintendency offices oversee different sectors of the economy, such as companies, insurance, banks, and economic competition. Compliance with their regulations is crucial to avoid sanctions and ensure compliance with the legal framework.

ESTONIA

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ESTONIA

LEGAL FOUNDATIONS

Estonia follows the civil law system. It relies on a codified system of written law. The fundamental legal framework of the country is rooted in various acts and statutes that outline rights, obligations, and regulations.

The legal structure of Estonia consists of several important jurisdictional layers that contribute to the country's governance and legal order. These layers include:

- Constitutional Jurisdiction: At the highest level, Estonia's legal system is guided by its Constitution, which establishes the fundamental principles of the state, defines the structure of government, and guarantees universal rights and liberties to its citizens.
- Legislative Jurisdiction: The Riigikogu (Estonian Parliament) is the supreme legislative body responsible for enacting laws and statutes. Legislation covers a wide range of areas, including civil, criminal, commercial, and administrative law.
- Executive Jurisdiction: The executive power of the government is responsible for implementing and enforcing laws. This includes various ministries, government agencies, and local administrative bodies.
- Judicial Jurisdiction: The judiciary is an independent body which ensures the interpretation and application of laws. Estonia's court system includes district courts, circuit courts, and the Supreme Court. Additionally, specialized administrative and constitutional courts address specific legal matters.
- Local Jurisdiction: Local governments in Estonia have certain powers and responsibilities, particularly in areas such as local governance, education, and social welfare. Local governments operate within the framework of national laws.
- European Union Jurisdiction: As a member of the European Union, Estonia is also subject to EU laws and regulations. EU law has a significant impact on various aspects of Estonia's legal system, including trade, competition, and consumer protection.

ESTONIA

CORPORATE STRUCTURES

Estonia is quite known for its corporate-friendly business environment and digital infrastructure, making it an attractive location for startups.

In accordance with Estonian legislation, the ensuing company classifications are as follows: general partnership, limited partnership, private limited company, public limited company, or commercial association. The detailed requirements and definitions of corporate structures in Estonia are described in the Commercial Code. The most common corporate structures used for startups in Estonia are Private Limited Company (Osaühing or "OÜ") and the Public Limited Company (Aktsiaselts or "AS").

Corporate structures differ from each other mainly in terms of the following features:

- the amount of the required share capital;
- the principles of the partners' liability;
- management bodies and decision-making processes of the company, right of representation;
- ease of organizing daily activities (e.g. accounting);
- company auditing requirements.

Private Limited Companies (OÜ – Osaühing)

A private limited company is a company that has share capital divided into private limited company shares. This is the most common corporate structure in Estonia, as it offers limited liability protection for shareholders, without putting their personal assets at risk. An OÜ has no minimum required share capital, which gives the founders the freedom to decide on the share capital based on their planned activities and the actual needs of the company. A private limited company may be founded by one or several natural or legal persons. The mandatory management body of private limited company is the management board. A supervisory board is mandatory only if this requirement is specified in the articles of association of the company. The highest management level of a limited liability company is the meeting of shareholders. Shareholders can also hold management positions. Setting up an OÜ can be done electronically or through a notary. The process usually takes no longer than one working week.

Public Limited Companies (AS – Aktsiaselts)

A public limited company is designed for larger businesses, particularly those seeking to raise capital through public offerings or engage in more complex business operations. A public limited company has the capital requirement at least 25 000 euros. A public limited company may be founded by one or several natural or legal persons. Like private limited companies, the shareholders of AS are not personally responsible for the company's obligations. However, a public limited company can offer its shares to the public, enabling it to raise capital from a wide range of investors, which is why a public limited company is a subject to more strict regulatory requirements. The highest governing body of the AS is the general meeting of shareholders. Having a management board and a supervisory board is also mandatory in case of public limited companies. Additionally, a public limited company must appoint an auditor. The AS must be registered only through a notary.

Both corporate structures offer distinct advantages and requirements, allowing businesses in Estonia to choose the one that aligns with their size, goals, and capital needs. It's essential to adhere to the legal processes and requirements to ensure a smooth establishment and operation of the chosen corporate entity.

ESTONIA

ENTERING THE COUNTRY

In continental Europe, foreign and domestic investments are generally treated equally. . However, in 2023, Estonia adopted the Foreign Investment Reliability Assessment Act. The purpose of said act is to secure the Estonian nation against foreign investments or activities which may have impact on sensitive areas of importance to the national security and public order.

The Foreign Investment Reliability Assessment Act plays a significant role in regulating foreign investment in Estonia. This Act focuses on evaluating the reliability of foreign investors and the potential impact of their investments on national security, public order, and vital economic interests.

Under this act, foreign investors looking to enter Estonia should be prepared for a thorough assessment process. This assessment aims to ensure that the investment aligns with Estonia's strategic objectives and does not threaten any essential sectors. Specifically, the evaluation process considersthe circumstances related to the foreign investor, the economic activity of the target company or part of the target company,the relevant economic field, and lastly the possible impact of the foreign investment on critical areas of the economy.

Additionally, foreign investors should be aware of sector-specific regulations and restrictions that may apply. In strategic sectors, the state must ensure that new capital does not threaten national security and essential services, whether in the fields of energy, transportation, medical supplies, media, telecommunications or information technology. Those are also the most background-checked group of businesses that could be affected by the law.

Maintaining open communication and cooperation with relevant authorities is crucial throughout the investment journey. Foreign investors are encouraged to engage with local agencies and provide necessary information to facilitate the assessment process and address any concerns that may arise.

The foreign investment permit is issued by the Consumer Protection and Technical Regulatory Authority, having previously coordinated it with the Foreign Investment Committee. This committee consists of representatives of various ministries and other government agencies, including security authorities. A foreign investment permit is not granted if it threatens the security or public order of Estonia or another member state of the European Union.

In conclusion, entering Estonia as a foreign investor requires careful consideration of the Foreign Investment Reliability Assessment Act and sector-specific regulations. By following these rules and collaborating transparently with local authorities, foreign investors can navigate the investment landscape successfully, thereby helping to diversify the Estonian economy, open new export markets and bring new knowledge and jobs to Estonia.

Taxation: In Estonia, income tax is paid only upon distribution of profits (e.g., dividends) or when equivalent payments (transfer prices, payments unrelated to business, costs of entertaining guests, fringe benefits) are made by resident legal entities. The corporate tax rate is a flat 20%, calculated as 20/80 from taxable net payment. However, resident legal entities can use a lower tax rate (i.e., flat rate of 14%) in the fourth year of dividend payout to the extent of the average taxed dividend of the previous three years (the tax rate on the net amount is 14/86). It should be noted that if dividends are paid to a resident or non-resident natural person, an additional 7% income tax must be withheld from the payment. The period of taxation is the calendar month.

In turn, undistributed profits of legal entities are not taxed. Therefore, the Estonian corporate income tax system differs from the tax systems of other countries in the sense that tax liability is transferred from the moment the profit is made to the time it is distributed.

ENTERING THE COUNTRY, CONT'D

Upcoming tax changes: From 2025, the corporate income tax rate will be increased to a flat tax rate of 22% (the tax rate on the net amount will be 22/78). The lower dividend flat rate of 14% and the 7% withholding tax on dividends paid to a resident or non-resident natural person will be abolished. Therefore, from 2025, dividends will only be taxed at the flat tax rate of 22%.

Exceptions: Dividends received from a legal entity located in an EEA Member State or Switzerland are not subject to income tax upon further distribution if at least 10% of the shares or votes of this legal entity belong to an Estonian legal entity. Further distribution of dividends received from a third company is also not taxable if the Estonian legal entity owns at least 10% of the shares or votes in this legal entity and income tax has been withheld from the dividends in this third country.

Fringe benefits and expenses not related to business: Employers operating in Estonia are obliged to pay taxes on fringe benefits paid to their employees/ members of the management board/long-term contractual workers. Fringe benefits are any goods, services, remuneration in kind or monetarily appraisable benefits which are given to a person. Fringe benefits are subject to income tax of 20% (the tax rate on the net amount is 20/80) and social tax of 33% (social tax is levied on an amount that includes the value of the fringe benefit and the income tax calculated on this amount). Expenses not related to the legal entity's business are subject to income tax of 20% (the tax rate on the net amount will be 20/80).

Gifts, donations and entertainment costs: Legal entities resident in Estonia who give gifts, donate or incur expenses related to the entertainment of guests must pay income tax at the rate of 20/80. However, there are certain exceptions and Estonian legal entities can donate money and transfer goods tax-free to certain non-profit organizations and foundations. When donating to specific non-profit associations and foundations, legal entities can choose between two tax exempt limit values, either: 1) 3% of the wages paid or; 2) 10% of the profit for the previous financial year.

Transfer pricing: If the value of a transaction between a resident legal entity and a related legal entity differs from the value of similar transactions between unrelated legal entities, the tax authority may base the assessment of income tax on the value of transactions applied by unrelated legal entities under similar conditions. The Estonian Tax and Customs Board may at any time request additional documents from the legal entity regarding the structure of transactions with related parties. The tax authorities generally give only 60 days for submission of necessary documentation.

Other distributions: Income tax should be paid by resident legal entities upon reduction of the share capital or contributions, upon redemption or return of shares or contributions, or on any other payouts which exceed the monetary and non-monetary contributions made to the equity of the company.

Exit tax: Income tax is levied on the difference between the market value and the balance sheet value of assets taken out of Estonia at the time of exit, if an Estonian resident legal entity transfers these assets to a permanent establishment in another Member State of EU or a third country.

Controlled foreign companies: A controlled foreign company is a non-resident legal entity in which Estonian resident legal entity, alone or together with its related persons, owns more than 50% of the voting rights or capital, or has the right to receive more than 50% of the profits. In Estonia, income tax is levied on the non-distributed income of a controlled foreign company (CFC) arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. This rule is not applicable in case the CFC's accounting profits do not exceed EUR 750 000, and non-trading income does not exceed EUR 75 000.

ENTERING THE COUNTRY, CONT'D

Thin capitalisation: Thin capitalisation rules apply when borrowing costs are excessive. Borrowing costs are considered excessive if they exceed EUR 3 million in a single financial year and 30% of the interest, tax and profit before depreciation. The exceeding part is subject to income tax of 20% (the tax rate on the net amount will be 20/80).

Personal taxation: A flat tax rate of 20% applies to all items of income derived by a resident natural person. The period of taxation is the calendar year.

Taxable income: There are the following types of taxable income of a resident natural person: 1) income from employment; 2) business income (i.e., self-employed income); 3) gains from transfer of property; 4) rental income and royalties; 5) interest; 6) dividends (if not yet taxed at the company´s level); 7) pensions, scholarships and grants, benefits, awards and gambling winnings; 8) insurance indemnities and payments from pension funds.

Deductions from income: The following deductions are available to resident natural persons from their income: 1) basic exemption (i.e., 654 euros in a month and it decreases as a person's income increases); 2) increased basic exemption upon provision of maintenance to child (starting from the second child); 3) increased basic exemption for spouse; 4) housing loan interest; 5) training/educational expenses; 6) gifts and donations made to specific non-profit associations and foundations; 7) contributions to the supplementary funded pension.

Table of basic exemption:
There is a basic tax exemption for resident natural persons in amount of 7848 euros per year (i.e., 654 euros in a month). Basic exemption applies if annual income of a natural person is up to 14 400 euros. If annual income is up to 25 200 euros, then basic exemption can be calculated according to the following formula: 7848 – 7848 ÷ 10 800 × (income amount – 14 400). If annual income is above 25 200 euros, then basic exemption is 0.

Annual Gross Income (EUR)	Basic Exemption
Up to EUR 14 400	EUR 7848
Between EUR 14 400 and 25 200	Reduction of basic exemption by using a specific formula: 7848 – 7848 ÷ 10 800 × (income amount – 14 400)
More than EUR 25 200	No right to basic exemption

Social security tax: Employers operating in Estonia pay social security tax at a rate of 33% (13% is used for financing public health insurance and 20% for public pension insurance) on the employee's gross earnings. The social security tax must be paid on wages as well as on fringe benefits. The period of taxation is a calendar month. In 2023, the minimum social tax liability for the employer is 215,82 euros per month.

Upcoming tax changes: From 2024, the right to deductions from income in case of child maintenance and for the spouse, as well as the deduction of housing loan interest will be abolished.
From 2025, the personal income tax rate will be increased to a flat tax rate of 22%. In addition, regressive basic tax exemption will be abolished, and a single basic tax exemption will be established at 700 euros per month or 8 400 euros per year.

ENTERING THE COUNTRY, CONT'D

Value-Added Tax: The standard VAT rate is 22% of the taxable value of the goods or services.

VAT rate of 9%: A reduced rate of 9% is applied to 1) books and educational literature (both on a physical medium and electronically), 2) medicinal products, 3) accommodation services or accommodation services with breakfast.

VAT rate of 5%: The VAT rate on press publications (both on a physical medium and published electronically) is 5%.

VAT exemption with right of input VAT deduction and with no right of input VAT deduction: The VAT rate of 0% (i.e., exemption with right of input VAT deduction) applies to exports, the intra-community supply of goods, certain supplies of services. Some other services are exempt with no right of input VAT deduction. For example, universal postal services, health services, service provided by dental technicians, insurance services, certain financial services, etc.

The obligation to register for VAT purposes arises when a person's taxable supply exceeds 40,000 euros as calculated from the beginning of a year. The taxable period is one calendar month. The deadline for submitting a VAT return is the 20th day of the month following the taxable period.

Upcoming tax changes: From 2025, accommodation services and accommodation services with breakfast are taxed at 13% VAT rate instead of the current 9%, and the VAT rate for press publications will rise from 5% to 9%.

INTELLECTUAL PROPERTY

Estonia provides a robust framework for intellectual property registration and protection, covering trademarks, patents, copyrights, industrial designs, utility models, and trade secrets. IP can be registered and protected through various means. Here are the main types of registrable IP and their registration methods:

Trademarks

Object of protection - You can protect the following trademark types: word mark; figurative mark; shape mark; position mark; pattern mark; colour mark; sound mark; motion mark; multimedia mark; hologram mark. What can not be registered is the following: signs which indicate the characteristics of goods or services and which are indistinguishable; signs which have become customary in the particular field of activity or in general business practice; signs which are of such nature as to mislead the consumer; genuine and ordinary images of products or packages; images or symbols widely used in the service area; signs which are contrary to public order or accepted principles of morality.

The scope and duration of legal protection of a trademark is determined by which trademark you have registered for which goods and services. Firstly, the chosen sign must be distinctive and available. The protection conferred by trademark law offers its author a monopoly of use for a period of 10 years since the filing date of the application for registration. The term of legal protection of a trademark may be renewed at the request of the proprietor for ten years at a time. The owner of a registered trademark is obliged to use it to designate the goods and services indicated in the registration. If the trademark is not used within five years without a valid reason, an interested person may challenge the exclusive right to this trademark.

INTELLECTUAL PROPERTY, CONT'D

Trademarks, CONT'D

How to obtain protection & associated costs – Trademark applications can be filed either with (i) the Estonian Patent Office for national protection, (ii) the European Union Intellectual Property Office (EUIPO) for unitary protection in the EU or (iii) by designating Estonia in the application for international registration under the Madrid System through the World Intellectual Property Organization (WIPO) in which Estonia is a party.

In order to obtain legal protection nationally in Estonia, an application for trademark registration must be submitted to the Patent Office in Estonian. The application can be submitted electronically through the e-services of the Patent Office or by filling out the trademark registration application form, which can be printed out and brought or sent to the reception of the Patent Office. The amount of the state fee to be paid depends on the number of classes of goods and services in which the applicant wishes to protect the trademark. There is a state fee of 145 EUR for one class of goods or services and an additional fee of 45 EUR must be paid for each additional class. You can carry out the procedures of registering trademarks yourself or through patent attorneys. Persons whose place of residence, seat, or operating commercial or industrial company is not in Estonia must appoint a patent attorney as their representative, except for only filing the application.

In Estonia, inventions can be protected with a patent or a utility model.

Patents

Object of protection – An invention can be protected with a patent. An invention is patentable if it is new, involves an inventive step and is susceptible to industrial application. An invention is considered to be new if it does not form part of the state of the art. The state of the art is held to comprise all the technical information made available to the public by means of written or oral description, by use, or in any other way, in any part of the world before the filing date of a patent application. An invention is considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. An invention is considered as susceptible to industrial application if it can be manufactured or used in economy.

The object of the invention may be a device, a method, a substance and/or a combination thereof. The Estonian Patent Office verifies the novelty, inventive step and industrial applicability of an invention in order to determine its patentability. Computer algorithm or program, scientific theory, plan of economic and thought activities, rules and methods, building and land design, etc. are not the object of an invention.

How to obtain protection – In order to register a patent, it is necessary to submit a patent application to The Estonian Patent Office in Estonian. When applying for a patent, the following key documents must be submitted: patent application; description of the invention, in which the invention must be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention; patent claim; drawing or other illustration, if applicable; short summary of the nature of the invention. Documents related to a patent application must also be submitted in Estonian. Related documents can be submitted in a foreign language if the patent applicant submits a translation into Estonian within a specified time limit. The requirements for drawing up and finalising documents are presented in the legal act "Content and Formal Requirements for Patent Application and Procedures for Submission to the Patent Office".

A person whose residence or location is outside the Republic of Estonia may file a patent application themselves or using a patent attorney; further proceedings related to the patent application procedure are conducted only via the patent attorney.

INTELLECTUAL PROPERTY, CONT'D

Patents, CONT'D

The scope, cost and duration of protection – The date on which the application arrives at the Patent Office is considered its filing date. The patent application is published in the Estonian Patent Gazette 18 months after the filing of the patent application. The state fee for filing a patent application has to be paid no later than in two months' time from the date the patent application was filed. The fee for filing an application is EUR 225. If the patent claim consists of more than ten clauses, an additional payment of EUR 13 per clause must be paid from clause 11 onwards. The registration of inventions in the patent register is subject to the payment of a fee of EUR 96. The patent shall be valid for 20 years in the Republic of Estonia. To maintain the validity of the patent application and patent, it is necessary to pay a state fee for each year of validity. State fees for maintaining the validity of a patent application, patent, and European patent can be found on the website of the Patent Office.

Utility Models

Registrations for utility models are processed more quickly and economically than patents and require a lower standard of inventive step. Though, utility models only provide up to ten years' worth of protection and are not suitable for protecting a complex invention.

How to obtain protection – Applications for registering a utility model are also submitted to The Estonian Patent Office. When applying for the registration of a utility model, the following basic documents must be provided: request for the registration of a utility model; description of the invention, in which the invention must be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention; the claims of the utility model; a drawing if necessary; an abstract of the invention in Estonian and English. The registration application is submitted in Estonian. The name of the invention in the registration application of the utility model and the abstract describing the invention must be in both Estonian and English.

The applicant must guarantee that the utility model meets the criteria of novelty and level of inventiveness. The Estonian Patent Office will still carry out a state-of-the-art search and forward the search report to the applicant. Based on the search report, the applicant may implement improvements and changes within two months from the release of the report, however this is not obligatory.

Duration of protection & associated costs – The sum of the state fee in the case of a natural person or solely natural persons is EUR 26, whereas in the case of a legal person a state fee in the sum of EUR 105 must be paid. The registration of a utility model is valid for four years from the date that the application was submitted. It is possible to extend the validation of the registration for four years, and an additional two years thereafter. It is necessary to pay a state fee for the extension of the registration.

INTELLECTUAL PROPERTY, CONT'D

Industrial designs

Object of protection – Industrial designs can also be registered with the Estonian Patent Office, offering protection to the visual appearance of a product. Industrial design pertains to a two or three-dimensional exterior design of a product, which can be formed, either separately or in combination, from the shape, configuration, ornamentation, colours, texture and material. It is also possible to register an exterior design of a product as an industrial design, but a two-dimensional exterior design, e.g. a pattern of a cloth, design of a website, a logo etc. can also be protected.

The industrial design must be new and distinguishable and based on the ability to be produced industrially or artisanally. It is possible to file for protection for one industrial design, its variants or a set of industrial designs.

How to obtain protection – An application must be submitted to the Estonian Patent Office along with the reproductions of the industrial design. The application can be submitted online. Therefore, documents to be included with the application for registration are the following: industrial design registration application; reproduction of the industrial design; power of attorney, if the applicants have chosen a common representative and not all applicants have signed the application; supporting documents of the declaration of priority, in cases where the priority is being applied for.

Fees and duration of protection – For a registration of an industrial design to be assessed, a state fee in the sum of EUR 105 must be paid if submitted by a legal person. For applications containing variants of an industrial design, an additional fee of EUR 26 must be paid for each subsequent variant starting from the third variant.

Procedures relating to the registration of an industrial design can be performed by the applicant or a patent attorney. A person with no residence, seat, or commercial or industrial enterprise operating in Estonia must authorise a patent attorney as a representative, except when applying for the registration.

The rights of the owner of a registered industrial design are valid for five years. This validity can be extended for a period of five years, every five years, for a total period of 25 years by paying a fee.

FYI – When applying for the legal protection of an industrial design, a formal registration system is used in Estonia. This means that the Estonian Patent Office examines the compliance of any formal requirements when registering an industrial design, but does not examine the industrial design as to its novelty, individual character, industrial or handicraft applicability, nor that the person filing the application has the right to do so. The applicant is responsible for the compliance of these requirements.

INTELLECTUAL PROPERTY, CONT'D

Here are the main types of non-registrable IP in Estonia:

Copyright

Object of protection – Pursuant to the Copyright Act, "works protected by copyright" means any original results in the literary, artistic, or scientific domain which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author's own intellectual creation.

How to obtain protection – Copyright protection is granted automatically upon the creation of an original work, such as literary, artistic, musical, or software creations. Copyright applies without any official registration or formalities. Although registration is not required, it can serve as evidence in case of disputes.

Duration of protection – copyright generally applies during the author's lifetime and for 70 years after their death.

The substance of protection – The author of a work is guaranteed a number of moral and economic rights. The moral rights of an author are inseparable from the author's person and non-transferable (though licensable). The economic rights of an author are transferable as single rights or a set of rights for a charge or free of charge.

For example, the author has the moral right of authorship, right of author's name, right of integrity of the work, right of disclosure of the work, etc. The author also has the economic right of reproduction, distribution, alteration, public performance, and communication of the work, the right of making the work available on the Internet, etc. Use of the object of rights may, within certain limits, take place without permission and payment of a fee. These are the so-called "free use" cases set out in Chapter IV of the Estonian Copyright Act.

In general, the moral and economic rights of the author belong to the author of the work. Legal entities own copyrights only in the cases prescribed by law, employment relationships being one such case. The author of a work created under an employment contract in the execution of their duties shall enjoy copyright in the work but the economic rights of the author to use the work for the purpose and to the extent prescribed by the duties shall be transferred to the employer, unless otherwise prescribed by contract.

Trade Secrets

What is protectable – Trade secret regulation is set forth in the Restriction of Unfair Competition and Protection of Business Secrets Act, according to which a trade secret is information which meets the following requirements: (i) it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question (ii) it has commercial value because it is secret; (iii) it has been subject to reasonable measures under the circumstances, by the person lawfully in control of the information, to keep it secret. If the aforementioned criteria are met, the trade secret is protected automatically.

Unlawful acquisition, use and disclosure of business secrets – The acquisition of a business secret without the consent of the person lawfully in control of it is unlawful if such acquisition involves: unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, under the control of the person lawfully in control of the business secret, containing the business secret or from which the business secret can be deduced; or any other actions which, under the circumstances, are deemed contrary to honest commercial practices.

Duration of protection – Trade secrets in Estonia do not have a set term of protection. Instead, they are protected as long as they remain confidential and not generally known or easily accessible to the public. If a trade secret becomes widely known or easily accessible to the public, it can no longer be considered a trade secret and is no longer protected.

DATA PROTECTION / PRIVACY

Legal Framework

The primary legislation is the GDPR, which sets out the rules for the processing of personal data within the EU, including Estonia.

Estonia implemented the GDPR in 2018 through the Personal Data Protection Act (PDPA), which is closely aligned with the GDPR and does not derogate from it in areas such as the appointment of a data protection officer, data breach notification, or data subject rights. Though, the PDPA contains certain supplementary provisions. For example, it specifies the age of consent for the processing of children's personal data for the provision of information society services; states that the consent of a data subject remains valid for ten years after death and 20 years if the data subject was a minor; regulates the protection of natural persons when personal data is processed by law enforcement authorities in relation to the prevention, detection and prosecution of offences and execution of punishments.

In addition to GDPR and the PDPA, Estonia does not have specific national laws or regulations that would complement and specify certain aspects of data protection. Though, privacy, data protection, and cybersecurity-related rules are also found in some other legal acts, such as the Public Information Act and the Cybersecurity Act.

The Estonian Constitution sets out a fundamental right to privacy (eg, everyone has the right to the inviolability of private and family life).

Data Protection Authority

The Estonian Data Protection Inspectorate (DPI) is the national supervisory authority responsible for enforcing data protection laws in Estonia. The DPI exercises state and administrative supervision over compliance with the requirements set out in: (i) the PDPA and legislation established on the basis thereof; (ii) the GDPR; and (iii) other acts that govern the processing of personal data.

The Inspectorate makes sure that people's personal data is sufficiently protected and also ensures that information on the activity of institutions (public information) is sufficiently available. The right to the protection of personal data and the right to public information are also constitutional rights in Estonia.

In exercising such state supervision, the DPI may implement the measures provided for in Article 58 of the GDPR. In addition, the DPI may make enquiries of electronic communications undertakings to obtain the data required to identify an end user from the identification tokens used in public electronic communications networks, except for data relating to the transmission of messages, if it is impossible to identify the end user in any other way.

To date, the DPI has issued warnings with the potential for fines for non-compliance which relate to, for instance, video surveillance, the DPI's request for information, and the right to rectification. Furthermore, the DPI has issued guidance on automated decision-making, video surveillance, and the main responsibilities of data controllers.

DATA PROTECTION / PRIVACY

Data Protection Officer (DPO)

Organizations that process a large amount of personal data or engage in certain types of processing activities are required to appoint a Data Protection Officer.
Data controllers and data processors must appoint a data protection officer (DPO) in the following cases:

- The processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
- The core activities of the data controller or processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
- The core activities of the data controller or processor consist of processing on a large scale of special categories of data pursuant to Article 9 or personal data relating to criminal convictions and offences referred to in Article 10 of the GDPR.

If a data controller or processor fails to appoint a DPO, then according to Article 83(4)(a) of the GDPR and Section 62 of the Personal Data Protection Act, the supervisory authority may impose a fine of up to €10 million or, in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Although fines connected to data breaches are the lowest in the Baltics and the focus of the government has not really been on data protection then it is still a very important topic in Estonia due to the focus on secure and user-friendly digital services

According to Article 5 of the GDPR, the key principles for data processing are as follows:

- Lawfulness, fairness and transparency: Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject;
- Purpose limitation: Personal data shall be collected for specified, explicit and legitimate purposes, and not further processed in a manner that is incompatible with those purposes. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
- Data minimisation: Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which the data is processed;
- Accuracy: Personal data shall be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that is inaccurate, having regard to the purposes for which it is processed, erased or rectified without delay;
- Storage limitation: Personal data shall be kept in a form which permits the identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed. Personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of the data subject;
- Integrity and confidentiality: Personal data shall be processed in a manner that ensures the appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;
- Accountability: The data controller shall be responsible for, and be able to demonstrate compliance with, the abovementioned principles.

These principles must be applied regardless of the type of data being processed.

Special Regimes in Specific Sectors

In regards to financial privacy, the Credit Institutions Act sets out certain rules on information that is subject to banking secrecy and imposes certain restrictions on the rights of data subjects. For example, in case of the processing of personal data for the purpose of preventing payment fraud and market abuse.

The Money Laundering and Terrorist Financing Prevention Act also imposes certain limitations on the rights of data subjects. For example, in the context of cooperation and information exchange for anti-money laundering purposes between obliged persons.

ESTONIA

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Estonia, yet. Therefore, AI regulation will, in the furure, most likely very closely align with the upcming EU AI Act (as has been the case with the GDPR). However, the general restrictions, particularly under data protection and copyright law do apply.

Legal Framework
In 2017, Estonia's national digital adviser, Martin Kaevats, proposed the adoption of a special AI law aimed at granting a legal personality to AI, with corresponding amendments to liability insurance legislation. An AI report released after that, however, recommended adopting the same approach to a legal framework for AI as that of the European Union (EU). According to the chief information officer of the Estonian government, "The European Union has proposed a framework for the implementation of responsible artificial intelligence. Estonia aims to build on the EU framework, not to start creating and arguing for it itself."

Accordingly, in May 2019, the government of Estonia signed the Organization for Economic Co-operation and Development's (OECD's) Principles on Artificial Intelligence, which reflected the principles of human-centric and ethical AI development embodied in the EU approach and recommended by the OECD in their Recommendation of the Council on Artificial Intelligence.

In Summary
The national AI strategy relies on four pillars: boosting AI in the government and in the economy, skills along with research and development, and the legal environment. In terms of the legal environment, according to the Estonian strategic plan for AI, there is no need for fundamental changes of the Estonian legal system. However, to enable the efficient use of AI, certain legislative amendments shall be made in the future.

As part of the national AI plan, Estonia is bringing a government-as-platform approach to boost the uptake of AI in both the public sector and the wider economy. Planned activities include, for example, a public e-course to raise awareness about AI, along with creating sandboxes for testing public sector AI applications. The private sector will have the opportunity to use designated innovation and development grants for developing machine learning based solutions.

As to the start-up scene it is worth noting that AI is one of the main innovation drivers in Estonia and there are currently numerous funding programs (i.e. incubators) for AI-based business models.

EMPLOYEES/CONTRACTORS

When a foreign entity wants to engage workers in Estonia, there are several things which need to be considered.

Employees vs. independent contractors: Work may be performed under various types of contracts, the most prevalent being employment contracts, contracts for services, and authorization agreements. Understanding the distinction between employees and independent contractors, as well as the legal regulations that apply to each, is crucial. In Estonia, the classification of an employee is primarily based on the relationship between the employer and the worker, rather than the type of contract. This means that even if a contract states that a worker is an independent contractor, they may still be classified as an employee under Estonian law.

However, in some cases, distinguishing an employment contract from other service contracts can be complex, and the presumption is in favour of an employment relationship. The Employment Contracts Act in Estonia states that if an individual carries out work for another person that is reasonably expected to be done only for remuneration, it is presumed to be an employment contract. This means that in the event of a dispute, the employer must prove that it is a contract other than an employment contract under the law of obligations. Therefore, it is recommended to give careful consideration regarding which type of contract is most suitable for the legal relationship that will be established.

EMPLOYEES/CONTRACTORS, CONT'D

Concluding the contract: Prior to commencing work, it is compulsory for both the employer and employee to finalize a written employment agreement, unless the duration of the employment is aptly short. This agreement should outline the specific terms and conditions of the employment relationship. Most importantly, the contract should cover aspects such as wages, working hours, job responsibilities, and the designated workplace. The law mandates (and depending on the industry, there may be collective agreements) that certain conditions be communicated in writing by the employer to the employee prior to the commencement of work. Additionally, the employment agreement should include the organizational work policies.

Failing to adhere to this requirement can create difficulties in proving the agreed terms, potentially leading to disputes concerning wages, job responsibilities, and other conditions.

For contractors, as they are not covered by the Employment Contracts Act, the rights and obligations of the parties may vary significantly. Thus, it is important to negotiate the terms carefully, as there are no specific laws that protect the rights of the weaker contracting party.

Employment Permits: If a foreign entity plans to involve employees from outside Estonia, (for example, if it plans to send its own employees to work in Estonia), it may need to obtain work permits, residence permits, or other formalities for the employees, depending on their nationality as well as the duration and purpose of their stay. Short-time employment in Estonia is permitted to a foreigner who stays legally in Estonia on a temporary basis (for example, on the basis of a visa or visa-free) and whose employment has been registered with the Police and Border Guard Board before the employment commences. Short-term employment can be registered for up to 365 days during a 455-day period. For longer stays, the foreigner may be issued a residence permit for working pursuant to the Aliens Act. This residence permit is intended for someone to come to Estonia to work for a specific employer and is initially issued for up to 5 years.

Termination of Employment Agreements: In Estonia, employers must have a valid reason for terminating an employee's contract and must provide a written declaration of termination stating the reasons. The notice period for termination must be respected. This period thus varies based on the duration of employment. Acceptable reasons for termination include redundancy, repeated intoxication, breach of working duties or instructions, theft, fraud, or other acts that result in a loss of trust. Violating the terms of the Employment Contracts Act when terminating an employment relationship can lead to substantial compensation claims and further complications. However, when it comes to independent contractors, the contract can be terminated according to the terms set forth by both parties or if the contract breaches any legal regulations, or if there is no valid agreement in place, legal principles will dictate the termination process.

Intellectual property rights in labour relations: In Estonia, intellectual property rights in labour relations are governed primarily by the Estonian Copyright Act. According to this law, the author of a work created under an employment contract in the execution of one's direct work duties shall enjoy copyright in the work, but the economic rights of the author to use the work for the purpose and to the extent prescribed by the work duties shall be transferred to the employer unless otherwise prescribed by contract. An author may use the work created in the execution of his or her direct work duties independently for the purpose prescribed by the work duties only with the prior consent of the employer, whereupon mention must be made of the name of the employer. In such a case, the author is entitled to receive remuneration for the use of the work.

In addition to the regulations in the employment contract, in the case of, for example, more important IT development projects, it may be reasonable to conclude a separate intellectual property agreement with the employee. But when the employee is an independent contractor, it is crucial to have a clear and well-defined agreement in place. This agreement should outline the ownership and rights to any intellectual property created by the independent contractor throughout their work. This is important because, unlike traditional employees, independent contractors usually retain the rights to any intellectual property they create unless specifically specified otherwise in a written agreement. Therefore, without a proper agreement, the company may not have the legal right to use or commercialize the work produced by the independent contractor.

Please note, employment law is a highly intricate and tightly regulated domain; therefore, it is strongly recommended to seek assistance from a local advisor before taking any actions. Failing to comply with regulations may lead to significant financial consequences and reputational damage.

ESTONIA

CONSUMER PROTECTION

General: Estonian Consumer Protection Act (Tarbijakaitseseadus) and the Act of Obligations are the primary legislations governing consumer rights and protection in Estonia. The Consumer Protection Act outlines the rights and obligations of consumers and businesses, sets rules for fair business practices and provides measures to ensure these. For example, all traded goods must have Estonian labeling and technically complex goods must come with a user manual in Estonian.

Consumer Rights include the right to receive accurate and transparent information about products and services, the right to withdraw from distance and off-premises contracts within a specified cooling-off period, and the right to claim compensation for faulty or non-compliant products. The more precise consumer rights are brought out in different legal acts, such as the Advertising Act, Product Safety Act, Electronic Communications Act, Language Act etc.

Estonia has implemented various EU directives concerning consumer protection, such as Consumer Rights Directive (2011/83/EU) and Unfair Commercial Practices Directive (2005/29/EC). The latest substantial implementations were made in 2022. The changes included, for example, the extension of the burden of proof term in favor of the consumer from six months to one year, meaning that the defect, which appears within one year of the handing over of the product to the consumer, was present at the time of handing it over. Also, the trader's notification obligation increased – the consumer must be informed about the functionality, compatibility and interoperability of the digital content and service. In the event of a one-time transfer or provision of digital content or a digital service, for example when purchasing a computer program, the entrepreneur is liable for a defect that existed at the time of its transfer or provision and that appears within two years. It is important that digital content and services do not only have to meet the terms of the contract at the time of their initial transfer, but the trader has the obligation to update them occasionally to ensure compliance with the terms of the contract.

Regulators: The Consumer Protection and Technical Regulatory Authority (TTJA) manages safety and market regulations, checks compliance with legal obligations and settles customer disputes. TTJA has the authority to conduct state supervision of electronic communications, media services, rail transport and the safety of work, equipment and products, buildings, infrastructure and energy efficiency in addition to consumer rights.

In the event of a dispute with the trader, the consumer has the right to turn to the Consumer Disputes Committee. The Committee is an independent and impartial body competent to resolve consumer disputes, both domestic and cross-border ones, which are initiated by a consumer and one of the parties to the dispute is a trader whose place of establishment is in the Republic of Estonia. Compared to court proceedings, the Commission can resolve the problem more easily and conveniently, requiring less time and money.

Standard Terms: Usually the consumer contract is concluded using standard terms, which the trader has drafted in advance and the consumer cannot influence the content of them. It is presumed that standard terms have not been negotiated individually in advance. Standard terms are part of the consumer contract if the trader clearly refers to them as part of the contract before or while entering into the contract and the consumer has the opportunity to examine their contents.

Standard terms and conditions can cover various essential aspects that affect the relationship between the consumer and the trader, for example limitation of liability, payment and delivery conditions, right of withdrawal and return conditions, as well as data protection and dispute resolution procedures. A standard term is void if, considering the nature, contents and manner of entry into the contract, the interests of the parties etc., the term causes unfair harm to the other party, particularly if it causes a significant imbalance between the parties. The Act of Obligations stipulates the specific cases where a standard term is usually considered to be unfair.

CONSUMER PROTECTION, CONT'D

Pricing: Generally, when offering and selling goods to the consumer, the trader must inform the consumer about the selling price and the unit price of the goods. The selling price means the final price to be paid by the consumer for a unit of goods or a quantity of goods. The final price includes value added tax and other taxes related to the sale of goods.

Any announcement of a price reduction must indicate the price preceding the reduction, i.e. the lowest price applied during the 30 days preceding the reduction. In the case of a reduction in the price of goods offered for less than 30 days, the prior price is the lowest price applied to the goods for at least seven days before the price reduction.

Withdrawal: There are differences in the cancellation policy for each type of contract. Therefore, before deciding to withdraw, it is mandatory to check the rights and the corresponding provisions in the respective agreement. If the contract is signed by ordering from the catalog, by telephone or at an event or in the lobby of the shopping center, a 14-day right of withdrawal applies. In case of signing the deal at a company's premises, there is no right of withdrawal.

If the online trader does not inform the customer of the right of withdrawal within 14 days of the purchase, the time period of withdrawal automatically extends up to 12 months. The 14-day return policy does not apply, among other things, to: goods manufactured to customer's personal needs, or which are perishable/outdated; to magazines, audio and video recordings and computer software, if the consumer has opened the package; sealed items that cannot be returned for health or hygiene reasons, if the package is opened after delivery; entertainment and travel services. If the products ordered over the Internet happen to be defective, the complaint to the seller must be lodged within two years of receiving the product.

TERMS OF SERVICE

The mandatory information required in online Terms of Service differs depending on whether they are intended for a professional or a consumer. Terms of service in regards to contracts entered into with consumers are mainly regulated by two acts – the aforementioned Consumer Protection Act which sets forth the right of consumers to obtain information as well as the Law of Obligations Act to further clarify the obligations of the trader.

Traders are required to provide consumers information concerning the characteristics and conditions of use of the goods or services as well as the contract to be entered into for acquiring the goods or using the services pursuant to the procedure corresponding to the obligation to provide precontractual information. Furthermore, contracts concluded online are regarded as distance contracts according to the Law of Obligations Act. This adds additional requirements in addition to the ones set forth regarding precontractual information. Therefore, information that must be included is the following:

- the data which enables the identification of the trader, in particular the trader's business name, the address of the place of business of the trader, their telephone number and email address, and (if applicable) where the trader provides other means of online communication which ensure that the consumer has the opportunity to maintain correspondence with the trader on a durable medium
- the main characteristics of the object of contract to the extent appropriate to the object of contract and the manner of presentation of information;
- in the case of digital content, digital service and things with digital elements, the method of use thereof, the technical protective measures applied to it and compatibility thereof with any hardware and software what the trader knows of needs to know;

TERMS OF SERVICE, CONT'D

- the total price of the object of contract inclusive of taxes, or where the nature of the object of the contract is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated. Furthermore, all additional freight, postal or other delivery costs, if the consumer has to cover these costs as well as information on that such additional costs may be payable;
- where appropriate, information about that the price was adjusted on a personal basis in accordance with a decision based on automated processing;
- the arrangements for payment, delivery and execution of an order and the time by which the goods are delivered, the service is provided or other acts are performed;
- in the case of long-term contracts the minimum duration of the consumer's obligations under the contract, or if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- upon offer of the maintenance service of the object of contract or customer service after the performance of the contract, the existence and the terms and conditions thereof;
- upon grant of additional warranty in addition to the legal remedies provided by law, the existence and terms and conditions thereof;
- a reminder that the consumer can rely, upon non-compliance of an immovable, digital content and digital service with the terms and conditions of the contract, on the legal remedies provided by law;
- the procedure for handling complaints implemented by the trader, if the procedure exists.
- the address of the place of business of the trader where the consumer can address complaints, if different from the address of the place of business.
- the information on the possibilities of the consumer to have recourse to a body settling extra-judicial complaints and disputes and the terms and conditions of recourse.

A consumer may withdraw from a distance contract within 14 days without giving any reason, unless there are exclusionary circumstances. There fore the trader is required to provide:

- Where a right of withdrawal exists, conditions, the time limit and procedures for exercising that right as well as a standard form of application for withdrawal. If the trader has violated the obligation to provide this information, the withdrawal period shall expire in 12 months;
- the fact that if the consumer withdraws from the contract, the consumer shall bear the costs of returning the goods that constituted the object of the contract;
- where a right of withdrawal is not prescribed, the information that the consumer has no right of withdrawal or, if the consumer may lose the right of withdrawal, information about the circumstances under which the right of withdrawal will be lost.

The aforementioned shall be provided prior to entry into the contract or making a binding offer for this purpose by the consumer, in a manner which is clear and comprehensible for the consumer, unless that information is not already apparent from the context. The Consumer Protection Act also sets forth that information provided to a consumer shall be in Estonian unless the consumer has agreed to provision of information in another language.

WHAT ELSE?

Upcoming EU Markets in Crypto-Assets MiCA regulation and additional requirements thereof.

Estonia has become known as one of the most strictly regulated jurisdictions for establishing and operating crypto companies, the terms of the operating license of the so-called virtual currency service providers have largely been based on the MiCA conditions and are even more strict in some areas.

The Financial Supervision Authority (Finantsinspektsioon) will become the supervisory authority in regards to crypto-asset issuers and service providers.

Current Virtual Asset Service Providers (VASPs) with existing licenses cannot (automatically) apply for a license under MiCA conditions in a simplified procedure as can be done in many other jurisdictions. The Financial Supervision Authority will conduct a new licensing procedure among all market participants. This is caused by the fact that the licensing authorities have changed.

Cryptocurrency service providers can still operate under the MLTFPA (Money Laundering and Terrorist Financing Prevention Act) license until July 1, 2025.

Additionally, on August 21, 2023, the Ministry of Finance submitted the draft of the Cryptocurrency Market Act for consultation and commenting. The draft regulates operations and supervision over participants in the cryptocurrency market. The proposed act is closely aligned with MiCA as the purpose of it is to implement, among others, the MICA regulations at the national level.

FINLAND

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FINLAND

LEGAL FOUNDATIONS

Finland is a civil law country and operates under the principle of the rule of law. There is no federal or state division of powers. In addition to written rules of law, decisions of the Supreme Court (KKO) and the Supreme Administrative Court (KHO) are considered as precedents and have a great importance in interpreting the statutes but are not legally binding. The Finnish legal system also includes lower courts, such as district courts and administrative courts, as well as specialized courts, such as the Market Court and the Labour Court.

Finland is a member of the European Union and has implemented EU laws in national legislation. EU legal system is based on the principle of the supremacy of EU law which means that EU law takes precedence over national law. EU laws have been largely harmonized and thus within the EU many countries share similar legislation.

The Finnish legal system has developed in close connection with that of the other Nordic countries. Since Finland and Sweden share a common historical past Swedish legislation has to a notable extent influenced the Finnish legislation. Therefore, similarities can be found between the legal systems in other Nordic countries and especially Sweden.

CORPORATE STRUCTURES

Finnish law provides the following forms of companies:

Limited liability company ("Osakeyhtiö")

The limited liability company is the most common legal form to conduct business in Finland since it has a flexible ownership structure with the ability to have one or multiple shareholders. It is regulated under the Finnish Limited Liability Companies Act 2006/624 (FI: "Osakeyhtiölaki"). As to its requirements:

- One or multiple shareholders (individuals or legal entity) possible
- There is no minimum amount of share capital required
- Every new limited liability company must file a start-up notification with the Finnish Trade Register. The electronic filing is cheaper and faster than a hard copy filing. However, electronic filing is only available in practice to those companies for which the articles of association have been approved in the standard form proposed by the Trade Register, and one of the board members has a Finnish internet bank account to go through the identification process (otherwise hard copy format registration is available). The registration process typically takes from two to three weeks. The company will be a separate legal entity from the date of registration.

FINLAND

CORPORATE STRUCTURES, CONT'D

Limited liability company ("Osakeyhtiö") , CONT'D

- The Memorandum of Association (FI:" Perustamissopimus") and the Articles of Association (FI: "Yhtiöjärjestys") are the official founding documents. The Articles of Association contains rules by which a company is regulated in addition to the Finnish Limited Liability Companies Act. The Articles of Association must include certain statutory information, but shareholders can also voluntarily include provisions, for example, on limitations to share transfers or different decision-making practices.
- The Board of Directors and the Managing Director constitute the company's operative management and represent the company whereas shareholders do not have any statutory obligation to represent a limited liability company
- Shareholders can flexibly agree on certain rights or obligations for shareholders through a shareholders' agreement
- A limited liability company is separate from its owners and, therefore, offers limited liability protection for its shareholders

A limited liability company may be private or public. Shares of a public company can be traded publicly. Thus, public limited liability companies have more compliance requirements and a minimum share capital requirement of EUR 80,000. A private limited liability company can be turned into a public company and vice versa. In the event of change of company structure, changes to statutory requirements should be carefully noted and complied with.

Sole proprietorship (FI: "Toiminimi") or private trader

This is the easiest company form to set up and operate in Finland. It allows individuals to start and run their own businesses without high administrative or reporting requirements compared with a limited liability company. Private traders are not required to register with the Trade Register but can choose to do so if they wish. Registering with the Trade Register is required in case:

- you wish to get protection for your company name;
- you wish to apply for enterprise mortgage;
- you are liable to register financial statements under the Accounting Act; or
- you are a private trader permanently residing outside the European Economic Area.
- Private traders may still be obligated to register with the Finnish Tax Administration.

Private traders may still be obligated to register with the Finnish tax Adminstration.

- No minimum capital is required.
- If a start-up notification must be made, it can be filed electronically with the Finnish Trade Register. If the owner has a Finnish internet bank account to go through the identification process (otherwise hard copy format registration is available)
- The owner can operate the business under its own name or choose a trade name
- In sole proprietorship, the owner is solely responsible for the financial and legal obligations of the business. This means that the owner's personal assets can be seized to pay off any debts incurred by the business.

General Partnership (FI: "Avoin yhtiö")

A general partnership is owned by one or more individuals. It is simple to set up and requires fewer formalities compared to a limited liability company. As to its requirements:

- A start-up notification with the Trade Register must be filed, this can be done electronically if the owner has a Finnish internet bank account to go through the identification process (otherwise hard copy format registration is available)
- The General Partnership comes into force with the notification
- Partnership shares are not freely transferrable as in limited liability company due to owner's personal liability and transferring partnership shares requires consent from every owner
- The owners are personally liable for the company's debts and obligations. Their personal assets may be seized to satisfy the company's liabilities if the company is unable to pay its debts.

CORPORATE STRUCTURES, CONT'D

Limited partnership (FI: “Kommandiittiyhtiö”)

A general partnership and a limited partnership are, in many ways, similar forms of business. In principle, they are set up the same way. A general partnership is ideal for a small business with a trusted partner. A limited partnership, on the other hand, is well suited for business activities based on personal work input and combined with an investor. The general partners are personally responsible for the company's debts as in general partnerships, while the limited partners are only responsible for the company's debts to the extent of their capital contributions. Moreover, general partners are responsible for operations, representations and decision making whereas limited partner acts solely as an investor if otherwise has not explicitly been agreed on.

ENTERING THE COUNTRY

Save as concerns key national interests, there are no general restrictions on foreign investment.

If key national interests so require the Finnish Ministry of Economic Affairs and Employment can restrict certain foreign corporate acquisitions. Under the Act on the Monitoring of Foreign Corporate Acquisitions in Finland 172/2012 (FI: “Laki ulkomaalaisten yritysostojen seurannasta”) (Foreign Corporate Acquisitions Act), an acquisition of Finnish entities by a foreign investor is subject to an approval by the Ministry if the acquired entity falls within the following categories:

- Defence industry entity
- Security sector entity (company that produces or supplies critical products or services related to the statutory duties of Finnish authorities essential to the security of society)
- Entity critical in terms of security of supply (an organisation or business undertaking that is considered, when assessed as a whole, critical in terms of securing functions vital to society on the basis of their field, business or commitments)

A foreign investor means any person not domiciled within EU or an EFTA Member State as well as any entity in which a person not domiciled within EU or EFTA controls at least one tenth of the voting rights or has a corresponding actual influence. Moreover, an acquisition of a defence industry enterprise is subject to monitoring also in cases where the investor is domiciled in another EU Member State, apart from Finland, or in an EFTA Member State.

The Ministry must approve the acquisition unless it potentially conflicts with a key national interest, in which case the Ministry must refer the matter for consideration at a government plenary session.

The Foreign Corporate Acquisitions Act would not as such apply to activities conducted by start-ups but will only apply in case of an acquisition.

FINLAND

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Distinctive signs such as words, phrases, logos, symbols, colors, sounds, shapes and even scents as long as they can be represented in the Trademark Register in a manner that enables the authorities and the public to determine the clear and precise scope of the protection granted to the trademark proprietor The mark must also be capable to distinguish goods or services of one company from those of another company. A mark indicating the characteristics of the goods and/or services applied under the mark, such as the kind, quality, quantity, purpose, value, geographic location, time of manufacture of goods, time of rendering of services, or another feature thereof, is generally deemed to be non-distinctive. In addition, the trademark must not be identical to or confusingly similar to an existing trademark, and it must not be contrary to public order or morality. As the relevant authority (the Finnish Patent and Trademark Office "PTO") automatically examines prior rights (trademarks and trade names receiving protection in Finland), it is recommendable to conduct an availability search before filing the application.

Where to apply? Applications can be filed either with (i) the PTO for national protection, (ii) the European Union Intellectual Property Office (EUIPO) for unitary protection in all EU countries or (iii) by designating Finland in the application for international registration under the Madrid System through the World Intellectual PropertyOrganization (WIPO). The national trademark application can be filed online in Finnish, Swedish or in English if the applicant has a Finnish internet bank account to go through the identification process (otherwise hard copy format registration is available). Note, however, that all authority correspondence after the filing must be conducted either in Finnish or Swedish.

Duration of protection? A trademark registration remains valid for ten years, taking effect from the application date, and may thereafter be renewed every 10 years.

Costs? The costs can vary depending on the number of classes of goods and services that the application is filed for In Finland, the official fee for filing a trademark application for one class is EUR 240. Each additionalclass of goods and/or serviceswill cost an additionalEUR 100. The fees do not includepossible legal representative fees.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in the field of technology are patentable. This requires that the invention is novel as in it involves an inventive step, not obvious to a skilled professional and it is industrially applicable (i.e., it is technological in nature, and must solve a technical problem). Thus, it follows that ideas and discoveries may not be patented, meaning that discoveries, scientific theories, mathematical methods, aesthetic creations, schemes, rules, programs for computers, or presentations of information, as such, are not patentable in Finland but related inventions thereof may be if the invention is technological in nature. Patents to inventions that are considered contrary to public order or decency if commercially exploited are not granted.

Where to apply? Patent applications can be filed with either the Finnish PTO (online or hard copy format) or through the European Patent Office (EPO) or as a PCT application through WIPO where Finland may be designated as one of the countries where protection is sought. The registration procedures before these offices slightly differ. Finland has ratified the UPC Agreement, meaning that Unitary Patents submitted by a single request to the EPO will be granted patent protection also in Finland.

Duration of protection? A patent can be kept in force for 20 years from the filing date of the application. If the patent protects the active ingredients used in medicinal products or plant protection products, the term of patent protection can under certain conditions be extended with a maximum of 5 years(Supplementary ProtectionCertificate, SPC).

Costs? Application fees vary depending on with which authority the application is filed and the complexity of the invention. In Finland the authority application fee amounts to EUR 540 (for an electronic application EUR 430), and the fee for each claim over 15 amounts to EUR 50. Later during the process, a publication fee and annual maintenance fees become payable. The fees do not include legal representative fees.

Employee invention and inventor bonus? In Finland, the rights to employee inventions that may be protected by patents are regulated by the EmploymentInventions Act (FI: "Lakioikeudesta työntekijän tekemiin keksintöihin" 1967/656) and the Employee InventionsDecree. A patentable invention made by an employee in the course of his or her employment and as a result of his/her work tasks is considered to be the property of the employer, unless otherwise agreed in writing (e.g., in the employment contract). Nevertheless,the employee is always entitled to reasonable compensationfor the right tohis/her inventionthat the employer mayobtain either by operation of law or by virtue ofagreement.

Utility Model

What is protectable? Utility models may be registered to protect technical inventions (inventions to be used for industrial purposes). Similar to patents, the invention must be new and clearly differ from what has become known before the date of filing the utility model application. Otherwise, the rules applicable to utility models are very similar to those applicable to patents, with the distinction that the threshold for inventiveness is somewhat lower than for that of patents.

Where to apply? An application can be filed with the Finnish PTO (online or hard copy format) or as a PCT application through WIPO where Finland may be designated as one of the countries where protection is sought.

Duration of protection? Once registered, a utility model is valid for four years from the date of filing the application. The registration may be renewed twice, first for a period of four years and again for a period of two years, thus extending the maximum period of protection to 10 years from the filing date. There is no opposition period for utility models, and anyone can at any time file an invalidation claim against the registered right.

Costs? The costs consist of a registrationfee and, if needed, an additional fee for claims. The list of applicable fees for utility model applications and registered utility models can be found here. The fees do not include legal representative fees.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? A design right protects the appearanceof the product, made up of the overall impression of a product's lines, contours, colors, shape, texture, or material. A non-separable part and an ornament of a product also may be protected by a design right, such as industrial or handicraft item, including parts intended to be assembled into a complex product, and packaging, get-up, graphic symbols and typographic typefaces. In order to receive protectionthe design must be new and have individual character. If the design or an identical design is made available to the public prior to filing of the application, the design is not considered new and is devoid of registration. A grace period of 12-months constitutes an exception to this rule.. The so-called grace period provision makes it possible, for the creator of a design to test his/her product on the market for up to 12 months before filing the application. However, the grace period involves many risks that may take away the novelty of your design and should not be used lightly.

Where to apply? An application for national protection is to be filed with the PTO (online or hard copy format). To obtain unitary protection in the EU, a Community Design may be registered with the EUIPO or as a PCT application through WIPO where Finland may be designated as one of the countries where protection is sought.

Duration of protection? The term of protection is five years and can be renewed five times for another five year-period by paying a renewal fee. The maximum term of protection is therefore 25 years. An exception to this rule is that the maximum term for protection of component parts of complex products is 15 years.

Costs? The application costs for a design consist of an application fee and varies depending on the number of classes. The list of applicable fees for design applications and registrations can be found here. The fees do not include possible legal representative fees.

Domain Name

What is protectable? A .fi or .ax domain name can consist of two to 63 characters. The general requirementfor registration is that the domain is not identical with or confusingly similar to any company names or trademarks already registered (unless the domain name holder can present a good, acceptable reason for registering the said domain name). It is the domain name applicant's responsibility to make sure that the domain name registration fulfills the necessary requirements.

Where to apply? In order to register a .fi or .ax domain name, the applicant has to contact a domain name broker who has registered itself with Traficom (list available on their website) and who, on behalf of the applicant, performs all actions such as registration, renewal and maintains the technical requirements regarding the domain name.

Duration of protection? A domain name registration may be registered for a maximum of five yearsat a time and may thereafter be renewed (by paying the renewal fee).

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? Copyright protection is automatically granted in Finland and does not require registration. Under the Finnish Copyright Act, a person who has created a literary or artistic work shall have copyright therein, e.g., a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or as well as maps and computer programs. Moreover, the Copyright Act provides protection for certain neighboring rights such as rights of photographers, performing artists, and record producers. The prerequisite for obtaining copyright protection is that the work of art is considered creative and original.

Duration of protection? The duration of copyright spans the author's life plus 70 years after the author's death.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the indispensable right to be named as author. The author may grant third parties non-exclusive or exclusive rights to use the work through a licence agreement. A work of art may only be created by one (or several) natural person(s), who is/are then regarded as its creator(s). Copyright protection consists of moral and economic rights. The distinguishing feature between these rights is that moral rights, such as the right to be acknowledged as the creator of a work of art, are inherently those of the creator and cannot be transferred. Economic rights, however, may be freely transferred, thus enabling also a company to possess copyrights. It is customary for an employment contract to contain a provision, according to which the employees transfer possible copyrights that arise during the course of the employment to the employer.

Trade Secrets

What is protectable? Under the Trade Secrets Act 595/2018 (FI: "Liikesalaisuuslaki"), implementing the EU Trade Secret Directive, a trade secret is defined as information that is not generally known or readily accessible to persons that normally deal with the kind of information, that has economic value in business activities, and whose owner has taken reasonable steps to keep the information secret. Thus, for receiving protection companies have to take appropriate non-disclosure measures(e.g., marking information as trade secrets, implementing IT security measures, particularly access restriction, and concluding NDAs).

Duration of protection? Trade secrets in Finland do not have a set term of protection. Instead, they are protected as long as they remain confidential and not generally known or easily accessible to the public.

FINLAND

DATA PROTECTION/PRIVACY

Since 25 May 2018 the GDPR applies in Finland. The GDPR is supplemented by the Finnish Data Protection Act 1050/2018 (FI: Tietosuojalaki), which applies to the processing of personal data where the controller's place of business is in Finland and if the processing is carried out in the context of the activities of an establishment of a controller or processor in the EU.

The national derogations under the GDPR are included in the Finnish Data Protection Act and may be summarized as follows:

- The age for child's consent in relation to information society services has been lowered from 16 years to 13 years
- Several provisions of the GDPR are not applied with respect to the processing of personal data solely for journalistic purposes or academic, artistic and literary expression purposes, including data subjects' information rights and controllers' transparency obligations certain rights of data subjects and provisions relating to the processing of special category personal data
- The Data Protection Act also includes derogations with respect to processing of personal data for scientific or historical research purposes or statistical purposes, including the provisions of the GDPR relating to right of access, right to rectification, right to restriction of processing and right to object
- The Data Protection Act restricts the right to process personal ID numbers, this is only allowed under the conditions enumerated in the Data Protection Act

The Act on Electronic Communication Services 917/2014 (FI: Laki sähköisen viestinnän palveluista) applies to electronic communication service providers and includes, amongst others, provisions on the collection and use of location data, processing of traffic data confidentiality of communications, electronic direct marketing and cookies.

As a rule, **electronic direct marketing to individuals** is allowed with the individual's prior consent thereto. Electronic direct marketing is marketing conducted by means of automated calling system, fax, email, text, voice, sound or picture message. Consent for electronic messages is, however, not required if the controller has received the contact information from the customer in connection with a previous transaction and this contact information is used for the direct marketing of products or services belonging to the same product group as previously purchased and the electronic marketing is carried out by the same controller. The controller must provide the individual with the possibility to forbid the use of his/her contact information, easily and free of charge, in each subsequent direct marketing message.

Electronic direct marketing to legal persons (sales@company.com) is allowed if the receiver has not prohibited such marketing. If electronic direct marketing is sent to an employee, the products or services marketed must be related to the employee's duties. Otherwise and if email messages are sent to an individual's work email e.g. firstname.lastname@company.com, the rules relating to electronic direct marketing to individuals apply, i.e. the employee in question must give his/her consent to such marketing.

Finally, as regards **data processing carried out by employers**, it is worthwhile noting that the Act on the Protection of Privacy in Working Life 759/2004 (FI: "Laki yksityisyyden suojasta työelämässä"), includes additional and stricter provisions on employers' right to process employee-related personal data and to monitor employees' email communications than the GDPR.

The Office of the Data Protection Ombudsman (FI: Tietosuojavaltuuten toimisto, www.tietosuoja.fi) is the competent supervisory authority. The number of cases initiated has increased considerably during the past years. Over 50 per cent of the initiated cases concern data breaches.

As regards **the use of cookies**, prior consent is required for setting cookies which are not necessary for the provision of the service in question, irrespective whether personal data is processed or not. Thus, opt-in is required for all marketing cookies. The Finnish Transport and Communications Agency monitors the use of cookies.

FINLAND

ARTIFICIAL INTELLIGENCE

There are currently no specific laws in Finland that solely govern AI but laws in different domains may apply such as the GDPR and the Finnish Copyright Act. However the upcoming AI Act, having been under work in the EU since 2001, will be directly applicable also in Finland once approved and in force (the AI Act will most likely be approved in 2025 and apply two years from its entry into force).

Whilst the GDPR does not specifically regulate AI it, nevertheless, applies in general to all processing involving personal data (which may be the case when developing/taking into use AI). Also, article 22 of the GDPR includes a ban on automated decision making unless there is suitable legal safety measures such as the right to contest the AI decision and right to obtain human intervention.

It is currently not legally entirely clear if copyright infringements may occur when training AI applications. The Finnish Copyright Act was recently amended to implement the Directive on copyright and related rights in the Digital Single Market (the DSM Directive, 2019/790/EU) and a new provision (13 (b)) on data mining was introduced to the said Act. According to this provision anyone with legal access to a work is allowed to make copies of it for the purpose of text and data mining, unless the author has expressly prohibited it. However, data mining, if interpreted narrowly, may be regarded to apply to activities producing analytics only and not the production of content (which can be seen as the aim of the training of AI applications). Neither the DSM Directive nor the preparatory works for the new provision included in the Finnish Copyright Act mention AI or machine learning and, therefore, it is to be seen how the Finnish courts will interpret this provision. When it comes to the copyright of creations, copyright can only be obtained by human creators. This means that any creations made purely by AI are not copyright protected.

Also, it is worth noting that Finland is one of the first countries in Europe to launch a national artificial intelligence strategy - a national AI strategy was created already in 2017. In end 2020 the Ministry of Economic Affairs and Employment of Finland appointed a steering group to prepare an action plan for Finland to speed up the introduction of AI. The AI strategy, amongst other things, focuses on promoting the development and introduction of AI and other digital and seeks to encourage cooperation between different sectors.

Finally, the development of AI technology has in Finland been supported by Business Finland, a Finnish governmental funding agency through several key funding programmes, such as the AI Business Programme (boosting development, growth and internalisation of Finnish AI companies) with a total budget of over EUR 200 million.

FINLAND

EMPLOYEES/CONTRACTORS

General: An employer and an employee must conclude an employment agreement stipulating their rights and obligations. Additionally, mandatory law and collective agreements set forth right and obligations for both employers and employees. Enforcing compliance with the labour legislation is mostly the responsibility of the Occupational Safety and Health authorities (FI: "Aluehallintovirastot").

A company may also offer a contractor agreement (freelance contract or contract for work and services) instead of an employment agreement. These contracts are usually not subject to labour legislation.

Foreigners working in Finland: Generally, foreigners planning to work in Finland are required to apply for a residence permit with right to work. However, there are exemptions from this requirement, for example, for citizens of another EU/EEA country and for work that lasts under 90 days. An employer has an obligation to ensure that employees are entitled to work in Finland.

Posted workers: If the employment contract is connected to several countries, the choice of law must be evaluated on a case-by-case basis. Where the work is carried out in Finland, the mandatory Finnish law will be applied. The country where the work is habitually carried out will not be deemed to have changed if the employee is temporarily (up to a maximum of two years) employed in another country (Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I)).

Social insurance contributions and indirect labour costs: The employer is obligated to pay certain social security contributions. Statutory insurance contributions include employment pension insurance (TyEL), accident insurance and unemployment insurance contribution for all employees. Additionally, an employer may be obligated to have a group life insurance. These statutory obligations are often referred to as indirect labour costs. The employer withholds the employee's share of the contribution in connection with paying out the wage.

Universally binding collective agreements: Finnish labour market system is characterised by a high degree of organisation among both employers and employees and the collective agreeing of terms and conditions of employment.

A collective agreement may be confirmed as universally binding. These agreements are binding in their respective sectors also on unaffiliated employers, i.e. employers that do not belong to an employers' organisation. Any clause in an employment contract that violates the corresponding provision in a universally binding collective agreement is null and void.

Termination: Employees are generally well protected in Finland. Termination of an indefinitely valid employment contract is not possible without proper and weighty reason. Fixed-term employment contract cannot be terminated unless it has been expressly agreed upon when the employment contract was concluded.

Employees can challenge an unlawful termination of their employment relationship (e.g. if the proscribed motive for the termination is illness or disability affecting the employee, participation of the employee in industrial action or the employee's religious or political opinions).

In addition, certain groups of employees (e.g. pregnant employees, employees on parental leave, shop stewards and elected representatives) enjoy special termination protection and can only be terminated under certain conditions.

FINLAND

CONSUMER PROTECTION

Finland has relatively **high degree of consumer protection** that is mostly regulated by **Finnish Consumer Protection Act 1978/38** (FI: "Kuluttajansuojalaki"). The act is applied to the offering, selling and other marketing of consumer goods and services by businesses to consumers in Finland. Consumer protection includes regulation for disclosing information, advertising and marketing as well as some standard terms and conditions such as consumer rights applicable to goods and services provided. **Finnish Competition and Consumer Authority** provides companies guidance on consumer law issues and advise for resolving disputes with consumers. Moreover, the Consumer Ombudsman's guidelines contain information and advice regarding the application of the provisions.

The obligation to disclose certain information concerns information about the products and services as well as information about consumer rights and terms and conditions applied to the sale. Obligation to disclose information is more comprehensive for distance selling and businesses must for example provide information on consumers' right to withdraw from any contract within 14 days without giving any reasons. If a consumer is not sufficiently informed about the right of withdrawal, this right is automatically extended for up to 12 months. Marketing is also subject to certain information disclosure obligations. Marketing must clearly indicate its commercial purpose and on whose behalf it is carried out.

Finnish consumers have a number of rights under the Consumer Protection Act, including the right to receive a full refund for defective products and the right to receive compensation for any damage caused by a product. Businesses must have a process in place for handling consumer complaints and resolving disputes with consumers.

There is also an alternative dispute resolution for consumers **(The Consumer Disputes Board)** that gives recommendations to disputes between businesses and consumers. Recommendations by The Consumer Disputes Board are largely obeyed and applied by businesses.

TERMS OF SERVICE

Distance sale (such as online sale) must be accompanied with certain information set forth in the Consumer Protection Act (Chapter 6). Terms and conditions in contradiction with the act are considered null and void. Following information must be included in any online terms of service targeted at consumers (the list is not intended to be exhaustive):

- main characteristics of the service (or good);
- the name and address of the business as well as contact details;
- the price including taxes and other fees, delivery charge and terms of payment on the consumer service (or good);
- the other terms of delivery or performance of the contract;
- information about consumer complaints;
- information about costs related to withdrawal;
- information about consumer's right to withdraw within 14 days without giving any reasons and withdrawal form if applicable;
- information on statutory liability for defects;
- the duration of the contract, and if it is in force until further notice, and terms and conditions regarding the termination of contract; and
- information about the possibility and means to refer a dispute to the Consumer Disputes Board or other dispute resolution body.

WHAT ELSE?

State monopolies on gambling and alcohol

In Finland, gambling is regulated by the Lotteries Act 1047/2001 ("FI: "Arpajaislaki"). Gambling services are provided by the state-owned company Veikkaus Oy. Marketing of gambling operations other than those provided by Veikkaus Oy is prohibited. However, dismantling the monopoly over the gambling market is currently considered by the Finnish Parliament.

There is a state monopoly on the retail sales of alcohol in Finland. Alko Inc. is a state-owned company which holds by law the exclusive right to the retail sale of alcoholic beverages containing more than 5.5 % alcohol by volume (Alcohol Act 1102/2017 (FI: "Alkoholilaki")). The only exception is local produced beverages that can be sold, by the farmer, but only with an alcohol content not exceeding 13% alc. vol.

Startup funding

Business Finland offers funding, advice, as well as information and contacts in the target market for startup companies with the most growth potential. Business Finland is a public sector operator. The basic services are free of charge. The startup services are generallyintended for growth companiesthat have been operating less than five years. For example, the startup funding Tempo is intended for startup companies, not older than five years, having a new product or service idea. The funding constitutes of a grant that does not have to be paid back. The maximum amount of Tempo funding is EUR 60,000. Funding from Business Finland covers 75 per cent of project costs and can at most amount to EUR 80,000. Tempo call was closed in October 2023 for an indefinite period and the re-opening of the call will be announced later.

Information on the funding can be found here: https://www.businessfinland.fi/en/for-finnish-customers/services/funding/tempo-funding

Innovative startup founders from outside the EU/EEA can apply for a renewable startup permit, which is initially issued for a maximum of two years. Before applying, Business Finland evaluates whether the suggested business model, team, and resources show potential for rapid growth. The Startup Permit does not include investments or financial support but once the permit is received, the start-up can benefit from a wide range of services and resources of Business Finland.

Information on the startup permit can be found here: https://www.businessfinland.com/establish-your-business/finnish-startup-permit/

There are also other forms of funding offered to startups. FiBAN, Finnish Business Angels Network, is a non-profit association of private investors that enables startups to seek funding by matching potential growth companies with private startup investors free-of-charge. Applications are accepted from the Nordics and Baltics, but also from elsewhere if having references to Finland. FiBAN is one of thelargest and most active business angel networks in Europe.

Information on Fiban can be found here: https://fiban.org/

In relation to IP rights, the European Union Intellectual Property Office (EUIPO) offers financial support to small and medium-sized companies to protect their intellectual property under the" Ideas Powered for Business SME Fund" grant programme applicable both for national and EU applications.

More information on the EUIPO financial support can be found here: https://euipo.europa.eu/ohimportal/en/online-services/sme-fund

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LEGAL FOUNDATIONS

France is a civil law system based on a set of codified rules that are applied and interpreted by judges. French law is divided into two main branches:

Private law: Governs relationship between individuals and/or private legal entities and is applied by the courts of the judicial order. This order is organized around two types of courts:

The civil courts: are competent to settle disputes and repair damages but not impose any penalties. They are composed of three levels of jurisdiction: (i) the Commercial Courts, the Labor Courts and the Judicial Courts (ii) the Courts of Appeal and (iii) the Court of Cassation, which is the highest civil court.

The criminal courts: are competent to punish criminal offences against persons, property and society. They are composed of three levels of jurisdiction: (i) the Police Court, the Criminal Court and the Assizes Court (each applicable to a specific category of offenses) (ii) the Court of Appeal or the Appeal Court of Assizes, depending on the nature of the offense and (iii) the Criminal Division of the Court of Cassation, which is the highest criminal court.

Public law: defines the principles of functioning of the state and public authorities and is applied by the courts of the administrative order as soon as a public person is involved. This order is based on three levels of jurisdiction: (i) the Administrative Tribunal (ii) the Administrative Court of Appeal and (iii) the Council of State.

In the French system, case law rarely has the effect of law. However, they can be invoked by the parties in support of their claims and constitute in this sense an indirect source of law, in the same way as custom or doctrine.

CORPORATE STRUCTURES

There are two main categories of companies under French law: commercial companies and civil companies.

There are 8 types of commercial companies:

- Société Anonyme (SA) – (Public limited company)
- Société à Responsabilité Limitée (SARL/EURL) – (Limited liability company)
- Société par Actions Simplifiée (SAS) – (Simplified joint-stock company)
- Société en Nom Collectif (SNC) – (General Partnership)
- Société en Participation (SP) – (Joint venture company)
- Société en Commandite Simple (SCS) – (Limited Parnership)
- Société en Commandite par Actions (SCA) – (Limited Parnership with share capital)
- Société Européenne (SE) – (European Company)

CORPORATE STRUCTURES, CONT'D

As of January 2024, the three most popular forms of commercial companies registered in France are as follows (compared to 2022):

- 1,615,831 SARL (49,969 new registrations, representing growth of 3%);
- 1,543,822 SAS (267,237 new registrations, up 21%);
- 1,469,379 individual entrepreneurs (EURL) (195,773 new registrations, up 15%).

A limited liability company (SA) may be private or public. Shares of a public company can be traded publicly. Thus, public limited liability companies have more compliance requirements and a minimum share capital requirement of EUR 80,000. A private limited liability company can be converted into a public company and vice versa. In the event of change of company structure, changes to statutory requirements should be carefully noted and complied with.

All other companies are usually categorized as civil. Subject to certain exceptions, only commercial companies should carry on businesses.

The key characteristics of the most common forms of French commercial companies are as follows:

Société Anonyme (SA)
Public limited company

Main Features: Appropriate form for a company whose shares are publicly traded. The SA's operation is largely regulated by law.

Number and quality of shareholders/partners: 2 to unlimited in unlisted companies. 7 to unlimited in listed companies. Shareholders can be either natural or legal persons.

Minimum share capital: 37,000 euros, contribution in cash and/or in kind.

Shareholder's/Partner's liability: Limited to their contribution to the share capital.

Management: The SA (in its classical form) is managed by a board of directors, comprising 3 to 18 members. The Chairman is appointed by the Board of Directors from among its members. The general manager (CEO) is also appointed to represent the company and ensure its day-to-day management.

Société à Responsabilité Limitée (SARL)
Limited liability company

Main Features: Recommended for small and medium-sized companies. The SARL's operation is largely regulated by law.

Number and quality of shareholders/partners: 1 (called a "EURL") to 100. Partners can be either natural or legal persons.

Minimum share capital: No minimum, contribution in cash and/or in kind.

Shareholder's/Partner's liability: Limited to their contribution to the share capital.

Management: The SARL can be managed by one or more managers, who can only be natural persons.

CORPORATE STRUCTURES, CONT'D

Société par Actions Simplifiée (SAS)
Simplified joint-stock company

Main Features: Very flexible since its functioning is largely determined by the shareholders (very free drafting of the bylaws). SAS cannot be listed on a stock exchange.

Number and quality of shareholders/partners:
1 (called a "SASU") to unlimited (above 150 may be regarded as listed company). Shareholders can be either natural or legal persons.

Minimum share capital: No minimum, contribution in cash and in kind.

Shareholder's/Partner's liability: Limited to their contribution to the share capital.

Management: The SAS is managed by a single President, who can be a natural or legal person. He/She/It can be assisted, if need be, by managing directors and deputy managing directors. Other specific management or supervisory bodies, such as a board of directors, may be set up in the bylaws.

Benefit of an SAS

The SAS is the most commonly used type of company in France (67% of the companies newly incorporated in 2022 were SAS), especially for start-ups.

The reasons for adopting the SAS form are as follows:

- The SAS only needs to have a single shareholder and one president (a foreigner, e.g. US resident, can be a shareholder and the president at the same time of an SAS);
- If the company has more than one shareholder, the bylaws (statuts) may freely organize the relationship and the specific rights of the different shareholders;
- The bylaws may also freely organize the management and operations of the company; as a result, the the SAS is the corporate form that provides the greatest flexibility;
- The shareholders' liability for the losses of the company are limited to their contribution to the share capital;
- There is no minimum capital requirement (subject to specific situations and regulations).

The formalities required and the relevant documentation for the set-up of an SAS are as follows:

Opening of a bank account: The founding shareholder(s) must appoint a French bank to receive the funds representing the initial share capital of the company. The bank will need certain documents and information, such as the draft by-laws, the list of shareholders with their full names and addresses (and possibly other information for the bank's KYC procedure), the amount of their paid-in contribution and the number and classes of shares subscribed.

Deposit of share capital: Once the bank account is opened in the name of the company to be constituted, the amount of the initial contribution is wired into that account by each shareholder. Upon receipt of the funds, the bank will issue a statement of receipt (attestation de dépôt des fonds). The share capital must be fully subscribed, but may be partially paid up with a minimum of 50% of the full amount of the subscription to be paid up upon the constitution. Where there are contributions in kind or specific advantages granted to one shareholder, an auditor must be appointed to assess the value of the contribution or of the specific advantage, subject to specific exceptions for SAS.

CORPORATE STRUCTURES, CONT'D

By-laws and constitution of the company: The bylaws must contain certain specified information (e.g. company form, duration, company name, registered office which must be in France, company purpose, amount of the share capital and its composition…).

The company is legally constituted by the signing of the bylaws (statuts), which must be in the form of a private or notarised deed.

The bylaws must be signed by each shareholder, only after the statement of receipt has been issued by the bank.

The bylaws and other incorporation documents may be signed by means of an electronic signature.

Formalities for Incorporation: The formalities for incorporation are carried out online.

- Registration and incorporation: The bylaws must be registered within one month of being signed and filed with the other incorporation documents at the Guichet unique (online platform)
- Public Announcement: An announcement must be published in a legal media setting out the details of the company.
- Effective beneficiary(ies): Any natural person holding, directly or indirectly, 25% or more of the share capital of the company must be registered as its effective beneficiary(ies), with certain details including his/her personal address. Any changes in this situation must be reported to the Registry of the Commercial Court.
- Incorporation documents: Several documents must be attached to the application for incorporation (e.g. statement of receipt of funds delivered by the bank, list of shareholders, proof of address of registered office; bylaws).

ENTERING THE COUNTRY

Pursuant to the French Monetary and Financial Code certain foreign direct investments (FDI) are subject to review and prior authorization by the Minister of the Economy. The objective of this control is to ensure that foreign direct investments in sensitive business sectors do not create of risks to public order, public security or national defense.

The sectors of activity covered by the FDI controls principally include the following: military/national defense, essential infrastructure, networks, goods or services (e.g. energy, water, public health, food security, press…), critical technologies (e.g. cybersecurity, artificial intelligence, robotics, semi-conductors, cryptology, dual-use items …).

Three cumulative conditions must be met for a foreign direct investment to be subject to prior review by the Ministry of the Economy:

1. A foreign entity is present in the ownership chain of the direct acquirer,
2. The investor (i) acquires control, (ii) acquires all or part of a business line or (iii) crosses the 10% threshold of voting rights [1] in a French legal entity (note that the third scenario only applies to investors from outside the EU/EEA), and
3. The French target company has business activities (i) in one of the sectors listed above and (ii) that could jeopardize public order, public safety or national defense.

ENTERING THE COUNTRY, CONT'D

Reinforcement of FDI controls in 2024
The scope of control has been extended from 1st January 2024. Takeovers of branches of foreign-registered entities engaged in sensitive activities are now be subject to control, in order to guard against possible strategies for circumventing FDI regulations. New sectors are also covered:

- extraction, processing and recycling of critical raw materials
- research and development activities in photonics and low-carbon energy production technologies, when they are intended for implementation in one of the sectors covered by the regulations; and
- activities essential to the security of prisons.

Procedure
The control procedure by the French Ministry of the Economy takes place in two phases within a maximum regulatory period of 75 business days. The operations can be directly authorized or authorized subject to conditions to be met by the investor (e.g. preservation of the workforce or a prohibition on relocation) for a determined period after the closing. The setting of any conditions must be justified by and proportionate to the protection of public order, public safety or national defense.

In 2022, 325 operations were subject to FDI controls in France (70 of which were finally determined to not fall within the scope of the FDI regulation), compared with 328 in 2021 and 275 in 2020. In 2022, 131 operations were authorized by the Minister for the Economy, 70 were authorized subject to conditions and 54 were not authorized.

[1] Introduced in the context of the health crisis in order to protect French listed companies with sensitive businesses from opportunistic shareholdings, the 10% threshold (compared to 25% previously) for voting rights held by a non-European investor in a listed company has been made permanent as from January 1, 2024.

INTELLECTUAL PROPERTY

In France, intellectual property rights can be acquired with or without formality.

Intellectual property right that requires formalities:

Trademarks

Object of protection: A trademark is a distinctive sign that can take various forms such as a word, a slogan, numbers, a logo, a drawing, a sound, a combination of images or a jingle and that is used to distinguish goods and/or services.

Requirements for protection: To be eligible for protection under trademark law, the chosen sign must be distinctive, available, not deceptive and in conformity with public policy.

Duration of protection: The protection conferred by trademark law offers its author a monopoly of use for a period of 10 years, renewable indefinitely.

I**Cost of protection:** The cost of filing a trademark for protection in France depends on the number of classes selected: EUR 190 for one class and EUR 40 for each additional class. EUR 60 will be also added in case of extension of the protection to French Polynesia.

Procedure: The trademark can be registered, depending on the planned territorial protection, with (i) the French trademark office - Institut National de la Propriété Intellectuelle (INPI), (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO), France being a member of the Madrid system. Trademark applications for France are only made online on the https://procedures.inpi.fr/?/ platform. The French trademark application is then published in the Bulletin Officiel de la Propriété Industrielle (BOPI) for a two-months period, during which time any third party may file an opposition against its registration on the one hand and the INPI carries out its own examination on the other hand. If there is no opposition from third parties or no objection from the INPI, the French trademark is registered.

INTELLECTUAL PROPERTY, CONT'D

Patents

Object of protection: A patent protects a product or a technical process that provides a new technical solution to a technical problem.

Requirements for protection: In order to be protected by patent law, the invention must be new, involve an inventive step, be susceptible of industrial application and not be expressly excluded by law (articles L.611-16 to L.611-19 of the Intellectual Property Code).

Duration of protection: The patent holder benefits from a monopoly of use for a maximum period of 20 years.

Cost of protection: Between 1 and 10 claims, the cost of filing is EUR 636 (EUR 26 for the filing, EUR 520 for the search report and EUR 90 for the issuance). Beyond that, it will cost EUR 42 for each additional claim. In order to keep the patent in force, an annual fee must be paid, the amount of which is progressive (from EUR 38 the first year to EUR 800 the twentieth).

Procedure: The patent can be registered, depending on the planned territorial protection, with (i) the INPI, (ii) the European Patent Office (EPO) or (iii) WIPO. The application for a French patent must be filed online on the https://procedures.inpi.fr/?/ platform. The patent application is transmitted for examination to the Ministry of Defense, which has a five-month period to decide whether to keep the patent secret if it is in the national interest to delay or prevent its disclosure. If not, the Ministry of Defense issues an authorization for disclosure of the invention. The INPI then carries out its own examination and issues a preliminary search report as well as an opinion on the patentability of the invention before publishing the application in the BOPI for a three-months period. Finally, the INPI establishes a final search report and, if all the conditions are met and the fee has been paid, issues the patent.

Designs

Object of protection: Designs (2D) and models (3D) protect the appearance of an industrial or artisanal product characterized by its lines, contours, colors, shape, texture or materials.

Requirements for protection: In order to be protected by design law, the design must be new and have individual character, the applicant must be legitimate and the protected elements must be visible during the normal use of the product by the consumer.

Duration of protection: The owner of the registered design or model benefits from a monopoly of use for a period of 5 years, renewable in 5-year increments, up to a maximum of 25 years.

Cost of protection: The cost of filing a design is EUR 39 (EUR 52 extra if you want to protect it for 10 years). For each reproduction, it will be necessary to add EUR 23 for black and white and EUR 47 for color designs/models.

Procedure: The design can be registered, depending on the planned territorial protection, with (i) the INPI, (ii) the EUIPO or (iii) WIPO. The application for registration of a French design must be filed online on the https://procedures.inpi.fr/?/ platform. The INPI examines the design/model filing on the form and on the substance. If there is no objection from the INPI, the model is registered.

INTELLECTUAL PROPERTY, CONT'D

Intellectual property rights that do not require any formalities:

Copyright

Object of protection: Copyright (called "author's rights" in France) protects literary works, in particular graphic, sound, or audiovisual and sculptural creations, musical creations but also software, creations of applied art, fashion creations, etc.

Requirements for protection: The protection conferred by copyright is acquired without formality. The work is protected by the very fact of its creation, regardless of its form of expression, type, merit, or purpose. However, in order to be protected, the work must be a human creation and, above all, be original.

Rights conferred by the protection: Copyright offers to its holder (i) moral rights (such as a right of attribution), which are perpetual, inalienable, and imprescriptible) and (ii) economic rights, which allow the author to prohibit or authorize the use of his work and get paid for it.

Duration of protection: Moral rights are perpetual. Economic rights last for the lifetime of the author and last, for his/her beneficiaries, for 70 years after the author's death.

Secrets

Object of protection: Secrecy does not offer any real private right but allows to protect commercially valuable information through the absence of disclosure. The protection of business secrets covers, in a non-limitative way, know-how, commercial strategy, technical knowledge, and trade secrets.

Requirements for protection: To be protected by business secrecy information (i) must not be generally known or readily available to those familiar with a particular industry, (ii) must have actual or potential commercial value, and (iii) must be subject to reasonable safeguards. Trade secrets have been formally recognized and protected by law in France since 2018. Any infringement of a trade secret engages the civil liability of its author.

Duration of protection: Secrecy confers on its holder a protection unlimited in time, as long as the secrecy is maintained.

Useful Tools: In order to ensure effective protection of secrecy, it may be appropriate to set up computer system protection, a confidentiality policy and access controls to such information.

DATA PROTECTION/PRIVACY

In France, data protection is regulated by French Law n°78-17 of 6 January 1978 on Information Technology, Data Files and civil Liberties, as amended by Law n° 2018-493 of 20 June 2018 ("French Data Act"), which implemented the changes required by the GDPR. Moreover, the French national supervisory authority, the 'Commission Nationale de l'Informatique et des Libertés' ("CNIL"), may issue recommendations based on the foregoing texts. While those recommendations are not binding, they are influential and give an idea as to the CNIL's interpretation of the law.

With the French Data Act of 1978, France was one of the first European countries to adopt an effective arsenal of personal data protection to protect data subjects when their personal data is processed. In this respect, the GDPR was inspired by the French Data Act, as well as other European texts such as the German of Spanish Data Acts. This explains why there are few divergences between the GDPR and the French Data Act and why the French legislator has made little use of the opening clauses.

However, there are the following French specificities that result from the new French Data Act or other texts such as the French Law no 2016-1321 of 7 October 2016 for a Digital Republic:

Age of consent: The threshold for digital majority is set at 15 years. Below this age, while the GDPR only provides for the consent of the holder of parental responsibility, French law retains the joint consent of both the minor and the holder(s) of parental responsibility.

Post-mortem right: French law gives the data subject an additional right to those under the GDPR, allowing him/her to provide directives to organize what happens to his/her digital identity and personal data after his/her death. In such a case, the data subject may designate a person to carry out the directives. Otherwise, after his/her death, the heirs may exercise his/her rights of access, opposition and rectification and proceed to the closure of the deceased's accounts.

Prior formalities: While the GDPR replaces the formalities vis-à-vis the supervisory authorities with the principle of accountability, which requires the data controller to be able to demonstrate the lawfulness of the processing carried out, French law maintains prior formalities (authorization/declaration) with the CNIL as an exception for:

- Processing involving the registration number of data subjects in the national register of identification of natural persons(NIR), with some exceptions;
- Processing of genetic or biometric data necessary for authentication or identity control implemented on behalf of the French State;
- Processing implemented for the purposes of public security or safety, public defense or the prevention and repression of criminal offenses;
- Processing of health data justified by a public interest purpose.

Automated individual decisions: Beyond the GDPR provisions on automated individual decision-making, the French Data Act provides specific rules for the use of algorithms by public authorities.

Exempt processing: certain provisions of the GDPR do not apply to processing for academic, artistic, literary or journalistic purposes where such a derogation is necessary to conciliate the right to data protection with freedom of expression and information.

Commercial prospection: Commercial prospection by telephone or post does not require the data subject's consent but requires the data subject to be informed of the use of his/her data for this purpose and to be able to opt out of receiving prospecting messages in a simple and free manner. With regard to e-mail, SMS and MMS, a distinction must be made between B2C and B2B relations. In the first case (B2C), the data subject's prior consent is required unless (1) the consumer already purchased products or services from the advertiser and the commercial prospection concerns similar products or services or (2) the prospection is not commercial by nature (e.g.: a charity). In the second case (B2B), commercial prospection does not require the data subject's consent and may be based on the advertiser's legitimate interest. In both cases, the advertiser must (1) specify its identity and (2) propose a simple way to opt out of receiving other prospecting messages. Since March 1st, 2023, commercial prospection by phone is only allowed from Monday to Friday, from 10 a.m. to 1 p.m. and from 2 p.m. to 8 p.m.

FRANCE

ARTIFICIAL INTELLIGENCE

There is currently no specific legal framework for artificial intelligence (AI). Charters, codes of conduct and guides to good practices have been drawn up to provide an ethical framework for AI, but these are non-binding rules and there are no penalties for non-compliance.

Nonetheless, the proposed « AI Act » intends to regulate the use of artificial intelligence within the European Union. This first EU regulatory framework for AI classifies AI systems according to the risk they pose to users and the different risk levels entail more or less stringent obligations for AI systems designers.

The liability regime under ordinary law, which does not currently provide a legal framework for AI behaviour, could change with the draft revision of the "Directive on Liability for Defective Products". This text provides for a reduction in the burden of proof for victims in complex cases such as those involving intelligent products or products using AI. Another legislative proposal has also been adopted – the "Directive adapting the rules on non-contractual civil liability to the field of artificial intelligence", aimed at facilitating compensation in the event of damage caused by AI.

Several provisions of French law are likely to provide safeguards for AI use, although there are still a number of grey areas and there is still a lot to be done to address the various challenges posed by AI. The following examples show that some existing texts could be applied to AI, subject to some potential adjustments:

- **Anti-discrimination**: There exists under French law anti-discrimination laws to address the issue of bias and discrimination, in particular in hiring, promotions and working conditions. Although these prohibitions may apply to AI, the CNIL (which is the French data protection regulatory authority), in its May 2023 AI action plan reiterated the need to protect against bias and discrimination and published dedicated new guidance regarding use of algorithms and AI in relation to human resources.
- **Copyright**: French intellectual property law is currently evolving to address the challenge posed by AI. For example, the special copyright law on software, which protects the form and structure of software, could apply to protect the graphical interface used in AI. In addition, the "sui generis right" – which enables a database producer to authorise or prohibit the extraction or re-use of a substantial portion of the database content if there has been a substantial financial, material or human investment – might be useful to protect AI generated content. The question remains as to whether the human user or the entity that created or commissioned an AI should be liable for any infringing content generated by the AI.

To encourage French innovation, the Prime Minister inaugurated the "Comité de l'intelligence artificielle générative" on 19 September 2023. This committee brings together various experts to inform the government's decisions and make France a country at the forefront of the artificial intelligence revolution.

EMPLOYEES/CONTRACTORS

General - Employees:

In France, employment contracts are regulated by the French labour Code and by collective bargaining agreements. The provisions of the latter are designed to apply to specific industries and relate to basic issues such as the durations of the trial and notice periods, the amount of the dismissal indemnity, the employee classification, minimum salaries etc. When applicable law and the collective bargaining agreement provide differently, the most favourable rule is applied to the employee.

An employment contract is deemed to have been entered into when the following three cumulative conditions are met:

- the performance of a service,
- in return for a remuneration, and
- a subordinate relationship between the employer and the employee (i.e. the employer has the power to give directives and orders to the employee and to sanction their violation).

Pursuant to French Labor Law, a written employment contract is not systematically required, although it is highly recommended to prove the parties' rights and obligations. It can be mandatory in specific situations expressly listed by employment law (fixed-term or part time contract, etc.). In addition, the employer must provide an employee with one or more written documents specifying the main elements of their contractual relationship.

EMPLOYEES/CONTRACTORS, CONT'D

General - Staff representative:

When a company has employed at least 11 employees over the last 12 consecutive months, it must implement a works council (comité social et économique (CSE)), whose powers include submitting individual or collective claims to the employer regarding wages or the application of Labor law. When a company has employed at least 50 employees over the last 12 consecutive months, the works council has more powers, including a right to be informed and consulted before the implementation of some company projects.

General - Contractors:

A company can execute a contractor agreement with independent contractors to perform services. To retain this qualification, courts will analyse the facts, and will not be bound by the title given to the agreement by the parties. Indeed, the contractor must remain autonomous, independent and act freely. The company must refrain from giving directives, otherwise the contractor could lodge a claim to have the contract be re-classified as an employment contract, entailing the application of employment rules (in particular regarding working time or termination) and social security rules (regarding social security payment), and, in some situations, criminal sanctions.

Termination of the employment contract:
Pursuant to French Labour Law, the employer can initiate the termination of the employment contract through a dismissal, or mutual agreed termination of contract. The dismissal must be based upon real and serious grounds (whether economic or personal), and be implemented following a specific procedure usually involving a convocation to a pre-dismissal meeting, (during which both parties have the opportunity to explain their arguments concerning the grounds for the termination), and the sending of a detailed dismissal letter with acknowledgement of receipt to the employee. However, if an employee falls within a protected class (pregnant women, employee representatives, occupational health doctors, labor court councilors, etc.), the employer will have to comply with specific additional procedures or waiting periods.

Work Made in the Course of Employment:
The French Intellectual Property Code ("FIPC") sets out all the rules applicable to any works created by employees. Several situations must be distinguished according to the type of creation, as detailed below:

Copyright: In general, employees remain the exclusive owners of the copyright (economic rights) in works that they created, unless an assignment agreement is signed and/or a specific clause in the employment contract assigns rights to the employer.

By way of exception, copyright (economic rights only) in the work is automatically vested in the employer in the following cases:

- software and its documentation created in the performance of their duties or pursuant to the instructions of their employer;
- work made by a journalist who contributes on a permanent or occasional basis to the preparation of a press title, whether or not the work is published;
- work made by a public official in the performance of his or her duties or in accordance with instructions received, to the extent strictly necessary for the performance of a public service task;
- work made at the employer's request and by several employees of the company without it being possible to attribute to each of them a separate right in the whole (called "collective works").

Patent: If an employee creates an invention in the course of his/her duties (while executing missions with an inventive duty or pursuant to studies or research explicitly entrusted to him/her) during his or her working time, it will belong to the employer. In consideration of this invention, the employee will be entitled to compensation. If the above conditions are not met, an employee's invention will belong to him or her unless the employee has created it during the performance of work duties, in the activity or in the field of the employer, through the knowledge of documents or studies belonging to the employer, or with material installations belonging to the employer, in which cases the employer can claim ownership of all or a part of the invention. In these situations, the employee will be eligible to receive fair compensation.

CONSUMER PROTECTION

In France, consumer protection is mainly regulated by the Consumer Code, but also by other provisions, notably from the Civil Code and the Commercial Code.

Price reductions: Pursuant to the Consumer Code any announcement of a price reduction must indicate the price preceding the reduction, i.e. the lowest price applied during the thirty days preceding the reduction. By derogation, in case of successive reductions, the previous price is the one applied before the first price reduction.

Online contracting: Contracts with consumers concluded over the Internet are strictly regulated.

- **Withdrawal period:** the consumer has a period of 14 days from the conclusion of the contract or receipt of the goods to change his/her mind about the purchase made/service required, allowing him/her to cancel the contract without giving any reason. There are a number of logical exceptions to this requirement (e.g., for software or for goods specifically personalized for a consumer).
- **Online cancellation:** pursuant to a recent law (June 2023), professionals who offer consumers the possibility of subscribing to a contract electronically must provide a means to cancel online via a "cancellation" button.
- **"Double click" obligation:** The online order is concluded only after a validation (first "click") and a final confirmation (second "click"), during which the consumer can check the details and modify his/her order.

Unfair terms: A consumer (or a consumer association) can ask a court to annul any term in a B2C contract that creates a significant imbalance in the rights and obligations of the parties (called “unfair terms”). In addition, the French Consumer Code provides two non-exhaustive lists of unfair terms: “black” terms and “grey” terms. The ‘black list’ contains twelve terms that are irrefutably deemed unfair. Examples include terms allowing the supplier to unilaterally alter the terms of the contract, hindering the pursuit of legal remedies or limiting the liability of the supplier. The “grey list” contains ten terms which are presumed unfair unless proven otherwise. Examples include provisions allowing the professional to terminate the contract without a reasonable prior notice period or imposing on the consumer in breach an indemnity that is manifestly disproportionate.

Misleading commercial practices: Pursuant to the Consumer Code, some commercial practices are deemed misleading with regard to the consumer and therefore prohibited. Regarding e-commerce sites and marketplaces, the French Consumer Code notably deems as misleading commercial practices the failure to provide the following information, considered as substantial: (i) information on whether or not the seller offering products on a marketplace is a professional, (ii) information on the main parameters influencing the ranking and priority of products offered online and likely to be searched for online via a keyword query, it being specified that this information must appear in a specific section directly and easily accessible from the page displaying the results of the query, and (iii) information on whether and how the professional who provides online consumer reviews verifies that these reviews have been provided by consumers who have used or purchased its products.

Disputes: In case of a dispute, consumers are allowed to contact a consumer association, to ask for help from the consumer mediator, to go to court and/or to report the case to the French authority in charge of consumer affairs and fraud control (DGCCRF).

- **Consumer associations:** consumer associations can initiate class actions against professionals in order to defend the right of consumers.
- **Consumer mediator:** professionals have the obligation to provide consumers with the option to resolve disputes by means of mediation. Each professional may set up its own consumer mediation system or offer the consumer access to any other consumer mediator who meets the requirements of French law. The professional must provide the consumer with the contact details of the relevant mediator.

FRANCE

TERMS OF SERVICE

The mandatory information required in online Terms of Service differs depending on whether they are intended for a professional or a consumer:

B2B Terms of Service: The mandatory information are the following:

- Prices and/or price list, possible discounts and payment terms,
- Consequences of late payment (interest rate for late payment penalties and fixed compensation for collection costs),
- Guarantees, conditions of implementation of guarantees, name and contact details of the professional that provides guarantees and, where applicable, guarantee exclusions.
- When applicable, i.e. for very small companies (fewer than five employees), when the agreement between the professional is concluded off-premises and does not concern the professional's main field of activity – provisions regarding the right of withdrawal (withdrawal period, withdrawal procedure, etc.).

B2C Terms of Service: The mandatory information are the following:

- Essential features of the services,
- Prices and/or price list, possible discounts and payment terms,
- Date or deadline for service delivery,
- Professional identity and contact details and information regarding the legal entity (status and legal form, registration number, intra-community VAT number when applicable),
- Possibility of contacting a Consumer Ombudsman and its name and contact details,
- Guarantees, conditions of implementation of guarantees, name and contact details of the professional that provides guarantees and, where applicable, guarantee exclusions,
- If the services are provided under a regulated or licensed activity, name and address of the authority which has issued the authorization, professional title and European State of issue and name of the relevant professional association or body,
- Reference to the professional liability insurance and territorial scope of the insurance; Applicable law and competent courts.

In addition to the mandatory information listed above, some specific types of contracts can require the supply of additional information (e.g. online contracting notably involves the supply of information regarding the right of withdrawal of the consumer).

Beyond these mandatory clauses, it is customary to include in the Terms of Services, whether B2B or B2C, provisions regarding liability, data protection, confidentiality, intellectual property, etc.

In both B2B and B2C situations, the client must be able to read, print and store the Terms of Service at the time of conclusion of the contract. B2B Terms of Services must be provided to any professional client who requests them. Regarding B2C Terms of Services, the customer must expressly accept the general conditions (preferably via a tick box).

Failure to comply with such rules are punishable by a fine of up to €15,000 for an individual or up to €75,000 for a legal entity.

WHAT ELSE?

Obligation of translation into French: Any person providing goods or services in France is required to use the French language for the designation, the offer or the presentation of its products and services.

Payment conditions: Pursuant to the French Commercial Code, the provisions dealing with payment conditions in the T&Cs must specify the conditions under which late interest is applied, the rate (at least three times the legal interest rate) and the minimum fixed fee of 40 euros to cover recovery costs.

Significant imbalance: Beyond consumer law, the concept of a "significant imbalance" is apprehended by commercial and civil law. Article L.442-1 of the French Commercial Code prohibits a party from subjecting the other party to obligations that create a significant imbalance in their rights and obligations, at any time during the commercial relationship. Nonetheless, recourse to Article L.442-1 is not common and has generally only been successful in cases where there is a major imbalance in power between the parties, such as is often the case between farmers and supermarket chains.

In addition, Article 1171 of the French Civil Code provides that any non-negotiable term, determined in advance by one of the parties that creates a significant imbalance in the rights and obligations stated in the contract is deemed not written. This rule only applies to contracts of adhesion. Nonetheless, such a significant imbalance cannot concern the essential purpose of the contract and/or the adequacy of the price.

Hardship: Hardship (referred to as 'imprévision' in French) refers to the situation in which a contract becomes imbalanced due to a change in circumstances that was not foreseeable at the time of its conclusion. The party who suffers the imbalance can require the other party(ies) to renegotiate the contract. The parties must continue to perform their obligations during the renegotiation. In the event of refusal or failure of the renegotiation, the parties may agree to the termination of the contract, on the date and under the conditions that they determine, or they can both ask the judge to adapt the contract. If no agreement can be found, the judge may, at the request of a party, revise the contract or terminate it, on the date and under the conditions set by the judge. A contractual imbalance will not qualify as unforeseeable, if either party to the contract had agreed to assume the risk that caused the imbalance. In addition, it will not be sufficient to demonstrate that the execution of the contract has simply become difficult, it must be proven that execution of the contract has become excessively onerous.

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LEGAL FOUNDATIONS

Germany follows the **civil law system**. It thus relies on written statutes and other legal codes in the field of public, private and criminal law. The German civil law system is partly cast in a number of major Federal Codes (Civil Code, Commercial Code, Tax Code, Criminal Code, the Codes of Civil, Criminal and Administrative Procedures). Some of these are well over 100 years old, revised where necessary, but still providing a stable and deeply structured backbone. Other parts of our law are set forth in a large number of principal statutes regulating, again on a Federal, nationwide level, a large number of important private and commercial sectors (including, for example, the Law Against Unfair Competition, the Copyright, Patent and Trademark Acts, the Federal Building Act, the major corporate acts on the various legal forms to do business and many others). In addition, there is a large number of laws, regulations and ordinances on both a Federal and State level (Federal or State – depending on the constitutionally allocated jurisdictional competence), which provide fine tuning or specific rules in a given legal sector. Cultural affairs (including education, arts, media, broadcast), as well as some locally relevant issues (i.e. some construction and zoning aspects), are more or less a matter of State jurisdiction in the 16 German States (Land, pl. Länder), allocated to 16 State parliaments and governments. Last but not least, many daily business operations are governed by local municipal regulations (eg local trade license (Gewerbeanmeldung), Sunday and holiday business operation permits, etc.

In legal disputes, court decisions, such as of the German Federal Court of Justice, are often used as supporting arguments when it comes to interpreting the statutory provisions. They must be generally considered by lower courts. The legal structure is thus also further developed by case law.

GERMANY

CORPORATE STRUCTURES

German Law provides the following forms of companies:

Corporations (Kapitalgesellschaften)

The German limited liability company (GmbH, Gesellschaft mit beschränkter Haftung) is one the most popular form of companies in Germany. As to its requirements:

- It requires at least one shareholder (individual or legal entity) for its incorporation.
- ·Further, the shareholders have to draw up and sign the articles of association in form of a German notarial deed. As of 1 August 2022, under certain preconditions, anAnonline formation of a German GmbH is possible, too. The company comes into existence with its registration in the German commercial register.
- The GmbH has a minimum statutory share capital of EUR 25,000. The shareholders have to pay in a minimum capital contribution of EUR 12,500. Contributions in kind are admissible but need to be effected in full.

ADVANTAGES

- Limited liability of the shareholders.
- Managing directors are bound to the instructions of the shareholders.

DISADVANTAGES

- Minimum share capital of EUR 25,000 (minimum capital contribution of EUR 12,500).
- The articles of association as well as any share transfer agreement have to be notarized.

The entrepreneurial company with limited liability **(Unternehmergesellschaft (haftungsbeschränkt)** or **UG (haftungsbeschränkt)**, is not an independent legal form, but a variation of the German GmbH having a minimum share capital of only € 1.00. The German legislator has introduced this so-called "small GmbH" in particular for founders of small commercial enterprises and start-ups, who wish to limit their liability and might be prevented from incorporating a German GmbH by its relatively high minimum share capital in the amount of € 25,000. However, it should be kept in mind that – in day-to-day business - the UG (haftungsbeschränkt) is often not as well regarded as a German GmbH due to its extremely limited liability.

In principle, the UG (haftungsbeschränkt) is subject to the same statutory provisions which are applicable to a "regular" German GmbH. The most important exceptions are, however, that:

- The UG (haftungsbeschränkt)'s share capital needs to be paid in full prior to the application for registration of the company in the commercial register.
- Contributions in kind are not allowed.
- 25% of the company's annual profit may not be distributed to the shareholders, but must be accumulated until there is sufficient equity of the UG (haftungsbeschränkt) to increase its share capital to € 25,000. At this point in time, the UG (haftungsbeschränkt) can become a "regular" GmbH.

Finally, there is the possibility to establish a German stock corporation **(AG, Aktiengesellschaft)** by one or more shareholders (individual or legal entity). The German AG has a share capital (Grundkapital) of at least EUR 50.000.00, of which at least EUR 12,500.00 need to be paid in by the shareholders. Furthermore, the AG requires the establishment of a supervisory board with at least three members. The articles of association need to be notarized and the company needs to be registered in the commercial register to come into legal existence. Due to the fact that the legal regulations for the German AG are much more formalistic than those for a German GmbH or UG (haftungsbeschränkt) and considering the relatively high initial investment, the AG is usually no attractive option for start-ups.

CORPORATE STRUCTURES, CONT'D

Partnerships (Personengesellschaften)

Apart from the GmbH, the most common forms of partnerships for businesses are the general commercial partnership (OHG, Offene Handelsgesellschaft) and the limited commercial partnership (KG, Kommanditgesellschaft). As to the requirements:

- In both cases, the establishment requires a partnership agreement between at least two partners (individuals or legal entities).
- No minimum capital is required.
- OHG and KG both need to be registered in the commercial register.
- Unlike the shareholders of a corporation, the partners are fully and personally liable with their personal assets.
- However, different from the OHG, in a KG there are two types of partners: (i) general partners, who have unlimited liability, and (ii) limited partners, who have only limited liability.
- In case of a so-called GmbH & Co. KG, i.e. a KG with a GmbH as general partner, even the liability of the general partner can be limited due to the fact that the GmbH's liability is limited to its share capital by law. The same applies for the UG (haftungsbeschränkt) & Co. KG.

ADVANTAGES

- No minimum capital
- No formal requirements for the establishment
- No obligation to disclose the articles of association

DISADVANTAGES

- Unlimited liability; this applies to all partners in an OHG and only to the general partners in a KG

Another form of a partnership is the civil law partnership (GbR - Gesellschaft bürgerlichen Rechts). Its establishment requires at least 2 partners (individuals or legal entities) who promote the achievement of a common purpose in the manner stipulated by the partnership agreement, in particular, without limitation, by making the agreed contributions. The partnership agreement does not need to be notarized but should – for reasons of evidence – be in writing. There is no general registration obligation for the GbR. Since 1 January 2024, in certain cases, however, an entry in the new company register (Gesellschaftsregister) may become a de facto obligation as certain transactions / legal rights presuppose the registration of the GbR in order to prove its capacity to act (e.g. entries in the land register). A registration in the commercial register is neither required nor possible. The partners are fully and personally liable with their personal assets. Due to this personal liability of the partners, the GbR is usually not an attractive alternative for start-ups.

Sole Proprietorship (Einzelunternehmer)

The sole proprietorship is also a commonly used legal form in Germany. The owner of the business is a single natural person. The sole proprietorship comes into existence with the commencement of the sole proprietorship activity. In case that the sole proprietor is a merchant within the meaning of the German Commercial Code, the sole proprietor is obliged to have entered the business name and the place and domestic address of the commercial business in the commercial register. The sole proprietor is fully and personally liable with his or her private and business assets and thus, usually no attractive option for start-ups, either.

GERMANY

ENTERING THE COUNTRY

On the legal basis of the German Foreign Trade and Payments Act and the German Foreign Trade and Payments Ordinance, the German Federal Ministry for Economic Affairs and Climate Action may review the acquisition of German firms by foreign buyers on a case-by-case basis.

Any acquisition of a company by investors located outside the territory of the EU or the EFTA region whereby investors acquire ownership of at least 25% of the voting rights of a company resident in Germany can be subjected to a cross-sector investment review. If the domestic company operates critical infrastructure, or if it provides other services of particular relevance to security, the threshold for the review is only at least 10%. If the direct buyer is resident in the territory of the EU, such review may be performed if there are indications of an abusive approach or a circumvention transaction.

Special rules for investment reviews apply to acquisitions in specific sectors: the acquisition of companies that operate in sensitive security areas (eg manufacturers and developers of war weapons and other key military technologies, products with IT security features that are used for processing classified government information). Similar special rules also apply to the acquisition of a company that operates a high-grade earth remote sensing system. Any acquisition of a company by foreign investors whereby these acquire ownership of at least 10% of the voting rights of a company resident in Germany can be subjected to such sector specific review.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which is suitable for distinguishing goods and/or services of an enterprise from those of another enterprise can be protected as trademarks. These signs can be, for example, words, letters, numbers, images, colours, holograms, multimedia signs and sounds.

Where to apply? Trademarks can be filed either with (i) the German Patent and Trademark Office (DPMA), (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application of a German trademark is very similar to the procedure before the EUIPO. The application can be filed via the online platform on https://direkt.dpma.de/marke/ or paper based. The German Patent and Trademark Office reviews the application and registers the trademark if all minimum trademark requirements as mentioned above are met and whether there are absolute grounds for refusal. The German Patent and Trademark Office does not examine whether earlier trademarks or rights to signs of third parties conflict with the registration. With publication in the Trademark Gazette, the three-month opposition period begins. Within this time period third parties can oppose the trademark.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for a ten-year period and can be prolonged for successive ten-year periods.

Costs? Application costs for German trademarks for three classes amount EUR 290 if the application is filed online and EUR 300 for a paper-based application (EUR 100 are charged per additional classes). In addition fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in the field of technology are patentable. This requires that the invention is novel, based on an inventive step (i.e. not obvious to a skilled professional) and can be applied in industry.

Where to apply? Patent protection will be granted only per country, meaning that the applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the German Patent and Trademark Office (DPMA), the European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained by annual fees (3rd - 20th year (increasing): EUR 70 – EUR 2,030).

Costs? Application costs for German patents for up to ten claims amount to up to EUR 510.

Employee invention and inventor bonus? To employee inventions the German Employee Inventions Act applies, which is intended to create a balance between the interests of the employer and the employee who has invented something. According to the Employee Inventions Act, the employer has the right to claim a service invention, i.e. an invention that has arisen from the service activity or is significantly based on experience or work of the company. By claiming the service invention, the economic rights to the service invention are transferred to the employer. In return, the employer is obliged to compensate the employee appropriately and to apply for the grant of an industrial property right for the service invention without delay. This is accompanied by the employer's obligation to bear the costs associated with the granting procedure, as well as the costs of maintaining a patent application and a patent granted thereon. Special guidelines are available for calculating the employee's compensation.

Utility Model

What is protectable? Utility models are very similar to patents and can be registered for technical inventions. Protectable are (technical) inventions that are new, based on an inventive step and commercially applicable.

Where to apply? German utility models can be filed with the German Patent and Trademark Office (DPMA).

Duration of protection? In contrast to patents, the term of protection is only 10 years.

Costs? Application costs for German utility models for amounts to EUR 30 (electronic filing) or EUR 40 (paper-based filing). The utility model must be maintained by annual fees (4th - 10th year (increasing): EUR 210 – EUR 530). In addition fees of the legal and technical representatives apply.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design, eg furniture, clothing, vehicles, fabrics, or graphic symbols. To be protectable the design must be new at the date of filing and it must have individual character.

Where to apply? National designs may be registered with the German Patent and Trademark Office (DPMA) Office. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. German applicants can also file for designs with the WIPO worldwide as Germany is party to the Hague System for registering international designs. No application for registration is required for an unregistered Community design. Protection is automatically conferred by way of disclosure, i.e. when the design is first published (exhibited, offered or otherwise published) within the European Union.

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Application costs for German designs amount EUR 60 (electronic filing) or EUR 70 (paper-based filing) plus an additional fee of EUR 6 for each additional design from the 11th design. If the publication of the representation is deferred, there will be additional costs in the amount of at least EUR 30. In addition, fees of the legal representative apply.

The following IP rights cannot be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the German Copyright Act (eg literary and artistic works, texts, photos, graphics). Copyright protection is granted immediately with the creation of a work. No registration and no label required.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the indispensable right to be named as author. The author may however grant third parties non-exclusive or exclusive rights to use the work.

Trade Secrets

What is protected? In Germany, trade secrets are protected under the German Act on the Protection of Trade Secrets (GeschGehG). It provides companies with protection against espionage by competitors, i.e. against the unauthorized acquisition, use and disclosure of trade secrets. However, it also brings with it the compelling need to secure and protect trade secrets well (companies are required to take appropriate secrecy measures) so that a company can benefit from the legal protection. Full legal protection in cases of disclosure of secrets/theft of data – such as claims for damages, cease-and-desist claims, and claims to information – only applies when and if the owner has taken appropriate protection measures and has a justified interest in non-disclosure. A company must clearly and visibly document its intent to not disclose certain information.
The term "appropriate secrecy measures" includes, in particular, contractual protection mechanisms, such as declarations of commitment to secrecy protection, which can be agreed in individual contracts or under collective law (with employees).

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

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DATA PROTECTION/PRIVACY

Since 25th May 2018 the GDPR applies. In Germany, the GDPR is supplemented by the Federal Data Protection Act (BDSG), the data protection laws of the federal states, and sector-specific regulations, e.g., in the area of electronic communication by the Act on Data Protection and Privacy in Telecommunications and Telemedia (TTDSG). Some of the most relevant German specifics in the German data protection laws are the following:

- The Federal Datadata Protection Act (BDSG) contains specific rules on the processing and protection of the personal data of employees.
- The controller and the processor have to appoint a data protection officer if they generally employ at least 20 persons on a permanent basis for the automated processing of personal data.
- Some provisions of the GDPR do not apply to the processing of personal data for journalistic purposes by media owners.
- ·According to the Act against Unfair Competition (UWG) phone calls and electronic messages for advertising purposes require the data subject's prior consent (B2C and B2B). Consent for phone calls in a B2B context is not required in the event of a presumed consent on the part of the addresseeaddressed. Consent for electronic messages is not required, if the controller has received the personal data in connection with a transaction, the marketing communication concerns similar products and services and the data subject has been given the opportunity to opt-out when data has been collected for this purpose as well as with every communication (soft-opt-in). Due to restrictive legislation this exemption rarely applies. If the above requirements are not met, there is also no overriding legitimate interest for the processing of the data for the advertising purpose pursuant to Art. 6 para. 1 point (f) GDPR. Marketing by postal mail service can be based on overriding legitimate interests and does not require an opt-in under The Act against unfair Competition.
- According to Sec. 25 TTDSG, prior consent is required for setting cookies which are not necessary for the provision of the service, irrespective whether personal data is processed or not. Thus, opt-in is required for all marketing cookies.

Due to the federal structure in Germany, supervision of companies and public bodies is generally carried out by the data protection supervisory authorities of the individual federal states. At the federal level, centralized supervision by the Federal Commissioner for Data Protection and Freedom of Information (BfDI) is limited to supervision of the public sector, private-sector companies in the telecommunications and postal sectors and private companies covered by the Security Clearance Check Act (SÜG).

ARTIFICIAL INTELLIGENCE

Germany does not have any specific regulations for artificial intelligence until now. The existing laws are applied:

- Works created with the help of artificial intelligence may be protected by copyright in individual cases. Copyright protection applies when artificial intelligence is used as a tool for the creation of a new specific work. Copyright protection does not apply if the artificial intelligence takes over the entire creative process.
- The use of generative artificial intelligence is regularly associated with the input of data. This can infringe the copyrights of third parties if the data contains copyrighted works of third parties. An infringement exists if the copyright work of the third party can be recognised in the new work. The following principle can be used as a guide: the more you recognise the old work in the new work, the more likely it is that there has been an infringement. There is no infringement if the artificial intelligence only analyses the work (§ 44b UrhG).
- In the case of a work created with the help of artificial intelligence, the question of authorship can pose a problem. Unlike in the USA, for example, there is no "work for hire"-principle and therefore no automatic attribution of such works to the company. The copyright holder can be either the developer or the user of the artificial intelligence. If the identity of the developer and the user of the AI programme is different, it must be determined which person provided the relevant "creative work". A company is recommended to contractually determine the authorship in advance.
- Generative artificial intelligence is also subject to the General Data Protection Regulation (GDPR). The German data protection supervisory authorities are currently examining in particular the processing of special categories of data in accordance with Art. 9 GDPR, the realization of the rights of data subjects to access, rectify and erase personal data and whether and in what way personal data is reliably identified and sorted out as such during training and when using ChatGPT or how data protection-compliant processing is to be ensured in other ways.

In December 2023, the European institutions reached a provisional agreement on a new AI law. Such a law would have a significant impact on artificial intelligence in Germany.

EMPLOYEES/CONTRACTORS

General / Employment Contracts: German employment law is contained in numerous single laws, interpreted and specified extensively by case law.

Statutory law requires only that employment contracts with temporary workers and those parts of employment contracts relating to limitedfixed terms (including mandatory retirement clauses) and post-termination covenants not to compete be in writing. The written form requires the exchange of one or more hard copies with original handwritten (wet-ink) signatures of the employer and the employee on the same hard copy. Regardless, written employment contracts for all employees are a best practice. Written employment contracts are also a way to comply with the German Act on Proof of the Existence of an Employment Relationship (Nachweisgesetz - NachwG). With effect as of 1 August 2022 the NachwG was modified, based on an EU Directive. The new rules create additional documentation and notification obligations for employers. The list of terms and conditions of employment that employers have to provide information on to their employees is now longer than before. Typically, not all the items are covered in standard employment agreements.

Employees who start on or after 1 August 2022 essentially have to be provided with the necessary written (wet-ink signed) documentation on day one of their employment regarding certain material terms and conditions of the employment relationship (such as compensation and working hours). Existing employees with a start date prior to 1 August 2022 have to be provided with the written documentation only upon request. However, the employer has to respond within seven days after receiving the request.

The update to the NachwG introduces a regulatory fine of up to EUR2,000 per violation and employee. Violations can include that documentation is either not provided at all, not provided on time, not provided in full or not provided in the prescribed manner.

Minimum wage: On 1 January 2024, the minimum wage was raised from EUR 12.00 to EUR 12.41 per hour. The earnings threshold for so-called mini-jobs rised accordingly to EUR 538 (instead of the previous EUR 520).

Whistleblowing reporting centre for 50 employees or more: Since 17 December 2023, employers with at least 50 employees have been obliged to set up an internal whistleblowing office to report legal violations. This rule previously only applied to companies with at least 250 employees or in certain sectors and has now been extended. If the employer does not fulfil these obligations, fines of up to EUR 20,000 may be imposed.

Fixed-term Employment Contracts: According to the Part-Time and Limited-Term Employment Act (Teilzeit- und Befristungsgesetz) limitedfixed-term employment contracts are permitted if the limitation in time is justified by reasonable cause. Reasonable cause exists in particular (without limitation) if the operational need for work is only temporary, if an employee replaces another employee (e.g. in cases of illness, maternity and parental leave) or if the limitation is for a probationary period. There is no specific maximum duration for such limitedfixed-term contracts; however, the longer the duration, the more difficult it usually is to establish reasonable cause. The successive use of limitedfixed-term employment contracts over many years may amount to an abuse of rights, rendering the limitation unenforceable.

Reasonable cause is not required for fixed-term employment:

- of new employees and employees whose last employment with the employer ended a very long time ago, was of an entirely different nature or was very short (such contract may be – according to current legislation (the legislator is planning restrictions here) – extended up to three times, subject to an overall maximum term of two years);
- **Note:** at newly established businesses, unless they are established in connection with a reorganisation of existing businesses, within four years of establishment (such contract may be extended multiple times, subject to an overall maximum term of four years); and
- of employees who have reached the age of 52 and have been unemployed for at least four months (such contract may be extended multiple times, subject to an overall maximum term of five years).

Specific statutes govern limitedfixed-term employment of scientific and artistic university staff and medical practitioners in further education.

EMPLOYEES/CONTRACTORS, CONT'D

Factors that Distinguish an Independent Contractor/Freelancer from an Employee: German law makes a very strict distinction between employees and self-employed persons/freelancers. The decisive factor is in particular how the contractual relationship is lived and less which regulations are contained in the contract itself. An employee is defined as someone who, based on a contract under private law, is obliged to work according to instructions and heteronomously in someone else's service and personal dependence. The degree of personal dependence required may vary by the nature of the work to be performed. Contrary to an independent contractor, who is essentially free to determine how to organise their work and when and where to work, an employee is integrated into the employer's operational organisation and subject to the employer's instructions regarding the contents, performance, time and place of work. In determining whether someone is an employee, all circumstances of the individual case must be taken into account. The wording of the contract is disregarded where its practical implementation shows an employment relationship. Independent contractors who are economically dependent on the employer and, comparable to employees, in need of social protection are regarded as employee-like persons to whom some employment statutes apply.

In case of uncertainty regarding the employment status, the status determination procedure in social insurance pursuant to Section 7a of the Fourth Book of the German Social Security Code (SGB IV) enables the parties involved in an employment relationship to obtain clarity about their employment status at an early stage. With this procedure, the parties involved in a contractual relationship can have a legally binding determination made as to whether an insurable employments status exists or not.

The shown distinction between an employee and a self-employed person is important, as it has implications for taxation, vacation entitlements, pension contribution payments, insurance issues, intellectual property and protection against dismissal.

Especially in the rapidly growing branch of the gig economy (labour market characterized by the prevalence of short-term contracts or freelance work as opposed to permanent jobs, e.g. Uber, Uber Eats, Lieferando), businesses need to know their responsibilities depending on what type of worker they employ to avoid legal complications.

Recently, some companies within the gig economy (e.g. Uber in the UK) have been claiming their staff were self-employed, when in fact, they were workers in the law, and therefore entitled to workers' rights.

The German Federal Labour Court has dealt with this question in a controversial judgement in December 2020. For platform operators, this means that the limits set out in this ruling must be strictly observed.

Legislation Governing Temporary Work Through Recruitment Agencies: Temporary work through recruitment agencies is governed by the German Act on Temporary Agency Work (Arbeitnehmerüberlassungsgesetz). Recruitment agencies are required to have a government permit to operate and are subject to detailed regulation. The maximum period that a temporary worker may work for the same business is 18 months. Recruitment agencies must grant a temporary worker essentially the same terms and conditions of employment, including pay, as the business for which the temporary worker works grants to comparable employees of its own (the equal treatment rule).

EMPLOYEES/CONTRACTORS, CONT'D

Mobile working / Remote Working in Germany: Most of the legal provisions that regulate the questions of 'how' and 'where' work is to be delivered are still designed assuming the traditional concept of employees coming to work at the employer's business premises. This is especially challenging as mobile work and remote work is breaking down these classic work systems. There is no legal entitlement to mobile work in Germany.

When implementing mobile work or remote work policies, it is therefore first of all important to know which legal areas are affected by mobile work. Mobile and remote work affects occupational health and safety obligations just as much as questions about the necessary data protection, accident insurance or possible participation rights of a works council. In addition, mobile work becomes particularly exciting and conflictual when employees are not only working from home but are also allowed to work remotely abroad. German labour law recognises three different manifestations (pure telework, alternating telework or remote work) of working outside the employers' business premises, which in turn are subject to different legal frameworks. In case of pure remote work the employee is basically allowed to work from anywhere and, thus, is not tied to a specific workplace and can perform their work from anywhere in the world. In contrast, if the employee decides to use a fixed workplace outside of the employers' business premises (e.g.their home workplace), this is considered 'telework'. Whereas with telework the workplace must meet certain legal specifications (e.g. specific equipment of the workplace, etc.) from the first day of work, with mobile work the employee is still somewhat free and can choose their workplace more flexibly. If the employee works remotely abroad, German labour law remains applicable. However, things may change if the employee spends a significant part of their working time abroad. In this case, it must be checked very carefully whether foreign tax, social security law and (at least selectively) foreign labour law provisions apply.

Working Hours: The German Working Time Act (Arbeitszeitgesetz) limits the daily working time to eight hours. An increase of the working time up to ten hours per workday is legally permitted, provided the average number of hours worked over a six-month period does not exceed eight hours per workday. The stipulations of the German Working Time Act are mandatory and cannot be contractually altered except where expressly permitted. There is no work permitted on Sundays and public holidays except with special permission of the relevant local authority. Until 13 September 2022, German law only provided for an obligation to record working time for any working time exceeding the standard working time of eight hours on working days and working time on Sundays and public holidays. The standard working time on workdays did not have to be recorded. However, a decision of the Federal Labour Court (BAG), dated 13 September 2022, includes an important change in the law. The BAG thus obviously follows the so-called „time clock decision of the European Court of Justice (ECJ - 14 May 2019)" and counts a working time recording system that records the entire working time of the employee as a necessary resource. According to the ECJ decision, this is the only way to verify and ensure that the provisions of the EU Working Time Directive (in particular rest periods and breaks) are complied with and that the practical effectiveness of the Working Time Directive is ensured. However, the BAG has not decidedon the question of how working time must be recorded. There is currently no formal requirement for time recording; in addition to electronic time recording, recording using a classic time clock or manual recording using time sheets are still possible options. Ultimately, it is up to the legislator to specify the requirements for the working hours recording system in more detail. In April 2023, the Federal Ministry of Labour and Social Affairs drew up a proposal on the structure of working time recording in the Working Hours Act and the Youth Employment Protection Act, which is currently still being discussed within the government, in order to create legal certainty on the question of "how" the recording obligation should be implemented.

German Trade Secrets Act (GeschGehG): The German Act on the Protection of Trade Secrets (GeschGehG) came into force on 26 April 2019. It is intended to provide companies with better protection against espionage by competitors, i.e. against the unauthorized acquisition, use and disclosure of trade secrets. However, it also brings with it the compelling need to secure and protect trade secrets well (companies are required to take appropriate secrecy measures) so that a company can benefit from the legal protection.

The term "appropriate secrecy measures" also includes, in particular, contractual protection mechanisms, such as declarations of commitment to secrecy protection, which can be agreed in individual contracts or under collective law. They are intended to make employees aware of the confidential information and trade secrets that exist in the company - also in terms of their weighting - and to define concrete behavioral measures for dealing with this information. They should also make employees aware of the in legal practice relevant issue of "betrayal of secrets/data theft", which is a criminal offense in Germany.

EMPLOYEES/CONTRACTORS, CONT'D

No work made for hire regime: There is no work made for hire regime in Germany. By creating a personal intellectual creation, the employee becomes the author of the work created in the process. This formal legal status as an author cannot be disputed by anyone, not even the employee's employer, as copyright as such is not transferable in Germany. However, an author grant another person rights of use to the copyright created. Employment contracts should contain detailed and comprehensive clauses on this.

Dismissals: The termination of an employment relationship by notice of the employer is governed by the German Protection Against Unfair Dismissal Act (Kündigungsschutzgesetz). It requires specific grounds to justify a termination notice if the terminated employee has been employed for at least six consecutive months. The Act is applicable to businesses employing more than ten (in some situations five) employees. Part-time employees do not participate in the headcount. Instead they are included by hours worked, i.e. up to 20 part time hours = 0.5 employee, up to 30 hours = 0.75 employee. When calculating the size of the company, temporary agency workers working in the company must be included if their use is based on a „generally" existing demand for manpower. Termination notices must be given in writing, with the legal original signature of the employer or his authorized representative. If a works council exists, a termination notice is legally invalid if the works council has not been informed and heard prior to the termination notice. The basic statutory notice period is four weeks, terminating the employment at the fifteenth or the last day of a calendar month. Notice periods apply equally to notices of the employer and the employee. The length of the notice period to be observed by the employer increases with the duration of the employment, up to a maximum of seven months. If an extended notice period applies, the termination notice is effective only at the end of the relevant month at the end of the notice period. Collective bargaining agreements (Tarifverträge) and individual employment contracts often provide for notice periods that are longer than those prescribed by statute. Shorter periods may be agreed in certain exceptional cases. There is no right to pay in lieu of applying the applicable notice period. Unless agreed otherwise, the employee has not only the duty but also the right to work until the notice period has elapsed. If the employee objects to the dismissal, they must file a complaint with the labor court within three weeks from receipt of notice of termination or else the employee will no longer be entitled to contest the notice in court.

Ordinary Dismissal: An employer's ordinary dismissal is subject to certain validity conditions if the German Protection Against Unfair Dismissal Act applies as described above. Dismissals are only legally justified if they are based on reasons that relate to any of the following:

- the employee's individual circumstances (e.g. a long-term illness);
- the employee's conduct;
- economic, technical or operational (ETO) grounds that rule out the possibility for the employee continuing to work in the business.

However, apart from such general protection, there are numerous other provisions that grant special protection against dismissal to specific groups of employees (e.g. pregnant employees; employees on parental leave; severely disabled employees and equivalent persons; works council members and other employee representative bodies).

Dismissal Without Prior Notice: An extraordinary dismissal without prior notice (termination for good cause) terminates the employment with immediate effect, Section 626 of the German Civil Code (Bürgerliches Gesetzbuch). An extraordinary dismissal requires a servere breach of duties and therefore circumstances which, taking the entire situation of the individual case into account and weighing the interests of both parties, render it unreasonable for the employer to continue the employment relationship until the notice period has elapsed.

EMPLOYEES/CONTRACTORS, CONT'D

Social Security, Income Tax and Company Pension Scheme: The statutory German social security system applies to employees and most managing directors of a limited liability company (GmbH). It does not apply to self-employed individuals (freelancers) and members of the boards of stock corporations. Social security insurance covers five principal areas:

- Health (Krankenversicherung), total premium is 14.6% of the gross salary;
- Pension (Rentenversicherung), total premium is 18.6% of the gross salary;
- Unemployment (Arbeitslosenversicherung), total premium is 2.6% of the gross salary;
- Nursing Care (Pflegeversicherung), total premium is 3.4% of the gross salary. Parents with more than one child are relieved. The contribution will be reduced by 0.25 per cent per child from the second child onwards. The reduction will be limited to a maximum of 1.0 per cent.;
- Accident (Unfallversicherung) costs are borne by the employers, subject to contribution rates, which change annually.

In general, the premium/contributions are payable by the employer and the employee at the rate of one half each (fifty-fifty). The amount of the contribution is a percentage of gross income (up to certain income limits). Employee contributions (like income and other taxes) are withheld and forwarded by the employer, together with its own share, to the relevant organization.

Unlike the situation in some other jurisdictions, company pension schemes are not mandatory. If they exist, they vary from being completely employee-funded schemes to those funded only by the employer. If claims of employees exist under a given company pension scheme, these are legally protected under the German Company Pension Act (Gesetz zur Verbesserung der betrieblichen Altersversorgung). There are tax reliefs available on contributions to company pension schemes.

CONSUMER PROTECTION

As consumer protection affects a large number of legal areas and legal transactions as well as areas of life, it is implemented by several laws in Germany.

Regulations and legal standards can be found, for example, in the German Civil Code (BGB), the German Food and Feed Code (LFGB), the German Cosmetics Ordinance (KosmetikV), the German Medicines Act (AMG), the German Insolvency Code (InsO), the German Air Passenger Rights Ordinance (Fluggastrechte-Verordnung) or the German Act against Unfair Competition (UWG).

Important core provisions are laid down in the German Civil Code, which regulates a wide variety of issues. These include, for example unsolicited services, principles for consumer contracts, in particular distance selling contracts, general terms and conditions, regulations on the sale of consumer goods, vacation right, regulations on consumer loan agreements and residential tenancy law.

The regulation on general terms and conditions in the Civil Code provides a catalogue of clauses which are inadmissible vis-à-vis consumers; cf. question 8.

In case of distance selling contracts (eg via webshops), the regulations on distance selling must additionally be adhered. Those regulations particularly foresee various information obligations. Besides, traders must implement a withdrawal management system and ensure that consumers can exercise their right to rescind from any contract within 14 days without giving any reasons. This right can only be limited in specific circumstances. Further, if consumers are not sufficiently informed about the right of withdrawal, this right is automatically extended for up to one year.

GERMANY

TERMS OF SERVICE

Terms of services, which are usually qualified as general terms and conditions, become enforceable only, if consumers have explicitly agreed to these terms (preferably via a tick-box) and had the possibility to read, print and store them upfront. In addition, the respective clauses must be in compliance with stringent consumer protection laws. According to Sec 305 et seq. German Civil Code, particularly the following clauses in terms and conditions are held to be invalid:

- Implied renewal of the contract if specific conditions are not met;
- Limitations of warranty rights;
- Exclusion of liability rights for death, bodily injuries, gross negligence, willful misconduct, claims under the product liability laws, damages occurred by violations of contractual core obligations;
- One-sided rights of companies to change scope of services or prices;
- Severability clauses;
- Any other intransparent or grossly disadvantageous clause.

In addition, pursuant to Sec 312 et seq. German Civil Code, certain information and documentation obligations vis-à-vis consumers exist.

However, some of the above-mentioned restrictions do not only apply to contracts with consumers. In legal transactions between entrepreneurs, terms of service must also effectively be included in the contract, to be valid. Furthermore, some of the legal restrictions regarding the admissible content of general terms and conditions, apply to contracts with entrepreneurs, too. Thus, for example, the exclusion of liability rights for death, bodily injuries, gross negligence, willful misconduct, claims under the product liability laws, damages occurred by violations of contractual core obligations in general terms and conditions, is also inadmissible in business transactions with entrepreneurs.

If standard terms of service in whole or in part have not become part of the contract or are ineffective, the remainder of the contract remains in effect, in principle. To the extent that the standard terms of service have not become part of the contract or are ineffective, the contents of the contract are determined by the German statutory provisions.

WHAT ELSE?

Registrations/Permits: Depending on the specific business, registrations or specific permits may be necessary. The founding of a commercial operation (Gewerbebetrieb) has to be registered with the local trade office (Gewerbeamt). Some businesses require a government permit. Certain professions require admission to respective professional organizations. Freelancers have to register with the tax office (Finanzamt).

Strict jurisdiction: German courts are rather strict as it comes to the protection of employees, consumers and data subjects. For businesses, the risk of non-compliance in these fields of law is rather high. It is thus recommendable to focus on these topics first, when rolling out a business in Germany.

GREECE

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GREECE

LEGAL FOUNDATIONS

Greece follows the **Civil Law System**. The system relies on its core, on the written legal codes governing the fields of public, private, and criminal law respectively. The legal codes are updated at regular intervals. The core legal codes are complemented by a complex system of statutes and legal acts, governing and regulating more specific legal issues and sectors of law. Such legal statutes and acts are updated constantly. European Regulations, which are directly applicable in all member states, constitute the third and final part of the Greek legislative ecosystem. The main jurisdictional layers, in terms of subject matter, are the following:

- Greek **public law** governs the relationship between individuals and the Greek state and is enforced by administrative bodies and administrative courts (i.e. public procurement contracts, fines imposed by public bodies/authorities, disputes against public authorities). In most cases, decisions are initially made by internal instruments/departments of the competent public body. Such decisions may then be disputed in the administrative courts. Greek administrative courts consist of three jurisdictional layers: i. administrative courts of first instance, ii. administrative courts of appeal, iii. The Council of State (Supreme Administrative Court). The core legal codes, governing Greek Public Law, are the "Administrative Code" and the "Code of Administrative Procedure".

- **Private law** governs relationships between individuals, regardless of their nature. Thus, private law covers numerous cases and sectors of law, from family law to commercial and corporate disputes (i.e. employment disputes, contractual liability disputes, land disputes etc.). Greek Civil Courts consist of four jurisdictional layers: i. Small claims court, ii. Civil Courts of First Instance, iii. Civil Courts of Appeal, iv. The Supreme Court. The main legal codes, constituting the backbone of private law, are the "Greek Civil Code" and the "Greek Civil Procedure Code". The main legal codes are then supplemented by hundreds of other laws governing specific fields or issues. (i.e. employment laws, Corporate Laws, e-commerce laws etc.).

- **Criminal law** is mainly codified in the "Greek Criminal Code" and the "Greek Code of Criminal Procedure". Some sectoral laws may also include criminal provisions or penalties for specific actions (i.e. data protection law, Intellectual Property Law, Competition Law). Greek Criminal Courts consist of four jurisdictional layers: i. Magistrate Courts, ii. Criminal Courts of First Instance, iii. Criminal Courts of Appeal, iv. The Supreme Court.

Even though the Greek Civil Law System relies on written legal statutes, codes, and acts, Greek Courts are competent to interpret the meaning and application of such statutes, codes, and acts. As such, case law of the Greek Courts also plays a vital role in developing the Greek legal system.

GREECE

CORPORATE STRUCTURES

Companies and Enterprises in Greece fall under three main categories: i. Individual Enterprises (Sole Traders/Freelance Professionals), ii. Personal Companies, and iii. Capital Companies.

For most start-up businesses and business models, the capital companies are the most appealing and relevant category since they generally provide limitation of the shareholders' liability and several ways for corporate capital to be raised by or invested in the start-up. The three most relevant capital company/corporate types for start-ups, looking to start their business in Greece, are the following:

Company Limited by Shares - Société Anonyme (S.A. /A.E.)

It is a capital company with legal personality, which is responsible for its debts with its own assets. The company's capital is divided into shares. A company limited by shares is a commercial company, even if its purpose is not the exercise of a commercial activity. Shareholders own shares of the company which are either registered or bearer shares. Shareholders are not personally liable, and their liability is limited to the amount of their investment.

Main features & Facts:

- Minimum capital of 25.000€ required for establishment.
- Contributions of the members can be in cash and in kind. However, in kind contributions are exclusively limited to assets which can be objectively valued. As such, provision of labour, services, or expertise may not be legally contributed against capital.
- The S.A. is the only corporate structure, under Greek Law, which may potentially be listed in the stock exchange.
- Increased administrative costs due to complex corporate structures and strict tax compliance requirements.
- Increased transparency obligations.
- Increased credibility with creditors and other stakeholders, due to the increased applicable transparency obligations.

Limited Liability Company (Ltd / E.P.E.)

A Limited Liability company is a commercial company by law, even if its Articles of Association do not state that it does pursue commercial objectives and irrespective of the business purpose actually pursued by its directors and partners. A limited liability company is liable for its debts with its own assets. The personal liability of the partners cannot be engaged and liability is limited to the amounts contributed by each partner in return for portions of participation.

Main Features & Facts:

- No minimum capital requirement.
- Contributions of the shareholders can be in cash and in kind. However, in kind contributions are exclusively limited to assets which can be objectively valued. As such, provision of labour, services, or expertise may not be legally contributed against capital.
- Specific form/notarial requirements apply to specific corporate actions, such as the transfer of capital portions.
- Dual majority requirements (majority in absolute number of partners and majority in terms of capital percentage) apply for decisions of the General Assembly to be valid.

CORPORATE STRUCTURES, CONT'D

Private Capital Company (PCC / I.K.E.)

The newest and most flexible corporate structure. IKE is a private capital company which has capital and the liability of its members for the company debts, except for members who participate in the company with guarantee contributions, is limited.

Main Features & Facts:

- No minimum capital requirement.
- Contributions of the members can be in cash, in kind, and in guarantee.
- The only corporate structure allowing in kind contributions related to labour, services, or expertise. For that reason, it is really popular amongst start-ups with business models based around tech development or IP.
- Lower administrative and tax compliance costs.

All of the abovementioned corporate structures may be established by a sole owner/shareholder.
All of the abovementioned corporate structures must be registered in the Greek Business Registry (GEMH) and comply with, varying degrees of, transparency obligations.

Foreign start-ups, may also explore the possibility of beginning their business activities in Greece by establishing a Greek branch of their main company. Branches do not possess a separate legal personality. However, they may acquire a Greek tax number and legally conduct business in Greece. In some cases, establishing a branch may be a way for start-ups, established in other countries and following specific business models, to test the business environment in Greece before fully committing to the Greek market.

ENTERING THE COUNTRY

Foreign Investment Restrictions: In general, Greek law welcomes foreign investments, however restrictions are in place in specific market sectors and industries which are considered strategic for the country's national interests. In most such cases, there is an upper limit of 49% in the ownership share which can be owned by a foreign investor. Some examples in which such restrictions may apply are the defense industry, and the mass media sector.

Restrictions Related to Working Visas and Residence Permits: Some pre-seed or seed funding-stage startups may face restrictions, related to visa or residence permit requirements, when establishing themselves within Greece. More specifically, although foreign company owners/shareholders are not subject to any visa requirements, for a non-EU/third-country resident to directly manage a company established in Greece, s/he must possess a working visa. From March 31, 2024 onwards a new and more strict "Immigration Code" regulating restrictions related to working visas and residence permits will be applicable in Greece.

In a nutshell, a residence permit may be granted to a foreign citizen if he plans to establish a company with corporate seat in Greece in order to conduct investments amounting at least 500.000 euros. In case the investment is performed by a foreign legal entity, a residence license may be granted up to three citizens, which may either be members of the Board of Directors or shareholders of the foreign entity with at least 33% of the share capital or its managers or legal representatives. In addition, third-country residents which are either shareholders of at least 33% of a Greek company's share capital by having paid in cash at least 500.000 euros or are shareholders of a Greek company with shares traded in regulated markets and the nominal value of their shares amounts at least 500.000 euros, may apply for a residence permit. Third-country citizens which are BoD members, legal representatives, managers of Greek companies as well as legal representatives of foreign companies' branches that conduct lawfully commercial business in Greece and have a turnover of at least 4 million, may also apply for a permit.

It is clear, that if a startup's BoD members or Administrators are EU citizens, the barriers of entry to the country for the company are much lower.

GREECE

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign, including sounds, and product shape or packaging, provided that it is able to distinguish between products and services of different companies/businesses and that may be represented in a form which allows the public to understand the object of the trademark protection.

Where to apply? Trademark applications are filed with either: i. the Greek Industrial Property Organization (OBI- Οργανισμός Βιομηχανικής Ιδιοκτησίας), ii. the European Union Intellectual Property Office (EUIPO), or iii. the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought (Greece, EU, Other Countries of the Madrid System). The application for a Greek Trademark may be filed online via the Greek Industrial Property Organization (http://www.obi.gr/en/). The procedure is similar to the one followed for the granting of EU Trademarks before EUIPO. The trademark application is reviewed by an OBI reviewer and, if the application includes all the required information and no absolute grounds for refusal apply, the trademark is published on the website of the Greek Ministry of Development and Investments. A three month-long opposition period, during which third parties may oppose the trademark, follows the abovementioned publication of the trademark.

Duration of protection? Registered trademarks are valid for 10 years from the date of registration. The protection may be renewed for further 10-year periods for a fee.

Costs? Application fees for Greek trademarks, for one class, begin from 100€ for electronic applications and from 120€ for hardcopy applications. Additional fees apply for the protection of additional classes of products/services. The abovementioned fees correspond to the administrative fees collectible by OBI and do not include attorney legal representation/consulting fees.

Patents

What is protectable? Inventions which are novel, inventive/not obvious, and are suitable for industrial application.

Where to apply? Greek Patent applications can be filed with the Greek Industrial Property Organization (OBI).

Duration of protection? The term of protection is, in any case, a maximum of 20 years from application and must be maintained by annual fees, following the second year of protection.

Costs? Application fees for Greek patents range between 500€ and 667€. The abovementioned fees correspond to the administrative fees collectible by OBI and do not include attorney and technical consultant legal representation/consulting fees.

Utility Model

What is protectable? Any three dimensional object of specific shape, such as a tool, device, utensil or component/accessory, which is novel, suitable for industrial application, and able to solve a specific technical issue.

Where to apply? Utility model applications can be filed with the Greek Industrial Property Organization (OBI).

Duration of protection? The term of protection is in any case a maximum of 7 years from application and must be maintained by annual fees, following the second year of protection.

Costs? Application fees for Greek utility models amount to 150€. The abovementioned fees correspond to the administrative fees collectible by OBI and do not include attorney legal representation/consulting fees.

ITELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? The external, complete or partial, image of a product, which derives from specific and distinctive characteristics such as the outline, the colour, the shape, the format, and the materials of the product and/or its decoration.

Where to apply? National designs may be registered with the Greek Industrial Property Organization (OBI).

Duration of protection? Registered designs are valid for 5 years from the date of registration. The protection may be renewed for further 5-year periods for a fee. The maximum term of protection is 25 years.

Costs? Application fees begin from 130€. The abovementioned fees correspond to the administrative fees collectible by OBI and do not include attorney legal representation/consulting fees.

The following IP rights cannot be registered:

Copyrights

What is protectable? Original literary, artistic, or scientific works of any form are protected by copyright. Software, source code, and specific novel type of databases may also be protected. Copyright protection is automatically granted upon the creation of the work. However, since no registration is required and the extent of the protection is usually decided in Court during disputes, the copyright owner should take measures to prove his ownership and the date of creation of the protected work. The Greek Intellectual Property Organization (IPO) provides a tool for right owners to register their work for the purpose of proving their ownership and date of creation. The creator of a work possesses, as a rule, both the right to be recognized as the creator of the copyrighted material (moral right) and the right to financially exploit the copyrighted work (financial right). Even if the financial right is transferred or licenced, the moral right remains with the original creator.

Duration of protection? Copyright protection ends 70 years after the creator of the work has passed away.

Trade Secrets

What is protectable? Trade secrets are explicitly protected under Greek Law. Trade secrets refer to any business information, method, or technology which has commercial value derived from it secrecy. For business information to be considered trade secrets and be protectable, the following requirements must be fulfilled: 1. The information must be secret and not widely known, 2. The information should have commercial value due to its secret nature, 3. The owner of the information must have used reasonable efforts and put in place reasonable measures to keep the information secret.

Duration of protection? Trade secrets protection can last as long as the information actually remains a secret.

How to keep trade secrets secret? In most cases, companies will have to implement a system of internal policies, procedures, technical measures, NDAs, and contractual clauses -extending both to internal (i.e. employees) and external stakeholders- to ensure that all reasonable measures to keep the information secret are in place and -where possible- to specify the estimated value of the trade secret for the company.

DATA PROTECTION/PRIVACY

GDPR applies directly in Greece since the 25th of May 2018. Greek Law does not provide for extensive or extreme particularities and derogations. Thus, data controllers and processors in Greece have to comply with all the principles, provisions, and obligations of the GDPR.

However, both: i. Law 4624/2019, which sets out implementation measures on the GDPR's opening clauses and integrates EU Directive 2016/680 into Greek law; ii. Law 3471/2006, which integrates EU Directive 2002/58/EC into Greek law, sets out rules for the protection of the confidentiality of communications and cookies/trackers, and regulates data protection in the telecommunications sector, and iii. Several other laws regulating specific sectoral data protection/privacy issues, include national derogations and legal particularities which apply to specific scenarios.

Additionally, while they constitute guidance instruments and do not directly have legally binding effects, the opinions and instructions of the Hellenic Data Protection Authority (HDPA) provide invaluable insight on how the legal framework is enforced in specific situations and in-depth rules for specific processing activities are often, de facto, set out through them.

Some of the most notable specificities of data protection legislation in Greece are the following:

- In-depth instructions and rules for the legal use of CCTV systems in different scenarios are introduced through an instruction of the HDPA. Additionally, the law provides that CCTV systems may be used in the workplace exclusively for purposes related to the protection of people and property.
- Specific rules apply to data processing in the context of remote working. Carrying out a DPIA for such purposes is compulsory for employers.
- Under Greek law, the processing of personal data in the workplace falls within the scope of the data protection rules, even when the processed data is not a part of, or intended to form a part of, a filing system. In such cases, Greek law is stricter than EU law, since it even extends to oral communications.
- The age for legal child consent in relation to personal data processing in information society services in Greece is 15 years.
- A prohibition is in place for the processing of genetic data for life and health insurance purposes.
- A no-call list is in place for phone call marketing and promotions.
- Cookies and similar technologies may only be used with the users' explicit consent. Cookies which are strictly necessary for the proper and safe functioning of the website may be used without consent.
- Explicit consent is required for marketing communications through e-mail, SMS, and/or messaging applications. Consent is not required if a previous business/client relationship exists between the controller and the recipient of the communication. An opt-out option must be included in any such marketing messages.
- The HDPA expects Controllers to use only one legal basis for each processing purpose. This means that – contrary to what may apply in other EU countries – a controller may not legally use more than one legal basis (ie, both execution of an agreement and legitimate interest) for the same processing purpose.
- Sectoral or case specific rules may apply in areas such as:
  - Banking
  - Stock Exchanges and brokers
  - Insurance
  - Legal Services
  - Occupational Doctors
  - Digital Governance

The Hellenic Data Protection Authority (HDPA) is understaffed but follows a strict approach to the protection of the rights and freedoms of data subjects. Heightened enforcement action on the part of the HDPA and an increase in the number of the number of civil data protection lawsuits filed by individuals can be noticed in Greece with each passing year. The HDPA has issued several decisions based around the mishandling of data subject requests, lack of transparency, and non-compliance with the obligation of data protection by design.

ARTIFICIAL INTELLIGENCE

Greece has recently introduced national legislation governing the use of AI by Public Bodies, Employers, and Medium or Large Enterprises. The provisions of the legislation are fully applicable in Greece since the 1st of January 2023.

Obligations concerning Public Bodies

The law defines the framework within which public bodies may legally use AI technologies. According to some of the key provisions on that subject:

- Public bodies may, when exercising their powers/competencies, legally use an AI system which either entails automated decision-making or contributes to a, human-run, decision-making process, only if the use of the AI system is expressly provided for in a specific legal provision. The abovementioned specific legal provision shall also contain all the safeguards necessary to protect the rights of natural and legal persons which may be affected by the decision-making process.
- An obligation to carry out an **Algorithmic Impact Assessment (AIA)** is introduced for any public body, which wishes to use the abovementioned AI systems. The AIA must be carried out before the system is used, and it should include, at a minimum, a description of the capabilities and intended use/purpose of the system, as well as the type of decisions which the system will be making. The purpose of the assessment is to weigh the benefits of the system against the potential risks to the rights and legitimate interests of the natural and legal persons affected by the use of the system.
- A number of obligations are created relating to: i. the establishment and maintenance of a Register of algorithmic decision making systems of the public body concerned, ii. the compliance with the principle of transparency in the use of AI systems and the provision, by the public body to the general public and the potentially affected businesses, of information relating to the existence and modus operandi of AI systems, and the methodology of decision making executed by them. Compliance with these obligations is monitored by the National Transparency Authority (NTA).
- Finally, the Law introduces a set of minimum contractual obligations to be undertaken, vis-à-vis the concerned Contracting Authorities, by prospective contractors of public contracts/tenders relating to the development or design of AI systems. Startups who integrate AI into their products and wish to work with the Public Sector, shall take these provisions and contractual obligations into account during the development of their business model and products.

Obligations concerning Employers and Medium or Large Enterprises

Employers, both in the public and private sector, who use AI systems which may influence decision-making about an employee or prospective employee must:

- Provide detailed information to the employee/prospective employee on the parameters that determine the decision.
- Ensure that the use of AI does not adversely affect the principle of equal treatment and the prohibition of discrimination in the workplace.

The violation of the above obligations is reviewed and enforced by the Labour Inspectorate and violators are subject to the sanctions of Greek Employment Legislation.

Additional obligations are introduced for companies that constitute Medium or Large Enterprises. In particular, such companies are now required to:

- Keep an electronic register of the AI systems used in the context of consumer profiling or employee/co-worker evaluation. The register should include comprehensive information on the operational parameters, purposes, and prevention/protection measures of each system.
- Establish and maintain an **ethical data use policy**, which describes the measures and procedures to be applied during the use of AI systems **(AI Ethics)**. S.As, which are already required to draft a corporate governance statement in accordance with the Greek Law regulating the function of S.As, must include their data ethics policy in the corporate governance statement.

It shall be noted that all the obligations regarding the use of AI, introduced by the new Law, are treated as independent legal obligations and thus, in cases where an AI system is used -inter alia- for the processing of personal data, they do not overlap or affect the application of the legal framework for the protection of personal data (GDPR, Law 4624/2019, etc.)

EMPLOYEES/CONTRACTORS

General:

- An employment agreement must be in place between employers and employees. In general, mandatory law provides for the limits of what can be agreed within the employment agreement and what is a mandatory right of the employee or obligation of the employer. Labour Law in Greece has traditionally been strict and protective of employees. After the recent (2021) amendment in Greek Employment Law, employment agreements may, in some cases, provide for more flexible working regimes, following an ad-hoc negotiation with the employee.
- Collective agreements or works agreements are recognized and encouraged by Greek Labour Law. Many sectoral collective agreements are already in place.
- A number of specific labour laws provide for additional obligations for employers who employee a big number of employees. For example, the obligation to hire an occupational doctor and a safety officer, as well as the obligation to establish whistleblowing channels are applicable to employers with more than 50 employees.

Work for hire regime:

- Patents: Greek patent law provides that patents created by employees belong, by default, exclusively to the employee. However, if the employee used resources and information of his/her employer to develop the patent, the employer is entitled to 40% of the patent and possesses priority licensing rights to the patent, provided that he renumerates the employee accordingly. If the employment agreement exclusively mentions that the employee is employed with the purpose of developing the patent, the patent belongs exclusively to the employer. However, the employee is entitled to additional proportional renumeration when the patent is exceptionally profitable for the employer.

- Copyright: Greek copyright law provides that that copyright ownership of a work created by an employee in the course of their employment belongs by default to the employee. If the employment agreement provides that such works belong to the employer, the employer automatically gains ownership of the part of the property rights which is deemed necessary for the purposes of the agreement; the moral right always remains with the employee.

Employee tax deduction and social security: Every employer must deduct and remit income tax installments to the Greek Tax Authorities on behalf of their employees. Employers are also obligated to pay part of their employee's social security fees.

Remote Working: Special rules, such as the obligation of the employer to cover equipment and other remote working costs, the obligation to establish a remote working policy, as well as transparency and employment agreement-related obligations, apply when an employer uses remote working regimes (either fully remote or hybrid).

Termination:

- Mutual termination of the employment agreement may be agreed between the parties.
- The employer may unilaterally terminate the employment agreement for "just cause". The bar for an employer to establish just cause, under Greek Law, is very high. All employees generally have a right of notice and of payment in the event of termination, unless they are terminated for "just cause".
- Employees may terminate the contract unilaterally. It is common practice for a prior notice obligation to be included, for the employee, within the employment agreement.

Contractors: Companies may also engage independent contractors to perform services. The distinction between an employee and a contractor is a question of fact, and is not determined by what the parties agree to call themselves. Factors taken into account in this determination will generally include control over the time, place and manner in which services are performed, ownership over tools and equipment, ability to subcontract/hire assistants, existence of additional employers/clients on the side of the contractor etc. Where the courts decide that a contractor is not independent, s/he possesses the same labour law rights as any other employee.

When engaging independent contractors, it is crucial for a comprehensive agreement, reflecting the actual agreement of the parties and governing all risk, intellectual property, commercial, and competition issues to be established between the parties.

CONSUMER PROTECTION

The Greek Consumer Protection Act (Law 2251/1994 as amended) is the centerpiece of Greek Consumer Protection Legislation. This legislation is complimented by a number of Civil Code Provisions, and sector specific laws or laws ruling specific business practices, such as the Presidential Degree for the provision of e-commerce services.

In general, Greek Consumer Protection Legislation is strict and provides specific rights to the consumers through mandatory law provisions, which cannot not be overturned or ignored through the use of contractual or terms of service provisions. Under Greek Law, the definition of a consumer exclusively includes natural persons not operating under their business or professional capacity.

Some of the main practices and issues which are explicitly regulated within Greek Consumer Protection legislation, are the following:

- **Transparency/Information Provision Obligations:** Sellers of products or services are required to provide consumers with information relating to the provided product/service and the consumer rights that are granted to them by law. The level and content of the provided information varies depending on the medium through which the sale is concluded (in-store sales, e-commerce sales, door to door sales etc.).
- **Extensive Obligations Relating to Online Sales:** A comprehensive set of consumer protection obligations are in place for companies selling their products online. Such obligations may include transparency obligations, the provision of a right to withdraw, active for 14 days following the sale of a product, to consumers in distance selling contracts, and due diligence and information provision obligations for the providers of online marketplaces.
- **Warranty rules:** A 2-year seller warranty is provided directly by law. Product manufacturers or sellers may offer commercial warranty on top of that.
- **Product Safety, Consumer Health, and Child Protection Provisions:** A number of obligations relating to the protection of the safety and health of consumers of products are in place. Children protection rules also apply and a general ban on the sale of products which may create risks for the mental, psychological or moral development of underaged consumers is in place; products , targeted to children, which may incite violence and/or racism, and products which promote or contribute to addiction of any kind -such as gambling or drugs- fall within this category.
- **Advertisement and Commercial Practices Restrictions:** Extensive rules to restrict misleading advertising or other misleading, illicit, immoral, or aggressive business practices, acts, and omissions are in place. Consumer-facing start-ups should ensure that new and proposed commercial practices are in line with these rules.

It should also be noted that Greek consumer protection laws have been recently updated to tackle issues created due to the rapid development of new technologies. Due to that, sets of rules for developers and importers of consumer IoT, AI, and 3D printing products are currently in place.

Last but not least, companies operating in Greece should keep in mind that the consumer protection and transparency provisions of EU's recent Digital Services Act and Digital Markets Act directly apply to companies operating in Greece. Additionally, a Greek Law which will clarify some of DSA's implementation details in the country is currently being drafted and is expected to come into force by the 17th of February 2024.

TERMS OF SERVICE

Terms of service in Greece are only enforceable when the consumer has been transparently informed about their provisions before the conclusion of a sale. Companies should try to ensure that measures to prove that a consumer had access and read the terms of service (such as tick-boxes for online sales or signature lines for offline sales), prior to entering into the contact, are in place. Predetermined terms of service shall be drafted in a transparent, easily understood, and precise manner. When an international company makes online sales to Greek consumers, its Terms of Service must be available in Greek.

Any terms or agreements which were specifically negotiated supersede the provisions of the general terms of service. The law provides that, when in doubt, Courts shall interpret predetermined terms of service in a way that favors consumers.

Any term of service provision which may result in the disruption of the obligation balance between the seller and the consumer are illegal and void. Examples of such terms, directly mentioned within legislation are, inter alia, the following:

- Terms providing the seller with an unreasonably long deadline to accept the consumer's offer/order.
- Terms restricting the sellers liability, beyond what was agreed and/or what is provided for by law.
- Terms introducing unreasonably short deadlines for the consumer to terminate the contract or for unreasonably long deadlines for the seller to terminate the contract.
- Terms which allow for the automatic renewal of the contract for extensive time periods, if the consumer does not terminate the contract in time.
- Terms allowing the seller to unilaterally change or terminate the contract without a specific, sufficient, and just cause.
- Terms which attempt to pass the liability of the seller or importer of the products exclusively to their producer.

It should be noted that Greek Court case law, requires a much higher standard of proof for business clients to validly claim that terms of service are invalid, compared to the one required for consumers.

WHAT ELSE?

Strategic Investment Legislation: Recent strategic investment legislation provides benefits for strategic investments which take place in Greece. The purpose of the legislation is to provide incentives for strategic investors to invest in Greece and to reduce investment risks and uncertainty for such strategic investments.

Different grades of strategic investments are recognized under the law. In most cases, for a beneficiary to fall within the scope of the legislation, an investment of at least 75.000.000€ is required. However, investments in specific market sectors, such as RnD or biotechnologies, and investments related to digital transformation or the provision of Cloud Computing Services, may be considered "strategic" starting from 20.000.000€.

Benefits for strategic investments may include fast-track procedures for obtaining permits, licensing and approvals by Public Bodies and authorities, investment subsidies, and tax incentives.

National Startup Registry: An official record of startups operating in Greece has been established under Greek Law. Companies which fulfill the eligibility criteria may apply to be included in the Registry. Members of the registry gain access to benefits such as targeted state-funded financial support measures and networking opportunities. Additionally, under Greek law, Angel Investors are only allowed to invest in companies which are included in the National Startup Registry.

WHAT ELSE?, CONT'D

Additional Rules for Online Marketplaces: Various legal provisions have introduced additional rules for Online Marketplace service providers. Such rules include Know Your Business Costumer (KYBC) obligations applicable during the onboarding of seller/businesses in the Marketplace, rules relating to advertising in the Marketplace, and rules concerning the transparency of recommender and ranking systems and algorithms used in the Marketplace.

Regulation of specific markets: Additional rules and regulatory frameworks are in place for companies wishing to operate in specific market sectors, such as fintech and investment services, gambling, telecommunications, and energy.

Strict jurisdiction: Greek Courts are rather strict when it comes to the protection of employees, consumers, data subjects and other protected groups of the population. For businesses, the risk of non-compliance in these fields of law is rather high. It is thus recommendable to focus on these topics first, when rolling out a business in Greece.

HONG KONG

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HONG KONG

LEGAL FOUNDATIONS

Hong Kong is an autonomous Special Administrative Region (SAR) of the People's Republic of China. The Basic Law is the mini constitution of Hong Kong that sets outs the political status of Hong Kong, and individual rights of persons in Hong Kong. The Basic Law guarantees Hong Kong a high degree of autonomy until 2047.

The legal system of Hong Kong is based on the rule of law and the independence of the judiciary. Under the principle of 'one country, two systems', the Hong Kong legal system is different from that of Mainland China, and is based on the common law supplemented by statutes.

Under the Basic Law, Hong Kong has been authorised by the National People's Congress to exercise independent judicial power, including the power of final adjudication. The courts of Hong Kong exercise judicial power independently, free from interference. Members of the judiciary are immune from legal action in the performance of their judicial functions. Judges are constitutionally required to determine and handle cases strictly in accordance with the law and legal principles.

CORPORATE STRUCTURES

Pre-incorporation

Many founders will operate as individuals in the early concept stage, and perhaps only consider a Founder Collaboration Agreement to organise affairs between them. This is a commercial agreement between founders in the form and style of a binding term sheet. The Founder Collaboration Agreement will summarise the key terms agreed by the founders in respect of important features of the business, including:

- timing of incorporation;
- initial shareholding of founders;
- assignment of intellectual property rights; and
- reverse vesting of shares held by founders.

These terms will require more formal agreements once the business has incorporated.

The decision to create a formal business structure is usually reached quite early in the development of the business. Common triggers include:

- the creation of any material value (especially intellectual property);
- an increase in the risk environment, particularly if it impacts personal liability of the founders; and
- investment or grant funding.

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ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Private company limited by shares

Legal status: A private company may be limited by shares. This means that the liability of shareholders will be limited to the unpaid capital on their issued shares in the company. A private company must restrict the right to transfer its share, limit the number of shareholders to 50 (excluding employees and former employees), and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

Requirements: A private company limited by shares incorporated in Hong Kong must have at least one director, one company secretary and one registered shareholder. One of the directors must be a natural person. The company secretary and the shareholders can either be natural persons or a body corporate. The company secretary must be resident in Hong Kong. There are no other residency requirements for officers or shareholders of the company. A sole director must not also be the company secretary.

Significant controller: A private limited company must maintain a significant controller register. This will contain details of persons who directly or indirectly hold more than 25% of the issued shares or voting rights in the company or otherwise exercise significant influence or control over the company (including rights to appoint the majority of directors). The significant controller register is not a public document, but may be inspected by enforcement authorities in prescribed circumstances.

Registered office: Every Hong Kong private limited company must have a registered office in Hong Kong for communications and notices.

Accounts: The accounting records of the company must be audited for each financial year, sent to the shareholders and laid before shareholders in an annual general meeting. The audited accounts for private limited companies do not need to be publicly filed or disclosed.

Share capital: There is no prescribed minimum or maximum share capital for any type of company in Hong Kong. A company can be formed with different types or classes of shares including ordinary or preferred shares with special rights attached to them. These must be set out in the company's Articles of Association. If no separate share classes are designated, then the shares will be considered ordinary shares.

Annual general meeting: Every Hong Kong private limited company must hold an annual general meeting of its shareholders nine months after the end of its accounting reference period for that financial year. If the first accounting period exceeds twelve months, then the private company must hold an annual general meeting nine months after the anniversary of the company's incorporation.

Annual return filing: Annual returns must be delivered to the Registrar of Companies for registration within 42 days after the anniversary of the date of the company's incorporation.

Tax: Profits tax is levied in Hong Kong against all companies, at the rate of 8.25% on assessable profits up to HK$2,000,000; and 16.5% on any part of assessable profits over HK$2,000,000 (for the year of assessment 2018/19 onwards), which carry on a trade, profession or business in Hong Kong in respect of profits arising in or derived from Hong Kong. Offshore profits are beyond the general scope of Hong Kong tax. There are no capital gains taxes or value added taxes in Hong Kong. Dividends are generally payable free of withholding tax, though royalty payments may be subject to withholding.

Business registration: Every company incorporated in Hong Kong must obtain a business registration certificate. The application must be made within one month from the start of business.

Timeline for incorporation: The Certificate of Incorporation and the Business Registration Certificate is usually available within five working days. The company legally exists from the date of incorporation.

CORPORATE STRUCTURES, CONT'D

Other Business Structures

Other available business structures in Hong Kong include registration of non-Hong Kong companies, registration of representative office, general partnership, limited liability partnership, and sole proprietorship.

ENTERING THE COUNTRY

Foreign investment

Free market: Hong Kong policy promotes free trade and free market principles with minimal government intervention. Generally, there is no distinction in law and practice between investments by foreign-controlled companies and those controlled by local interests. In most conditions, foreign companies and individuals can incorporate their operations in Hong Kong without discrimination and undue regulation.

No exchange controls: The Basic Law of Hong Kong provides that no foreign exchange control policies can be applied in Hong Kong and that the Hong Kong dollar must be freely convertible.

Free port and trade: The Basic Law also requires that Hong Kong is maintained as a free port, and that Hong Kong pursues a policy of free trade that safeguards the free movement of goods, intangible assets and capital. Consequently, no tariff is charged on import or export of goods. Licensing is only required for the import and export of certain limited classes of dangerous or controlled goods (such as optical disc mastering and replication equipment, and radio transmitting apparatus).

Immigration

Immigration: Hong Kong is a separate travel area from Mainland China. Hong Kong has visa-free entry for residents from over 170 countries and territories for trips ranging from seven to 180 days. In broad terms, short-term visitors may conduct business negotiations and sign contracts while entering Hong Kong on a visitor or entry permit.

Employment visa: All persons having no right of abode or right to land in Hong Kong, must obtain an entry permit/employment visa before coming to Hong Kong for the purpose of employment. Applications should be made through the sponsor (usually the employer company in Hong Kong). It must be demonstrated that the proposed employee has special skills, knowledge or experience not readily available in Hong Kong.

Investment visa: This requires the applicant to establish or join in business in a Hong Kong registered company. The applicant will be required to produce details on the viability of the proposed business and demonstrate that the applicant is in the position to make substantial contribution to the economy of Hong Kong.

Top Talent Pass Scheme (TTPS): This scheme seeks to attract talented persons with rich work experience and good academic qualifications to enter Hong Kong. This top talent includes high-income professionals and graduates from the world's top universities.

Dependant visa: Persons who are successful in receiving one of the above visas may also bring their spouse or civil partner (including the other party to a same-sex civil partnership, union or marriage) and unmarried 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. Normally, dependant visas are issued as a matter of course as long as the requisite relationship exists. A person holding a dependant visa is allowed to undertake any type of lawful employment in Hong Kong.

HONG KONG

INTELLECTUAL PROPERTY

Jurisdiction: Mainland China and Hong Kong are separate jurisdictions. Registration in one jurisdiction does not extend protection to the other. IP owners must register IP rights separately in each jurisdiction for coverage and protection.

Trademarks

Application for trademark registration: An application for registration of a trademark can be made online through an e-filing system, or filed by post or by hand with the Trade Marks Registry, Intellectual Property Department of Hong Kong. If the Registrar accepts the application for registration, particulars of the application will be published in the Hong Kong Intellectual Property (HK IP) Journal to provide an opportunity for the public to oppose the application for three months. If no notice of opposition is given within this period, a certificate of registration will be issued and notice of registration will be published in the HK IP Journal.

Duration of protection: Upon registration in Hong Kong, the validity of the registered trademark will last for 10 years beginning on the filing date of the application for registration. The registration must be renewed every 10 years with the payment of a prescribed renewal fee stated below for extending the period of another 10 years.

Treaties: Legislation was passed in Hong Kong to empower the Registrar of Trade Marks to make rules in Hong Kong to implement the Madrid Protocol for International Registration of Marks. Nonetheless, the Madrid System is not yet implemented in Hong Kong. The Paris Convention for Protection of Industrial Property and the Nice Agreement on International Classification of Goods and Services apply to Hong Kong.

Patents

Types of patents: There are two types of patents available in Hong Kong, being the standard patent and the short-term patent.

Standard patent (O): A standard patent can be an original grant patent by means of direct application in Hong Kong. A standard patent (O) must satisfy both the formality of the application process and substantive examination by the Registrar of Patents. The substantive examination will determine whether the claimed invention is new, involves an inventive step, and is capable of industrial application. The period of protection for a standard patent (O) is 20 years.

Standard patent (R): A standard patent can also be granted on the basis of a re-registration of a patent granted by the China National Intellectual Property Administration, the European Patent Office (designating the United Kingdom), and the United Kingdom Intellectual Property Office. A standard patent (R) is only subject to a formality examination by the Registrar of Patents. Formality examination is an examination of the information required in the application form and the supporting documents. A standard patent (R) is valid for 20 years from the filing date at the designated patent office.

Short term patent: A short term patent granted in Hong Kong is based on a search report from designated searching authorities outside Hong Kong. A short-term patent is only subject to a formality examination by the Registrar of Patents. There is no substantive examination of the application. A short-term patent having a protection term of up to eight years, being an initial term of four years renewable for an additional four years.

Treaty: The Patent Cooperation Treaty (PCT) applies to Hong Kong.

INTELLECTUAL PROPERTY, CONT'D

Designs

Application: An application for registration of a design may be made online through the e-filing system or filed by post or by hand with the Design Registry, Intellectual Property Department of Hong Kong. The application is only subject to a formality examination by the Registrar of Designs, and no substantive examination is undertaken. If the application is in order, the Registrar of Designs will register the design and publish it in the HK IP Journal. A certificate of registration will be issued.

Duration of protection: A design right in Hong Kong is valid for 25 years from the filing date. The owner can claim a priority date if the design is first applied in a Paris Convention Country or the World Trade Organization (WTO) member within six months prior to the application in Hong Kong. However, it is still necessary to prove the design is new at the priority date.

Treaties: The Hague System for International Registration of Industrial Designs does not apply to Hong Kong.

Copyright

No registration: Hong Kong does not have a government-established copyright registry. Copyright automatically arises when a work is created. To enforce copyright, it may be necessary to offer independent evidence of the existence of the copyright.

Duration of protection: The general rule is that copyright lasts until 50 years after the creator of the work dies.

Licences: Copyright owners may license the copyright of their works (a) by standard terms licences, (b) by licences under licensing schemes; or (c) on terms negotiated on a case-by-case basis. A localised version of creative commons licences was introduced in Hong Kong by Creative Commons Hong Kong for those who wish to make copyright work available for free under the governing terms of the selected creative commons licence. Hong Kong also has copyright licensing bodies which are authorised by copyright owners to grant, on their behalf, licences to users of copyright works. Some of these licensing bodies have registered on a voluntary basis with the Copyright Licensing Bodies Registry.

Treaty: A number of international treaties in respect of copyright apply to Hong Kong. These include:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the Universal Copyright Convention;
- the Geneva Convention for the Protection of Producers of Phonograms;
- the WIPO Copyright Treaty;
- the WIPO Performances and Phonograms Treaty; and
- the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

No legislation: Hong Kong does not have specific trade secret legislation, and trade secrets are protected by the common law principles of confidence. An obligation of confidence will arise whenever the information is communicated to or acquired by a person who knows or ought as a reasonable person to know that the other person wishes to keep that information confidential.

Remedies: Remedies include injunctions, damages, account of profits and delivery up of materials containing trade secrets. The owner of trade secrets may also seek orders or undertakings in respect of third parties who have unlawfully received trade secrets.

Non-Disclosure Agreements: Protection of trade secrets is typically achieved by non-disclosure terms and conditions that are contained in a standalone agreement or incorporated into employment or commercial agreements. The non-disclosure terms and conditions will include provisions not to disclose trade secrets, to limit the use of trade secrets to specific purposes, and to deliver up materials containing trade secrets on demand.

Practical measures: Each business should take practical measures to protect valuable proprietary trade secrets. This should include measures to have levels of access control, monitoring of use of trade secrets, regular IP audits, market monitoring, and segregation of workflows.

Enforcement

Civil: Civil remedies are available through local courts. Hong Kong courts often follow UK court decisions in IP matters.

Criminal: Infringement of certain IP rights may result in criminal sanctions.

Customs: The Customs service will work with holders of registered IP rights to seize and forfeit infringing goods entering Hong Kong. It is possible to establish and maintain communication channels with enforcement officials.

HONG KONG

DATA PROTECTION/PRIVACY

Context

Constitutional status: The Basic Law is the key constitutional document of Hong Kong. The right to privacy is recognised in Article 30 of the Basic Law, and in Section 8, Article 14 of the Hong Kong Bill of Rights Ordinance.

Legislation: The Personal Data (Privacy) Ordinance (the "PDPO") was passed in 1995 and took effect from December 1996 (except certain provisions). It is one of Asia's longest standing comprehensive data protection laws. The PDPO underwent major amendments in 2012 and 2021.

Authority: The Office of the Privacy Commissioner for Personal Data ("PCPD") is an independent statutory body set up to oversee the enforcement of the PDPO. The courts of Hong Kong have jurisdiction to deal with privacy and data protection related matters.

Key Principles

Data protection principles: The PDPO sets out six Data Protection Principles ("DPPs"):

- **DPP1:** Personal data must be collected in a lawful and fair manner, and the data user must give specified information to a data subject when collecting his personal data.
- **DPP2:** Personal data must be accurate and up-to-date, and kept no longer than necessary.
- **DPP3:** Personal data should only be used for the purposes for which they were collected or a directly related purpose. Otherwise, the data user must obtain the "prescribed consent" of the data subject.
- **DPP4:** The data user must have measures in place for the confidentiality and security of personal data.
- **DPP5:** Data users must provide general information about the kinds of personal data they hold and the main purposes for which personal data are used.
- **DPP6:** Data subjects must be given a right of access to their personal data, and to correct them.

Collection: On or before collection of personal data, all practicable steps must be taken to ensure that the data subject is informed of (a) whether the supply of the data is voluntary or obligatory, (b) the purposes for which the data are to be used, and (c) the classes of persons to whom the data may be transferred. Before first use of personal data, the data subject must also be informed of: (a) his right to request access to, and to correct, the data, and (b) the name or job title, and address, of the individual who is to handle any such request. These obligations are typically fulfilled by providing a personal information collection statement with the prescribed information to the data subject on or before the collection of personal data.

Data processors: If personal data is entrusted by the data user to a data processor, the data user is liable as the principal for any act done by its authorised data processor. The data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than necessary for processing the data, and to prevent unauthorised or accidental access, processing, erasure, loss or other inappropriate use of the personal data.

DATA PROTECTION/PRIVACY, CONT'D

Direct marketing: A data user engaging in direct marketing must first obtain the data subject's consent. The consent of a data subject must be the explicit agreement by the data subject to indicate that he consents or does not object to the use or provision of his personal data for use in direct marketing. If a data subject has orally consented to a data user using the personal data for direct marketing, the data user must confirm prescribed particulars of that consent within 14 days. A data subject may request that a data user ceases to use his personal data for direct marketing without charge (also known as the opt-out request).

It is a criminal offence, punishable by fine and imprisonment, to use personal data for direct marketing without the consent of the data subject. It is a separate offence for data users to provide a third party with personal data for the purposes of direct marketing in return for payment and without the data subject's consent.

International data transfers: There are restrictions on transfer of personal data to overseas jurisdictions in section 33 of the PDPO, but these provisions have not come into effect. Nonetheless the transfer of personal data is in itself a form of use of the personal data, and a data user must give notice to explicitly inform data subjects of the purpose (in general or specific terms) for which the personal data is to be used and the classes of persons to whom the data may be transferred. The PCPD has published two sets of recommended model contractual clauses for use by data users in respect of international data transfers. These cater for two scenarios, being the transfer of personal data from one data user to another data user and the transfer of personal data from a data user to its data processor.

Data breach: There is no general mandatory data breach notification requirement in Hong Kong, though notification requirements may arise in certain regulated sectors. The PCPD has consistently encouraged data breach notification as recommended best practice and has commented adversely in its Investigation Reports in respect of any failure or delay to report a data breach.

Data subject rights

Data access: Data subjects are entitled to request access to personal data.

Data correction: Data subjects are entitled to request the correction of personal data without charge to the data subject. This data correction request must be preceded by a data access request.

Data deletion and portability: Data subjects do not have the right to require data users to delete their personal data, nor to require the transfer of their personal data to persons prescribed by the data subject.

ARTIFICIAL INTELLIGENCE

There is no specific regulatory regime in relation to AI in Hong Kong. Nonetheless, the general restrictions on use of personal data in the PDPO apply.

If organisations need to set up and train their own AI models, organisations should be aware of the Data Protection Principles ("DPP") in the PDPO (please see Section 5 above for a list of the six DPPs). These are the key DPPS to observe in the preparation of datasets where personal data is involved:

- Collect an adequate but not excessive amount of personal data by lawful and fair means;
- Refrain from using personal data for any purpose that is not compatible with the original purpose of collection, unless express and voluntary consent of the data subjects has been obtained, or the personal data has been anonymised;
- Take all practicable steps to ensure the accuracy of personal data before use;
- Take all practicable steps to ensure the security of personal data; and
- Erase or anonymise personal data when the original purpose of collection has been achieved.

Also, data users should pay attention to the risks of data scraping when preparing datasets for AI models. Data scraping generally involves the automated extraction of data stored on social media platforms or websites. Mass data scraping incidents that harvest personal data may constitute data breaches that trigger the need to make a data breach notification to the PCPD (see Section 5 above).

The Hong Kong government has not announced a concrete plan to enact specific legislation for regulation of AI. The Office of the Government Chief Information Officer has published the "Ethical Artificial Intelligence Framework" in August 2023 to provide guidance to organisations in adopting AI. Also, the PCPD is tasked with monitoring the development of AI and its associated personal data privacy risks. Businesses in Hong Kong should keep abreast of guidelines and recommended best practices issued by the PCPD.

HONG KONG

EMPLOYEES/CONTRACTORS

Employment

Contract of employment: A contract of employment need not be in writing. However, if the employment contract is not in writing, the employer must provide written notice of conditions of employment upon request by an employee before his employment starts.

Minimum wage: A statutory minimum wage applies to all employees, regardless of whether they are employed under a continuous employment contract, with very limited exceptions.

Wages: Wages become due on the expiry of the last day of the wage period, and must be paid as soon as is practicable but in any case not later than seven days thereafter. The failure for any employer to comply with this provision constitutes a criminal offence. An employer must immediately terminate a contract of employment in accordance with its terms, if the employer believes that it will be unable to pay wages due under the contract.

Mandatory provident fund: The Mandatory Provident Fund Schemes Ordinance (Cap. 485) requires that every employer in Hong Kong contributes an amount equal to at least 5% of an employee's relevant income (up to a maximum contribution of HK$1,500 per month) to a retirement scheme that is registered as an MPF scheme. Every employee will also be required to contribute at least 5% of his relevant income (again up to a maximum of HK$1,500 per month) to the scheme.

Insurance coverage: Under the Employees' Compensation Ordinance (Cap. 282), employers are required to maintain insurance coverage in respect of work-related injuries. There is no statutory requirement to provide medical benefits otherwise.

Intellectual property: Intellectual property which is created in the course of permanent employment duties is usually the property of the employer. An employment contract can provide additional rights in respect of work created outside employment, and can impose obligations for signing documents and making filings that can continue after the employment ends.

Confidential information: In the course of an employment, an employee may come across different kinds of information, including trade secrets, confidential information, skills and knowledge and other non-confidential information. Trade secrets of an employer will be protected during employment and after termination of employment, even if there is no express provision in the employment contract. Confidential information will be protected during employment, but generally not after termination of employment. However, a provision in the employment contract can protect the secrecy and use of confidential information after termination, provided the confidential information is not know how.

Protective covenants: The basic rule developed by the common law Courts is that each person should be free to use his skills and experience in future employment and that any agreement restraining competition is on the face of it void and unenforceable. However, contractual provisions restraining an employee from competing with his former employer or from working for a competitor are enforceable if the degree of restraint imposed on the employee is reasonably necessary for the protection of some legitimate interest of the employer, goes no further than necessary for the protection of such interests, and is not against the public interest.

EMPLOYEES/CONTRACTORS, CONT'D

Termination of Employment

Termination by agreement: Termination by agreement occurs where a contract is for a fixed term or for a particular task and the term has expired, the task has been completed, or where the parties agree to terminate.

Termination by notice or payment in lieu: The employer and employee can agree on a notice period for termination, subject to a minimum of seven days notice for any continuous contract. A contract may be terminated by notice or by either party agreeing to pay to the other a payment in lieu of notice.

Summary dismissal without notice: An employer may terminate a contract of employment without notice or payment in lieu:

- if an employee, in relation to his employment:
  - wilfully disobeys a lawful and reasonable order;
  - misconducts himself, such conduct being inconsistent with the due and faithful discharge of his duties;
  - is guilty of fraud or dishonesty; or
  - is habitually neglectful of his duties; or
- on any other ground on which the employer would be entitled to terminate the contract with notice at common law.

Wages owing up to the time of dismissal must be paid plus annual leave pay accrued and owing at the date of termination. Severance payment and long service payment are not payable to an employee who was dismissed by the employer's valid summary dismissal..

Resignation without notice: An employee is entitled to resign without notice in circumstances where the employer is guilty of serious misconduct or a serious breach of the contract. A specific ground of resignation without notice is when wages are not paid to the employee within one month from the date on which they become due to him.

Wrongful termination: Wrongful termination is a termination otherwise than in accordance with the terms of the contract or without giving notice required or making payment in lieu. Under the Employment Ordinance, the party in default must pay to the other a sum equal to the amount which would have been payable by the employer had the employer terminated the employment lawfully by payment in lieu of notice. An employer wrongfully terminating will generally have to pay the employee his other accrued benefits.

By operation of law: An employment contract may terminate because of an external event. This could occur, for instance, if the employment becomes illegal or as a result of the death or insolvency of the employer. Payments may be due depending on the circumstances.

EMPLOYEES/CONTRACTORS, CONT'D

Contractors

Status: Individuals who perform services will typically fall into one of two categories under Hong Kong law. These are employees who enter into a contract of employment to serve an employee, and contractors who enter into a contract to provide services to another person. The distinction is important. The employment relationship has particular duties and obligations (including different statutory rights and tax treatment) that do not apply in a contractor relationship. Businesses need to properly consider which model of obtaining services they wish to use, and ensure it is properly implemented as a matter of fact and law.

Contractor characteristics: A contractor who is genuinely self-employed is not an employee and does not have employment rights or duties. The classic characteristics of a self-employed contractor are that the contractor provides his own skill and work in return for pay, with a high degree of control of his own activities and how he conducts the performance of his services. The nature of the arrangements must also be consistent with self-employment.

Risk: If key contractor characteristics are absent in the relevant contract, or in how the contract is performed, then there is a risk that the contractor may be able to claim that he is an employee. This, in turn, may mean the person can claim entitlements and rights that flow from employment status. Also, taxation issues can arise for businesses and contractors if contractors wish to be engaged via a services company.

Factors to consider: From the business owner's perspective, the engagement of a contractor carries a lower administrative burden. The contractor is responsible for his own immigration status. The business is not required to enrol the contractor in the business' MPF scheme. Fees, services and deliverables, and termination of services can be determined by contract. Contractor arrangements are sometimes preferred as a means of avoiding business establishment concerns if only one person will be providing services in Hong Kong. However, the business will have less control over the activities of the contractor, and must be prepared to accept that the contractor may perform services for others.

No hybrid status: Presently, Hong Kong law only recognises the status of employee and contractor. There is no statutory recognition for a separate category of workers who are neither employees nor contractors, and no specific laws that focus on issues arising from the gig economy.

Intellectual property: Intellectual property rights in respect of the work product of contractors will largely be determined by the agreement between the business and the contractor.

HONG KONG

CONSUMER PROTECTION

Provisions for consumer protection are found in various legislation in Hong Kong.

Contract terms

Sale of Goods Ordinance: Goods sold in the course of business have an implied condition that the goods supplied:

- with good title and the seller has the right to sell the goods free from undisclosed encumbrances;
- are of merchantable quality;
- fit for purposes made known by to the seller; and
- correspond with any sample or description given to the buyer.

Under the Control of Exemption Clauses Ordinance, these implied conditions cannot be excluded or restricted in sale of goods to persons dealing as a consumer.

Supply of Services (Implied Terms) Ordinance: This Ordinance provides for implied terms in contracts for the delivery of services, including implied terms that:

- services will be carried out with reasonable care and skill;
- if the contract is silent on timing for delivery of services, the services will be performed within a reasonable time; and
- if the contract is silent on charges, the service recipient will pay a reasonable charge.

It is not permitted for the service supplier to seek to exclude these implied terms if the service recipient deals as a consumer.

Control of Exemption Clauses Ordinance: Exemption clauses seek to limit or exclude liability of a party. Some key provisions are that it is not permitted to exclude or restrict liability for death or personal injury resulting from negligence, and any exclusion or restriction of liability must be reasonable if it relates to other loss or damage arising from negligence, or breach of contract.

Unconscionable Contracts Ordinance: This legislation empowers the Court to refuse to enforce any part a contract (in whole or in part) in which one of the parties is dealing as a consumer that the Court has found to be unconscionable.

Promotion and marketing

The Trade Descriptions Ordinance prohibits manufacturers, retailers and service providers from misleading consumers in respect of goods and services provided in the course of trade, and prohibits other unfair trade practices.

A person commits an offence under the Trade Descriptions Ordinance if he:

- supplies a false trade description to any goods/services;
- offers to supply any goods/services to which a false trade description is applied; or
- has in his possession for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied.

A seller who adopts unfair trade practices also commits an offence. Unfair trade practices include misleading omissions, aggressive commercial practices, bait advertising, bait and switch tactics and wrongly accepting payment.

Other legislation

Hong Kong law also contains consumer protection legislation in respect of specific industries or circumstances. These include legislation dealing with product safety, consumer credit, medicine and health, dangerous, controlled and prohibited goods, and specific provisions in legislation regulating estate agents, money changers and travel agents.

HONG KONG

TERMS OF SERVICE

Terms of Service: Online Terms of Service are usually uploaded on a company's website or downloaded with an application, and provide the contractual terms for the use of the website in question and the online purchase of goods or services via the website or application.

Electronic contracts: Terms of Service often contain provisions in relation to the formation of contract and making payments via the website or application. In general, contracting online is subject to the same requirements as contracting on paper. A contract will not be invalid or unenforceable on the sole ground that an electronic record was used to form the contract. As a matter of principle, electronic acceptance of contract offers is permitted under the Hong Kong law.

Click-wrap: Click-wrap acceptance of online terms occurs when the contracting party agrees with the Terms of Service by clicking a button or checking the "I agree" box. This commonly arises when the Terms of Service are displayed in a pop-up box in full or on a hyperlink. The general view is that clickwrap acceptance of Terms of Service is effective in Hong Kong, as active action is required from the user to confirm acceptance of the Terms of Service.

Browse-wrap: Browse-wrap acceptance of online terms occurs by notifying the online terms to the user, and deeming acceptance by their continued use of the website or application in question. The users are not required to actively agree to the Terms of Service, and there is no requirement that the user has to tick an "I agree" box. There is not a definitive guidance in Hong Kong law on whether browse-wrap acceptance is enforceable. The prevailing view is that, most likely, browse-wrap acceptance would not be valid in consumer contracts, and may not even be valid in business-to-business contracts.

Electronic signatures: Electronic signatures are considered valid in Hong Kong, subject to limited exceptions. Hong Kong adopts a technology neutral approach to what constitutes an electronic signature. The basic requirement is that the letters, characters, numbers or other symbols in digital form are attached to or logically associated with the electronic record of the contract, and were executed or adopted for the purpose of authenticating or approving the electronic record.

Online payment: There is an active market for the provision of online payment services in Hong Kong. The provision of money service operations will require a licence in Hong Kong. Consequently, most online sellers will avoid directly conducting the online payment transaction, and will engage licensed third parties to conduct online payment services. Online payment services are provided by licensed banks, payment system operators, stored value facility operators and money service operators.

WHAT ELSE?

Office tenancy: A permanent office may be more suitable depending on factors such as the type of business and the regularity of clients' visits. Rental will be highest in buildings with top quality amenities located in the Central area of Hong Kong. The length of the lease varies, but is usually for an initial period of three years. The lease will include provisions in respect of the period of tenancy, the monthly rent, payment period, deposit, facilities, renewal, and termination.

Serviced offices or co-working space: Some businesses prefer to start with a serviced office or co-working space. These facilities are available across Hong Kong, and allow for use of premises that can be scaled or reduced according to the needs of the business, and usually include access to a range of business support services.

Bank account opening: Opening a business bank account in Hong Kong is straightforward and transparent. Before opening a business account, the applicant must complete the business registration and company incorporation. Most of the banks in Hong Kong follow strict due diligence and know your customer procedure. This can include a requirement that the account signatories and principal directors to be physically present at the bank in Hong Kong for opening the account.

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HUNGARY

LEGAL FOUNDATIONS

The legal system in Hungary is based on **civil law**. Therefore, the main rules governing businesses are codified in laws and decrees. As a result of a recent legal reform, a limited precedent system has been introduced in Hungary. Consequently, there is a forming jurisprudence system for the courts to follow the legal interpretation of the Hungarian Supreme Court (Kúria).

Hungary is a unitary jurisdiction, there are no provinces or states. Local municipalities have limited powers to regulate local taxes and local matters in local government decrees.

CORPORATE STRUCTURES

Hungarian law offers four kinds of companies with the limited liability of some or all members. These are the following: **the limited partnership, the limited liability company, the private company limited by shares** and **the public company limited by shares.**

The most common forms of business associations used for establishment and suitable for generating income, acquiring assets and employing local staff in Hungary are the **limited liability company** and **private company limited by shares.**

If a foreign company does not intend to establish a company with separate legal personality, it may found a **branch office** for the same purpose. If the investor wishes to establish a local presence only to intermediate the establishment of a contractual relationship, or advertise the mother company or provide client contacts, and not perform business activity for generating income, the suitable form is a **representative office.**

CORPORATE STRUCTURES, CONT'D

The limited partnership

A limited partnership (in Hungarian: "betéti társaság", "bt.") is a company where there is at least one general partner and one limited partner. Liability of the general partners for the obligations of the company is unlimited and joint, while the limited partners are only liable up to their contributions. A general partner may be another company or legal entity with limited liability or a natural person which is not a general partner elsewhere.

Limited partnerships are commonly used for small enterprises and family businesses, but it can also be used to establish a structure in which the general partner is a limited company (similarly to the "Gmbh & Co. KG" in Germany). Limited parnerships have no minimum capital requirements. Establishing a limited partnership is free of registration fees and publication charges. This company form can also model US style investment fund operation, but this is not used for that purpose in Hungary, as the implemented rules of the AIFMD do not contain this company form as an option for operation of venture capital funds.

The limited liability company

The limited liability company (in Hungarian: "korlátolt felelősségű társaság", "kft.", hereinafter: LLC) is the most popular and numerous company form in Hungarian business life as their organisational structure is simple (for example, they can be created by one or more members, they can be led by one or more directors, a supervisory board is only mandatory in specific circumstances, and so on) and the members' liability is limited to providing the capital contribution and other contributions set forth in the Articles of Association (Deed of Foundation) of the LLC. The quotaholders, as a main rule, are not directly liable for the liabilities of the LLC.

The minimum registered capital is HUF 3 million (approx. EUR 7,700), which may comprise of cash and in-kind capital contributions. The minimum stake value of a quota may not be less than HUF 100,000 (approx. EUR 250). Establishing an LCC is free of registration fees and publication charges.

The private company limited by shares

The private company limited by shares (in Hungarian: "zártkörűen működő részvénytársaság", "zrt.") is a company issuing paper or dematerialized stock, where they are not publicly listed. The private company limited is ideal for big enterprises.

The establishment of a private limited company costs HUF 100,000 (approx. EUR 260), the issue of shares requires the payment of additional fees and costs, and the amount of minimum registered capital is higher. The minimum registered capital is HUF 5 million (approx. EUR 12,800), comprised of cash and in-kind capital contributions. The rights of the shareholders in the company are embodied by their shares.

The operation of a private limited company is just slightly different from the operation of an LLC. First of all, the private company limited by shares issues shares (either paper certificates or digital) to its shareholders. These shares are transferable by endorsement or wire transfer. The transfer of shares can be restricted to a lesser extent, compared to the quotas of an LLC. Also, certain more strictly supervised activities (such as banking) may be pursued in the form of a private company limited by shares, but not as a limited liability company.

Branch Office

A branch office (in Hungarian: "fióktelep") is an organizational unit of a foreign company, without legal personality, vested with financial autonomy and registered as an independent form of company in Hungarian company registration records as a branch office of a foreign company.

A foreign company is entitled to conduct entrepreneurial activities through its branch office(s) registered in Hungary. Generally, in the course of such activities, the branch office proceeds in legal relations with the authorities and with third parties in connection with the branch office. There is no legal requirement for a minimum registered capital in case of a branch office.

CORPORATE STRUCTURES, CONT'D

Representative Office

A Representative Office (in Hungarian: "kereskedelmi képviselet") is an organizational unit of a foreign company which may not carry out any business activity to generate income. It is registered as an independent business entity in the Hungarian Company Registry and engages in the mediation and preparation of contracts, the provision of information to clients and partners, and other related client contact activities. There is no legal requirement for a minimum registered capital in case of a representative office.

In respect of all company forms, company registration also automatically results in the registration at the tax authority, however it is strongly recommended to find an accounting service provider even before establishing the company. It is mandatory for Hungarian companies to open a payment account at a Hungarian bank. As these banks tend to be strict when carrying out anti-money laundering KYC procedures, it is advisable to contact the bank well in advance before actually signing the foundation documents. It is also useful to know that changing company form, relocation or winding-up rules are EU conform, quite flexible but time-consuming, therefore careful and thoughtful preparation of such transactions is recommended.

Legal developments in 2023: Convertible loan and ESOP

In June 2023, an amendment to the Hungarian Small and Medium Enterprises Act (SME Act) was adopted, with the aim of making it easier and faster for start-ups to raise capital from investors in the form of a convertible loan. The convertible loan, also known as a convertible note, is an investment method, characterized by the fact that the loan is initially a loan but can be converted into a business share if certain events occur. It significantly facilitates the financing of start-ups, as it does not require, for example, a prior company valuation, which is a significant challenge for a start-up.

The facilitations recently introduced in Hungary are only available for start-ups that have been registered for five years or less, and are not listed on a stock exchange, have not yet paid dividends and have not been created by a merger or division. The amendment is also beneficial for the typical investors of start-ups, the so-called angel investors, as they have not been able to provide money in the form of loans to the companies without the permission of the Hungarian National Bank previously.

Another recent legal development that affects startups is that a bill is currently pending before Parliament which would significantly improve the tax treatment of ESOPs (Employee Stock Ownership Plan). Cash-strapped start-ups tend to give a minority stake from the start to employees who are with the founders in the hardest times (sharing the high risks), but later on it is also an excellent motivational tool, especially for key employees. It is typically structured after an early capital injection, as it is in the interest of both the investor and the founders to keep the team together.

Lastly, the new Hungarian Company Act is expected to enter into force in 2026, which is expected to introduce a number of changes that will affect startups significantly. The new provisions will include the introduction of an automatic decision-making procedure in corporate matters, whereby courts will make their decisions without human intervention, based on automated data processing and automatic data requests, and will make their decisions within one hour, and automatically send notification thereof.

HUNGARY

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STARTUP LEGAL PLAYBOOK

ENTERING THE COUNTRY

Hungary intends to pursue a welcoming legal and regulatory environment for foreign investors. The establishment of a company does not require any approval or authorization of a public authority, and the company can be founded and managed by foreigners without any restrictions.

However, certain acquisitions of shares in an existing Hungarian company may be subject to **FDI screening**, which may act as a hurdle to foreign investments into or exiting from already existing companies. In Hungary there are currently two separate FDI screening regimes in force. The original set of rules introduced in 2019 is the implementation of the EU screening regime and the latter one, introduced during the coronavirus pandemic in 2020 catches a broad scope of activities. Transactions which fall under either of the two FDI Regime require both notification to and acknowledgement by the competent minister, as a precondition to the implementation of the deal which falls within the ambit of the legislation. In practice, the following shall be evaluated when assessing the need for a potential FDI approval in Hungary:

- whether the investor may qualify as a foreign investor;
- whether the Hungarian company pursues any strategic activity (as its main or ancillary activity) that is listed in the relevant FDI laws; and
- other more detailed criteria concerning the acquisition threshold, the structure of the particular transaction if the first two criteria are met, where applicable the transaction value, and possible exceptions rules.

A recent government decree, amending the relevant Hungarian FDI laws, brings significant changes to the FDI landscape. It narrows the scope of transactions that are not subject to submitting a request for FDI clearance. Additionally, a notable change introduces a right of first refusal for the Hungarian State in the field of solar power plant investments. Foreign investors seeking to acquire domestic strategic target companies engaged in photovoltaic projects must undergo a statutory pre-emption process, allowing the Hungarian State to intervene before any other party.

INTELLECTUAL PROPERTY

In or for Hungary the following IP rights can be registered or may be held based on local laws, EU rules or other international treaty obligations:

Trademarks

What is protectable? Trade mark protection may be granted for any signs, provided that these are capable of distinguishing goods or services from the goods or services of others, and can be represented in the trade mark register in a manner which enables the authorities and the public to clearly and precisely determine the subject matter of the protection applied for or granted to its holder.

Where to apply? Trademarks can be filed either with (i) the Hungarian Intellectual Property Office (HIPO), (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application of a Hungarian trademark is very similar to the procedure before the EUIPO. The HIPO then carries out the formal and the substantive examination that covers the examination of the absolute refusal grounds. it With the publication in the Trademark Gazette, a three-month opposition period begins. Within this time period third parties can easily and at low costs oppose the trademark on the basis of the relative refusal grounds. If all requirements are met and no opposition is received, the HIPO registers the trademark.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for a renewable ten-year period.

Costs? Application costs for Hungarian trademarks for one class amount HUF 60,000 (extra amounts charged for additional classes). In addition, fees of the legal representative apply.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? The patent ensures legal protection of inventions by granting a better position to the owner of the invention compared to that of rivals in the market of products and technology. The owner of the patent (the inventor or his/her legal successor) has an exclusive right to exploit the solution of invention, but the period and the territorial validity of patent protection are not unlimited.

Where to apply? Hungarian patent may be obtained by national or European application or by an application submitted in the framework of the Patent Cooperation Treaty (PCT) provided that the application and the invention comply with requirements set out in laws and regulations.

Duration of protection? The patent protection is valid up to 20 years started from the day on that the patent application was filed and solely in the countries where the protection was granted. (For patents protecting pharma products a so called SPC (= supplementary protection certificate) can be claimed)

Costs? Application costs at the HIPO depends on various factors, such as whether the applicant and the inventor are the same person or whether a written opinion is requested supplementing the search report. Application costs for up to ten claims normally are in range between HUF 30,000 up to HUF 200,000. In addition fees of the legal and technical representative apply.

Employee invention and inventor bonus? According to Hungarian law, employers are entitled to commercialize employee inventions and file patent applications, if it is the employee's job responsibility to develop solutions within the scope of the invention. If it is not part of the job's responsibility to develop solutions within the scope of invention, but the exploitation of the invention developed by the employee falls within the scope of his/her employer's activities, then in this case, the patent remains with the inventor, but the employer is entitled to exploit the invention for a fee. If employer makes use of such right, employee is statutorily entitled to appropriate inventor bonus. The bonus is determined primarily by the value of the invention on the basis of the so called license analogy and is thus subject to adjustments in course of the patent life time.

Utility Model

What is protectable? The utility model protection is a legal protection for the new technical solutions not reaching the level of a patentable invention. By virtue of utility model protection, the owner of the said protection has, as provided for by legislation, the exclusive right to exploit the utility model or to license another person to exploit it.

Where to apply? The utility model protection can be obtained through the granting procedures set out in law before the HIPO. In Hungary it is also possible to obtain a valid utility model protection through an international application within the frame of Patent Cooperation Treaty (PCT). A utility model application filed in Hungary can be transformed into a European patent application within the union priority range of 12 months, if the utility model application meets the requirements of European patent applications.

Duration of protection? The protection has a term of 10 years, then the utility model becomes part of the public domain.

Costs? Application costs at the HIPO depends on various factors, such as whether the applicant and the inventor are the same person. Application costs for up to ten claims normally are in range between HUF 5,000 up to HUF 56,000. In addition fees of the legal and technical representative apply.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design.

Where to apply? By filing (i) a design application with the HIPO, or (ii) an international application under the Hague Agreement Concerning the International Deposit of Industrial Designs, or (iii) an application for Community Design, the territorial scope of which covers Hungary

Duration of protection? It lasts for five years beginning on the filing date of the application. Upon request, this term can be renewed for further periods of five years each, four times at the most. After expiration of twenty-five years from the filing date of the application, the protection shall not be renewable anymore.

Costs? Application costs at Hungarian Intellectual Property Office depends on various factors, such as whether the applicant and the inventor are the same person. Application costs for a claim normally are in range between HUF 8,000 up to HUF 32,000. In addition fees of the legal and technical representative apply.

Plant Variety Protection

What is protectable? Plant variety protection ensures the legal protection of improved plant varieties (hybrids, lines, clones etc.). Plant variety protection may be granted for varieties of all botanical genera and species. The owner of the plant variety protection has exclusive right to utilise the plant variety or to give permission for it to others.

Where to apply? The application for national plant variety protection can be filed with the HIPO, while the application for a Community plant variety right can be submitted directly in the Community Plant Variety Office (CPVO).

Duration of protection? The territorial validity and the term of plant variety protection are limited, that means, the protection is valid only in the country or international organisation where it was granted. The term of plant variety protection is 25 years and in the case of vines and trees 30 years from the date of the grant of protection.

Costs? Application costs at Hungarian Intellectual Property Office depends on various factors, such as whether the applicant and the inventor are the same person. Application costs for a claim normally are in range between HUF 8,000 up to HUF 32,000. In addition fees of the legal and technical representative apply.

Geographical Indication

What is protectable? Any private individual, legal entity or company with no legal entity status can obtain protection for a national geographical indication, if they produce, process or manufacture a product identified by a geographical indication in the geographical area identified by such geographical indication. It is important to note that not only the applicant is entitled to use the protected geographical indication, but anybody who produces the product in the given region identified by the indication – but only in accordance with the product specification if it is also a requirement for the protection. The owner of the geographical indication is entitled to use the geographical indication in respect of the products listed in the product list set out by law, but may not give licence to any third party.

Where to apply? Protection can be obtained by submitting an application to the HIPO.

Duration of protection? The protection becomes effective by registration with retroactive effect to the day of submission, and lasts for an indefinite period.

Costs? The fee for submitting an application for geographical indication is HUF 107,000 regardless of the number of product groups included in the application.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Hungarian Copyright Act (scientific, literary and artistic works). Copyright protection pertains to the author immediately with the creation of a work. No registration, no label and no other formality is required. Performances of arts works, phonograms, not creative audiovisual products, and radio and TV broadcasts are subject to so called neighbouring rights protection. Non original databases if there is a significant investment to bring about to make appear or control the content thereof, are subject to a sui generis protection.

Duration of protection? Copyright protection lasts in the life of the author and ends 70 years after the author has passed away. Neighbouring rights are protected for 50 years, save for phonograms and performances, where the phonogram was put into circulation. In this case the term of protection is 70 years. Non original databases are protected for 15 years, in case of the extension of the database the 15 years' term of protection re-commences for the extended part.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the indispensable right to be named or not to be named as author, to give consent to the making the work public, to withdraw this consent, to challenge uses and acts that are derogatory to the honour and reputation of the author (integrity right). The author may however grant third parties non-exclusive or exclusive licenses to use the work. In some cases the economic rights are transferable. The rights in subject-matters of neighbouring right or sui generis right protection are transferable without any limitation.

Business Secrets

What is protectable? Business secrets as such are recognized as a specific intellectual property asset, the particularity of which is that the rights pertaining to the right owner are not exclusive. The Hungarian Act LIV of 2018 on the Protection of Business Secrets protects know-how and business information of commercial value that is kept secret.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

Fee discounts for SMEs introduced at the end of 2023

Pursuant to a recent legal amendment, if at the time of payment an SME holds the exclusive rights to the claim or protection, it is only liable to pay one-quarter of the patent application fee. Also, for certain applications, an 85 percent discount is granted if they are submitted electronically. This reduction also applies when the fee is already reduced due to the fact that a SME is the protection holder.

HUNGARY

DATA PROTECTION/PRIVACY

National legislation

Hungary is under the regime of the General Data Protection Regulation ("GDPR"), which is directly applicable. The current main national law on personal data protection is Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information (hereinafter referred to as "Act"). The Act sets out the general framework for data protection and is supervised by the National Authority for Data Protection and Freedom of Information ("NAIH").

The Act applies to all kinds of data processing operations, except to the processing of personal data by a natural person in the course of a purely personal or household activity. This is an addition to the GDPR and covers manual data processing operations as well.

Special categories of personal data

The Act provides that data controllers can process personal data relating to criminal convictions and offences in accordance with the rules on the processing of special categories of personal data. Companies can process such data mainly (i) based on the explicit consent of the individual; (ii) for carrying out the obligations and exercising specific rights in the field of employment and social security and social protection law; or (iii) for the establishment, exercise, or defence of legal claims.

Furthermore, a number of sector-specific laws have been amended to guarantee harmonisation with the GDPR, the main amendments are outlined below:

Labour Law

The employer must inform the employee in writing about the restriction of their personality rights. This includes the circumstances justifying the necessity and proportionality of the restriction. Information should be made in a written form and published in a customary and generally known method at the workplace, such as by email or on the company intranet.

The employer, works committees, and trade unions may process the personal data of employees for the purpose of labour relations and the employer also for the purpose of establishing, fulfilling, terminating, or enforcing the employment relationship. The employee may be required to present a document for this purpose, but the above data controllers do not have the option of making copies. Employees should also be informed in writing about these data processing operations, including by communication methods customary and generally known at the workplace (i.e. communication by email or publication on the company intranet).

Biometric identification of employees is possible to prevent risks to human life, physical integrity, health, or to protect significant interests and materials protected by law or regarded as hazardous or dangerous (e.g. classified data, explosives, hazardous substances, and nuclear materials).

The employer may process criminal personal data to determine whether the candidate or the employee is subject to the exclusion or restriction criterion specified by the law or the employer. An employer may determine such a criterion if the employment of the person concerned in a particular job would threaten the employer's substantial financial interests, trade secrets, or a significant interest protected by law. The employer must specify both the restrictive or exclusionary criteria and the conditions for the processing of criminal data, either by email or via the intranet, if this is in line with the customary and generally known method at the workplace.

DATA PROTECTION/PRIVACY, CONT'D

Labour Law, CONT'D

Employees may not use the IT tools provided by the employer (i.e. computer, telephone, or even an employer's WiFi network) for private purposes unless the employer explicitly authorises private use. Regardless of this fact, whether the IT or computing tool used for work is the employer's or the employee's property, its control can only cover the data related to the employment relationship. The employer must also inform an employee in writing of the terms of any inspection, either by email or by publication on the intranet, if this is in accordance with the customary and generally known method at the workplace.

In case of teleworking, the employer exercises the right of supervision primarily by electronic means. However, the employer or its representative shall routinely inspect work conditions at the place of teleworking and ensure that they are compliant with the requirements, and the employees have knowledge of and observe the provisions pertaining to them. Consequently, this may also mean that the employer carries out the supervision at the employee's home. At the same time, the workers' representative for occupational safety may enter the property where teleworking is performed with the employee's consent. The supervision cannot, however, impose a disproportionate burden on the employee or on any other person using the place of teleworking, nor infringe the privacy or dignity of the employee. The rules for the supervision, including data protection requirements, should be laid down in advance.

The AI raising data protection issues

In 2023, the Hungarian National Authority for Data Protection and Freedom of Information ('NAIH') imposed a record fine for an unnamed bank. As well as being the highest ever data protection fine, it is also the first ever resulting from the unlawful use of artificial intelligence.
The bank used an artificial intelligence-driven software solution to automate the processing of customers' emotional state. The speech signal recognition and evaluation system determined which customers needed to be recalled based on their mood. The bank operated the application to prevent complaints and customer churn. The NAIH ordered the bank to stop analysing emotional states, as it violated the General Data Protection Regulation (GDPR) on several points, as the bank did not adequately mention this in its privacy policy.

ARTIFICIAL INTELLIGENCE

Currently, there is no specific national regulatory regime for artificial intelligence ("AI") in Hungary. Nevertheless, a national plan has already been initiated on AI, in which Hungary has expressed its commitment to creating a regulatory environment that supports the development of AI and provides an attractive environment for research centres using AI technology. The upcoming AI Act of the EU is also going to be applicable in Hungary.

It is worth being noted that AI may already be subject to current copyright and data protection laws in Hungary:

- As the Act LXXVI of 1999 on Copyright applies to software, it also applies to AI software. Therefore, the source code and the algorithms of an AI software may be protected by copyright law. In case of generative AI, however, the legal status of the output of a generative AI is uncertain, but it can be stated with certainty that a generative AI cannot become a copyright holder under current laws.
- The principles of data protection law – in particular Art 22 GDPR for automated individual decision-making – also apply to AI. Therefore, the use of artificial intelligence must not have legal or similarly serious consequences for the data subject, without any human intervention.

HUNGARY

EMPLOYEES/CONTRACTORS

General: Hungary has strict labor laws primarily codified in Act I of 2012 on the Labour Code that provide protection for workers and regulate the terms of employment. Foreign entities should be aware of these laws and should take steps to ensure that their employment practices comply with Hungarian labor laws.

Employer and employee must conclude a written employment agreement, which stipulates their rights and obligations set forth by mandatory law, collective agreements or internal policies of the employer. The interests of employees can represented by the works council which can be stablished if within 6 months period the average number of employees exceed 50 and consultation with the works council is required for specific measures if such council is established. A company may also offer a contractor agreement (freelance contract or contract for work and services) instead of an employment agreement. For these contracts, some protective provisions of labour law do not apply, but its terms need to be carefully considered to avoid possible tax risks embedded if such agreement may be reclassified by the tax authority into an employment contract based on factual grounds.

Work for hire: According to Hungarian law, employers are entitled to commercialize employee inventions and file patent applications, if it is the employee's duty to develop solutions within the scope of the invention. If it is not the employee's duty to develop solutions within the scope of invention, but the exploitation of the invention developed by the employee falls within the scope of his/her employer's activities, then in this case, the patent remains with the employee, but the employer is entitled to exploit the invention for a fee. If employer makes use of such right, employee is entitled to appropriate inventor bonus. The bonus is determined primarily by the value of the invention and is thus subject to adjustments in course of the patent life time.

Registration with social security: Every employer must register employees with the National Tax Authority, for the purpose of health and pension insurance. Each employer has to pay monthly 18,5 % social security duty and 13% social contribution tax based on the gross salary of the employees. Employers in addition to that may establish private health or pension insurance schemes.

Termination: As a main rule the employer must give good reason to terminate both the indefinite and definite term employment agreement. Additionally, certain groups of employees (i.e. works council members, pregnant employees, employees on parental leave) enjoy special termination protection. Exceptions apply in case of executive employees.

HUNGARY

CONSUMER PROTECTION

Hungary's primary governing consumer protection statutes are:

- Act CLV of 1997 on Consumer Protection (the "Consumer Protection Act")
- Consumer protection rules in Hungary aim to ensure the rights and interests of consumers in their dealings with businesses, by setting out a range of provisions to regulate the relationship between consumers and businesses, with a focus on ensuring fair and transparent dealings, protecting consumer health and safety, and providing mechanisms for resolving disputes between consumers and businesses.
- The key provisions of consumer protection rules in Hungary include the requirement for businesses to provide clear and accurate information about the products and services they offer, the obligation to ensure that products are of satisfactory quality and safe for use, and the right of consumers to receive compensation in the event of a defective product. The rules also establishes a number of consumer protection organizations and agencies that work to enforce these provisions and provide assistance to consumers. In the event of a dispute between a consumer and a business, the several avenues for resolution are offered, including mediation, as well as the right to bring a complaint to a consumer protection agency. Consumers also have the right to take legal action against businesses that violate their rights under consumer protection law.
- Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising Activity (the "Advertising Act"), which sets out the basic requirements of advertisements as well as including essential provisions of direct marketing activities;
- Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the "Competition Act"), which mostly covers business-to-business relationships;
- Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices towards Consumers (the "UCP Act"), which includes the basic prohibition of unfair commercial practices towards consumers, including the so called "black-listed" practices that have to be deemed as unfair;
- Act V of 2013 on the Civil Code (the "Civil Code") provides additional legal protection for consumers in Hungary and establishes the rights and obligations of parties in contractual relationships, particularly in case of the application of general terms. It also sets out the rules for the protection of consumer health and safety, as well as the right to compensation in the event of a defective product;
- Government Decree 45 of 2014 (II.26.) on the detailed rules of business to consumer contracts includes special rights granted to consumers in contractual relationships;
- Act CVIII of 2001 on Electronic Commerce Services Act, which governs the provision of electronic commerce services in Hungary and provides additional legal protections for consumers in online transactions. It sets out the obligations of service providers and establishes the rights of consumers with regards to online purchases;
- Government Decree no. 373/2021. (VI. 30.) on the detailed rules for contracts between consumers and businesses for the sale of goods, supply of digital content and provision of digital services, which includes specific rules regarding contracts on digital services between businesses and consumers.

TERMS OF SERVICE

In Hungary, the enforceability of online terms of service is governed by the Civil Code and the specific government decrees mentioned in Section 7 above. To be enforceable, online terms of service must be in compliance with Hungarian consumer protection laws and must not violate the rights of consumers.

Some provisions that cannot be included in online terms of service in Hungary include:

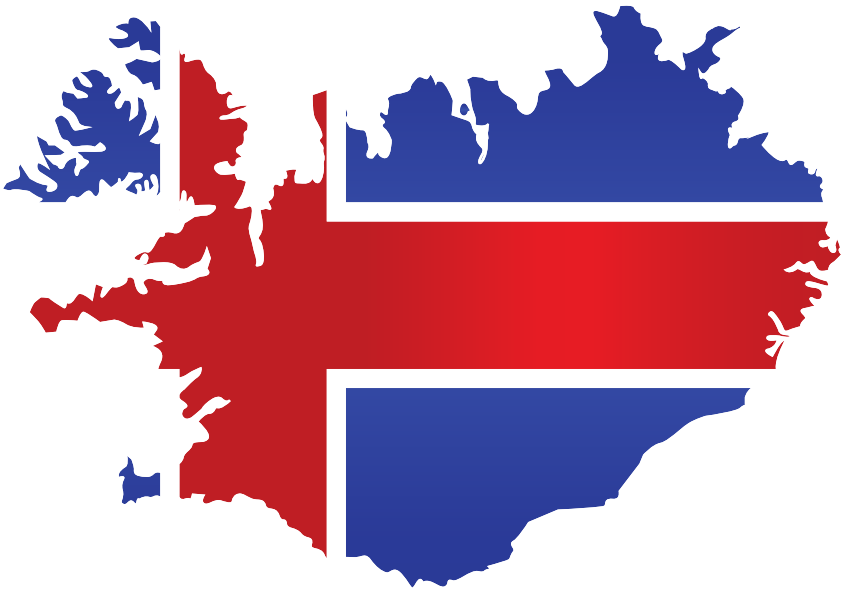
- **Unfair Terms:** Online terms of service cannot contain provisions that are considered unfair to consumers, such as excessive unilateral termination clauses, or provisions that allow the service provider to change the terms of the agreement without prior notice.
- **Unlawful Clauses:** Online terms of service cannot contain provisions that are illegal or contrary to public policy, such as clauses that restrict the right of consumers to take legal action.
- **Hidden Clauses:** Online terms of service must be clear and easily accessible to consumers. Provisions that are hidden or not easily understandable are not enforceable.
- **Imbalanced Contracts:** Online terms of service cannot be one-sided, or give undue advantage to the service provider. Contracts must be balanced and provide protection for both consumers and service providers.

Online terms of services must also include certain information to be enforceable in Hungary, such as the identity of the service provider, the scope of the services offered, and the conditions of termination of the agreement, and dispute resolution mechanisms, with special attention to the right of withdrawal of the consumers.

WHAT ELSE?

There are several things that a foreign entity should be aware of before entering the Hungarian market:

- **Language Requirements:** Hungarian law requires that certain contracts in certain circumstances, such as employment contracts and consumer contracts, be written in the Hungarian language. Foreign entities should be aware of this requirement and should take steps to ensure that their contracts are translated into Hungarian, if necessary.
- **Regulatory requirements in respect of commencing or performing certain business activity in Hungary:** For commencing or performing certain activities the establishment of a legal entity (branch or subsidiary, see more in Q2) may be necessary in Hungary. The contemplated activities need to be identified with the NACE codes for corporate law purposes: (https://ec.europa.eu/competition/mergers/cases_old/index/nace_all.html). Certain activites may only be performed if the entity holds a license or reported its activity to a relevant authority in advance of commencement (such as financial services, construction, etc.) to avoid potential administrative and criminal sanctions of unauthorized activity. Usually such license application requires the introduction of statutory personnel and material conditions, general terms and capital required for the sustainable operation.
- **Taxation:** Foreign entities who are not required to create a permanent establishment in Hungary for cross border operation, should still be aware of the tax laws and regulations in Hungary, including the corporate tax rate, value-added tax (VAT) rules, and rules regarding the withholding of taxes on income received from Hungarian sources. To certain activities a local VAT agent may be necessary and in any event double tax treaties need to be visited.
- **ESG rules:** The Hungarian ESG Act introduced several obligations related to sustainability due diligence and sustainability reporting in respected of undertakings meeting certain conditions. Nevertheless, small and medium businesses ("SMEs") are subject to ESG obligations only, if they qualify as an undertaking of public interest (in particular the listed SMEs). In case of the above-mentioned SMEs, the first ESG report to be prepared in 2027 in respect of the business activity of 2026.
- **Accounting and payment of taxes in foreign currency:** The Accounting Act allows businesses to keep their accounts in EUR or US dollars. In addition, in certain cases, they may choose other currencies if the functional currency in the economic environment of the company's business activity is that currency. Further, corporate tax and local business tax can be also paid in foreign currency.



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LEGAL FOUNDATIONS

Iceland follows the **civil law system**. It relies on written statutes and other legal codes which are frequently updated. Iceland does not have multiple jurisdictional layers with different legislation, i.e. all legislation applies on the federal level.

There are three judicial levels in Iceland. The lowest judicial level, or first instance, is the District Courts, of which there are eight throughout Iceland which operate in separate districts. Subject to certain conditions, the conclusions by the district courts may be appealed to a higher judicial level, the Appeal Court. Subject to stricter conditions, decisions of the Appeal Court may be appealed to the highest level, the Supreme Court, whose conclusions are final.

Decisions of the Icelandic Supreme Court and the Appeal Court are often heavily relied on as precedent in interpreting legal provisions. In general the district courts do consider precedents in their decisions.

Icelandic legal system is a civil law system and in particular, can be characterized as being a part of Scandinavian law. That is, a system in which statutory provisions are the main sources of law but legal interpretation relies heavily on Supreme Court/Appeal Court precedent and preparatory works.

CORPORATE STRUCTURES

The most common corporate structures in Iceland are limited companies. Other pertinent structures are partnerships, cooperative societies, sole proprietorship, and branches of foreign limited companies.

There are two types of limited companies in Iceland, public and private, regulated by two separate Acts. These Acts are in line with the requirements of the company law provisions of the EEA agreement. These structures offer the benefit of limited liability, while partnerships entail full and unlimited liability for all partners. It should be noted that foreign public or private limited companies and companies in a corresponding legal form having legal domicile within the European Economic Area may engage in activities with the operation of a branch in Iceland. Limited companies and companies in a corresponding legal form domiciled outside the European Economic Area may operate a branch in Iceland, if this is permitted in an international treaty to which Iceland is a party or by the Minister of Commerce. Limited companies and branches are registered with the Internal Revenue's Register of Enterprises division (Icel. Fyrirtækjaskrá).

CORPORATE STRUCTURES, CONT'D

A public limited company must have an initial capital of at least ISK 4.000.000 and a private limited company at least ISK 500.000. No limits are set on the number of shareholders for private limited companies, whilst shareholders must be at least two in a public limited company. When a limited company is established a memorandum of association must be prepared containing, inter alia, a draft of articles of association, names and addresses of founders, subscription price of the shares and deadline for subscription and payment of subscribed capital. The draft of articles must contain information including the name and location of the company, its objectives, share capital, board of directors, legal venue, auditors, and financial year. Moreover, information on beneficial owners must be submitted. The articles of association are adopted by the shareholders at the first general meeting and the company must be registered with the Register of Limited Companies within six months of the date of the memorandum of association in the case of a public limited company or two months in the case of a private limited company. An unregistered company can neither acquire rights nor assume duties.

To register a new public limited company, one must pay a registration fee of ISK 276.500. To register a new private limited company, one must pay a fee of ISK 140.500. A public limited company must have at least two founders, at least one of whom must reside in Iceland or be a resident and a citizen of an EEA or OECD country. A private limited company may be founded by one or more parties. At least one entity must reside in Iceland or be both a citizen and resident of an EEA or OECD country.

A public limited company must have a board of directors consisting of at least three persons and must appoint at least one managing director. The managing director(s) and at least half of the members of the board must reside in Iceland or be residents and citizens of any other EEA or OECD country, but an exemption may be granted by the Minister of Culture and Commerce. A private limited company shall have one or two persons on its board of directors if it has four shareholders or fewer; otherwise, the minimum is three persons. One or more managing directors may be appointed by the board, and if there is only one person on the board of directors he may also serve as managing director. The managing director(s) and at least half of the members of the board must reside in Iceland or be residents and citizens of any other EEA or OECD country, but an exemption may be granted by the Minister of Culture and Commerce. If there is only one person on the board of directors, he must fulfil the residence qualification.

Given the increased requirements for establishing and operating a public limited company, we generally advise our clients in the startup field to establish a private limited company, which can then be converted into a public limited company at a later date, if need be.

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ENTERING THE COUNTRY

Icelandic legislation contains restrictions pertaining to the acquisition of real property rights, namely Act No. 19/1966 on the Right of Ownership and Use of Real Property and Act No. 81/2004 on Farmland, which both set out certain requirements for acquiring real property rights. The general principle under Act No. 19/1966 is that Icelandic nationals and foreign nationals domiciled in Iceland may own property in the country or acquire the rights to its use. However, legal entities must satisfy certain requirements to own real estate in Iceland, cf. Article 1 of the Act. It should be noted that the Minister of Culture and Commerce may grant exemptions from the conditions listed in the aforementioned Article, e.g. if a person or company must acquire a property or property rights for use in their business, or if a foreign national has a strong connection with Iceland or an Icelandic national.

Act No. 34/1991 on Foreign Investment in Business sets out multiple rules concerning foreign investment, specifically with regards to domestically important industries, i.e., the fishing industry, aviation operations and power production. As per the Act, foreign parties are generally allowed to invest in Iceland, within the limitations set by law, cf. Article 3. Some of these limitations are subsequently listed in Article 4(1) of the Act. It should be mentioned that Article 12 of Act No. 34/1991 allows the Minister of Culture and Commerce to intervene in foreign investment that threaten the security of the country or those that are contrary to public policy, public security, or public health, or if serious economic, social or environmental difficulties arise in specific industries or in specific areas that are likely to persist. The Article also allows the Minister to intervene in foreign investment in systemically important companies when such investment involves systemic risk. It should be noted that any use of this measure must comply with Iceland's international obligations, i.e. those imposed by the EEA Agreement.

Lastly, it should be mentioned that a draft bill, which introduces an investment screening process to ensure national security and public order, was published in the Government's consultation portal in October 2022. The bill was met with heavy criticism from interest groups and corporations, due to fear of it limiting foreign investment in Iceland. The Government intended to introduce a draft bill pertaining to the above in Parliament during the 2022-2023 parliamentary session. However, those plans did not come to fruition. As per the 2023-2024 parliamentary calendar, the draft bill was to be submitted to Parliament in November 2023, but as of January 2024, no such bill has been submitted. According to the Ministry responsible for the draft bill in question, the feedback submitted via the consultation portal in 2022 is still being reviewed.

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INTELLECTUAL PROPERTY

Trademarks

What is protectable? Trademarks can be any type of sign, incl. words (incl. human names), pictures, patterns, letters, numbers, colors, sounds and shape or packaging of a product, as long as they distinguish the goods and services of the company from those of other companies. Further, to obtain registration, a trademark may not be descriptive of the goods or service or be confusingly similar to another trademark already registered in the same or similar categories.

Where to apply? Trademarks can be filed either with (i) the Icelandic Intellectual Property Office (ISIPO) or (ii) the World Intellectual Property Organization (WIPO) under the Madrid System. The application of an Icelandic trademark can be easily filed via an online form on the ISIPO website. The ISIPO will then conduct a trademark search and assess if the application meets all requirements. The procedure usually takes 8-10 weeks and if no amendments are necessary, the trademark is published in the ISIPO IP Gazette. After the publication in the Gazette, the registration can be opposed within two months. After the registration and opposition period ends, it is possible to request that the registration of the mark be cancelled, if the conditions for cancellation are met. Anyone can oppose or request cancellation of a trademark.

Duration of protection? A trademark registration is valid for 10 years from application date. Subject to certain conditions, the trademark can be revoked by a court judgment or decision of the ISIPO if the owner of the trademark has not used it within 5 years of its registration.

Costs? Application and renewal costs for an Icelandic trademark for one class amounts to ISK 37.900 (ISK 8.200 charged per additional class). In addition and if applicable, fees of a legal representation apply.

Patents

What is protectable? Technical inventions are patentable. An invention must be novel at the date of application, have an inventive step not obvious to a skilled professional and be applicable in the industry.

Where to apply? Patent protection is granted per country only, so an applicant must register the patent in each country where protection is sought. A Patent application can be filed directly with the ISIPO to obtain patent protection in Iceland. A patent application can also be filed with the European Patent Office (EPO) to obtain a European Patent. The European Patent can then be validated in each of the EPC contracting states, including Iceland. An application for a validation in Iceland is filed with the ISIPO and must, before validation of the patent, be accompanied by an Icelandic translation of the claims. Please note that Iceland is not a party to the European Unitary Patent system.

Duration of protection? A patent can be maintained up to 20 years from application, by paying annual fees. In case of pharmaceutical inventions, it is possible to apply for supplementary patent protection which may entail an additional protection period of maximum 5,5 years.

Costs? Application cost for an Icelandic patent for up to ten claims is ISK 76.000, for each additional claim ISK 4.900 is added. Further, annual fees range from ISK 13.000 to ISK 74.400, depending on how many years the patent has been valid. The official fees to validate a European Patent is ISK 36.700. In addition, translation cost and fees of a legal representation apply.

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INTELLECTUAL PROPERTY

The following IP rights can be registered:

Designs

What is protectable? A Design registration protects the design of a product of part of a product, i.e. shape, colors, pattern etc. The design must be new and different from what already exists.

Where to apply? National designs may be registered with the ISIPO. Design cannot be protected solely on the basis of use, but copyright may apply in some cases.

Duration of protection? The term of protection is five years. The term may be renewed for five years at a time, up to a maximum term of 25 years.

Costs? Application costs for designs amount to ISK 20.300 for each five-year term, plus an additional fee of ISK 8.900 for each additional design in a joined application. The renewal fee for each design for each five-year period is ISK 25.700.

Copyright

What is protectable? Copyright is a protection under the Icelandic Copyright Act No. 73/1972 that is established when an intellectual creation, such as literary work or artistic work, is created. No registration or label is required.

Duration of protection? Copyright protection ends at the end of the 70th year after the author has passed away.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work. The author is also entitled to a right of attribution and a right to object to derogatory treatment The author may however transfer or license the right to exploit the copyright financially.

Trade Secrets

What is protectable? Trade secrets are protected by specific legislation, Act No. 131/2020 on Trade Secrets. Accordingly, trade secrets are protected against illegitimate acquisition, use and disclosure. Trade Secrets are legally defined in Act No. 131/2020 as information which:

- is secret in the sense that it is not, as a whole or in conjunction or combination of individual components, generally known or easily accessible among persons in groups which normally deal with the type of information in question,
- has commercial value because it is secret
- an individual or legal person possesses legally and has made reasonable efforts, as applicable in each case, to maintain secrecy

Duration of protection? Protection for trade secrets lasts as long as the above conditions are fulfilled.

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DATA PROTECTION/PRIVACY

The GDPR was implemented into Icelandic law in June of 2018 by way of an annex to the Icelandic Act No. 90/2018 on Data Protection and the Processing of Personal Data. Provisions on marketing and use of cookies are enshrined in the recently updated Telecommunications Act No. 70/2022. The Icelandic particularities beyond the GDPR are limited, but briefly summarized are the following main points:

- The age for child's consent in relation to information society services is lowered from 16 to 13 years.
- Direct marketing by e-mail and other electronic messages requires prior consent (opt-in). However, a data subject's e-mail address obtained through a transaction may be used for the direct marketing of a company's own products or services if end-users are given the option to object to such processing free of charge at the time of registration (data collection for the purpose) and every time a marketing communication is sent. Those who conduct marketing by phone calls shall respect specific designation in the National Register (Icel. Þjóðskrá) which indicates that the data subject does not wish to receive such phone calls.
- Notwithstanding the foregoing, it is permissible to use generic e-mail addresses of companies and institutions, if available, for direct marketing of products and services.
- The use of cookies must be on the basis of prior consent (opt-in), unless the use of cookies is for the purpose of storage or access to information for the only purpose of carrying out the electronic communication over a network and when the use of cookies is necessary for providing the service. Thus, opt-in is required for all marketing cookies.
- The conduct of electronic surveillance is specifically covered in the Icelandic Data Protection Authority's Rules on Electronic Surveillance No. 50/2023
- The registration of police records and the processing of personal data for law enforcement purposes is specifically governed by Regulation No. 577/2020

The Icelandic Data Protection Authority, Persónuvernd is the competent supervisory authority. It has published a number of more specific rules and guidelines concerning the processing of personal data in certain situations, such as the rules on electronic surveillance, rules on the safety of personal data in conducting scientific research in the field of health sciences and rules on personal data processing subject to specific permits.

ARTIFICIAL INTELLIGENCE

A specific national regulatory regime for AI does not exist in Iceland. However, the regulation which will soon be adopted by the EU on harmonized rules on artificial intelligence (the socalled AI Act) is likely to be implemented in Iceland in the coming years.

Currently, the principles of data protection law, in particular Art 22 GDPR on automated individual decision-making must be observed in relation to the development, testing and operation of AI. Thus, the use of AI must not lead to any legal or similarly serious effects to the data subject, without any human intervention.

Also, national copyright restrictions are particularly relevant for generative AI. This applies to both (i) the input data (such as web scraping) and (ii) the output of the specific AI application: The retrieval of data from the internet into set of training data may be considered exploiting the content in a way subject to the Icelandic Copyright Act. Currently Iceland has not implemented the provision of the EU Directive 2019/790 on copyright and related rights in the Digital Singe Market (so called DSM directive) bur the process of incorporation into the EEA Agreement is pending. It therefore may be expected that the socalled Text- & Data-Mining exceptions will allow such retrieval in the near future under the conditions laid down in the directive. Finally, the output of AI may infringe the rights of the author of the original if the output is identical to or resembles an original source.

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EMPLOYEES/CONTRACTORS

General: Employer and employee must conclude an employment agreement, which stipulates their rights and obligations set forth by mandatory law, collective bargaining agreements and the employee agreement. The collective bargaining agreement applicable to the employee´s position will govern the minimum wages and terms that can be negotiated in an employee agreement.

Works created in the course of employment: According to unwritten principles of copyright law the copyrights necessary for the employer in the operations for which the copyrighted work was created will be transferred to him. The transfer of rights to computer programs is specifically mentioned in the Copyright Act No. 73/1972 in accordance with Directive 2009/24/EC on Computer Programs. According to the Act on Employees´ Inventions the employer is entitled to acquire the rights to patentable inventions created by employees in the course of the employment. However, for avoid disputes, it is advisable to conclude an agreement between the employer and employees on ownership of IP rights that will be created during the term of employee agreements.

Registration at the Employer´s Registry, employee benefits and employer´s payments: Every employer must register employees with the Iceland Revenue and Customs. The employer shall also pay to the Iceland Revenue and Customs a source deduction payment monthly together with a social insurance fee. Furthermore, the Employer is obliged to pay certain amounts into the employee´s pension fund together with payments to holiday benefit and sickness funds. Employees are entitled to annual leave benefits which amount to at least 10,17% of the salary. At the birth, an adoption or a fostering of a child each of the parents is entitled to six months payments from a state operated fund.

Termination: Notice periods for termination of an employment contract by either of the parties are designated in collective bargaining agreements and in the legislation. In general the employee does not have to specify a reason for termination. However, certain groups of employees (eg work council members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection.

Contractors: A company may also hire workers on a contractor basis, usually to perform specific tasks and/or within a pre-determined time frame. Contractors decide when and how they perform their tasks even if they receive instructions on where the task must be performed from the buyer and within which time period, they use their own equipment and are entitled to delegate their tasks. Contractors are not entitled to wages from the buyer company in case of illness or accident, matching contribution to pension funds, accident insurance or holiday leave. Contractors must themselves account for various wage- and operation-related taxes and charges under the relevant law.

The Icelandic Tax Authorities frequently examine whether a contractor agreement is really an employment contract and have the authority to reassess companies' taxes if they determine that an employment contract has been set up as a contractor arrangement in order to circumvent taxes and other obligations. They may, for example, examine whether the buyer company/employer has deciding power on planning the performance of the worker's work, pays wages on a regular basis regardless of the progress of work, lists minimum working hours in the contract, makes reference to employment related rights and a notice period of termination.

CONSUMER PROTECTION

Icelandic consumer protection legislation is regulated by various Acts, such as Act No. 30/2002 on E-commerce, Act No. 57/2005 on the Surveillance of Unfair Business Practices and Market Transparency, Act No. 16/2016 on Consumer Agreements and Act No. 33/2013 on Consumer Loans.

Foreign entities not established in Iceland offering their products and/or services to Icelandic consumers must be mindful of consumer protection legislation in Iceland as some Acts apply to foreign service providers irrespective of whether they are established in Iceland or not. Following is a brief overview of the geographic scope of the most relevant Acts in this respect:

The Consumer Agreement Act applies if an agreement is concluded outside a permanent establishment **but is directed towards Icelandic consumers or if the seller's marketing is otherwise conducted in Iceland or in Icelandic,** irrespective of whether the seller is established in Iceland.

The Unfair Business Practices Act applies to agreements, terms or conduct **meant to have effect in Iceland.**

The Consumer Loans Act (and Icelandic legislation in general) applies to a loan agreement **concluded by a consumer which is a resident in Iceland even if the counterparty is a foreign entity, if:**

- the precursor to the agreement was a specific offer made to the consumer or a general advertisement and the necessary arrangements to conclude the agreement on behalf of the consumer were performed in Iceland
- the counterparty, or its agent, took the consumer's order in Iceland
- the agreement concerns the sale of a product and the consumer travelled from Iceland to another country and placed their order there, provided that the trip was planned by the seller in order to entice the consumer to conclude the agreement.

The E-commerce Act applies to all electronic service providers established in Iceland, irrespective of whether the service is directed to the Icelandic market or to foreign markets.

Other Acts on consumer protection in Iceland include Act No. 48/2003 on Consumer Purchases, Act No. 25/1991 on Tort Liability for Product Defects and Act No. 50/2000 on the Purchase of Liquid Assets.

In case of distance sale agreements, such as in online stores, various information obligations must be adhered to in accordance with the Consumer Agreement Act. Further, a consumer must have a right to withdraw or rescind from any agreement within 14 days by simple notification. This right can only be limited in certain circumstances.

Specific attention is drawn to the requirement of the Unfair Business Practices Act that advertisements directed to Icelandic consumers must be in Icelandic. Further, advertisements must be presented in a way that there is no doubt that they are advertisements, and clearly distinguished from other media content.

The Icelandic Consumer Agency, Neytendastofa, is the competent supervisory authority, see Act No. 62/2005 on the Consumer Agency. It has authority to investigate and impose fines on companies for breaches of provisions of the Unfair Business Practices Act and other Acts regulating consumer protection, including those listed above. The Consumer Agency can investigate potential breaches on its own initiative or by complaint from individuals or companies. It is very consumer-focused and therefore prioritizes addressing unilateral conduct which may affect consumers negatively, such as unfair business practices towards consumers, advertising claims and insufficient labelling. Lately, the Agency has been particularly focused on enforcing compliance with advertising requirements.

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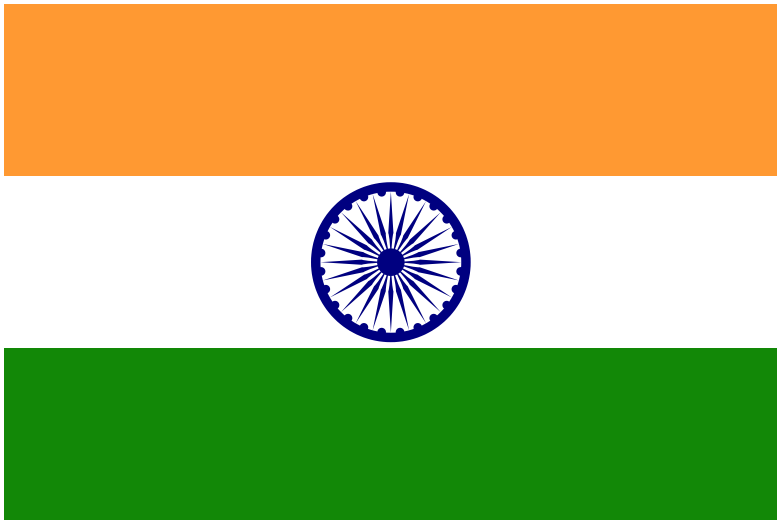
TERMS OF SERVICE

The Consumer Agreements Act stipulates that it is not permissible to negotiate or offer terms which are less favorable to the consumer than would result from the Act. According to the Icelandic Contract Act No. 7/1936, an agreement may be deemed invalid in whole or in part if the terms are considered unfair towards the consumer or against good business practice.

According to the Consumer Agreements Act, if an agreement is concluded electronically, and includes an obligation for the consumer to pay, the seller shall in a clear and easily understood manner and right before the consumer places the order, bring his attention to information on the main characteristics, price, validity period of the agreement and the minimum binding time of the agreement. Further, the seller shall ensure that at the time of order, the consumer shall explicitly acknowledge that the order entails an obligation to pay. If an order is placed by activating a button or similar function, the button or function shall be marked in a legible manner only with unambiguous wording indicating that the order constitutes an obligation on the consumer to pay the seller. Failure to do so will entail that the consumer is not bound by the agreement or order.

WHAT ELSE?

Iceland is not a EU Member State, but it is a party to the EEA Agreement, of Act No 2/1193 on the European Economic Area. Iceland is therefore a part of the European Economic Area and has in many areas of law implemented EU legislation.



ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

INDIA

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INDIA

LEGAL FOUNDATIONS

Common Law Structure
The general legal structure of India is a common law structure. The highest court in India is the Supreme Court of India (the "SC"). Judgments of the SC are binding on all the lower courts, i.e. the principle of stare decisis is followed.

Division of Powers under the Indian Constitution
The Constitution of India (the "Constitution"), inter alia, divides the legislative powers of the central and state governments. Under the Seventh Schedule of the Constitution, the power to legislate on matters such as incorporation, regulation and winding up of trading corporations, banking, insurance, stock exchanges, etc., is vested exclusively with the central government.

The state governments have the power to exclusively legislate on matters such as public health, hospitals, municipal corporations, public order, etc. And certain matters such as criminal law, transfer of property, charitable institutions, etc., can be legislated upon by both provided that no state law can be contrary to the provisions of a central law.

CORPORATE STRUCTURES

Private Limited Companies

Start-ups should consider setting-up a private limited company. The minimum number of shareholders required to form, and continue a private limited company are two. There is no minimum paid-up capital requirement for a private limited company but it does need two directors out of which one should be an Indian resident.

There are several benefits of conducting business as a private limited company in addition to the limited liability protection it provides to its founders and other shareholders. For example, a private limited company can:

- issue a special class of shares which is beyond the plain vanilla equity and preference shares which could facilitate venture capital and seed stage investments.
- can issue convertible notes, which is another instrument preferred and commonly used by early stage investors.
- can purchase its own shares and also provide loans and other financial support for the purchase of its own shares, which could facilitate exit options for early stage and other investors.
- There are no restrictions on managerial remuneration even if a company is loss making.
- The jurisprudence around private limited companies is also well established, and most investors are familiar with the legal and tax issues associated with such a vehicle.
- There is significant operational flexibility of doing business.

However, the limited downsides of doing business as a private limited company is that it may not be able to have all the tax benefits of a limited liability partnership.

CORPORATE STRUCTURES, CONT'D

Limited Liability Partnerships

A limited liability partnership ("LLP") may also be considered. An LLP is also a vehicle provides operational flexibility. In certain cases, depending on the specific business to be conducted, and specific sources of financing of the LLP, an LLP may be able to have a better tax treatment as compared to a private limited company discussed above.

However, one key shortcoming of an LLP is that in certain cases, the founders can be exposed to personal liability for non-compliance of the law. Since each LLP must have at least two designated partners, it is mostly the founders who tend to become designated partners in order to exercise control over the LLP. And a designated partner becomes liable for all penalties imposed on an LLP for contravention of statutory provisions of the Limited Liability Partnership Act, 2000. Further, in cases, for example, where an LLP or any partner or a designated partner of such limited liability partnership has conducted the affairs in a fraudulent manner, then in addition to any criminal action the concerned partner or designated partner would become liable to pay compensation to the affected person. Thus, it is not advisable to use an LLP structure unless and until based on the business plans and fact patterns, it may lead to a significant tax saving.

Other theoretical options

While in theory there are other options such as an unlisted public company, a one person company, sole proprietorships, and general partnerships, these not being relevant for start-ups especially where there is a foreign citizen or foreign resident being a founder, these are not being discussed here.

ENTERING THE COUNTRY

Foreign Investment Law

India has a dedicated foreign investment law. Any foreign investor investing into India must comply with the provisions of the Foreign Exchange Management Act, 1999 of India and the rules and regulations notified thereunder. Most sectors are open to 100% foreign ownership. However, certain sectors such as gambling and betting, lottery, real estate, rail way operations, etc., are prohibited. In the case of certain sectors such as e-commerce, foreign investment is permitted in the market place based model (subject to certain conditions and limitations) but not in a model where the start-up would own inventory and then sell it to consumers directly.

Any foreign investment must be reported to the Reserve Bank of India and must be made as per internationally acceptable valuation norms.

Investment by way of debt is restricted and subject to conditions. Investment by way of subscription to a non-convertible debenture and/or a non-convertible preference share, would be considered as an investment in debt and not equity.

INDIA

INTELLECTUAL PROPERTY

India recognizes all kinds of intellectual property such as copyrights, patents, trademarks, trade secrets and designs. While there is no specific trade secret legislation, a trade secret is recognized by the Indian courts. Depending on the nature of the intellectual property, it may be registered with the Trade Marks Registry or the Copyright or Patent Office, etc.

Trademarks/Service marks

What is protectable? A mark including a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination of the aforesaid, which is capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others, is protectable.

Where to apply? An application for registration of a trade mark is filed with the Trade Marks Registry in India physically or by way of an electronic filing.

Duration? A trade mark/service mark is valid for ten years, and may be renewed from time to time.

Costs? Filing fees for start-ups is approximately US$ 60 per mark per class, and for non-start-ups is US$ 120 per mark per class.

Copyrights

What is protectable? Any original literary work including computer programmes, computer databases, tables and compilations, dramatic works, musical or artistic works; cinematographic films; and sound recordings are protectable.

Where to apply? An application for registration of a copyright is made to the Registrar of Copyrights physically or by way of an electronic filing.

Duration? A copyright, for most kinds of work is protected for sixty years from the beginning of the calendar year next following the year in which the author of the work dies.

Costs? The filing fees, depending on the nature of the work range from approximately US$ 6 per work to approximately US$ 24 per work.

International Treaties

It may be noted that India is also a signatory to the following international Madrid Protocol, the Berne Convention, the Paris Convention, and the Patent Co-operation Treaty, and thus one can take advantage of the such international treaties including priority dates of the applications filed in the reciprocating territories.

Patents

What is protectable? Any new product or process involving an inventive step and capable of industrial application is protectable.

Where to apply? An application for grant of a patent is filed with the Patent Office in India physically or by way of an electronic filing.

Duration? The term of a patent granted is twenty years from the date of filing of the application for the patent and in case of International applications filed under the Patent Cooperation Treaty designating India, it is twenty years from the international filing date accorded under the Patent Cooperation Treaty.

Costs? Filing fees for start-ups is approximately US$ 21 per application, and for non-start-ups is approximately US$ 106 per application.

Designs

What is protectable? 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 any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark or property mark or any artistic work under the Copyright Act.

Where to apply? An application for registration of a design can be filed with Design Wing of the Patent Office in Kolkata or any of the branches of the Patent Office in Mumbai, Delhi or Chennai.

Duration? A design is granted protection for 10 years from the date of registration and extendable by another 5 years.

Costs? Filing fees for start-ups is approximately US$ 12 per design, and for non-start-ups is approximately US$ 48 per design.

DATA PROTECTION/PRIVACY

Existing Regime

India has rules relating to data protection and privacy notified under the provisions of the Information Technology Act, 2000. These, inter alia, govern the manner in which personal and sensitive information can be collected, disclosed transferred and used.

As per the **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011,** a privacy policy must be published on the website of the entity collecting personal information and must be clear and easy to understand, must specify the type of personal or sensitive information being collected, the purpose of collecting the same, etc. The data collected should not be retained for longer than its intended use and must allow for the review of such information and allow an option to the provider of the information to withdraw consent for such collection, use, etc.

A grievance redressal officer must be designated to address any discrepancies and grievances if the data subjects, and the name and contact details of such an officer must be published on the entity's website. Any grievance is to be redressed no later than one month from the date of receipt of a grievance.

Such rules also prescribe reasonable security practices and procedures to be followed in order to protect the safety and confidentiality of such data. If an entity has implemented the International Standard IS/ISO/IEC 27001 on **"Information Technology Security Techniques-Information Security Management System Requirements"** then it would be deemed to have complied with reasonable security practices and procedures.

New Data Protection Law

On August 11, 2023, a new law "The Digital Personal Data Protection Act, 2023" or the "DPDP Act" was introduced to provide for the processing of digital personal data in a manner that recognizes the right of individuals to protect their personal data and the need to process such personal data for lawful purposes.

The provisions of the DPDP Act will apply to the processing of personal data in the digital form within India (where the data is collected in the digital form or if collected in the non-digital form is digitized subsequently) and to processing of such data outside India, if the processing is in connection with any activity of offering of goods or services to data principals in India.

The provisions of the DPDP Act are not yet in force and a government notification is awaited in this regard. However, the salient provisions of the DPDP Act are as follows:

- The term "personal data" has been defined to mean any data about an individual who is identifiable by or in relation to such data. The earlier differentiation between the personal data and sensitive personal data will be done away with.
- A person may process the personal data of a data principal i.e., an individual to whom the personal data relates, and where the individual is a child, it includes the parents or lawful guardian of the child, and in the case of a person with a disability includes the person's lawful guardian, for which the data principal has provided consent or for a legitimate purpose.
- Consent provided must be free, specific, informed, unconditional and unambiguous with a clear affirmative action, and is to signify an agreement to the processing of the data for the specified purposes and should be limited to such personal data as is necessary for such specified purpose. The request for consent must be made in a clear and plain language, along with an option to access the request in English or any of the 22 different languages specified in the Eight Schedule of the Constitution of India.
- Legitimate uses for which personal data may be processed and for which consent is not mandatory is where the data principal has voluntarily provided the personal data for a specific purpose and for example by a state or its instrumentalities to provide benefits, services, subsidies, etc., where the data principal has previously consented to the processing of such data.

DATA PROTECTION/PRIVACY, CONT'D

New Data Protection Law, CONT'D

- The term **"Significant Data Fiduciary"** has been introduced. This means any data fiduciary or a class of data fiduciaries as the government may notify, and is meant to cover data fiduciaries that process, large volumes of data, sensitive personal data, data which may have a potential impact on the sovereignty and integrity of India, public order, etc. Such Significant Data Fiduciaries are to appoint a Data Protection Officer who must be based in India. Other classes of data fiduciary must appoint consent managers. All data principals must be given the right to access, correct and seek erasure of their data and to have their grievances resolved within prescribed time frames.
- Processing of personal data outside of India has been permitted. However, the government may by notification prohibit the transfer of personal data to select countries.
- Certain limited exemptions from the applicability of the DPDP Act have been provided, for example, where the processing of the personal data is necessary for enforcing any legal right or claim, the processing by a court or tribunal or similar entities, processing for the prevention, detection, investigation, prosecution of crimes, processing of personal data of principals not within India pursuant to a contract, processing for the purposes of mergers or amalgamations of two or more companies, for responding to medical emergencies, for the purposes of employment, etc. Additionally, the DPDP Act does not apply to personal data processed by an individual for any personal or domestic purpose, and personal data that is made publicly available by the data principal or by a person under a legal obligation to disclose such data.
- Penalties for breach of the provisions of the DPDP Act or the rules made thereunder are significant and depending on the nature of the breach can extend up to approximately US$ 30M.

ARTIFICIAL INTELLIGENCE

Currently there is no specific legal regime for AI regulation in India. Also, the government has clarified that while it is concerned about ethical issues and risks relating to biases and discrimination in decision making processes, etc., as of now it does not intend to introduce any law to regulate AI. Notwithstanding the aforesaid, the government has been and is focused on keeping abreast with AI related issues which is evident from the fact that a report on National Strategy for AI has been published as early as 2018, and the launch of an AI-based cloud computing infrastructure platform known as AIRAWAT i.e., the Artificial Intelligence Research, Analytics and Knowledge Assimilation Platform.

EMPLOYEES/CONTRACTORS

Direct Hiring without an Entity in India

Firstly, a foreign entity should know that if it directly hires any person in India as an employee that could lead to adverse tax consequences such as constitution of a permanent establishment in India, and its business income could become taxable in India. Secondly, even if it hires someone in India, as an independent contractor, it needs to be careful that the independent contractor is truly independent, and for example has other clients that the independent contractor is providing same or similar services to or else, again, there could be the adverse tax consequences as stated above.

State Laws

A foreign entity must also know that different state laws would apply to employees in different states and which may have their own unique compliance requirements. For example, while some states such as Karnataka, require a minimum prior notice period and reasons for termination of employment, others states, such as Maharashtra do not so require. And in the case of workers working in industrial establishments, there are further onerous compliance requirements including for lay off or retrenchment of workers especially when the number of workers is 50 or more.

EMPLOYEES/CONTRACTORS, CONT'D

Four Central Labour Law Codes

A foreign entity should also know that India has four central labor laws for the protection of employees and workmen and then also certain state laws in this regard. The said four laws are: **(i) The Code on Wages, 2019, (ii) The Industrial Relations Code, 2020, (iii) the Code on Social Security and (iv) the Occupational Safety, Health and Working Conditions Code, 2020.** However, if the number of employees is not more than 10 then most of such laws would not apply. As the number of employees or workmen keeps increasing, the applicability of such laws increases and there are additional compliance requirements. Also, certain beneficial provisions of such laws apply only to **'workers'** and to **'industrial establishments.'** Someone who is employed mainly in a managerial or administrative capacity is not considered to be a worker. Similarly, someone employed in a supervisory capacity and drawing wages exceeding approximately US$ 225 per month is also not considered to be a worker. At the moment, the said codes are notified but not implemented due to the pending rules thereunder which are yet to be finalized. Thus, some of the existing labor laws would continue to hold the field.

Work for Hire

A work for hire regime partly does exist under the copyright law but is subject to a contract to the contrary. Thus, it is always prudent to incorporate a specific intellectual property assignment clause with specific language therein such as the term of the assignment, the territory of the assignment and the non-revocability of the assignment. For example, under the copyright law, if the term of an assignment is not specified it is deemed to be for a limited period of five years only.

CONSUMER PROTECTION

In a significant legal development that will impact several advertisers and companies including e-commerce companies, the Central Consumer Protection Authority notified guidelines imposing a prohibition on the use of dark patterns. A dark pattern practice means "any practice or a deceptive design using interface or user experience interactions on any platform that is designed to mislead or trick users, to do something they originally did not intend or want to do, by subverting or impairing the consumer autonomy, decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights."

As per the notification, no advertiser, seller and/or platform systematically offering goods or services in India, can engage in dark pattern practices including the following: False Urgency, Basket Sneaking, Confirm Shaming, Forced Action, Subscription Trap, Interface Interference, Bait and Switch, Drip Pricing, Disguised Advertising, Trick Question, Nagging, SAAS Billing, and Rogue Malwares. All the aforesaid terms have been defined and supported by illustrations in the said notification.

Consumer Protection Law

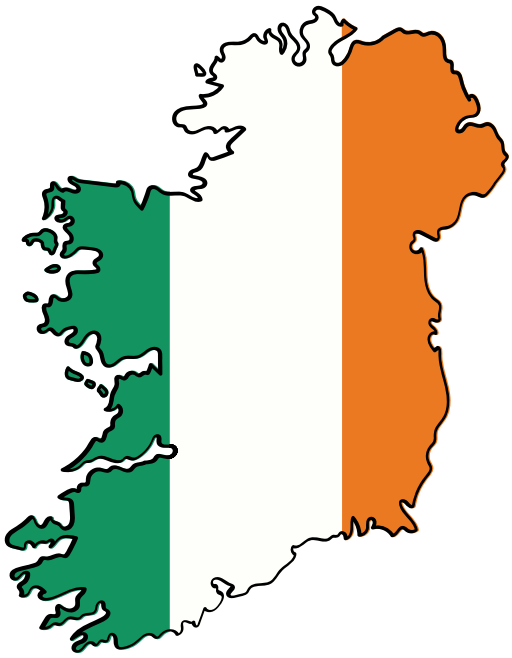
India has a comprehensive law on consumer protection which is the Consumer Protection Act, 2019. This law deals with various aspects of consumer protection such as liabilities of manufacturers, service providers as well as sellers.

Fines and Imprisonment

Further, any manufacturer or service provider who indulges in false or misleading advertising could be punished with imprisonment of up to two years and a fine of up to US$ 12,500 (approximately). The term of imprisonment and the fine increases for any subsequent offences.

E-Commerce Entities

Further, a foreign entity, particularly engaged in the e-commerce sector needs to know that even though not incorporated in India, if it owns, operates or manages digital or electronic facility or a platform for electronic commerce, and which systematically offers goods or services to consumers in India, then it would come under the purview of the Consumer Protection (E-Commerce) Rules, 2020, which inter alia require that a person who is resident in India is appointed by it to ensure compliance with the provisions of the Consumer Protection Act, 2019.



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IRELAND

LEGAL FOUNDATIONS

Ireland has a common law system. There are four primary sources of law, being the Irish Constitution, domestic legislation, case law developed by the judiciary, and laws of the European Union (which may be statutory or emanate from decisions of the Court of Justice of the European Union (**"CJEU"**)).

The Irish court system consists of three higher courts (the Supreme Court, the Court of Appeal and the High Court), and courts of more limited jurisdiction (the District Court and Circuit Court). Commercial disputes with a value of EUR1m or over, as well as certain other specific types of disputes (such as relating to intellectual property), can be entered into the Commercial Court (the commercial division of the High Court). The Commercial Court offers a relatively 'fast track' process, designed to facilitate a quicker and more efficient resolution of disputes. By virtue of Ireland's membership of the European Union, Irish courts may also refer relevant points of law to the CJEU.

Ireland has enacted the UNCITRAL Model Law on International Commercial Arbitration and is also a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award.

CORPORATE STRUCTURES

The two primary types of corporate entity that a start-up might consider are an 'LTD' or a 'DAC'.

LTD

The principal type of company formed in Ireland is the private limited company, formally known as a company limited by shares, or LTD. The liability of the shareholders is limited to the amount they agree to pay for shares in the company. An LTD must have at least 1 and not more than 149 members (shareholders).

An LTD, on incorporation, must have at least 1 shareholder, a minimum of 1 director and a company secretary, as well as a registered office (situated in the State). Where an LTD only has 1 director, the company secretary cannot be the same person as the director. Subject to certain exceptions, an LTD must have at least one director who is resident in the European Economic Area (EEA). The company secretary can be a body corporate or a natural person and directors must be natural persons.

CORPORATE STRUCTURES, CONT'D

LTD, CONT'D

The nominal share capital of an LTD can be as large or small as the promoters wish. The capital is usually denominated in Euro, but can be denominated in US Dollars or any other currency. There must be at least one issued share (usually EUR1 each, although it can be smaller). There is no requirement to have an authorised share capital.

An LTD is formed when the Irish Registrar of Companies issues a certificate of incorporation after the filing with the Irish Companies Registration Office (CRO) of a duly executed CRO Form A1, a constitution of the company and payment of applicable CRO fees. The constitution is a single document which must be signed by the subscribing shareholder(s) and it, together with the Companies Act 2014 (as amended), determines the rules that will govern the LTD.

An Irish company's standard constitution is normally very short with the majority of terms simply incorporated via various sections of the Irish Companies Act. This can mean it is difficult to ascertain all of an Irish company's governing terms in one place, albeit there is nothing preventing an LTD adopting a more comprehensive constitution.

DAC

An alternative to an LTD is another form of private limited company, formally known as a designated activity company or DAC. A DAC is a private limited company that is only able to carry out specified activities (or objects) and must have an authorised share capital. DACs tend to be used where the shareholders want the capacity of the company to be clearly prescribed, such as with management companies or joint venture vehicles. DACs are also used to list debt and securities and to carry out certain regulated activities, none of which an LTD can do. The requirements regarding directors, company secretary and registered office are the same as for an LTD.

The much more flexible LTD is far more common in Ireland, particularly for start-ups. It does not need to specify its activities in objects (it has a single document constitution as mentioned above), nor have an authorised share capital.

Other types of legal entity

In terms of other types of entity that could be considered from an Irish company law perspective, there are unlimited liability companies. The shareholders' liability is not linked to the amount they agree to pay for shares so their liability is unlimited, a key difference from a DAC. Unlimited liability companies have some benefits, such as more flexible rules relating to extraction of cash or other assets and distributions to shareholders. Other types of companies that are available but which would not generally be suitable for start-ups are companies limited by guarantee (these are more appropriate for charities, other non-profit organisations and property management companies) and public companies.

Ireland has limited partnerships ("**LPs**") and general partnerships. It would not be advisable to use a general partnership structure for start-ups as liability is not limited and LPs are more suited to private equity and property owning fund structures.

Sole Proprietorships are not generally used by start-ups in Ireland because of the fact that the owner would be required to enter into contracts in their own name, and would not be able to avail of the benefits of incorporation (e.g. limited liability).

IRELAND

ENTERING THE COUNTRY

Against the backdrop of the EU Investment Screening Regulation (Regulation (EU) 2019/452 ("FDI Screening Regulation") becoming effective in October 2020, the Screening of Third Countries Transactions Act 2023 ("Act") was signed into law on 31 October 2023. It is expected that the Act will become operational in the second quarter of 2024. The FDI Screening Regulation regulates the acquisition of strategic EU interests and companies by undertakings from third countries (non-EU members), with a view to maintaining public order and security.

Under the Act, a new mandatory notification to, and 'screening procedure' by, the Minister for Enterprise, Trade and Employment ("Minister") will be required for certain transactions that involve third country or foreign-controlled undertakings (this includes both companies and individuals outside the EU, EEA and Switzerland) that are parties to a transaction if the following conditions are met:

- a third country undertaking or a connected person is a party to the transaction;
- the value of the transaction is at least EUR2m;
- the transaction relates to critical infrastructure and technologies, natural resources, sensitive data and media; and
- the transaction relates to an asset or undertaking in the State.

It is noteworthy that the UK will be a third country for the purposes of the Act, which is significant given the level of investment by UK investors into Ireland.

A "transaction" includes any transaction or proposed transaction where a change of control of an asset or the acquisition of all or part of an undertaking in the State is affected. The concept of "control" is the same as in the EU and Irish merger control regime and relates to 'direct or indirect influence' over the activities of the undertaking (e.g. voting rights or securities, ownership of assets of the undertaking or rights and contracts providing influence over the decisions of the undertaking).

Transactions for the acquisition of shares or voting rights only have to be notified where the above criteria are fulfilled and where the percentage of shares or voting rights held changes from (a) 25% or less to more than 25%, or (b) from 50% or less to more than 50%.

The Act replicates the FDI Screening Regulation and focusses the notification / screening obligation on transactions in the below sectors / businesses:

- critical infrastructure including energy, transport, water, communications, aerospace, defence, data storage and processing;
- critical technologies including artificial intelligence, robotics, semiconductors, cybersecurity, etc.;
- critical inputs including energy, raw materials and food security;
- access to sensitive and personal data; and
- media.

The obligation rests on all parties to a transaction (although practically we envisage the purchaser will lead on notifications to the Minister). A failure to correctly notify the Minister is a criminal offence and parties may be liable (a) on summary conviction, to a fine of up to EUR2,500 and / or 6 months' imprisonment, or both, or (b) on conviction on indictment, to a fine of up to EUR4m and / or 5 years' imprisonment, or both.

The Minister will review notifications received but retains broad powers to also review non-notifiable transactions where there are reasonable grounds for believing that the transaction may affect security or public order in the State (criteria for this assessment are set out in the Act), and where the transaction results in a third country undertaking acquiring control of an asset or undertaking in the State.

If a screening decision concludes that public order or security may be affected by a transaction, the Minister can direct that the transaction is not to be completed, or that certain other steps are undertaken by the parties.

IRELAND

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

In Ireland, various intellectual property rights (including copyright, patents, trademarks and designs) are capable of creation and protection. Disputes in relation to intellectual property are typically dealt with by the dedicated intellectual property sub-division of the Commercial Court.

Patents

What do they protect? An invention: a new and innovative way of doing something, or solving a technical problem (includes products and processes).

How are IP owner's rights protected? Prevents unauthorised making, using or selling of the patented invention.

What term of protection is afforded? Up to 20 years.

Where to register? Intellectual Property Office of Ireland (IPOI) or the European Patent Office (EPO).

Cost: At the IPOI, €125 initial filing fee, €200 fee for searches before grant, €64 fee for grant.

Copyright

What does it protect? A work: an original intellectual creation (e.g. audio-visual works, pictures, graphics, architecture, databases, software, designs, literature, novels, poems, plays, music and video, dramatic works).

How are IP owner's rights protected? Prevents the work being (without authorisation) copied, published, distributed or made available online and protects the integrity and attribution of the work.

What term of protection is afforded? Typically lifetime of the author +50 to +70 years (depending on the work) after death.
Where to register? There is no registration procedure for copyright works under Irish copyright law. Copyright protection is automatic and arises upon the creation of an original work.

Cost: N/A.

Trade Marks

What do they protect? Distinctive signs that identify brands of products/services (e.g. words, personal names, designs, letters, numerals, colours, shapes, packaging, sounds).
How are IP owner's rights protected? Prevents unauthorised use of distinctive signs for the same or related products or/services.

What term of protection is afforded? Indefinite, subject to use in commerce and renewal every 10 years.

Where to register? Intellectual Property Office of Ireland (provides protection in Ireland only) or European Union Intellectual Property Office (EUIPO) for EU Trade Marks which are protected throughout the whole EU. If the goods or services will be marketed in non-EU countries, a filing with the World Intellectual Property Organization (WIPO) under the Madrid Protocol may be considered (instead of a local national filings).

Madrid Protocol: Ireland ratified the Madrid Protocol on 19 July 2001 and the Protocol entered into force, with respect to Ireland, on 19 October 2001. Consequently, the Madrid Protocol governs international trade mark applications received in the Intellectual Property Office of Ireland.

Unregistered rights: Without a registered trademark, a brand owner can only rely on the tort of passing off for protection. To succeed in a claim of passing off, you must prove cumulatively the following: (i) goodwill in your own unregistered mark; (ii) misrepresentation on the part of the competitor; and (iii) damage to the goodwill built up in your unregistered mark.

Cost: At the IPOI, €70 initial application fee, additional €70 for each additional classification, €177 registration fee if application is successful, €250 renewal fee every 10 years, €125 renewal fee for each additional classification.

INTELLECTUAL PROPERTY, CONT'D

Designs

What do they protect? A new and original visual appearance of a product (e.g. packages, containers, furnishings, graphic symbols, computer icons, typefaces, graphical user interfaces, logos and maps).

How are IP owner's rights protected? Prevents unauthorised use of an identical or similar visual appearance for the same kind of products and/or services.

What term of protection is afforded? Up to 25 years for registered designs.

Where to register? Intellectual Property Office of Ireland (IPOI) for a registered Irish design which provides protection in Ireland only or European Union Intellectual Property Office (EUIPO) for a registered Community design which provides protection throughout the whole EU. It is not necessary to register a design, but it is highly advisable. Unregistered community designs are protected only from 196 unauthorised copying and they have shorter term of protection (up to 3 years versus up to 25).

Cost: At the IPOI, €70 initial application fee, in the case of an application to register multiple designs, the fee is €70 plus €25 per design. Renewal fees begin at €50 for the first five-year renewal period, €70 for a third renewal period, €80 for a fourth renewal period and €100 for the fifth, and final, renewal period.

Trade Secrets

What do they protect? Any type of useful information for business that is secret and kept confidential (e.g. any confidential information: business methods, customer lists, R&D data, financial information, cooking recipes, software, datasets, know-how, algorithms).

How are IP owner's rights protected? Prevents others from using the confidential information, as long as it remains secret. Ability to claim monetary compensation in case of unlawful disclosure of the confidential information.

What term of protection is afforded? Indefinite, provided the information is not revealed.

Legislation: The legal regime for the protection of commercial/trade secrets in Ireland is governed by the European Union (Protection of Trade Secrets) Regulations 2018 (SI199/2018). These Regulations give effect to EU Trade Secrets Directive (EU 2016/943) and provide for civil redress measures and remedies in respect of the unlawful acquisition, use and disclosure of trade secrets.

IRELAND

DATA PROTECTION/PRIVACY

In Ireland, data protection laws consist primarily of the Data Protection Acts 1988 to 2018 ("DPA"), the General Data Protection Regulation (EU) 679/2016 ("GDPR") and the European Communities (Electronic Communications Networks and Services)(Privacy and Electronic Communications) Regulations 2011 ("ePrivacy Regulations"). The supervisory authority for data protection in Ireland is the Data Protection Commission ("DPC").

The DPA sets out Irish derogations from the GDPR. These derogations include the following:

- there is no obligation to register as a controller or processor with the DPC;
- all DPOs are required to register with the DPC;
- where consent is relied on for processing personal data relating to the offer of information society services directly to a child, such consent can only be provided by the child where the child is 16 years of age or over. However, the DPA states that all other references to a "child" in the GDPR means a person under the age of 18 years; and
- the DPA sets out certain restrictions on data subject rights otherwise provided for in the GDPR.

The ePrivacy Regulations include requirements relating to electronic mail direct marketing. They require organisations sending such marketing communications to obtain the consent from the individual to receive them, except in limited circumstances where certain conditions are met. The conditions include the need for the organisation to have obtained the individual's contact details in the sale of a product or a service from the organisation, the marketing communication is related to similar products or services, and the individual is provided with the option to opt-out of receiving marketing communications at the time of collection of their details and in all marketing communications.

Data protection laws should be read together relevant DPC guidance which provides some direction as to how those laws and their requirements are interpreted by the DPC.

The DPC is the lead EU data protection supervisory authority for a number of multinational technology companies by virtue of their European operations being headquartered in Ireland. As a result, the DPC has handled some high profile, pivotal enforcement actions and cases in recent years.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime currently for AI in Ireland. Government departments have published a number of strategies and guidelines on topics such as the use of AI in the public service, but these have not yet been translated into a regulatory framework.

AI is subject to certain general legal requirements, such as laws relating to data protection and intellectual property. These include, for example, copyright laws and rules laid down in Article 22 of the General Data Protection Regulation (GDPR) relating to automated individual decision-making apply in relation to the development, testing and operating of AI. Under Article 22, the use of automated decision making must not lead to any legal or similarly serious effects to the data subject without human intervention. Protections afforded to authors and other rights arising under copyright law will be relevant in particular to generative AI.

The development of a horizontal European Union regulatory framework for AI is underway which, based on its current draft form, will have direct effect in Ireland once it is agreed and adopted by the relevant EU bodies.

EMPLOYEES/CONTRACTORS

General: The distinction between an employee and an independent contractor is a vexed one. Courts and tribunals will analyse an individual's status by reference to how the relationship operates and not the label applied by the parties.

In Ireland, employees enjoy a broad range of protections relating to matters such as working time, dismissal, discrimination and statutory leave.

Employers must furnish a written statement containing certain core terms of employment within 5 days of an employee's start date. The remaining minimum terms and conditions of employment must be furnished to an employee within one month of their start date.

It is common for employers to issue a detailed employment contract addressing not only the core terms, but also matters such as confidential information, intellectual property and post-termination restrictions.

In addition to the employment contract, it is also important for an employer to put in place certain basic employment policies. These should include a disciplinary policy, a grievance procedure and a dignity at work policy.

It is possible to engage an individual/entity as a contractor in Ireland. However, caution must be exercised to ensure that the relationship is not misclassified. The Supreme Court recently delivered a detailed judgment in a case concerning the status of pizza delivery drivers. The principles set out in this judgment should be considered carefully by organisations which are considering engaging individuals/entities as contractors.

Work for hire regime: Generally, any intellectual property created by employees in the course of their employment is the property of their employer. However, it is relatively common for employment contracts and consultancy agreements to include detailed intellectual property protection clauses.

Termination: Irish employment law provides substantial protections to employees who are dismissed.

Under the Unfair Dismissals Acts, a dismissal will be deemed unfair unless an employer can demonstrate that there was a fair reason for the dismissal (i.e. redundancy, conduct, capability competence or qualifications, the employee being unable to work or continue to work in the position held without contravention of a duty or restriction imposed by or under legislation or some other substantial reason) and that the employer acted reasonably in effecting the dismissal. Generally, an employee must have at least 12 months' continuous service to be protected by the Unfair Dismissals Acts. Where a dismissal is found to be unfair, the relevant adjudication body may order reinstatement, re-engagement or compensation of up to two years' gross remuneration.

A further potential risk for employers is the possibility of a claim under the Employment Equality Acts. There is no service requirement to bring a claim under the Employment Equality Acts or duty to mitigate loss. The potential redress is reinstatement, re-engagement and/or compensation. Compensation is limited to two years' gross remuneration or up to €40,000, whichever is greater.

Under industrial relations legislation, an employee who has been dismissed may bring a complaint that there has been a trade dispute (which is defined very broadly). There is no service requirement. The complaint may result in a non-binding recommendation being made.

An employee who has been dismissed or who is at risk of dismissal may seek injunctive relief before the civil courts, particularly where the dismissal/potential dismissal is conduct related. This type of action tends to be more commonly pursued by senior level employees. There is no length of service requirement.

IRELAND

CONSUMER PROTECTION

The primary consumer protection laws comprise the Sale of Goods Act 1893, Sale of Goods and Supply of Services Act 1980, Consumer Protection Act 2007, and the recently enacted Consumer Rights Act 2022. Consumer protection laws tend to apply to all business activities involving Irish consumers.

The 1893 Act and 1980 Act imply certain condition into consumer contracts which cannot be excluded, such as merchantable quality and fitness for purpose. The 2007 Act sets out, among other things, rules relating to unfair and misleading commercial practices, as well as certain prohibited commercial practices, when dealing with consumers.

The 2022 Act consolidates and builds on elements of previous legislation and seeks to update consumer laws for the digital age. The Act includes requirements, for example, relating to transparency of terms and a consumer's right to cancel a contract entered online (within certain parameters). The Act also transposes several EU Directives into domestic law and operates to generally bolster protection for consumers.

The Competition and Consumer Protection Commission is responsible for safeguarding consumer protection in Ireland and has a number of enforcement powers at its disposal for non-compliance.

TERMS OF SERVICE

Under Irish law, a consumer must be provided with certain information before online terms of service become legally binding against the consumer.

This information includes:

- the total price or how it will be calculated (if it cannot be reasonably calculated in advance);
- the trader's complaint handling policy (where applicable);
- where the consumer has a right to cancel the contract, the conditions, time limit and procedures for exercising that right; and
- the duration of the contract, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating it.

The 2022 Act sets out a list of terms that are automatically unfair, including terms:

- giving the seller a shorter notice period to terminate the contract than the consumer;
- giving the seller the exclusive right to interpret a term of the contract; or
- conferring exclusive jurisdiction for disputes arising under the contract on a court in the place where a trader is domiciled unless the consumer is also domiciled in that place.

The 2022 Act also sets out a "grey list" of terms which are presumed unfair until the contrary is proven. These include terms that:

- automatically extend a fixed term contract unless the consumer indicates otherwise, where there is an unreasonably early deadline for the consumer to object to the extension of the contract;
- bind the consumer to terms and conditions they had no real opportunity to fully understand before the contract was entered into; or
- allow the trader to unilaterally alter the terms of the contract without a valid reason which is specified in the contract.

Unfair terms in consumer contracts are not binding on the consumer.

WHAT ELSE?

There are a number of agencies (such as Enterprise Ireland and IDA Ireland) that offer assistance to start-ups establishing in Ireland, as well as grant assistance to qualifying businesses.

ISRAEL

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LEGAL FOUNDATIONS

Israeli law is largely based on the **common law**. As a relatively small jurisdiction, Israel does not have a federal system and power is centralized in Israel's parliament ('knesset'). Israel does not have a formal written constitution but Israel's parliament has previously enacted a series of **quasi-constitutional laws** ("hukey hayesod") that have special status under Israeli law.

Israeli courts are made up of professional judges, without use of juries. There are three levels of courts as follows:

- **the magistrate courts**, with jurisdiction over certain civil matters and offences punishiable up to three years,
- **the district courts**, based in six major cities (Jerusalem, Tel Aviv, Haifa, Beersheva, Lod and Nazareth), with general jurisdiction in civil and criminal matters. The district courts in Tel Aviv and Haifa also boast economic divisions with judges specializing in and with jurisdiction to hear commercial disputes, and
- **the Supreme Court in Jerusalem**, determining appeals from inferior courts. The Supreme Court also sits as a court of first instance, acting in its capacity as a High Court of Justice ('bagatz') where it hears petitions against actions of public bodies as well as the constitutionality of laws legislated by Israel's parliament.

The employment court system is separate from the civil court system and specializes in employment relationships. The employment courts have exclusive authority to hear claims between employers and employees (both collective and personal disputes), as well as between employer and employee organizations.

CORPORATE STRUCTURES

Under the laws of Israel, a simple limited liability company (Ltd.) is most readily used by start-ups and offer the most attractive space for growth of a young company. While other legal structures do exist in Israel (e.g. partnerships, sole tradership), these are not typically suitable for growth focussed start-up companies.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company (Ba"am)

The Israeli limited liability company is the most common and accepted business entity in Israel (Ltd.) and has a simple procedure for establishment:

- There is **no minimum registered capital requirement** and no requirement to maintain or deposit any amounts against the registered capital.
- Companies are required to have a **minimum of one shareholder**, whether individual or a legal entity, and a **minimum of one director**, for its incorporation.
- A strong advantage is that the shareholders' liability for the company's debts is limited, as implied by the name.
- In order to incorporate a company as a limited liability company, the founders of the company must complete the following documents and file them with the Israeli Registrar of Companies:
  - (i) "Company Formation Form" signed by the company directors and shareholders, including details such as the name of the company, shareholders' personal details, address, composition of the company's share capital and the allotted share capital;
  - (ii) first directors' declaration form; and
  - (iii) the articles of association, signed by all of the shareholders.
- If any of the shareholders or directors is a foreign citizen or foreign legal entity, a notarized copy of the foreign citizen's passport or registration documents of the foreign entity are also required to be submitted.
- All of the documents above must be **submitted in Hebrew only**, other than the articles of association which may be submitted in English or Hebrew.
- The registration fee is around **NIS 2,500**.
- Upon submission of the registration documents it is possible to receive a certificate of formation of the company within four business days, often earlier.

Sole Trader (Osek Patur and Osek Murshe)

Individuals in Israel can operate a business as a sole trader via two different forms: (i) an exempt business ('Osek Patur') or (ii) an authorized business ('Osek Murshe'). This form of operation is largely suitable for someone who wants to open a business without forming a corporate entity.

Osek Patur, is one of the simplest forms of business classifications in Israel but is limited to companies with a maximum annual turnover of around NIS 100,500. Furthermore, this form of business is not required to pay any Value Added Tax (VAT) for trading transactions.

On the other hand, Osek Murshe is for companies with an annual turnover of NIS 100,000 or more, allowing for easier expansion of a business, and it also allows employment of workers in the business. It should be noted, however, that this type of business is obliged to pay VAT from all trading operations (though it is possible to reimburse VAT on incoming trading operations such as purchase of raw materials and other necessary expending of the business).

For various reasons, neither the Osek Murshe or the Osek Patur are likely to be suitable for start-ups looking to grow their business and bring on external investors, not least due to the fact that the owners' liability is not limited.

ISRAEL

ENTERING THE COUNTRY

In general, foreign entities or individuals can freely purchase and sell assets and securities in Israel. There are no broad restrictions on foreign investment in Israel, nor are there specific sectors of the Israeli economy in which FDIs are categorically prohibited, as there is **no comprehensive or consolidated foreign direct investment (FDI) regime**.

However, various sectors of the economy and specific regulators do have their own unique FDI oversight powers that can be exercised using administrative discretion. These powers stem from sector-specific sets of authorizing statutes and secondary legislation. This has resulted in a mosaic of different (and sometimes overlapping) sets of FDI restrictions that are sector-specific and may include, for example, defense, communications, financial sectors/banking, real estate, and insurance, amongst others. Importantly, this FDI oversight regime was never focused on national security specifically. Each such regulator wields its own unique toolbox for overseeing foreign investment and does so relying on its own unique set of public policy considerations that include national security (among other considerations, such as general welfare or macroeconomic concerns).

Usually, Israeli start-ups do not typically target the domestic market (given its limited size) and therefore it would be rare for them to fall under the above described FDI oversight powers. However, depending on the sector in which a start up operates or the nature of the technology it develops, it may face hurdles when trying to raise capital in certain countries that are deemed high risk from a national security perspective.

Historically, national security has been one of the largest, if not the largest, concerns within Israel. Coupled with outside pressure from Israel's Western allies (particularly the US), an **FDI Oversight Committee** was created in 2019 in order to give authority to a closed list of regulators overseeing certain essential infrastructure or areas vulnerable to national security concerns to refer cases for review (this list is detailed below). Such concerns may include the potential formation of significant influence by a foreign entity over a company in Israel, which may pose a risk to national security or foreign relations; this also extends to the disclosure of information to a foreign party which may cause harm to Israel's security. In this regard, generally, this closed list of regulators may refer a foreign investment transaction to the Oversight Committee for review when the following (cumulative) conditions are met:

- there is a potential foreign investment;
- by a 'foreign party';
- in a transaction whose execution requires obtaining a permit for either controlling or holding a concession or license from one of the following regulators:
  - Bank of Israel;
  - Israel Securities Authority;
  - Capital Markets, Insurance and Savings Authority;
  - Ministry of Finance (other functionaries with regulatory powers);
  - Ministry of Transport and Road Safety;
  - Ministry of Communications; and
  - Ministry of National Infrastructure, Energy, and Water Resources (including the Israel Water and Sewage Authority; the Public Utilities Authority (Electricity); and the Israel National Gas Authority);
- the applicable regulator may (or must) consider 'national security interests' when granting or denying such permits under its own authorising legislation; and
- the applicable regulator voluntarily submits an inquiry to the advisory committee.

That said, the Oversight Committee itself is not constituted by primary legislation and therefore operates somewhat informally (it was constituted by a Government (i.e. executive branch) Decision). It does not have independent powers and authorities, and its purpose is intended solely to serve as an advisory body to sector-specific regulators on FDI matters. Importantly, its rules, procedures, and working guidelines have not been made available to the public, nor any of its opinions. The reality is that if the Oversight Committee does not favour a particular transaction and provides a 'non-binding opinion' against or otherwise not in support of a transaction, then given the weight of the Prime Minister's Office (from where the Oversight Committee sits), the relevant Israeli regulator will more than likely conform with the advice provided and not permit a transaction to take place or otherwise will not provide or may remove licenses required for a transaction to be successful. Finally, it is important to note that there is no industry outreach by the Oversight Committee. Therefore, it is important for start-ups to be vigilant of whether their area of business or their technology may trigger this regime in the event of foreign direct investment and to seek the informal avenues at their disposal to help clear the investment ahead of time.

ISRAEL

INTELLECTUAL PROPERTY

In Israel, the following Intellectual Property rights may be registered:

Patents

What is protectable? In Israel, a patent can be granted for inventions, whether products or processes, in any field of technology provided that they: (i) are new (novel); (ii) are useful; (iii) can be used industrially; (iv) involve an inventive step.

Where to apply? All registerable Intellectual Property can be registered through the relevant department of the Israeli Patent Office (ILPO), in this case the Patent Department.

Duration of protection? The term of a registered patent in Israel is 20 years from the date of application.

Costs? The official fee for filing a patent application in Israel is NIS 2,183 for the regular route for a national patent application; and NIS 4,416 for the PCT (Patent Cooperation Treaty) route for an international application (NIS 596 for transmittal fee and NIS 3,820 for search fee in the Israel Patent Office).

Employee invention? The Israeli Patents Law, 1967, states that so long as there is no agreement to the contrary, the patent rights to an invention that was developed by an employee during, and in consequence of, his employment is owned by his employer. Under such Law, if there is no agreement determining whether an employee is entitled to compensation for such inventions, and under what terms, the matter will have to be decided by the Special Committee for Compensation and Royalties. Pursuant to recent jurisprudence, though, this right can be waived by the employee, with such waiver examined according to the general principles of contract law.

Trademarks

What is protectable? In Israel, trademarks may be letters, numbers, words, images, symbols or other signs, or a combination of these, whether two or three dimensional.

Where to apply? Trademarks in Israel can be registered either through the Trademarks Department of the Israeli Patent Office (ILPO) or by filing an international trademark application via the Madrid System (maintained by the ILPO) that designates Israel.

Duration of protection? The term of a trademark in Israel is 10 years from the date of filing. Registration can be renewed without limit, for additional terms of 10 years each.

Costs? The official fee for filing a trademark application in Israel in one class is NIS 1,731. Each additional class costs NIS 1,301. Handling fee for filing an application for an international trademark via the Madrid System is NIS 569.

Registered Designs

What is protectable? A design right in Israel is an intellectual property right granting its holder protection for the appearance of a product or part of a product, composed of one or more visual characteristic of the product or of part of the product, including outline, color, shape, decoration, texture or the material from which they are made. A design will be eligible for protection as a registered design if it is novel and has an individual character. According to the Designs Law, 2017, "Product" may be a set of articles, packaging, graphic symbol and screen display (but not a typeface or computer program); Examples can include jewellery, clothes, toys, screen displays and furniture. A registered design grants the proprietor an exclusive right to perform certain acts (such as manufacture, sale or lease and distribution) with respect to the registered design and any other design which creates for the informed user a general impression that does not differ from the general impression created by the registered design.

Where to apply? All registerable Intellectual Property can be registered through the relevant department of the Israeli Patent Office (ILPO), in this case the Designs Department

Duration of protection? The term of a registered design in Israel is 25 years from the date of application, subject to the payment of renewal fees.

Costs? The official fee for filing a Design application in Israel is NIS 428.

INTELLECTUAL PROPERTY, CONT'D

The following Intellectual Property rights cannot be registered in Israel:

Copyright

What is protectable? Copyright protection is available in Israel for "original works", which are literary works, artistic works, dramatic works or musical works, fixed in any form, and sound recordings. The author of a copyright must be able to demonstrate a minimal level of effort and creativity. By default, the employer is the first owner of copyright in a work made by an employee in the course of his service and during the period of his service, unless otherwise agreed. In a work made pursuant to a commission, the first owner of the copyright therein, wholly or partially, shall be the author, unless otherwise agreed as between the commissioning party and the author, expressly or impliedly.

Duration of protection? Copyright protection in Israel shall be in effect until the 70th anniversary of the death of the creator of the work. As copyright cannot be registered, it is often advised to add the © symbol.

Unregistered Designs

What is protectable? To have protection over an unregistered design, such design must be novel and have an individual character. The design product must be offered for sale or be distributed to the public in Israel commercially by the holder of the design, or anyone on his behalf, including over the Internet, within six months of the date on which the holder of the design, or anyone on his behalf, first made public the design or the design product, in Israel or abroad. A holder of an unregistered design has the right to prevent any person from manufacturing for commercial use, a product which is identical in its design or that creates with an informed user the same general impression.

Duration of protection? Protection for an unregistered design is for a 3-year term from first publication in Israel or outside of Israel.

Trade Secrets

What is protectable? Trade secrets are viewed as commercial information of every kind, which is not in the public domain or which cannot readily and legally be discovered by the public, the secrecy of which grants its owner an advantage over his competitors, provided that its owner takes reasonable steps to protect its secrecy. Israeli courts have ruled that the more the secret is susceptible to being disclosed, the greater the protective measures required. Therefore, the execution of non-disclosure agreements, restriction of access to trade secrets by physical or technological means and giving access to the trade secrets on a needs-only basis are all advisable methods to protect trade secrets.

Duration of protection? Whilst there are appropriate protection measures in place and information has a commercial value, trade secret protection applies and is thus not limited by time.

Integrated Circuit Layouts

What is protectable? ·The three-dimensional disposition of an integrated circuit if it is original. The owner of a topography shall have the exclusive right to do or to authorize others to do certain acts, such as to copy the topography or part thereof; to import, sell or otherwise distribute it for commercial purposes.

Where a topography is created by an employee during and in consequence of his employment by his employer, the employer shall be the owner thereof.

Duration of protection? The exclusive right shall expire on the earlier of the following dates: (1) at the end of 10 years from the date on which the topography or an integrated circuit in which the topography is incorporated were first lawfully sold or distributed commercially in Israel or outside of Israel; (2) at the end of 15 years from the date of creation of the topography.

DATA PROTECTION/PRIVACY

There are three main laws and regulations which govern data protection and privacy in Israel:

- **The Protection of Privacy Law, 1981 ("PPL")** – the main law in Israel which regulates the protection of privacy in general and the processing of personal data in computerized databases.
- **The Protection of Privacy Regulations (Transfer of Information to Databases outside the State's Boundaries), 2001 ("Transfer Regulations")** – regulations which govern the transfer of personal data from Israeli databases to databases outside of the country.
- **The Protection of Privacy Regulations (Data Security), 2017 ("DSR")** – the DSR govern the level of security to be assigned to computerized databases (based on specific parameters such as the sensitivity of the data, the number of data subjects and the number of individuals with access to the data or data systems) and the security measures that should be implemented to safeguard personal data maintained in computerized databases and the data systems (such measures include, inter alia, physical and environmental security, data access management, communication security, outsourcing of personal data, etc.).

The abovementioned law and regulations impose obligations such as databases registration, transparency and consent, and also detail general principles such as lawfulness of processing, purpose limitation, data minimisation, proportionality and accountability. The Israeli Protection of Privacy Authority ("PPA") also occasionally publishes guidance which deals with specific matters including surveillance cameras, outsourcing, drones, biometric data etc.. Other notable sectors are the health, banking, finance and insurance sectors with respect to which regulatory requirements are set out under specific directives and circulars issued by the respective regulators, which determine specific arrangements applicable to the entities operating in the respective sectors, which are in addition to or similar to the requirements set out under the PPL and the regulations enacted thereunder.

The PPL applies to "Data" and "Sensitive Data":

- "Data" is defined under the PPL as information regarding the personality, personal status, intimate affairs, health condition, economic situation, professional qualifications, opinions, and beliefs of a person.
- "Sensitive Data" is defined under the PPL as information on the personality, intimate affairs, health condition, economic situation, opinions and beliefs of a person, and other information if designated as such by the Minister of Justice, with the approval of a parliamentary committee (no such determination has been made to date).

Territorial application: The PPL (and the regulations enacted thereunder) is silent with respect to its territorial scope, however, in general, Israeli legislation is of a territorial application unless extra-territorial application is explicitly stipulated in the law, or implied from the language and the objectives of the law.
To-date, the matter of whether the PPL applies to foreign entities without any presence in Israel or offshore personal data processing operations affecting Israeli data subjects, has not yet been addressed by the Israeli courts. The PPA has not issued formal guidance in this regard either. Furthermore, the PPL does not (nor any other law, regulation or case law does) determine the links that may be decisive or relevant to the application of the PPL and its regulations to foreign entities, therefore this matter should be reviewed on a case-by-case basis. As a common market practice, the matter of whether the PPL applies to foreign entities, with no presence in Israel, with respect to data processing activities not centred in Israel, is likely to be analysed on the basis of linkages of such data processing activities to Israel.

A draft bill for the amendment of the PPL (Amendment No. 14) **("Bill")** was submitted to the Israeli Parliament on January 5, 2022. On January 24, 2022, the Bill was passed in the Israeli Parliament at first reading and is currently in discussions in the relevant Parliament committee in preparation for second and third readings. On May 29, 2023, the Israeli Knesset approved the Israeli Government statement regarding the application of the Rule of Continuity on the Bill (this rule is a procedure intended to allow the advancement of a bill which was approved by the Israeli parliament (the Knesset) in its first reading but was then stalled due to the dissolution of the parliament) and the Bill has returned to discussions in the relevant Parliament committee in preparation for second and third readings.

DATA PROTECTION/PRIVACY, CONT'D

The Bill proposes three main amendments:

- Clarifying terms and definitions in the PPL - The proposed Bill aims to align the statutory definitions relating to the protection of computerized personal data to the technological and social developments that have occurred since the PPL was enacted, as well as to conform to international legislation in the field (including the GDPR provisions).
- Reducing the scope of the obligation to register databases.
- Increase of the PPA's enforcement powers - The Bill also suggests enhancing the PPA's supervision and enforcement authority with respect to the PPL (and its regulations) and its violations and to increase the PPA'S investigative powers and its ability to impose greater monetary fines.

Regulator: The regulator responsible for the enforcement of the PPL is the Protection of Privacy Authority (the **"PPA"**). The PPL empowers the PPA to supervise compliance with the provisions of the PPL and the regulations thereunder, to conduct both criminal and administrative investigations, to levy fines for breaches of the PPL, etc.

In addition, the PPA operates an inspection unit that performs a cross-sectorial inspection to examine the implementation of the provisions of the PPL and the regulations promulgated thereunder, at all levels of the Israeli economy, on a sectoral and thematic basis.

Adequacy: It is also of note that, based on a 2011 decision, the European Union Commission has found Israel to maintain an adequate protection of personal data with regard to automated processing of personal data, making it one of the few non-EEA countries to which data can be exported without the requirements that may otherwise apply.

In the context of a re-evaluation process carried out by the European Union Commission regarding the renewal of the adequacy status, the Israeli Justice Ministry recently brought into law new regulations (the **Privacy Protection Regulations (Instructions Regarding Data Transfers from the European Economic Area to Israel) 2023**) that place new requirements on owners of databases containing personal data originated from the European Economic Area.

EMPLOYEES/CONTRACTORS

General

Generally, under Israeli law there is no requirement for a written employment contract (subject to certain exceptions). Employers are, however required to provide new employees with a written notification of certain employment terms (as specified in the relevant legislation) no later than 30 days after the date of commencement of their employment and to update them of any changes to this. There is also no requirement that this be in a certain language, so long as it is in a language which the employee can understand.

Many aspects of Israeli labor and employment laws are regulated by legislation and extension orders (as defined below) that apply to all employees in Israel, and provide minimum mandatory entitlements. For example: minimum wage, annual leave, sick leave, travel expenses, recuperation pay, prior notice of termination and resignation, severance pay, and pension entitlement are all legal requirements. An **"extension order"** is created when a collective bargaining agreement between a union and an employers' organization is extended, in whole or in part, to additional groups of employers and employees, or certain fields of employment, and even to all employers in the economy, by force of an order of the Minister of Labour.

EMPLOYEES/CONTRACTORS, CONT'D

The aforementioned statutory entitlements do not, generally, extend to an individual deemed to be an independent contractor rather than employee. It is important to note that should a 'contractor' be found by a competent Israeli court or public authority to be a de facto employee, then an employer may become liable to retroactively pay the individual all the financial benefits associated with the status of an employee, including vacation days, pension and severance contributions etc.

Israeli law prohibits any discrimination in respect of employment which is based on the following grounds: gender; sexual tendencies; marital status; pregnancy, the undergoing of fertility or in vitro fertility treatment; parenthood; age; race; religion; nationality; country of origin; place of residence, views; party affiliation; the performance of reserve duty, or the duration or frequency of such reserve duty; and employees who are employed by manpower agencies. According to case law, the above is not a "closed" list.

Discrimination in the workplace on the basis of disability is also prohibited. Discrimination in this respect includes a failure of the employer to make necessary accommodations due to the special requirements of the disabled person, which would enable the disabled person to perform the employment. Such accommodations include: adjustment of the workplace, its equipment, admission tests, training, and guidance. However, there is no duty to make accommodations which would impose an excessively heavy burden on the employer; i.e. one that is unreasonable in the circumstances, taking into account various relevant factors listed in the legislation.

Work for Hire Regime

Employees: the basic rule under Israeli law is that the first owner of rights in inventions and copyrighted works created in the course of the employee's employment is the employer. However, the rule does not apply in a straightforward manner to know-how or trade secrets (although it is a general principle of employment relationships that trade secrets of the business are the property of the employer).

Contractors: only the Copyright Law, 2007, refers to the notion of work for hire vis-à-vis contractors. In this respect, the Law prescribes with respect to ownership of a commissioned work, that it may be agreed upon by the parties "expressly or impliedly".

Termination

In the event that a company wishes to terminate an employee, Israeli case law dictates that all employers must hold a hearing process prior to making a decision regarding the termination and that this hearing should inform the employee of the employer's reasoning prior to the jearing meeting and give them the opportunity to respond.

In addition, there are certain groups in society who receive protection from termination by law, some of which are specific to Israel: (a) pregnant employees; (b) employees on maternity or paternity leave or those recently back from maternity or paternity leave in the 60-day period following their return; (c) employees undergoing fertility treatment or expecting to adopt children, becoming foster parents or becoming parents with the assistance of surrogacy; (d) employees on reserve duty with the Israel Defence Forces (and if the reserve duty exceeded two days the protection will also apply for thirty days thereafter); and (e) employees on sick leave. Termination of such employees may be entirely prohibited (as in the case of statutory materntity leave) or would require approval from the competent authority in Israel.

CONSUMER PROTECTION

Israeli consumer protection law is mainly governed by:

- The Israeli Consumer Protection Law 1981 (the **"Consumer Protection Law"**) and the regulations enacted thereunder, protects consumers from misleading sales tactics and establishes various principles and requirements applicable to the sale of goods and services, including, inter alia, the prohibition on misleading consumers in material aspects of a transaction; rules regarding practicing unfair influence; rules regarding on-going transactions; transactions entered into remotely; indication of prices; disclosure of payment requirements; advertisements; "do-not-call" registry, etc.
- The Israeli Penal Law 1977, provides, inter alia, for a general prohibition on lotteries, draws and raffles. Lotteries in Israel must be carried out in accordance with the Israeli Penal Law and the general permit for the conduct of lotteries for commercial advertisement issued by the Israeli Ministry of Finance.
- The Communications Law (Telecommunications and Broadcasting) 1982 (the **"Anti-Spam Law"**), prohibits sending "advertisements" by certain means (including, inter alia, email, SMS/WhatsApp) without obtaining the recipient's prior explicit or recorded consent (i.e., on an opt-in basis). In addition, the Anti-Spam Law includes certain mandatory and formal requirements vis-à-vis the communication of permitted advertisements (e.g., the advertising message must state that it is an advertisement, it must inform the recipient of its right to decline to receive advertisements and a mechanism to send the advertiser a notice in this regard, i.e., an "unsubscribe" mechanism, it needs to include certain details regarding the advertiser, etc.).
- The Israeli Standard Contracts Law, 1982 regulates the matter of standard contracts (a contract, the terms of which have been pre-determined by one party in order for them to be used in several agreements between that party and an undetermined and unspecified number of other parties) The consequence of an agreement being determined to be a standard contract by the court is that the court might strike out unfairly prejudicial terms contained within the contract.

Examples for such prejudicial terms include:

- A condition denying or limiting a right or remedy available to the customer ("a person to whom a supplier offers an engagement to which a standard contract applies, whether such customer is the receiver or the giver of anything") under law.
- A condition imposing the burden of proof on a person who would not have to bear it but for that condition.
- A condition which denies or limits the customer's right to make certain pleas before judicial authorities or that determines that any dispute between the supplier and the customer will be settled in arbitration.
- A provision which relieves the supplier, fully or partially, of a liability which the supplier would have to bear under law if such condition was not included in the contract.
- A condition which requires a customer to confirm that the customer read the contract, or to declare that they have committed any act, or to approve the customer's knowledge concerning a certain matter or fact, excluding information provided by the customer to the supplier in the contract.

TERMS OF SERVICE

Generally, the contractual relationship between an online vendor and the end consumers would be treated as an ordinary commercial contract. Online terms are generally viewed as enforceable under Israeli law, subject to aspects involving a standard contract, as further discussed above. Nevertheless, when entering into an agreement that is reviewed and signed online, companies should ensure that the signer has the opportunity to review the terms of the agreement beforehand and that the signer provides their consent to the agreement (such consent should be retrievable for evidentiary purposes), subject to the restrictions set forth in the Standard Contracts Law, as further discussed above.

It should be noted that, in some decisions of the Israeli district courts (which are not binding case law, but rather guidance for lower courts), it has been ruled that the courts' tendency will be to revalidate online agreements when the signer provided active consent (i.e., clickwrap agreements or even hybridwrap agreement, where a clear and accessible link to the terms has been provided), as opposed to shrinkwrap (or browserwrap) agreements, where the active consent of the signer is not required. However, if the online terms of service are considered to be a Standard Form Contract (as defined in paragraph 7 above), then the Consumer Protection Law provides certain contractual terms that must be included for sale agreements made at a distance (S14C of the Consumer Protection Law) or ongoing transactions (Section 13(D) of the Consumer Protection Law).

Additional terms may need to be specified depending on the type of product or service being provided (for example, in the case of medical products or services).

In addition, the Consumer Protection Law provides that in a remote marketing stage (i.e. when there is no physical presence of the parties, this could include marketing through a sales website, app, etc.), a dealer must disclose to the consumer at least the following: (1) the dealer's name, ID number and address in Israel and abroad, as applicable; (2) the main characteristics of the services/product; (3) the price of the services/product and the possible payment terms; (4) when and how the services/product will be supplied; (5) the period during which the offer will be in effect; (6) details regarding warranty (if applicable); and (7) details regarding the consumer's right to cancel the transaction. In addition, any material information should be included on the terms of use.

WHAT ELSE?

Israel Innovation Authority. The Israel Innovation Authority (**"IIA"**) offers funding to Israeli companies based on the Law for the Encouragement of Research, Development and Technological Innovation in Industry Law 1984, the regulations promulgated thereunder and the rules published by the IIA (the **"R&D Law"**). In general, the IIA does not take equity interests in the company which has received funding but is entitled to payment of royalties, plus interest, relating to income generated from the product or service based on IIA funded-know how or as determined in the approval documents. The goal of the R&D Law is mainly to create economic benefit to the Israeli economy through R&D and innovation in the Israeli ecosystem. As such, there is a prohibition on the transfer, in any manner, of IIA-funded know-how outside of Israel or the grant of rights to non-Israeli residents (for example by way of assignment, grant of manufacturing or R&D licenses, grant of access etc.), except if a transfer approved by the IIA and subject to payments to the IIA (capped at 6 times the IIA funding received and the interest). Sale of products or the grant of rights to sale or market products is permitted without IIA approval. Investment and shares transactions do not require the approval of the IIA. Non-Israelis who will become an "interested party" in a funded company (holding at least 5% in the company or have the right to appoint a director) will have to sign a standard undertaking towards the IIA acknowledging that the company is IIA-funded and subject to the applicable laws. In M&A transactions non-Israeli buyers usually consider whether to ask the company to buyout the IIA as part of the acquisition (by way of obtaining IIA transfer approval). In such a case, the redemption fee to be paid to the IIA for such approval will be a commercial issue between the seller and the buyer.

Employee Incentives. One of the key ways of incentivizing Israeli employees and officers is to grant equity based incentives under the "capital gains route" set out under Section 102 of the Israeli Income Tax Ordinance [New Version] 1961 (the **"Capital Gains Route"**). Generally, under the Capital Gains Route, subject to compliance with various terms and conditions, Israeli employees and officers (the **"Participants"**) will be able to benefit from a lower tax rate (capital gains rate of 25%) on their gain upon sale of shares issued in connection with awards granted under the Capital Gains Route as opposed to ordinary income tax (top marginal rate of 47%) plus any surtax and social security. Under the Capital Gains Route, the granting company is required to comply with various procedural rules, including but not limited to filing the equity plan for approval by the Israeli Tax Authority prior to any grant, the appointment of an Israeli trustee and deposit of grant agreements and corporate approvals with the Israeli trustee within specific timelines. One of the basic requirements from the Participants is that they sell their shares after the lapse of a two-year period following the date of grant. It is common practice in Israel to grant equity awards under the Capital Gains Route and almost all companies operating in Israel grant awards under such tax route. It is highly recommended to obtain specific advice prior to granting any awards in Israel due to the different tax arrangement applicable under Israeli law.

Tax Benefits for Preferred Technology Enterprises. The Israeli Law of Encouragement of Capital Investments 1959 provides that an Israeli company may benefit for certain significant tax benefits (dividends, withholding tax and capital gains) if it meets the criteria to be a "Preferred Technology Enterprise". In general, companies will only be eligible if: (1) the IIA has approved the company as being a company that promotes innovation, and (2) if the company is not part of a group of companies with annual aggregate revenues of more than NIS 10 billion, and (3) the company meets certain financial thresholds (for example, that the company's average R&D expenses are over a three year period more than or equal to 7% of the company's total revenues or exceed NIS 75 million per year).

ITALY

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ITALY

LEGAL FOUNDATIONS

Italy has a civil law system. The paramount legal sources are, the laws, codified in written codes, statutes, and decrees.

The hierarchy of the legal sources is the following:

- The Constitution of the Republic of Italy and other constitutional laws;
- The primary sources, which include the Government laws, for example, the codes, and the regional laws;
- The secondary sources, which include Government, regional or local statutes or regulations;
- The uses and customs.

The most relevant source of private law is the Italian Civil Code.

In addition, there are many laws, legislative decrees, or law decrees for different sectors, for example, the Law Decree no. 179 of October 18, 2012 (hereinafter **"Startups Decree"**), which includes specific provisions for startups.

The most important source of criminal law is the Italian Criminal Penal Code.

Also, in this field we have a certain number of legislative decrees or law decrees which provide for the punishment of different offences not included in the Italian Criminal Code.

In the Italian system, contrary to common law systems, case law is not binding upon other courts, however, the judges refer to judicial precedents (especially the Supreme Court's precedents) in order to rule upon a case.

ITALY

CORPORATE STRUCTURES

In Italy, there are specific provisions for "innovative startups", i.e. newly-established companies with a strong nexus to technological innovation.

No other boundaries are set: innovative startups can operate in any business area.

Article 25 of the Startups Decree provides a legal definition of "innovative startup"," which can have form of unlisted limited companies and cooperatives.
The requirements for an innovative startup is as followsstartups are the following:

- It is newly established or has been incorporated for less than 5 years;
- It has its headquarters in Italy, or in another EU/EEA Member State provided that it has a production facility or a branch in Italy;
- Its annual turnover is lower than euros 5 000,000.00; It has not and it does
- not distribute profits;
- The corporate purpose concerns mainly, or exclusively, the development, production and commercialisation of innovative products or innovative high-tech services;
- It is not the result of a company merger or split-up, or of a business or branch transfer;
- Finally, it meets at least one of the three following innovation-related requirements:
    - Research and development expenditure corresponds to at least 15% of the higher value between turnover and annual costs (as per the latest statement of accounts);
    - The staff consists of at least 1/3 of PhDs, PhD students or researchers, or at least 2/3 of staff hold a master's degree;
    - The company is the owner or licensee of a registered patent (or it has filed an application for an industrial property right) or it owns an original registered software.

In order to set up an innovative startup, entrepreneurs can choose between different forms of limited companies:

Limited Liability Company - LLC (società a responsabilità limitata – SRL)

It is certainly one of the most common forms for carrying on a business in Italy.

The shareholders (natural or legal persons) are not personally liable for the company's debts, even if they have operated on behalf of the company.

The share capital of an "SRL" may be:

- Equal to, or greater than, 10,000 euros. In this case, at least 25% of the share capital shall be paid at the time of incorporation, but if the company has a sole shareholder, the entire share capital needs to be paid in.
- Less than 10,000 euros but not less than 1 euro. In this case, the share capital shall be fully paid at the time of incorporation. In the event of the establishment with share capital of less than 10,000 euros, an annual mandatory minimum capital reserve requirement of 5% of the proceeds will apply until the cumulative amount of the initial capital and of the subsequent capital reserves reaches euros 10,000.

The articles of association shall be in the form of a notarial deed which must be recorded in the Companies' House Register.

The rules for corporate governance are flexible. An "SRL" may have a sole director or a board of directors (and the directors can act jointly or separately on behalf of the company).

CORPORATE STRUCTURES, CONT'D

Simplified Limited Liability Company – SLLC (società a responsabilità semplificata - SRLS)

It is a form of "SRL" recently introduced by the Government to encourage entrepreneurship (especially youth entrepreneurship).

The shareholders may only be natural persons (not companies or other entities), and the company can have a sole shareholder.

The share capital of "SRLS" shall be a minimum of 1 euro and not greater than 9,999 euros. The entire share capital needs to be paid in at the time of incorporation.

The articles of association shall be in the form of a notarial deed and it is standard (according to a model provided by the Government and cannont be amended.

Limited Partnership Company – (società in accomandita per azioni – SAPA)

This corporate model has never been popular. Ait has been used in a few cases as a "family safe".

It is a company in which two different groups of shareholders coexist:

- Limited partners (soci accomandanti) are excluded from directorships and liable only to the extent of their contribution;
- General partners (soci accomandatari) are directors by right, they are personally and fully liable for the company's debts.

In the "SAPA" participation in equity is represented by shares and the managing authority is attributed to directors with unlimited liability, even if subsidiarily, for the company's debts.

The governance in the "SAPA" is substantially like in the "SPA" model. All the general partners are members of the board.

There are special rules laid down for the appointment and removal of auditors or members of the oversight body.

Public Limited Company – PLC (società per azioni – SPA)

It is certainly the main business company model suitable for large investments.

The two key features of this form of company are the limited liability of all shareholders and the division of the capital into shares.

The "SPA" has a minimum share capital of 50,000 euros, of which at least 25% shall be paid into the hands of the directors at the time of the incorporation, but if the company has a sole shareholder, the entire share capital needs to be paid in.

The "SPA" is set up by public deed before the Public Notary.

According to the rules of corporate governance, the company may be organised as per three different models:

- The traditional model – the sole director or the board of directors (they could be different from the shareholders) are entrusted with the administration of the company;
- The single-tier model (of Anglo-Saxon derivation) – the administration and control of the company are vested in a board of directors and a committee set up within it;
- The two-tier model (of German origin) – a management board elected by the supervisory board (elected by the shareholders) is entrusted with the administration of the company.

The board of auditors is the oversight body of corporations that adopt the traditional system: it has the task of controlling the management of the company and ensuring the compliance with the law and the articles of association.

ITALY

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

ENTERING THE COUNTRY

The foreign direct investment regime in Italy, the so-called "Golden Power" regime, allows the Italian Government to scrutinise transactions that concern "strategic" industrial sectors and grants it the power to apply conditions to such transactions or even veto them in the case of threat to the national economy or security.

The regulation of the Golden Power in Italy was first introduced by Law Decree no. 21 dated March 15, 2012 (hereinafter the "Golden Power Decree") and has been amended and integrated in the past few years.

According to the Law Decree no. 21/2022 entered into force on March 22, 2022, the application of the Golden Power has been extended to a number of industrial sectors deemed to be strategic for the national economy, especially in relation to the 5G and cloud services sectors.

In the light of the above-mentioned amendments, the Golden Power provisions could apply to transactions of innovative startups.

In fact:

- the notification obligation does not depend on the transaction's value (for this reason also low/mid market acquisitions or investments shall be notified);
- the involved sectors are, typically, the ones where startups operate their business.

According to the notification procedure, the involved company shall notify the Government of the transaction within 10 days of the adoption of the relevant resolution, providing information related to the transaction.

The Government can use its power to apply special conditions or to veto the transaction no later than 45 days of receipt of the notification (this period could be suspended if additional information related to the transaction is requested).

In May 2022, the Government adopted simplified notification measures and also introduced a pre-notification procedure, which potentially interested parties can use to receive a preliminary assessment of the applicability of the Golden Power Decree to the specific transaction.

Failure to comply with notification obligations or with Government- imposed conditions (if any) could be sanctioned with a fine up to 1% of the total annual worldwide turnover of the previous year.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademark

What is protectable? Any sign used to identify the products / services of a company and to distinguish them from those of the other companies.

All the signs, in particular words, including names of people, or drawings, letters, figures, colors, the shape of the product or its packaging, or sounds, provided that such signs are suitable for distinguishing products or services of one company from those of other companies.

Where to apply? This depends on the protection you want to grant. Trademarks can be filed with:

- the Italian Patent and Trademark Office (Ufficio Italiano Brevetti e Marchi – UIBM);
- the European Union Intellectual Property Office (EUIPO);
- the World Intellectual Property Organization (WIPO).

Regarding the UIBM procedures, you can submit an application in three different ways: by filling in and submitting an online form (a fast-track procedure is available for products/services included in the Nice Classification), by downloading a form to fill in and delivering to the Companies' House, by downloading a form and sending it to the Ministry of Enterprises and Made in Italy.

Once the application has been received, the UIBM shall verify that the trademark meets the requirements set by the law. With the publication in the trademark bulletin (Bollettino Marchi), the three month opposition period begins. If no opposition is filed, the registration process is completed.

Duration of protection? The trademark registration is valid for ten years and may be renewed for further ten-year periods.

Costs? To file an application for trademark registration you have to pay administrative charges (101 euros for goods and services in a Nice class for initial application, plus 34 euros for any additional Class) and stamp duties (euros 42 for online application and 16 euros for 4 pages in the case of the other application's methods).

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? A Patent is a title that grants to the owner an exclusive exploitation of an invention, for a limited period of time, consisting of the right to use it and make a commercial use of it, prohibiting other persons to do the same.

Only technological innovations with industrial application (industrial inventions, utility models and new plant varieties) are patentable.

Where to apply? Depending on the protection you want to grant, patents can be filed with:

- the Italian Patent and Trademark Office (Ufficio Italiano Brevetti e Marchi – UIBM);
- the European Patent Office (EPO);
- the World Intellectual Property Organization (WIPO).

Procedure for UIBM registration is the same mentioned for trademarks. According to some recent amendments to Article 59 of the Industrial Property Code (Codice della Proprietà Industriale), the same invention can be protected by an Italian and a European Patent, that can co-exist.

Duration of protection? Patent registration is valid for twenty years (ten for utility models).

Costs? Filing fees are different according to the type of patent (for invention or for utility model) and the selected procedure for application.

Design and Model

What is protectable? Designs or models mean the appearance of the entire product (or of a part of it) which results, in particular, from the characteristics of the lines, contours, colors, shape, surface structure and/or materials of the product itself and/or its ornament, provided they are new and have individual character. Protection concerns the external appearance as a whole and unwritten. If there are writings, these are not protected.

Where to apply? Protection is valid only in the country to which it is requested. In addition to submitting the application for protection in Italy (to the UIBM offices), it is possible to request protection with validity throughout the EU with a request to EUIPO, or to request protection in many foreign countries by directly submitting an application to WIPO. Procedure for UIBM registration is the same mentioned for the trademarks.

Duration of protection? The protection period of designs and models is five years from the date of the presentation of the application and can be renewed for five-year periods, up to twenty-five years.

Costs? Filing fees are different according to the type of design or model filed.

Copyright

What is protectable? According to Article 2575 of the Italian Civil Code and to the Law no. 633 of April 22, 1941 (hereinafter the **"Copyright Law"**), a work which is the expression of its author's creativity can be protected by copyright. The Copyright Law protects literary, artistic, musical, architectural, theatrical, and cinematographic works, and also computer programs and databases with creative characters. Whilst the Italian law is clear in requiring that copyright holders be natural persons, it is still debated whether artwork created by a natural person leveraging the power of Artificial Intelligence can be copyright protected. In this respect, a very recent ruling of the Italian Supreme Court stated, incidentally, that an artist can invoke copyright protection in respect of an artwork created with the support of software; however, in such a case, the degree of the software's contribution should be specifically assessed.

Where to apply? Differently from patents and trademarks, to obtain copyright there is no need of a filing, since it is sufficient being able to prove to be the author of the work and to have created it before others.
In order to give evidence of the authorship of the work, it is advisable to file an application to certify the date with the Italian SIAE (Società Italiana degli Autori ed Editori). The SIAE certifies the filing which obtains a number and a date of filing, but it does no searches concerning the content of what is filed.
To make application for registration it is necessary to file a copy of the work (on a paper document or digital support) with a statement of authorship. Deposit has a duration of five years and can be renewed upon termination.

Duration of protection? According to Article 25 of the Copyright Law, the duration of copyright protection lasts for the author's whole life and for seventy years following his death.

Costs? Filing fees of SIAE are different. For a natural person not registered yet, the costs are in the region of 144 euros; for a legal person not registered yet, the fees are in the region of 288 euros.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protectable? Trade Secret provides a type of protection which is different from the one granted by trademarks and patents. It focuses on the information related to productive activity or to business organisation which meets the following requirements:

- information is secret (it means that it is not commonly known or easily accessible in the relevant business field);
- information has a commercial value;
- information is protected by security measures to keep it secret.

Where to apply? To protect the trade secret it is not necessary to publish the invention or to register it with the UIBM. In Italy, trade secrets are protected by the Industrial Property Code. Article 98 of the Industrial Property Code lists protectable information: company information, industrial / marketing technical expertise, which are typically subject to the holder's control.

Duration of protection? The relevant protection is not limited in time.

Costs? There are no registration costs.

DATA PROTECTION/PRIVACY

Since May 2018 the General Data Protection Regulation (GDPR) applies in Italy like in the other Member States of the EU.

On September 19, 2018 entered into force Legislative Decree No. 101/2018 with specific provisions for adaptation of the national legislation to the provisions of the GDPR and amendments to the Italian Privacy Code.

The relevant provisions may be summarized as follows:

Age of consent. According to Article 2 quinquies of the Italian Privacy Code, a child over the age of fourteen may consent to the processing of his/her personal data in relation to the direct offer of the services of the Information Society.

Without prejudice to Article 8(1) GDPR, for children under the age of fourteen, consent is only valid if provided by the person exercising parental responsibility.

Data for journalistic purposes. The Italian Privacy Code contains a specific regulation regarding the processing of personal data for journalistic purposes.

In particular, Article 137 of the Code provides that personal data, including those referred to in Articles 9 and 10 of the GDPR, may also be processed without the consent of the data subject, provided that deontological rules referred to in Article 139 of the Code are respected.

Research. According to Article 105 of the Italian Privacy Code, personal data processed for statistical or scientific research purposes may not be used to make decisions or measures relating to the data subject, nor for other purposes. Statistical and scientific research purposes must be clearly determined and made known to the data subject, in the manner set out in Articles 13 and 14 of the GDPR.

DATA PROTECTION/PRIVACY, CONT'D

Employees Data. The Italian Privacy Code contains specific rules on the processing of data in the context of the employment relationship.

Article 111 bis provides that if an uninvited CV is received with a view to possible recruitment, the information referred to in Article 13 of the GDPR shall be provided when the respective data subject is first contacted thereafter.

Article 113 of the Italian Privacy Code prohibits any investigation or processing of data or pre-selection of workers, even with their consent, based on personal beliefs, trade union or political affiliation, etc.

Article 114 of the Italian Privacy Code refers to the "Statuto dei lavoratori" and sets a general prohibition onto use of audio-visual and other technical equipment for purposes of controlling the activity of employees.

Article 115 protects the working conditions, integrity and personality of the domestic or remote worker.

Article 4 of the Italian Legislative Decree, no 104 of June 27, 2022 (also known as "Transparency Decree") identified specific information obligations for the employer in the event of the use of automated decision-making or monitoring tools, used to provide information (i) relevant for the purposes of recruitment or assignment, management or termination of the employment relationship, assignment of tasks or duties, or (ii) affecting the monitoring, assessment, performance and fulfillment of the contractual obligations of employees.

Additional information includes (i) the aspects of the employment relationship that are affected by the use of automated decision-making or monitoring systems; (ii) the operation of such systems; (iii) the main parameters used to program or train automated decision-making or monitoring systems, including performance evaluation mechanisms; (iv) the control measures adopted for automated decision-making or monitoring systems; (v) the level of accuracy, robustness and cybersecurity of the automated decision-making or monitoring systems and the metrics used, as well as the potentially discriminatory impacts of those metrics.

The Italian Data Protection Authority (Garante per la protezione dei dati personali) is an independent authority set up to protect fundamental rights and freedoms in connection with the processing of personal data.

ARTIFICIAL INTELLIGENCE

No specific legislation has been adopted in Italy as regards AI.

The consensus seems to be that the current statutes are sufficient to tackle the challenges that AI is bringing to businesses and households. We are awaiting for the AI-Act (the European Regulation which aims to ensure that AI systems placed on the European market and used in the EU are safe and respect fundamental rights and EU values).

This approach appears sensible, as an adjustable judicial interpretation of the current statutes should be preferred to the introduction of ad hoc sector-specific regulation, which may prove too rigid to apply to the ever-changing characteristics of AI.

For example, it has been considered that the liability for damage caused by AI-enhanced medical devices should fall within the field of application of the standard product liability regime; algorithms monitoring personnel in the workplace (e.g. in fulfilment centres, supply chains, etc.) should comply with the specific legislation on staff monitoring (Article 4 of law 300 of 1970) and with the employer's general obligation to safeguard the staff's physical and psychological health (Article 2087 of the Civil Code), etc.

In the absence of a statutory definition, it was left to the Administrative Court to define AI. In fact, the Italian Supreme Administrative Court, on 25 November 2021, ruled that AI is when "an algorithm includes machine-learning mechanisms and creates a system which not only executes the software and criteria (as in a "traditional" algorithm), but that constantly processes data inference criteria and takes efficient decisions based on such processing, according to an automatic learning mechanism".

ITALY

EMPLOYEES/CONTRACTORS

In Italy employment relationships are regulated by the applicable national collective bargaining agreement (Contratto Collettivo Nazionale del Lavoro – CCNL) for different sectors. General principles about the rights and obligations of employers and employees are included in the Law no. 300 of May 27, 1970 (Statuto dei Lavoratori).

The labour regulations do not apply to the contractors or consultants of a company, which is allowed to enter into different agreements according to the Italian Civil Code provisions.

The Italian regime for employment termination is strongly in favour of the employees.

Typically, the employers can terminate an open-ended employment agreement on the following grounds:
- Just cause: the employer fires the employee because of his/her misconduct;
- Justified reasons: the termination of the employment relationship is related to business reorganisation.

Specific labour provisions apply to innovative startups. The most important of those are listed below:
- **Salary.** Without prejudice to a minimum salary set down in the related CCNL, the parties may agree on complete autonomy over the fixed and variable components of salary. Those components may be agreed upon, for example, based on the efficiency or profitability of the employee or other performance objectives.
- **Work for equity.** Innovative startups can reward their employees with equity participation instruments (such as stock options), and external service providers through work for equity schemes.

CONSUMER PROTECTION

In Italy, the consumer's right is protected by the provisions of the Italian Civil Code and of the Legislative Decree no. 206 of September 6, 2005, hereinafter the "Consumer Code" (Codice del Consumo).

All the companies (even innovative startups) shall comply with the rules set in the aforementioned laws concerning unfair business-to-consumer commercial practices.

The Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato – AGCM) is the authority entrusted with powers to enforce the laws either ex officio or following claims by consumer and consumer associations.

Some of the most relevant provisions regarding the consumer protection laws are the following.

Prohibition of unfair commercial practices.
A commercial practice shall be unfair when it is contrary to the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behaviour of the average consumer whom it reaches or to whom it is addressed.

The Consumer Code distinguishes the misleading commercial practices from the aggressive ones. The former (Articles 21-23) are practices that deceive or are likely to deceive the average consumer, because of their likelihood to push him to take a decision that he would not have taken otherwise. According to recent amendments that came into force in April 2023, a commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor.

If the entrepreneur uses harassment, coercion or other forms of undue influence, its behaviour shall be considered aggressive (Articles 24-26). The aggressive nature of a commercial practice depends on its nature, its timing, its forms and the possible use of physical and oral threats.

CONSUMER PROTECTION, CONT'D

Contracts with consumers.
Pursuant to Article 33 and following of the Consumer Code, a contractual term shall be regarded as unfair, even in the case of the seller's/supplier's good faith, if it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer. If the clause is unfair, it is null and void.

Typically, the Authority can: evaluate and ascertain the unfair nature of contractual terms through an ex officio inquiry or following a complaint; or by making an assessment under a specific request by a seller or supplier (the "interpello").

After-sales guarantees (Articles 128 - 135).
It is a legal guarantee in favour of the consumer, which means that it is always recognised and consequently cannot be excluded or limited. Even if the defect is attributable to the producer, it always relates to the existing relationship between the consumer and the seller. It lasts for a period of two years from the delivery of the goods. It is applied to all products purchased by the consumer, even to second-hand goods, and also covers the installation of the assets. Through this tool, the consumer is firstly entitled to the repair or replacement of the goods (primary remedies) or, if this is not possible, to the reduction or termination of the contract (secondary remedies). The additional conventional warranty offered by the manufacturer or by the seller, can be added to the legal guarantee.

Right of withdrawal (Articles 52 – 59).
The right of withdrawal allows the consumer to change his mind about the purchase made, and free himself from the contract without giving any reason. In this case, the consumer can return the goods and obtain a refund of the amount paid. The right of withdrawal is provided for distance or off-premises contracts concluded between traders and consumers (however, there are numerous exceptions, listed in article 59 of the Consumer Code).

The right of withdrawal in the e-commerce field can be exercised within 14 days starting:
- in the case of service contracts, from the time of conclusion of the contract;
- in the case of sales contracts, from the day on which the consumer or a third party, other than the carrier and designated by the consumer to receive the goods, acquires physical possession of the goods.

Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract.

The exercise of the right of withdrawal shall release the parties from their respective obligations. It follows that:
- consumers shall be required to return the goods within 14 days after the date upon which the trader was informed of the consumer's intention to withdraw;
- the trader shall reimburse all payments received from the consumer, including, where applicable, delivery costs, without undue delay and in any event within 14 days after the date upon which the professional was informed of the consumer's intention to withdraw.

Dispute Resolution (Articles 141 – 141 bis).
In case of issues related to the purchase of a product or service, regardless of whether it was purchased online or directly in a store, the consumer can resort to out-of-court dispute resolution methods (so-called "Alternative Dispute Resolution" or "ADR") regulated by Articles 141 and 141bis of the Consumer Code.

TERMS OF SERVICE

Besides the provisions of the Consumer Code, the Italian law source for e-commerce is the Legislative Decree no. 70 of April 9, 2003 (the Italian transposition of the Directive 2000/31/EC of the European Parliament and of the Council on Electronic Commerce), hereinafter the **"E-commerce Law"**.

According to the E-commerce Law, in order to offer online products and services, the service providers shall:

- Provide general information, easily, directly and permanently accessible (i.e. the name of the service provider, the geographic address at which the service provider is established, the details of the service provider including his electronic mail address, the trade or similar public register where the service provider is registered, the prices of the service inclusive tax and delivery costs – Article 7 of the E-commerce Law).
- Meet specific requirements for commercial communications (i.e. the communications shall be clearly identifiable as such, the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable, promotional offers, such as discounts, premiums and gifts, shall be clearly identified as such – Article 8 of the E-commerce Law).
- Provide other specific information to enter into the contract (i.e. the different technical steps to follow to conclude the contract, whether or not the contract will be filed by the service provider and whether it will be accessible, the technical means for identifying and correcting input errors, the languages of the contract).

WHAT ELSE?

A company that meets the requirements listed in answer 2) can obtain innovative startup status by registering in a special section of the register of the Italian Companies' House.

The registration is voluntary and free of charge. The entrepreneur has to send a self-certification of compliance with requirements. The special benefits apply from the application date, and they may be maintained, if all the other requirements are met, up to the fifth year after incorporation.

The simplified registration process is balanced by two counterweights. First of all, Companies' House carries out routine checks to make sure that the innovative startup meets and maintains the above-mentioned requirements. Secondly, a list of the registered startups is publicly available on the website: www.startup.registroimprese.it for public monitoring and discouraging opportunistic behaviours.

In addition to that, innovative startups are required to confirm (annually) that they fulfil the requirements set forth by law.

Other benefits for innovative startups are listed below:

- Tax incentives for equity investors (natural or legal persons);
- Simplified access to the Guarantee Fund for Small and Medium Enterprises (SME Guarantee Fund) – a public facility that fosters access to credit by applying guarantees on bank loans;
- Possible access to the financing programme called "Smart&Start Italy";
- Possible conversion into an innovative SME for successful innovative startups that maintain a clear innovation component (after the fifth year);
- Exemption from duties and other fees that a company has to pay to the Companies House;
- Fundraising through equity crowdfunding campaigns;
- Exceptions to general company law (innovative startups in the SRL form are allowed to: create categories of shares with specific rights; carry out transactions on their own shares; issue financial instruments such as stock options and work-for-equity; offer capital shares to the public; extend the period to cover losses; be non-compliant with the rules for dummy companies);
- Access to a tailor-made labour regulation and to a flexible remuneration system (see answer No. 7);
- Special measures for VAT credits compensation;
- Access to a "Fail Fast" procedure in case of failure (innovative startups are exempted from standard bankruptcy procedures, composition with creditors, and compulsory administrative winding-up).

JAMAICA

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JAMAICA

LEGAL FOUNDATIONS

Jamaica follows the English Common law system. The sources of law are statutes and case law, treaties and books or articles on the relevant subject matter from authoritative sources such as Halsbury's Laws of England. In terms of jurisdiction, there are parish courts that preside over cases within the parish borders and twelve miles from the parish border in relation to the criminal jurisdiction. In the civil jurisdiction, there is a monetary limit of $1,000,000.00 for matters in the parish courts. Any amounts in excess of this is done in the Supreme Court or High Court. The Supreme Court of Jamaica is a trial court of first instance.Its decisions are appealable to the Court of Appeal of Jamaica. The final tier of the appeals is the Privy Council that is situated in London England and is staffed by judges of the United Kingdom's Supreme Court.

Cases are decided on the principle of judicial precedent. This is governed by the principle of stare decisis which in practice means "let the decision stand." What this means in practice is that decisions of higher courts are binding on the lower courts unless the decision can be distinguished based on fact or law.

Public Law: covers the relationship between citizens and public authorities or persons or entities exercising a public function.

Private Law: may be based on contract or obligations. The latter includes tort whereby the law imposes duties on persons in relation to land, product liability or based on their relationships – eg. trespass or negligence.

Criminal Law: relations to offences against the state such as murders, traffic offences or in relation to enforcing international treaties that have been codified into law such as copyright or trademark infringements.

CORPORATE STRUCTURES

The different corporate structures are sole trader, partnerships and corporations.

Sole Trader: This is where an individual carries on business in his own name or by using a trading name that is not his own. In relation to the latter, that is a trading name, not his own, the sole trader is required to register under the Registration of Business Names Act. There are disadvantages to this form of carrying on business. The most obvious disadvantage is that the individual has unlimited liability and is personal responsible for all liabilities of the business. Another disadvantage is borrowing. Lenders tend to prefer corporations as they do not have to deal with the personal succession and estate issues associated with individual ownership.

CORPORATE STRUCTURES, CONT'D

Partnerships: This is where two or more persons agree to carry on business for profit.This form of business structure is better than a sole trader primarily because the liability of the partners is limited to the extent of their contributions or as agreed among them.This is not as advantageous as at first appears in that, the aggrieved persons can sue all partners. Partners who are forced to pay up will then have to seek an indemnity against the non-paying partner. Some business types must operate in the form of partnerships such as lawyers and accountants. Under the current law, a partnership agreement is not required but for good order and liability it is good practice to obtain one.There is a statute that has not yet come into effect that will enable persons to incorporate as limited liability corporations or partnerships.

Corporations: A company is a juristic or legal person. It is established under the Companies Act, 2004 (inclusive of amendments).Formation of a company requires only one shareholder and the same person can be the only director. The advantage of the company is that the shareholders are only liable to the extent of their contribution. Unlike the partnership, only the shareholders' contribution is liable to be attached on a winding up. Shares are no longer be issued at par value in Jamaica.

Companies can be private or public companies. There are several options for raising capital in Companies and in any event this corporate structure is more favoured by lenders. The options for raising capital include:

- Share capital;
- From existing shareholders, by rights issue; and
- Commercial lenders.

Companies are attractive as a corporate structure for raising capital as they are not plagued by succession issues, they can offer security such as debentures over all or some of their assets.

Companies must be registered under the Companies Act and must comply with regulatory requirements for registered address, secretary, and ultimate beneficial ownership. These new requirements will bring Jamaica into alignment with the Financial Action Task Force's recommendations and global standards in the fight against money laundering, terrorism and the proliferation of weapons of mass destruction.

ENTERING THE COUNTRY

There are no specific rules relating to foreign investments except in specialised industries such as the cannabis industry where the majority ownership must be Jamaican. However, there are policies geared at encouraging foreign direct investment such as the establishment of credit bureaus, a separate register for personal interests in property under the Security Interests in Personal Property Act (SIPPA). Forming businesses has also become much easier and a portal for the online payment of taxes thereby aligning the methods of doing business with first world standards.

However, there is the Jamaica Promotions Agency which is established under the JAMPRO Act, 1990 to promote business opportunities in Jamaica.They are the primary agency to consult when dealing with trade (export) and investment opportunities in Jamaica.They cater to the local and international private sector. It operates under the Ministry of Industry, Investment & Commerce.

JAMAICA

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INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which is capable of being represented graphically and is able to distinguish the goods and services of one undertaking (ie. any person, company or business entity).

Only technological innovations with industrial application (industrial inventions, utility models and new plant varieties) are patentable.

Where to apply? Applications to register trademarks can be filed either with (i) the Jamaica Intellectual Property Office (JIPO) or (ii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought.

Except when filing with WIPO, the system is manual which means the application is completed on paper and filed in person at JIPO. JIPO subsequently reviews the application, issues a Notice of Acceptance and thereafter publishes the mark in the Trademark Journal for a two-month opposition period. Provided there are no oppositions, the mark is registered with time running from the date of filing and registers the trademark immediately if all minimum trademark requirements as mentioned above are met. Opposition proceedings can be expensive but often the parties agree to a settlement.

Duration of protection? Once approved, the trademark registration remains valid for a period of ten years.

Costs? The fees and costs for an application for a trademark in Jamaica in one class is USD752.00 (USD100.00.- are charged per additional class inclusive of the official fee). These fees attract General Consumption Tax (GCT).

Patents

What is protectable? Inventions relate to any new and useful process in relation machines, technology or manufacturing or technology or any improvements of these matters. To qualify as an invention, there must be novelty and not obvious to a skilled professional and can be applied in industry.

Where to apply? Patent protection is territorial meaning that it is granted in each country where protection is sought. Patent applications can be filed with either the Jamaica Intellectual Property Office (JIPO), or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection is a maximum of 20 years from application and must be maintained by annual fees, annuities.

Costs? Application fees and costs for Jamaican patents for one claim amount up to USD1082.50. In addition, fees of the technical representative apply. However, most times the complete application is sent to counsel in Jamaica for filing only and does not require examination.

Employee invention and inventor bonus? Ordinarily a patent made by an employee for an employer belongs to the employer. However, on an application to the Court, the employee may be awarded compensation in circumstances where, depending on the size of the employer, the invention is of great benefit to the employer. The employee must make the application within twenty-one years of the date of the grant of the patent.

Utility Model

What is protectable? Utility models are very similar to patents and can be registered for technical inventions. A major difference and advantage is the six-month novelty grace period for own publications.

Where to apply? See comments on patent applications above.

Duration of protection? In contrast to patents, the term of protection is only 10 years.

Cost? Application costs for Jamaican utility models for up to one claim amount USD 366 inclusive of costs but excludes General Consumption Tax of 15% In addition, fees for the technical representatives apply.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design.

Where to apply? National designs may be registered with the Jamaica Intellectual Property Office. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the EUIPO Austrian applicants can also file for designs with the WIPO worldwide although Austria is no party to the Hague System for registering international designs.

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Application costs for designs amount USD244.95. In addition fees of the legal representative apply.

The following IP rights do not need to be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Jamaican Copyright Act (eg literary and artistic works). Copyright protection is granted immediately with the creation of a work. No registration is required. However, the poor man's copyright is recognised – this is where the right owner immediately post publication mails the copyright work to himself.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the indispensable right to be named as author. The author may however grant third parties non-exclusive or exclusive rights to use the work.

The following IP rights cannot be registered:

Trade Secrets

What is protectable? Trade secrets as such are not recognized as an intellectual property asset. However, they are protected at common law including in claims for breach of confidence or breach of the employment contract.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies. The restriction however must be reasonable and must not be such as to prevent employees from exercising their skill or professional training.

JAMAICA

DATA PROTECTION/PRIVACY

The Data Protection Act was passed on the 10th July 2020. It took effect in part on the 1st December 2021 with a two year transitional period that ended on the 30th November 2023. The Act is now in full effect, save that there is an extension of time for a period of six (6) months commencing the 1st December 2023 for the completion of implementation and registration with the information commissioner.

Territorial Scope: The Data Protection Act is applicable to data controllers that have a place of establishment in Jamaica, or a place were Jamaican Law applies. The personal data must be processed in the context of the business of the establishment. The Act also applies to businesses that are not established in Jamaica if:

- the businesses use equipment for processing the personal data except where the data is only transiting through Jamaica;
- processes the personal data, of a data subject who is in Jamaica, and the processing activities are related to –
  - the offering of services or products to Jamaican data subjects even if not payment is required of the data subjects.
  - monitoring of the behaviour of data subjects insofar where their behaviour is taking place in Jamaica.
- A data subject that falls within this sub-paragraph 2 must appoint a local representative established in Jamaica.

What is Protected? Personal Data and Sensitive Personal Data. Personal data is any information either by itself or when aggregated can identify a natural human being. Sensitive personal data includes biometric data such as photographs, political and religious ideas, health information and sexual orientation. There are eight principles of data protection which circumscribe the obligations:

- Lawful and fair Processing
- Personal Data should be collected for a specific purpose, purpose limitation.
- Data should be collected only for the purpose required, adequacy or data minimisation.
- Personal data should be kept up to date by be accurate.
- Data collected shall be retained for no longer than is necessary.
- Personal data shall be published in accordance with the rights of the data subject. There are six data subject access rights.
- The implementation of technical and organisational measures to protect personal data taking into account the state of the art.
- In relation to data transfers to ensure that countries to which personal data is transferred from Jamaica offers the same level of protection.

Unlike in the GDPR, there are no obligations on data processers. Data Controllers are however required to impose terms for processing the personal data on data processers that are similar to those imposed on controllers in the law.

Who is Protected? The Data Protection Act, 2020 protects the personal data of a named or otherwise identifiable natural living persons for the duration of their life plus thirty years.The natural living person is the data subject.

What are the rights of the Data Subject?
The rights of the data subject are:

- Access to his/her personal data;
- Consent to Processing;
- Prevent Processing;
- Consent to direct marketing;
- Rights in relation to automated decision making;
- Right to rectification of inaccuracies

Unlike the GDPR, the Data Protection Act does not have a right to be forgotten. Based on the wording in the Act, it is likely that all data controllers are required to appoint a Data Protection Officer. This is because most of them process sensitive personal data such as health information or biometric data such as photographs. The Data Protection Officer must be suitably qualified to carry out this function. By this is meant that the person must (1) have a conflict of interest between his duties as a data protection officer and any other duties of that person; (2) be qualified in privacy implementation and have a good knowledge of the laws relating to data protection globally.

The Role of the Data Protection Officer includes:

- ensuring that the data controller processes personal data in compliance with the data protection standards and in compliance with the law and best practice.
- consulting with the Commissioner to resolve any doubt about how the provisions of the Data Protection Act are to be applied.
- ensuring that any contravention of the Data Protection Act is reported to the Information Commissioner if the data controller fails to rectify such contravention to his satisfaction.
- assisting data subjects with the exercise of their rights under the law.

The data controllers who are required to appoint a Data Protection Officer are:

- public authorities;
- those that process sensitive personal data or data relating to criminal convictions;or
- processes personal data on a large scale

Compliance with the Data Protection Act is monitored and enforced by the Office of Information Commissioner.

JAMAICA

ARTIFICIAL INTELLIGENCE

There is no regime for AI regulation in Jamaica. However, there is ongoing discussion towards developing a a governance framework of Artificial Intelligence.

EMPLOYEES/CONTRACTORS

There are employment contracts and work for hire contracts. There is a strict regime whereby work for hire contracts cannot be used to avoid the obligations of the employer especially as it relates to payroll taxes.The recent decision of **National Housing Trust v. Marksman Limited & Robert Epstein [2022] JMRC 1** reinforced the distinction between work for hire and employment contracts. The term work for hire is not used but instead, independent contractors. Therefore, the distinction is between a contract of services (employment contract) or a contract for services (independent contractor). Objective factors are used to determine whether a contract is one or the other. An organization cannot escape the obligations for a contract of service simply by stating that the relationship is based on a contract for services. This is because the distinction while a question of fact depends on the circumstances. A key consideration is whether the worker is engaged in business on their own account. If the worker is so engaged, this favours a determination that it is a contract for service. It is not final deciding factor. In the National Housing Trust case the questions to be considered include:

- the degree of control exercised by the employer/hirer over the worker;
- whether the worker provides his own equipment;
- the extent of the worker's involvement in the "employer's" business; and
- the extent to which the worker can profit from sound management in the performance of their tasks.

There are restrictions on termination. Termination is governed by the Employment (Termination and Redundancy Payments) Act, 1974 and the Labour Relations and Industrial Disputes Act, 1975(LRIDA). These laws serve two different functions. The former sets out the framework within which termination by notice or by redundancy is to take place. It provides for a minimum notice period depending on the length of the term of the employment. The minimum notice period is two weeks' if the period of continuous employment is five years or less up and ranges up to a minimum notice period of not less than twelve weeks' notice if the period of continuous employment is twenty years or more.Notices of termination must be in writing unless it is given in the presence of a credible witness.

On the other hand, an employer may comply with Employment (Termination and Redundancy Payments) Act and still find itself in conflict with the requirement of the LRIDA. LRIDA sets up the specialised tribunal for determining industrial disputes.Industrial dispute is defined to include the suspension or termination of the worker. The jurisdiction of the tribunal is to make hear disputes and make awards depends on a referral by the Minster of Labour. The hearing is by way of review of the procedure that was used to terminate the employee. The termination must be unjustifiable or unfair. The employment can be reinstated and also awarded its normal wages for the period during with the employee would have been at work but for the dismissal.

In determining whether the termination is unfair, the Tribunal will consider or be guided by the Labour Relations Code.This requires and examination of whether there was among other things communications and consultation with the employee. If this is not followed, termination is almost impossible. Termination that does not follow fairness procedures such as giving a fair hearing or notice will give rise to a allegation of unjustifiable dismissal.Whether this is so or not will be finally determined by the Industrial Disputes Tribunal. Appeals from the Tribunal are restricted to questions of law.

If there is no referral to the Tribunal by the Minister, the employee is still able to approach the court on the basis that he was wrongfully dismissed. Wrongful dismissal focuses on the employee's entitlement under the contract of service.It has been suggested that in this respect the employee can also sue for breach of the implied terms of trust and confidence under the contract. This will enable the employee to get more damages.

The reason that the distinction between the contract of service and the contract for service is important is that the liability for payroll taxes. The employer under the contract of service has an obligation to withhold and pay over income tax, housing, education and social security taxes to the relevant government departments. There is also an employer portion of these taxes that is fixed by the relevant statutes. There is an additional tax which is not contributed to by the employee, that is the HEART tax. This is a training and services agency. The employer is required to pay over a percentage of its wage bill to satisfy the obligation. It is currently three (3) percent.

CONSUMER PROTECTION

Consumer Protection is primarily safeguarded under the Consumer Protection Act, 2015. This law protects consumers from unfair or misleading advertising or deceptive practices. It applies to all persons in trade or business either through the purchasing or selling of goods or services.

The consumer, in relation to:

- any goods, means:
  - any person who acquires or wishes to acquire goods for his own private use or consumption; and
  - a commercial undertaking that purchases consumer goods.
- any services or facilities, means any person who employs or wishes to be provided with services or facilities.; and
- any accommodation, means any person who wishes to occupy accommodation.

Goods refers to and includes all kinds of property but excludes real property, securities, money or choses in action.

The consumer's rights are set out in the Act and includes:

- a right to information about the goods being sold. The information must be in the English Language. It includes the origin, the price in Jamaican currency, care, terms, components, proper use, weight, size, instructions for assembly and installation and if relevant any professional fees. If there is non-compliance, the provider will be required to bear the costs of any damage to the goods that can be attributed to the consumer's lack of information and it does not matter if there is a different warranty period or obligation.
- the right to check the weight, volume or other measurement if these factors materially or substantially affects the price of the goods.
- The right to receive a receipt which shows:
  - the amount paid by the consumer;
  - the date when the purchase is made;
  - a description of the goods or services sold; and
  - where applicable, the professional fees charged.
- Subject to the standard provisions of warranties, the provider must issue explicit warranties in relation to his goods or services, the goods are new or used and whether the service offered is the repair of any appliance equipment or furniture, equipment or good. If there are no explicit warranties, there implied warranties may be imposed.

The consumer is entitled to redress in certain circumstances such as the right to have the goods repaired or to return defective goods. There are also refund obligations as opposed to giving the consumer a store credit.

Non-compliance with these obligations to the consumer also attracts a criminal sanction if the provider is found guilty.

There is a Consumer Affairs Commission which is responsible for taking and investigating consumer complaints in relation to whether goods were sold or services rendered in contravention of the Act. The parties may settle their disputes by mediation and at their option if the matter is not settled to the courts or the Consumer Protection Tribunal.

TERMS OF SERVICE

The Electronic Transactions Act, 2006 applies to goods and services or facilities that are offered for "sale, hire, or" exchanged by suppliers on a website. There is a requirement in section 27 for the following information to be provided to the consumer:

- The full name of the supplier.
- The supplier's geographical address, website address, e-mail address and telephone number.
- The geographical address where the supplier will receive service of legal documents.
- A disclosure as to whether the entity is incorporated or registered under any law and, where applicable, the supplier's registration number and place of registration.
- Details as to membership in any self-regulatory or accreditation bodies to which the supplier belongs or subscribes, and the contact information of such bodies.
- A description of any code of conduct to which the supplier subscribes and how that code may be accessed electronically by the consumer.
- A description off the main characteristics of each type of goods, service or facility [as the case may be] offered on the website by the supplier, which is reasonably sufficient to enable the consumer to make an informed decision as to the proposed electronic transaction.
- The full price of the goods, services or facilities, as the case may be, including transportation cost, taxes and any other fees or cost.
- The method of payment required by the supplier.
- The terms of agreement, including any guarantees, that will apply to the transaction, and how those terms may be accessed, stored and reproduced by the consumer electronically.
- The time within which the goods will be dispatched or delivered, the services rendered, or the facilities made available, as the case may be.
- The manner and the period within which consumers can access and maintain a full record of the transaction.
- The return, exchange and refund policy of the supplier.
- Any dispute resolution code to which the supplier subscribes, and how the text of that code may be accessed electronically by the consumer.
- The security procedures and privacy policy of the supplier in respect of payment, payment information and personal information.
- Where appropriate the minimum duration of the agreement in the case of agreements for goods, services or facilities to be supplied on an ongoing basis or recurrently.
- Where applicable, the consumer rights under section 28 (see below)

In addition to providing this information the supplier is required to provide the consumer with the following information in the same order as below:

- review the entire electronic transaction;
- correct any errors;
- withdraw from any transaction before finally placing an order; and
- access electronically and reproduce an accurate summary of the order and the terms including the total costs.

The consumer is entitled to cancel the transaction within fourteen (14) days after receiving the goods, services or facilities to which the transaction applies. If the transaction is cancelled, the consumer is required to return the goods and the supplier is required to issue a refund.

The requirements of the Consumer Protection Act apply online as well. In addition, some of the terms mirror the protections that are in the Consumer Protection Act. In addition, as personal data is likely to be collected in the course of the sale, the provisions of the Data Protection law as in section 5 above also applies so that the privacy note should comply with the terms of the that law.

WHAT ELSE?

There are Special Economic Zones (SEZ) which are a vehicle that promote Foreign Direct Investment (FDI) by granting tax incentives among other benefits.These are set up under the Special Economic Zones Act(SEZA), 2016. This is a division of the Ministry of Industry Investments & Commerce. There is a Jamaica Special Economic Zone Authority (JSEZA). Its functions include the following:

- promote investments, actions or measures that are aimed at improving logistics chains in Jamaica.
- Foster the development and expansion of the zones in collaboration with the Government of Jamaica, international organisations and the private sector.
- Protect the environment in the course of the development and operation of Zones.
- Create an environment that facilitates effective competition among the businesses that conduct their affairs in the zone.
- Promote technical and operational education and training in fields of Zone development, promotion, operation and management.

A licence is required for operating in the SEZ. Information on operating a SEZ may be found at: https://www.miic.gov.jm/content/jamaica-special-economic-zone-authority

There are two types of licences. They are:

- As a developer; or
- As an occupant

The developer must apply for a master concession licence. In addition, it must be a limited liability company limited by shares that is incorporated under the Companies Act of Jamaica and is established by a sponsor fo the purposes of entering in the licence aforesaid. The "occupant" means a person that is not a developer of a Zone or zone user who conducts business in the Zone under a sub-concession made by that person with the developer, being a sub-concession that is in accordance with a master-concession or licence agreement with a developer.

A sponsor is an investor who or a consortium of investors that, proposes to provide shareholder capital to finance directly or indirectly, the business that a developer will undertake pursuant to a mater-concession or a licence agreement.

The benefits of being licenced to operate a SEZ include exemption from custom duty in relation to goods imported into the SEZ, subject to the provisions of the Customs Act; income tax at the rate of 12.5%, stamp duty, transfer tax and property tax relief. There are some specialized economic activities for which certificates may be granted such as maritime services including bunkering activities.

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LEGAL FOUNDATIONS

Japan has a civil law system based on written statutes and other legal codes in the fields of public, private and criminal law; this system is more principles-based than the common law system found in countries such as the U.K. and U.S.; laws and regulations are also subject to interpretation and clarification by regulators, etc. far more than is found in common law systems.

The core areas of law are:

- **Public law** controls national government powers, such as the relationship between individuals and the national government and government agencies (e.g. financial regulation).
- **Private law** governs the relationship between individuals (e.g. contracts, warranties, liability, etc.) and is codified in various laws, the most important being the Civil Code. There are many more laws for specific fields (e.g. employment, e-commerce, B2B relationships).
- **Criminal law** is mainly codified in the Penal Code and Code of Criminal Procedure. Specific provisions, such as criminal sanctions in the case of copyright infringements, are however included in respective relevant laws rather than the codes.

Legal precedent plays an essential role in Japan, interpreting existing legislation and effectively developing binding law (so-called "judge-made law") in areas where the legislation is silent.

There is no federal system, and all courts are unified under the Supreme Court of Japan, which is the highest and final court and handles appeals (Jokoku-appeals and special Kokoku-appeals) filed against judgments rendered by a High Court.

JAPAN

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STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

The most commonly used forms of corporation in Japan are (i) the joint stock company (kabushiki kaisha) or (ii) the limited liability company (godo kaisha).

Joint Stock Company (Kabushiki Kaisha ("KK"))

A KK is usually the first choice as a vehicle for starting a business in Japan as it is the most basic corporate form in Japan and has high social credibility. A KK is a type of corporation in which ownership and management are separated, with shareholders investing capital and delegating management to directors.

Basic requirements and procedures for formation of a KK:

- No pre-formed/off-the-shelf KKs – must be formed on a case-by-case basis.
- Typically 6 to 8 weeks to form if the parent is offshore.
- It requires at least one promoter for its incorporation.
- Although the promoter(s) can be either a natural or legal person and there is no requirement as to nationality or residence, Japanese resident individual(s) are usually hired to act as Promoter in order to ensure that the incorporation proceeds smoothly.
- Promoters have to draw up and sign the Articles of Incorporation (teikan) (the "AOI") and notarize the AOI at a notary office.
- Minimum statutory capital of JPY 1.
- Must have at least one director.
- Needs a bank account in Japan to receive capital.
- No requirement for a director resident in Japan, but advisable to have one Japan resident director for smooth operation of the KK.
- As soon as the registration with the commercial register has been completed, it can start commercial activities.

ADVANTAGES

- High social credibility
- Limited liability

DISADVANTAGES

- Cost for establishment and maintenance is relatively high
- Mandatory publication of financial statements

Joint Stock Company (Godo Kaisha ("GK"))

A GK is a relatively new type of corporation, introduced in 2006, whereby members invest capital and manage the company themselves; it is similar to a US LLC.

Basic requirements and procedures for formation of a GK:

- No pre-formed/off-the-shelf GKs – must be formed on a case-by-case basis.
- Typically 6 to 8 weeks to form if a member is offshore.
- No directors as members manage the GK themselves (possibly with a managing officer).
- It requires at least one member for its incorporation.
- Needs a bank account in Japan to receive capital.
- No requirement for a member resident in Japan, but advisable to have one Japan resident member or managing officer appointed by a member for smooth operation of the GK.
- Although the member(s) can be either a natural or legal person and there is no requirement as to nationality or residence, Japanese resident individual(s) are usually hired to act as a member in order to ensure that the incorporation proceeds smoothly.
- While members need to prepare the AOI, no need for its notarization.
- No minimum statutory capital.
- As soon as the registration with the commercial register has been completed, it can start commercial activities.

ADVANTAGES

- Cost for establishment and maintenance is lower than for a KK
- No mandatory publication of financial statements
- Limited liability
- Simpler management structure than a KK

DISADVANTAGES

- Lower social credibility compared to a KK

JAPAN

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ENTERING THE COUNTRY

Registration (Foreign Company) (gaikoku-gaisha-no-toki)

When a foreign company "carries out transactions continuously in Japan" from offshore itself and not through a branch office or legal entity in Japan established by it the foreign company needs to complete registration as a "Foreign Company" and appoint a local representative.

Restriction on Inward Direct Investment, etc.

If a transaction falls within the scope of an "Inward Direct Investment, etc." (tainai-chokusetu-toshi-tou), then, subject to certain exceptions, (i) a report prior to the transaction (which will trigger a 30-day compulsory waiting period), or (ii) an after-the-fact report, must be made to the Minister of Finance pursuant to the Foreign Exchange and Foreign Trade Act (Gaikoku-Kawase-oyobi-Gaikoku-Boeki-Hou). A foreign investor that has filed a prior notification must also submit an after-the-fact report within 45 days from the closing of the transaction.

Inward Direct Investment, etc. includes (i) acquisition by a foreign person or entity (e.g. non-Japan resident individuals and companies incorporated under the laws of a foreign jurisdiction) of any shares or equity in a Japanese non-listed company from persons other than foreign investors (foreign investors include non-Japan resident individuals and companies incorporated under the laws of a foreign jurisdiction) and (ii) a foreign person or entity establishing a branch (if a foreign entity), subsidiary or other business office (excluding a representative office) in Japan. In relation to item (i), acquisition of shares of a Japanese non-listed company between foreign investors is categorized as "Specified Acquisition" and if relates to shares of a Japanese non-listed company which conducts a "Designated Business", then prior notification will be required for such transaction; Designated Business includes the electric power industry and the telecommunications industry.

If such a transaction is made by a foreign investor indirectly (e.g. acquisition of shares of the foreign parent of a non-listed Japanese company) it would not, subject to limited exceptions, fall within the scope of Inward Direct Investment, etc.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any words, figures, symbols, three-dimensional shapes or colours or combinations thereof, sounds, movements, holograms and positions used to distinguish one's own goods or services from those of others can be registered as trademarks.

Where to apply? Trademarks can be filed either with (i) the Japan Patent Office (JPO) or (ii) the World Intellectual Property Organization (WIPO) through the local authorities acting as the receiving office, under the Madrid System, although this depends on the territories in which trademark protection is sought. The application can be filed by post. Online filing requires specialised software and therefore the support of a patent attorney. The JPO then examines the application and only those that pass the examination are granted a trademark registration. Examination usually takes around six months to a year, but if the requirements are met, the examination period can be reduced to around two months by applying for accelerated examination.

Duration of protection? The period of protection of a trademark begins on the date of registration and generally lasts for 10 years. A trademark owner can extend the term of protection indefinitely every 10 years by completing a renewal procedure. However, if an invalidation trial requested by a third party is granted, it will be invalidated even during the 10-year registration period.

Costs? Application costs for Japanese trademarks are JPY 12,000 for a single class (with JPY 8,600 per additional class). Registration costs are JPY 32,900 for a single class (with JPY 32,900 per additional classes). In addition, the legal representative will charge a fee. If the application is filed under route (ii) above, there is a separate fee structure because of the fees charged by the local authorities and WIPO.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions that are novel, involve an inventive step, and are industrially applicable are patentable. These inventions can be in any field of technology, including products and processes.

Where to apply? Patents can be filed with the JPO. International applications can also be filed through the Patent Cooperation Treaty (PCT) with the local authority acting as the receiving office, or directly with the WIPO. The procedures and costs associated with filing can vary depending on the route chosen.

Duration of protection? In either case, the term of protection is a maximum of 20 years from application and must be maintained by annual fees. This term can be extended for certain patents, such as those covering pharmaceuticals and agrochemicals, to compensate for the time taken to obtain regulatory approval.

Costs? The main costs involved in filing and registration of a patent are as:

- Filing costs: a flat fee of JPY 14,000 regardless of the number of claims,
- Request for examination of application costs: JPY 138,000 + JPY 4,000 per claim; and
- Registration costs; JPY 4,300 + JPY 300 per claim.

In addition, fees the legal and technical representatives will charge fees. If the application is filed through the PCT, there is a separate fee structure because of the fees charged by the local authorities and WIPO.

Employee invention and inventor bonus? According to the Japanese Patent Act, the right to the grant of a patent for any employee invention, which is made in connection with their work, vests in the employer only when it is prescribed in any agreement, employment regulation or any other stipulation provided in advance. If an employee invention is transferred to or vested in the employer in accordance with any agreement, the employee is entitled to an appropriate inventor bonus calculated in accordance with the agreement.

Utility Models

What is protectable? In Japan, utility models protect inventions related to shape, structure, or a combination of items that have industrial applicability. Unlike patents, utility models are often easier to obtain for inventions that may not meet the higher inventive step requirement of patents.

Where to apply? Applications for utility models must be filed with the JPO. Like patent applications, utility models can also be filed through international routes such as the PCT if Japan is a designated country. There is a utility model system that permits registration without undergoing a substantive examination, allowing for rapid and cost-effective registration. This no-examination process facilitates quicker protection of inventions, although it places the responsibility on the utility model holder to ensure the validity of their rights before enforcement.

Duration of protection? The period of protection for a utility model is 10 years from the filing date, which is shorter than the 20-year protection period for patents.

Costs? At the time of application, an application cost (JPY 14,000) and a registration cost for three years (JPY 2,100 + JPY 100 per claim x 3) must be paid. In addition, their will be fees the legal and technical representatives. If the application is filed through the PCT, there is a separate fee structure because of the fees charged by the local authorities and WIPO.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? Industrial products, including parts of products, can be protected under design rights; products that are not mass-produced, such as works of art, can also be protected. This includes the shape, pattern or colour of an article (including part of the article), or a combination of these, or the shape of a building etc. or an image, which is aesthetically pleasing to the sense of sight.

Where to apply? Applications for designs can be filed with the JPO. International applications can also be filed under the Hague Agreement concerning the International Registration of Industrial Designs, with the local authority acting as the receiving office, or directly with the WIPO.

Duration of protection? The duration of design protection in Japan is 25 years from the application date.

Costs? Application costs for designs areJPY 16,000. Registration costs are JPY 8,500 annually for year 1 to year 3 and then JPY 16,900 annually from year 4 to year 25. In addition, there will be fees of the legal representative. If the application is filed through the Hague Agreement, there is a separate fee structure because of the fees charged by the local authorities and WIPO.

The following IP rights cannot be registered:

Copyright

What is protectable? Copyright protection is available for expressions of an author's intellectual activities to produce works such as literature, music, art, software, etc. Protection is automatically granted upon the creation of the work without the need for registration or any form of copyright notice.

Duration of protection? Copyright lasts for 70 years after the death of the author, except in the case of works with anonymous or pseudonymous authors, where copyright lasts for 70 years from the date of publication.

How to exploit copyright? Copyright owners can exclusively exploit their works to generate revenue. This includes the right to take legal action against unauthorized use of their copyrights, such as seeking injunctions or claiming damages for copyright infringement, to protect their works from unauthorized exploitation by others. Copyright owners also have the option to license their works, granting others permission to use their works under agreed terms, which can be a source of income. They can also assign their copyrights to others for consideration, further monetizing their intellectual property.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit their work. However, there are specific provisions that limit copyright rights to balance the interests of copyright owners with the public interest. These include exceptions, such as for educational purposes, private use, citing, photobombing and non-commercial performance, etc. allowing certain uses of copyrighted works without the need for permission from the copyright owner. The use of copyrighted works in machine learning is described below (Section 6).

Trade Secrets

What is protectable? Trade secrets are not recognized in Japan as an intellectual property asset as such. However, the Unfair Competition Act protects know-how and business information of commercial value that is kept secret. Thus, for protection of trade secrets, companies are required take appropriate non-disclosure measures (e.g. marking information as trade secrets, implementing IT security measures, particularly restricting access and agreeing NDAs). Data that does not fall within the scope of trade secrets can still be protected through data agreements as limited provision data. In this case, the scope and conditions of protection depend on the agreement concluded between the parties.

Duration of protection? As long as appropriate measures are in place, know-how and business information of commercial value are protected without limit in time.

JAPAN

DATA PROTECTION/PRIVACY

The following is a brief description of Japan's data protection regime, namely regulations under the Act on the Protection of Personal Information ("PIPA"). Japan's data protection regime is anchored by the PIPA, supplemented by sector-specific guidelines for areas of such as finance, healthcare, telecommunications and some other important sectors.

Definition of Personal Information: The PIPA defines personal information as information relating to a living individual containing a name, date of birth, or other identifier or the equivalent which can be used to identify a specific individual, or an individual identification code (such as the individual number of an indentification document issued by the public sector). In addition, personal data is defined as personal information that constitutes a systematic structure of personal information that can be retrieved using a computer (this is called as "personal information database" in the PIPA).

Obligations upon acquisition of personal information: When handling personal information, the business operator handling the personal information shall specify and notify to the data subject or make public the purpose of utilization of the personal information as much as possible in advance of acquisition of the personal information unless there are exceptional circumstances specified by the PIPA.

The prior consent of the data subject must in principle be obtained when acquiring sensitive personal information (such as ethnicity, creed, social status, medical history, and previous convictions), except in exceptional cases specified by the PIPA.

Ensuring the accuracy of the content of personal data: The PIPA requires a business operator to endeavor to keep personal data accurate and up-to-date to the extent necessary to achieve the purpose of use, and to delete personal data without delay when it is no longer needed.

Obligation to take security control measures: Business operators are obligated to take necessary and appropriate measures for security control of personal information and to supervise their employees and contractors for this purpose. The content of security control measures is not specifically stipulated, though guidelines require that the content be necessary and appropriate according to certain factors.

Response upon data breach: If a material data breach as defined in the PIPA occurs, or there is a risk of such a breach occurring, a preliminary report should be made to the Personal Information Protection Commission (PPC) within 3-5 days of discovery. Detailed information must then be submitted in a confirmation report within 30 days of discovery. In addition, data subjects whose rights and interests could be damaged by the data breach must be notified as soon as possible, according to the circumstances of the situation.

Transfer of personal data to a third party in Japan: The transfer of personal data to a third party must be within the purpose of use, and in principle with the consent of the data subject. Sensitive personal information is transferrable only with the consent of the data subject. Transfers for subcontracting, business succession, or joint use stipulated in the PIPA do not require consent.

In order to ensure the traceability of personal data, the transferor of personal data must create and keep a record of the transfer, and the receiver of personal data should confirm and record the identity of the transferor and the reason for obtaining the personal data.

Transfer of personal data to a third party outside of Japan: The transfer of personal data to a person in a third country must be within the purpose of use, and in principle only with the consent of the data subject. Consent is subject to the data subject being provided with adequate information, such as information on the data protection legislation of the third country. Regulations on the transfer of personal data to a person in a foreign third party do not apply to countries specified in the Rules of the PPC (currently only EEA member countries and the UK). In such cases, regulations equivalent to those governing the transfer to a third party in Japan apply.

The same exception also applies to transfer of personal data to a business in a foreign country which constantly implements measures required under the PIPA, but an explanation of the content of such measures must be given to the data subjects upon request, in addition to ensuring continuous implementation of the said measures.

Extraterritorial application: In principle, the PIPA applies only to handling of personal information in Japan, though it is applied extraterritorially in cases where the handling of personal information overseas is related to the provision of goods or services to persons residing in Japan.

Rights of the data subject: A data subject has the right to request the business operator handling its personal information to disclose, correct or stop using his/her personal data.

JAPAN

ARTIFICIAL INTELLIGENCE

As Japan does not yet have any horizontal AI regulations, AI is mainly governed by sector specific regulations. In some cases, regulations are focused on the use of AI, such:

- Autonomous Driving: The revised Road Traffic Act and Road Transport Vehicle Act allow Level 4 automated driving.
- Finance: The Installment Sales Act allows credit card companies to determine credit amounts using data and AI.
- Infrastructure: The High-Pressure Gas Safety Act enables Super Certified Operators to use AI to conduct safety inspections without interrupting operations for up to eight years.
- Legal: AI-assisted contract services align with the Attorney Act. There is a guideline issued by Ministry of Justice for usage of AI contract review service.
- Healthcare: Early approval systems for AI-based diagnostic software.

In other cases, laws do not establish regulations focused on AI, but generally regulate AI in a technology-neutral manner, even when not explicitly regulated. Therefore, any legal interests that existing regulations seek to protect must be complied with, even when AI is used. The Digital ad hoc Commission (Digital Rincho) in the Digital Agency is revising approximately 10,000 regulations and ordinances on analog methods, which include requirements for written documents, on-site inspections, periodic inspections, and full-time stationing in order to make applicable AI in the current regulatory environment sector.

In addition, the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade and Industry are scheduled to release guidelines for AI businesses. The guidelines provide a unified policy for AI governance in Japan, aimed at ensuring that those who utilize AI in various business activities correctly recognize the risks of AI and voluntarily implement necessary countermeasures. Guidancehas been added for the most advanced AI systems, including state-of-the-art foundational models and generative AI systems. The guidelines differ from the previous METI and MIC guidelines. The basic content of the guidelines is being developed in line with international discussions at the Hiroshima AI Process based on last year's G7 Digital Ministerial Meeting.

The governing Liberal Democratic Party is discussing a bill on AI regulation, but its main focus is to strengthen the requirements for basic models, not to develop a uniform horizontal regulation.

In addition to above overview, there are some important developments in the Copyright Act and the PIPA in relation to usage of AI.

Regulations under the Copyright Act: Regarding the treatment of AI under the Copyright Act, the Agency for Cultural Affairs has prepared a "Concept on AI and Copyrights", which should be published soon. According to the draft, use of existing works at the training or development stages of AI will in most cases be permitted by applying Article 30-4 of the Copyright Act which allows, in principle, the use of works for "non-enjoyment purposes", of which information analysis purposes are a typical example. Information analysis can fall under "non-enjoyment purposes" even if the ultimate result is intended to be used for commercial purposes, meaning that use of copyrighted works for a broad range of machine learning is permitted. On the other hand, if the purpose is the intentional output of the creative expressions of a copyrighted work contained in the training data in the same state, then such use is not considered to be for "non-enjoyment purposes" and Article 30-4 of the Copyright Act does not apply. Furthermore, it is considered that Article 30-4 of the Copyright Act is not considered to apply in cases where the interests of the copyright holder would be unreasonably impaired. A typical example of this would be the reproduction for information analysis purposes of copyrighted works contained in a database that is organized and sold in a form that allows a large volume of information to be used easily for information analysis.

The use of AI at the generation and utilization stages may constitute copyright infringement of existing works. Similar to the requirements for copyright infringement that already apply to creative activities performed by humans without AI, copyright infringement occurs when both similarity and reliance on an existing work are found. In particular, the reliance requirement may be considered to be satisfied not only in cases where the AI user is deemed to have been aware of the existing work, but also even where the AI user was not aware of the existing work but the existing work is contained in the training data used by the AI. On the other hand, if the AI user was not aware of the existing work and the AI training data does not include such work, then it is considered to be only a coincidence and reliance is not found.

Regulations under PIPA: Personal information may be acquired intentionally or unintentionally as training data for AI. In either case, under the PIPA the consent of the data subject is not required for such acquisition unless the personal information is sensitive personal information (see Q5) but the purpose of use must be specified and, in principle, notified to the data subject or made public.

In June 2023, the PPC issued a reminder to OpenAI, L.L.C. and OpenAI OpCo, LLC to implement measures to ensure that sensitive personal information is not included in information collected, and to notify both individual users and non-users or make public the purpose of use of the collected information.

Newsletter
The first administrative guidance to generative AI platform and Alerts regarding the use of generative AI services issued by PPC, June 8th 2023

JAPAN

EMPLOYEES/CONTRACTORS

General: Under Japan's employment and labour laws, employees are entitled to broad protections regarding their status, wages, working hours, and other aspects of their treatment in exchange for complying with the employer's directions and control. On the other hand, contractors are not subject to such directions and control, but perform contracted work based on their own judgment and responsibility. Employment and labour laws do not fully apply to contractors, except for certain aspects such as health and safety, and disaster compensation. However, the Freelance Act will come into force in the autumn of 2024 and will provide some legal protection for contractors concerning transaction conditions and status.

Distinction between employees and contractors: In practice, even if there is a formal contract which provides that a person is a contractor, there are often cases where the nature of the contract and the actual work performed indicate an employment relationship, which can lead to retroactive application of employment and labour law protections. Therefore, when entering a contract, it is important to determine whether the contract maintains the independence of the contractor and does not establish a relationship where the person is under the direction and control of the engaging party.

Employment agreement and work rules: When entering into an employment contract, a written notice of employment conditions must be provided to the employee that includes specified items. In practice, it is common to incorporate the contents of the notice of employment conditions into the employment agreement and treat them as a unified document. Additionally, for workplaces with ten or more employees, work rules must also be established relating to matters such as uniform labor conditions and disciplinary procedures and notified to the employees.

Employee Representative: Employers must conclude labor-management agreements with an employee representative on matters such as overtime work, holidays, wage deductions, and other statutory provisions. Additionally, an employer is obliged to consult with the employee representative when formulating or revising work rules. Employee representatives are selected democratically, either from a labor union representing the majority of employees, or, if there is no such union, by the majority of employees electing a representative. Employers are not permitted to unilaterally appoint employee representatives.

Registration with social security: Employers must register their employees for various social insurances and labor insurances and pay the statutory insurance premiums. Additionally, there is an obligation to report the employment of foreign workers who are not Japanese nationals to the Public Employment Security Office.

Termination: Employees have extensive employment protections. There are four main recognised types of termination:

- normal dismissal (termination based on the employee's failure to fulfil contractual obligations);
- organisational dismissal (termination due to business reasons);
- disciplinary dismissal (dismissal for an employee's violation of company rules); and
- retirement due to the expiration of a leave of absence (e.g., expiration of the sick leave period stipulated in the work rules)

When considering termination, it is crucial to collect information that substantiates the grounds for termination in addition to confirming whether there are any legal restrictions (e.g., during maternity leave or due to work-related accidents). Regardless of the reasons for the termination, and even if the termination is pursuant to a notice clause in the employment contract, it must be objectively reasonable. In cases where termination is difficult to justify when considering the specific situation, it may be desirable to make effort towards a peaceful mutual agreement by offering a severance package as an incentive to have the employee resign voluntarily.

JAPAN

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

Japanese consumer protection is regulated by laws such as (i) the Consumer Contract Act (shohisha-keiyaku-ho), (ii) the Act on Specified Commercial Transactions (so-called "tokusho-ho"), and (iii) the Act against Unjustifiable Premiums and Misleading Representations (so-called "keihin-hyoji-ho"). All of these are applicable to foreign entities targeting consumers in Japan. Breach of these laws could lead to criminal penalties on the breaching company and any person at the company who was acting on behalf of the company, in addition to civil remedies.

Consumer Contract Act
The Act regulates unjust solicitations and unjust contractual provisions. If a consumer is induced to enter into a contract by solicitations that mislead or overwhelm the consumer, the consumer has the right to rescind the contract. The Act also stipulates that provisions that unjustly harm the interests of consumers shall be invalid.

Act on Specified Commercial Transactions
The Act regulates unjust solicitations, obligates delivery of documents, and prohibits false or misleading advertisements for specific commercial transactions, including e-commerce (e.g. selling goods or services to consumers via the Internet).

Act against Unjustifiable Premiums and Misleading Representations
The Act regulates misleading representations and offers of excessive premiums (discounts) in connection with a consumer transaction. Examples of misleading representations include (i) representations relating to the content or performance of goods or services as being better than the actual content or performance and (ii) representation of trade terms for goods or services as being more advantageous than the actual terms.
Also see section 9.

TERMS OF SERVICE

Yes. Terms of service are enforceable only if (i) the parties agreed to apply the terms of service as the terms of a contract (e.g. via a tick-box), or (ii) a business operator showed to consumers its intention to apply the terms of service as the terms of the contract in advance. Business operators must disclose the terms of service if requested by customers (except where the terms were already disclosed to customers). Further, terms must be in compliance with stringent consumer protection laws. Under the Consumer Protection Act and Civil Code, the following clauses in particular in terms and conditions or other contracts are held invalid:

- clauses that totally exempt business operators from liability for damages caused intentionally or by gross negligence;
- clauses that make consumers waive their right to cancel;
- cancellation penalties that exceed the normal amount of damages caused by the cancellation, and delayed damages that exceed an annual interest rate of 14.6%; and
- clauses that restrict the rights or expand the duties of the consumers more than the application of the default rules and unilaterally impair the interests of the consumers in violation of the principle of good faith.

These restrictions do not apply to business-to-business transactions.

Act on Specified Commercial Transactions
The Act obliges business operators including foreign companies to display important matters when placing an advertisement, and prohibits false or misleading advertisement; these include:

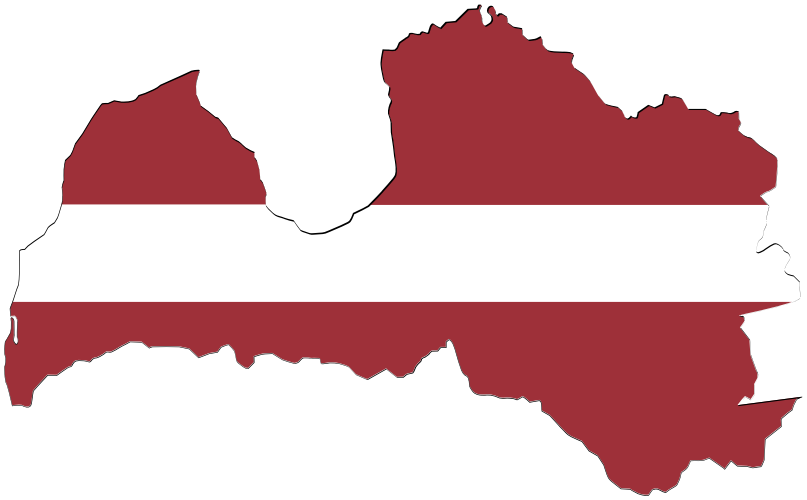
- the selling price of the goods or rights or the consideration for the services;
- the timing of payment and means of paying the charges for the goods or rights or the consideration for the services;
- the time at which the goods will be delivered, the time at which the rights will be transferred, or the time at which the services will be provided; and
- information concerning the withdrawal or cancellation of an offer for a sales contract for the goods, etc.

WHAT ELSE?

Exchange Control Regulations: Payments or transfers of money between a resident and non-resident of Japan (for example, a payment by a resident to a non-resident or payment by a non-resident to a resident) for an amount exceeding JPY 30 million requires a report to the Bank of Japan under the Foreign Exchange and Foreign Trade Act, though a failure to make the report does not affect the validity of the transaction.

Japanese Culture: Although it is changing, Japan has some unique cultural aspects which would be useful for a foreign investor to consider before entry into the Japanese market; these include:
·whilst the general increase of Japanese companies conducting business overseas has led to the broader acceptance of the use of signatures, Japan has a long history of using seals in lieu of signatures to execute contracts and issue legal documents;

- decision-making of Japanese corporations can take time as multiple layers of approvals are often required;
- high value is placed on the practice of exchanging business cards in Japan;
- Japanese people express themselves indirectly to be polite;
- a contract can be seen as the basis of a relationship rather than terms set in stone; and
- disputes are avoided if at all possible and if they arise are expected to be settled based on reasonableness rather than strictly enforced legal terms.



LATVIA

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LATVIA

LEGAL FOUNDATIONS

Latvia follows the **civil law system**, as it relies on written statutes for governance in the form of laws (as passed by the parliament), regulations (adopted by the Cabinet of Ministers, based on authorization from the parliament) and municipal regulations (passed by local Municipalities).

Private law governs the relationships between private individuals (e.g., property rights, contracts, torts, employment, commercial activities, etc.) The main source of private law is the Civil Law ("Civillikums"). In addition, there are various sectorial laws, such as Employment law, Commercial law, etc.

Administrative law governs the relationship between the state and the individual. Main sources of administrative law are Law on Administrative Liability ("Administratīvās atbildības likums"), Administrative Procedure Law ("Administratīvā procesa likums") and main sectoral laws which also contain provisions for administrative liability, for example:

- Matters of taxes are mainly governed by the law On Taxes and Fees ("Par nodokļiem un nodevām").

- Consumer relations are mainly governed by the Consumer Rights Protection Law ("Patērētāju tiesību aizsardzības likums") and Unfair Commercial Practices Prohibition Law ("Negodīgas komercprakses aizlieguma likums").

Criminal law determines criminal offences and outlines specific punishment for these offences. The sole codex of criminal offences in Latvia is the Criminal Law ("Krimināllikums"). No other law contains provisions as the basis of criminal liability. Criminal Procedure Law ("Kriminālprocesa likums") codifies procedural aspects for criminal proceedings.

LATVIA

CORPORATE STRUCTURES

Commercial Law of Latvia ("Komerclikums") provides the following forms of companies:

Limited liability company (sabiedrība ar ierobežotu atbildību):

A limited liability company, known as sabiedrība ar ierobežotu atbildību ("SIA") is the most preffered choice of corporate structures amongst foreign investors. Shareholders of SIA are subject to limited liability and are considered separate from the company.

Requirements:

- Minimum share capital of EUR 2800.
- At least one (or more) founders (shareholders) that can be either a natural person or a legal entity.
- Management board comprises of at least one board member.
- Supervisory board is not mandatory.
- Share capital must be contributed in cash or through in-kind contributions.
- For smaller enterprises, an alternative option is the establishment of a limited-capital SIA, with an initial share capital of as little as EUR 1. Although it functions as an ordinary SIA, specific limitations apply, i.e.:
  - Founders (shareholders) are limited to natural persons (up to five individuals);
  - The board consists exclusively of shareholder members, and each shareholder of the company must be a shareholder to only one limited-capital SIA.

Stock company (akciju sabiedrība):

A stock company, known as akciju sabiedrība ("AS") is a public company, the shares (stocks) of which may be publicly tradable objects.

The main difference between a stock company and a limited liability company lies in the higher equity capital requirement of the initial, coupled with the requirement of a mandatory supervisory council with a minimum of three members. Consequently, a stock company proves to be a less attractive option for startups.

Requirements:

- Minimum share capital of EUR 35'000.
- The company is administered by the meeting of stockholders, supervisory council (an institution which represents the interests of stockholders and oversees the management board), and a board.
- The supervisory council must consist of a minimum of three members. However, in cases where company's stocks are publicly traded – the minimum number of council members are five. The maximum allowable number of supervisory council members is 20.
- The board may consist of one or several members. In situations where the stocks of the company are publicly traded, the board must have a minimum of three members.

Sole proprietorship (individuālais komersants)

Sole proprietorship, which refers to a natural person registered as a merchant with the Commercial Register, is a prevalent form of economic activity in Latvia.

A natural person engaged in economic activities must register as a sole proprietorship, if:

- The annual turnover from their economic activities exceeds EUR 284 600,
- The economic activities align with those of a commercial agent broker, or
- The yearly turnover from economic activities exceeds EUR 28'500 and he or she simultaneously employs more than five employees.

Self-employment is also a common type of economic activity in Latvia, distinct from sole proprietorship. Self-employed persons must register solely with the State Revenue Service (VID, Valsts ieņēmumu dienests) until they fulfill criteria for transitioning to sole proprietorship.

Both sole proprietorship and self-employed persons are personally liable with all their assets. Consequently, this legal form of economic activity is less favored among startups due to the exposure of personal assets. Yet, it is often used by individual entrepreneurs who do not employ any employees.

CORPORATE STRUCTURES,CONT'D

Partnership

Partnerships in Latvia come in two main forms: general partnership (pilnsabiedrība) and limited partnership (komandītsabiedrība).

General partnership (pilnsabiedrība) is a partnership, the purpose of which is the performance of commercial activities through the use of a joint firm name, and in which two or more persons (members) have united, on the basis of a partnership agreement, without limiting their liability against creditors of the general partnership. The foundation of the partnership shall be applied for entering in the Commercial Register.

Limited partnership (komandītsabiedrība) is a partnership, the purpose of which is the performance of commercial activities through the use of a joint firm name, and in which two or more persons (members) have agreed on the basis of a partnership agreement, where the liability of at least one of the members of the partnership (limited partner) in relation to the creditors of the partnership is limited to the amount of its contribution, but the liability of the other member(s)of the partnership (general partners) is not limited. The foundation of the partnership shall be applied for enteringin the CommercialRegister.

Due to the inherent limitations on liability, where members, excluding the limited partner in a limited partnership, are personally liable with their private assets, partnerships are not frequently utilized for initiating startup ventures. Startups often lean towards corporate structures that offer enhanced protection of personal assets for their members.

ENTERING THE COUNTRY

While there is no general obligation to notify investments in Latvia by foreign investors, in several sectors laws prohibit or restrict foreign direct investment without notification, or may even block or limit foreigninvestment in accordance with applicable law - depending on the sector, country of origin of the investor and / or other requirements of applicablelaw. Such sectors are:

Companies of significance to national security and critical infrastructure, pursuant to the National Security Law ("Nacionālās drošības likums").

Land and agricultural land acquisition, pursuant to the Law on Land Privatization in Rural Areas ("Par zemes privatizāciju lauku apvidos"), and the Law on Land Reform in Cities of the Republic of Latvia ("Par zemes reformu Latvijas Republikas pilsētās").

Gambling, pursuant to the Law on Gambling and Lotteries ("Azartspēļu un izložu likums").

Critical financial services, where the provider of these services has been given such a status by the National Bank of Latvia, pursuant to the National Security Law.

Various sanctions regimes applicable at the time of the planned entering into Latvia must also be considered.

LATVIA

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign which is able to distinguish the goods and services from other companies can be registered as a trademark.

Where to apply? Trademarks can be filed either with (i) the Patent Office of the Republic of Latvia, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application for registration of Latvian trademark can be submitted to Patent Office in paper form or via the online platform on Patent Office's website https://www.lrpv.gov.lv/en. Latvian Patent Office reviews the application and examines the trademark within 6 months from receiving the application. If there are no deficiencies in the application and absolute grounds for refusal of registration are not identified the trademark is registered and published in official gazette Latvijas Vēstnesis. From that moment three months long opposition period begins. Within this time period third parties can oppose the trademark.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for a ten-years- period. Registration period can be renewed for additional ten years period unlimited number of times.

Costs? Application costs for Latvian trademarks for one class are EUR 90 (additional EUR 30 are charged per additional classes). Additional fees apply, for example, fees for registration and publication of the trademark, for amendments of application, provision of registration certificates, renewal fees, etc. (full list of fees are available on Latvian Patent Office website). In addition, fees of the legal representatives apply.

Patents

What is protectable? An invention can be protected with a patent in any field of technology if the invention is new, it has an inventive step and it is susceptible of industrial application. Latvian law does not provide registration of utilitymodels.

Where to apply? Patent protection will be granted only per country, meaning that applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Patent Office of the Republic of Latvia, European Patent Office (EPO) or WIPO (in accordance with the procedure of Patent Cooperation Treaty). The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained byannual fees.

Costs? Application costs for Latvian patents for up to ten claims are EUR 120 (additional EUR 20 are charged per addition claim). Additional fees apply, e.g., fees for the grant of patent and patent publication, fee for each invention description and claims pages in excess of 10, patent maintenance fees, etc. (full list of fees are available on Latvian Patent Office website). In addition, fees of the legal and technical representative apply.

Employee invention and inventor bonus? According to the Latvian Patent Law ("Patentu likums"), the employer has the right to a patent if the invention in relation to which the patent application has been filed has been created by the employee whose work duties include activity of an inventor or research, designing and construction or preparation of technological development (the employer must exercise the right to the invention). If the duties of the employee do not comprise the above but are related to the field of activity of the employer, then the right to the patent shall belong to the inventor (employee). The employer in this case has the right to use the invention as under a non-exclusive licence without the right to grant the licence to other persons. Additional numeration (inventor bonus) for the creation and use of the inventions are determined in the employment contract of collectiveagreement.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? The appearance of the whole or a part of a product (any industrial or handicraft item) resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its decoration (ornamentation) may be protected as a design. If the design has never been disclosed (published), there is no time limit for filing an application. The disclosure of a design to the public shall not do any harm to the novelty and individual character of the design if the disclosure has taken place within a time period of 12 months preceding the filing date for the registration or the date of priority. After this period, exclusive rights to the design will be lost.

Where to apply? National designs may be registered with the Latvian Patent Office. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Applicants can also file for designs with the WIPO worldwide within Hague System for registering international designs (Latvia is party to Geneva Act).

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Application costs for designs are EUR 40 plus an additional fee of EUR 30 per each additional design if multiple design application is filed. Additional fees apply, e.g., fees for the registration and publication of a design, amendments to application, renewal fees, etc. (full list of fees are available on Latvian Patent Office website). In addition, fees of the legal representative apply.

The following IP rights cannot be registered:

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Latvian Copyright Law ("Autortiesību likums"), e.g., literary works, musical works, audio-visual works, drawings, design works and other works of authors. Copyright protection is granted immediately with the creation of a work. No registration and no label is required.

Duration of protection? Copyright protection ends 70 years after the author has passed away. Where the work is created by co-authors, the protection ends 70 years after the death of the last surviving co-author. In relation to audio-visual works, the protection ends 70 years after the death of the last of the following persons: director, author of the script, author of the dialogue, author of a musical work created for an audio-visual work.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work (economic rights of an author) and non-assignable moral rights of an author (e.g., right to authorship, decision whether and when the work will be disclosed, etc.). The authors may assign the economic rights to third parties or grant licenses to third parties for the use the works. In relation to works created in the course of employment, the copyrights to work belong to the author except if such rights are transferred to employer in accordance with a contract (employment agreement). Exception is made in relation to computer programs which have been created by an employee while performing a work assignment – in such case, all economic rights to the computer program so created belong to the employer, unless specified otherwise by contract. It is expected that in 2023 amendments will be made to the Copyright Law, which, inter alia, will specify employers' rights to the works created by employees.

Trade Secrets

What is protectable? Trade secrets as such are not classified as an intellectual property rights, however, in practice they may have the same value as conventional intellectual property rights such as patent rights. Trade secret is undisclosed information of an economic nature, technological knowledge, and scientific or any other information which conforms to the requirements of the Latvian Trade Secret Protection Law ("Komercnoslēpuma aizsardzības likums"): 1) it is secret in the sense that it is not generally known among or available to persons who normally use such kind of information; 2) it has actual or potential commercial value because it is secret; 3) the trade secret holder, under the circumstances, has taken appropriate and reasonable steps to maintain secrecy of the trade secret.

Duration of protection? As long as appropriate measures are in place, information has a commercial value and information remains a secret, trade secret protection applies.

LATVIA

DATA PROTECTION/PRIVACY

Since 25th May 2018, the General Data Protection Regulation EU/2016/679 applies in Latvia. Latvian legislator has adopted the national Personal Data Processing Law ("Personas datu apstrādes likums") which supplements the GDPR and, among others, prescribes rights and obligations of national data protection supervisory authority and includes national derogations of the GDPR. Most notably, the national law provides:

- The age for child's consent in relation to information society services has been lowered from 16 years to 13 years.
- Restriction for data subjects to receive the information specified in Art. 15 of the GDPR if it is prohibited to disclose such information in accordance with the laws and regulations regarding national security, national protection, public safety and criminal law, as well as for the purpose of ensuring public financial interests in the areas of tax protection, prevention of money laundering and terrorism financing or of ensuring of supervision of financial market participants and functioning of guarantee systems thereof, application of regulation and macroeconomic analysis. Furthermore, the national law allows to restrict rights of data subjects in other situations in accordance with Art. 23 of the GDPR.
- Exemptions for application of data subjects' rights in relation to personal data processing in official publications, for statistical purposes, for archiving purposes in the public interest, processing for scientific or historical research purposes and for data processing related to freedom of expression and information.
- That person has the right to process personal data for the purposes of academic, artistic or literary expression in accordance with laws and regulations, as well as to process data for journalistic purposes, if this is done with the aim of publishing information for reasons of public interest. If personal data is processed for respective purposes, the obligations of the GDPR are not applicable (except Art. 5 of the GDPR) if certain preconditions stipulated in national law are met.
- Limitation period for civil claims related to personal data protection violations – the claims can be brought not later than 5 years after the day of infliction of the delict but if the delict is sustained - from the day of cessation of the delict.
- Right for data subjects to obtain information about the recipients or categories of recipients of its personal data, to whom the data has been disclosed in the last 2 years.
- Exemptions regarding the use of in-vehicle dashcams and CCTV cameras (video surveillance). Mainly, it provides that the requirements of the GDPR does not apply to dashcams and CCTV if personal data processing is carried out in for personal or household purposes. Where the surveillance is carried out on a large scale or in cases where technical aids are used for structuring of information the household exemption would not apply.

The cookie usage and sending of commercial communication messages (electronic marketing messages) are regulated by Law on Information Society Services ("Informācijas sabiedrības pakalpojumu likums") which, among others, have implemented EU ePrivacy Directive's obligations prior to the GDPR becoming applicable. National cookie consent requirements follow ePrivacy Directive's wording and the recent case law of Court of Justice of European Union – cookies can only be placed on end-user's device after the user has been provided with clear and comprehensive information, in accordance with the GDPR, about the purposes of the processing and has consented to the use of cookies. Cookie consent exemption only applies in relation to so called strictly necessary cookies – consent is not required for use of cookies which are necessary for ensuring circulation of the information in the electronic communications network or for the provision of service requested by the user.

Electronic commercial communication messages are prohibited to be sent to natural person unless prior consent has been acquired from a particular individual. In relation to e-mail commercial communication activities, exemption of similar products and services applies – if the service provider within a framework of his commercial transactions, has acquired e-mail addresses from service recipients, he may use these e-mail addresses for commercial communications provided that: a) they are sent regarding similar products or services of the service provider; b) a service recipient has not objected initially regarding further use of the electronic mail address; c) service recipient in each communication is informed about rights to refuse from further use of e-mail address for this purpose (e.g., unsubscribe link is included in each marketing e-mail). Prohibitions only apply for sending commercial communications to natural persons. However, the legal persons must also be given an option to freely to refuse (opt-out) from further use of their e-mail address for this purpose.

The competent data protection supervisory authority in Latvia is Latvian Data State Inspectorate (DVI, Datu valsts inspekcija). Currently the authority follows "consult first" principle, meaning that the authority's primary goal is to educate the data controllers / processors about their obligations arising from the GDPR. The imposition of monetary fines generally is used as corrective measure in case of multiple and repeated infringements of applicable law by the same party or when the infringer is reluctant to cooperate with the authority and data subjects to ensure compliance with applicable law.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Latvia. General restrictions, particularly under data protection and copyright law apply:

- The principles of data protection law – in particular Art 22 GDPR for automated individual decision-making – must be observed in relation to the development, testing and operation of AI. Thus, the use of AI must not lead to any legal or similarly serious effects to the data subject, without any human intervention. An automated decision-making process is for example assumed, if a company uses results of an AI-application without any further quality-check and assessment. Furthermore, among other GDPR requirements, there must be a legal basis for the processing of personal data within AI system in accordance with the GDPR requirements.
- National copyright restrictions are particularly relevant for generative AI. This applies to both (i) the input data (especially web scraping) and (ii) the output of the specific AI application: The retrieval of data from the internet into set of training data may be considered as Text & Data mining which would be subject to Latvian Copyright Law (Autortiesību likums). Section 21.1 of Copyright law allows Text & Data mining insofar it does not unjustifiably limit the lawful interest of the rights holder, and unless prohibited by the rights owners in machine readable form, including through metadata. The output of AI may infringe the rights of the author of the original if the output is identical to or resembles an original source.

In the future, the AI aspects may be regulated by EU Artificial Intelligence Act (currently in the proposal form).

LATVIA

EMPLOYEES/CONTRACTORS

General: Employer and employee must conclude an employment agreement, which stipulates their rights and obligations set forth by Labour Act ("Darba likums"). The following essential terms must be agreed in every employment contract: (i) date of commencement of employment; (ii) validity of employment contract; (iii) place of work; (iv)position, job duties.; (v) remuneration. The employer registered in Latvia shall provide the payment of income tax and the social security contributions calculated from the gross remuneration.

Law on Aid for the Activities of Start-up Companies (Jaunuzņēmumu darbības atbalsta likums) provides that if a start-up meets the requirements provided in the law it may apply for fixed social security contributions payments for an employee in the amount of two minimum monthly salaries laid down by the Cabinet of Ministers (beginning from 1 January 2024, the minimum monthly salary for normal working hours has been increased to EUR 700 gross) or apply for an aid programme for attracting highly qualified employees. The maximum period for such aid programmes is 12 months.

In case of engagement of the contractors the company has to be very careful, because if the legal relationships because of their nature will be recognised as employment relationship, there is a penalty and additional payroll tax payment risks. Pursuant to the law it shall be considered that a contractor receives an income for which salary personal income tax shall be paid (and this means that the employment relationship between parties are concluded), if at least one of the following pre-conditions is established:

- the contractor has economic dependence upon the entity to whom the contractor provides services;
- not taking on financial risk in case of fulfilment of non-profitable work or in the case of a lost debtor debt; the integration of the contractor into an undertaking to which the contractor provides services. The integration into an undertaking is deemed to be the existence of a work area or a recreational area, a duty to observe and comply with the internal regulations of the undertaking and other similar features;
- the existence of actual vacation and leave for the contractor, as well as existence of applicable internal procedures for taking a vacation or leave considering the work schedule of other persons employed in the undertaking;
- the work of the contractor is carried out under the management or control of another person, and the contractor does not have a possibility to engage his or her personnel or sub-contractors in the work;
- the contractor is not the owner of the fixed assets, materials or other assets, which are used in its business activities.

Therefore, the companies must be very careful when choosing the type of legal relationship with a person (employment or contractual).

No work for hire regime: Although it is possible to use other contracting forms besides employment, i.e. independent contractors, if such regime is chosen, from IP perspective it is relevant to note that there is no work for hire regime in Latvia. Therefore, each agreement should contain a clause covering IP issues. Such clause should be as specific as possible, as otherwise courts will usually interpret the grant of rights in a quite restrictive manner (the same applies to the employment contracts where it is essential to indicate to whom the economic rights of the intellectual property are transferred, if any, and how this will be compensated, usually the remuneration provided includes also compensation for transfer of IP rights).

Termination: Employees are very well protected. Pursuant to the Labour Act, the employer may terminate employment relationship only on the grounds provided in the law (for example, material violation the employment contract, intoxication of alcohol, narcotic or toxic substances when performing work, reduction of number of employees etc.) or by submission of the respective claim to the court if the employer has an important reason (mainly, conditions which do not allow the continuation of employment relationship on the basis of considerations of morals and fairness).

The Labour Act also provided quite strict regulation on the procedure how the termination of employment relationship must be performed, in some cases the employer has to provide a severance payment for termination of employment relationship. The employees may challenge the termination of their employment relationship in the court.

In addition, certain groups of employees (eg trade union members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection.

CONSUMER PROTECTION

If the trader is aware of the consumer protection rules on the EU level, then there is little to worry about whenit comes to Latvia. Same as in the rest of the EU, the main things to avoid are – unfair contractual terms and unfair contractual practices. Both of these are prohibited and their regulation stems from harmonized EU law on consumer protection (Directive 93/13/EEC and Directive 2005/29/EC respectively). The unfair contractual terms are listed in Article 6 of the Consumer Rights Protection Law ("Patērētāju tiesību aizsardzības likums"), while the unfair commercial practices are described in the Unfair Commercial Practices Prohibition Law ("Negodīgas komercprakses aizlieguma likums").

If an unfair commercial practice is committed only in Latvia, the market surveillance authority (Consumer Rights Protection Centre) is entitled to impose a fine up to EUR 300 000, while in case of practices that affect consumers in at least 2 member states the maximum fine is 4 % of trader's turnover.

Latvia has implemented the Representative Actions Directive (Directive (EU) 2020/1828), which allows select entities to bring claims on behalf of consumers against traders for infringement of consumer rights.

In contrast to some other EU member states, Latvia has chosen to extend the product liability regime arising from Directive 85/374/EEC not only to goods, but also to certain services. This means that pursuant to the law On Liability for Defects of Goods and Services ("Par atbildību par preces un pakalpojuma trūkumiem") the producer may be liable not only for its goods that have caused injury or loss of property, but also for services that consist of manufacturing of a new tangible property, improvement or alteration of an existing tangible property or its properties, as well as for services that have a direct or indirect effect upon human life or health. This is especially important for traders who develop apps or provide digital services that improve/alter functions of smart devices, such as motor vehiclesand household devices.

TERMS OF SERVICE

Latvia has supplemented the EU list of unfair contractual terms with the principle of **legal equality**. I.e., a contractual term is unfair if it is contrary to the principle of legal equality, namely, if it:

- reduces the liability of the parties prescribed by law;
- restricts the right of the consumer to conclude contracts with third parties;
- gives privileges to the manufacturer, trader or service provider, and restrictions to the consumer;
- puts the consumer in a disadvantageous position and is contrary to the requirements of good faith.

Same as with the other unfair contractual terms, the consequence of including it is invalidity of such term.

When it comes to digital products, the trader should carefully determine whether its product qualifies as a digital service, digital content, or part of goods with digital elements. Each of these has a distinct legal framework applicable, and improper qualification may lead to invalidity of economically important elements of the terms of service.

WHAT ELSE?

Support for start-ups: Latvia has adopted Law on Aid for the Activities of Start-up Companies ("Jaunuzņēmumu darbības atbalsta likums") to promote the formation of technology companies, i.e., startups, in Latvia and promote research development and commercialization of innovative products. Startups which fulfill the criteria of this law (inter alia, it requires that qualified venturecapital investor has made capital investment in the company) may apply to specific aid programs – aid program for attracting highly qualified employees, aid program for making fixed employees' mandatory social security contribution, and employees' personal income tax relief.

Strict jurisdiction: Latvian courts and administrative bodies are rather strict when it comes to protection of employees and consumers, and compliance with anti-money laundering (where company is subject to AML regulations) and sanctions regulations. For businesses, the risk of non-compliance in these fields of law is rather high. It is thus recommendable to focus on these topics first, when rolling out a business in Latvia.

Remote work and flexible working hours: Remote working and flexible working time have become extremely popular in employment relationships, and especially in start-ups. But employers need to bear in mind that the protection of confidential information, including trade secrets, and the rules on how to work remotely, including the workplace in case of remote working (for example, assessing whether a restriction on working from abroad is necessary), are becoming extremely important.

LITHUANIA

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LITHUANIA

LEGAL FOUNDATIONS

The Lithuanian legal system is principally based on the legal traditions of continental Europe, and thus follows the civil law system. Substantive branches of the Lithuanian law are codified in codes (e.g., Civil Code, Labor Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, etc.). The regulatory system includes the Constitution, constitutional laws, other laws, as well as the implementing legal acts. International treaties and conventions automatically become part of the Lithuanian legal system from the moment of signing, accession, or ratification.

The courts are obliged to take into consideration published decisions of the Supreme Court and the Supreme Administrative Court of Lithuania, as well as when ruling in the relevant categories of cases, the courts are bound by their own precedents – decisions in analogous cases.

Lithuania is a member of the European Union (EU) since 1 May 2004. Accordingly, the EU regulations and decisions become binding automatically in Lithuania on the date they enter into force, and EU directives are incorporated into the national legislation of Lithuania.

CORPORATE STRUCTURES

Typical structures for Lithuanian entities are as follows:

A Private Limited Liability Company

According to the statistics provided by the Register of Legal Entities, a private limited liability company (in Lithuanian: uždaroji akcinė bendrovė) is one of the most popular form of companies in Lithuania which may engage in any legitimate activities or in licensed activities upon obtaining the respective license. A private limited liability company is a private legal entity with limited civil liability, i.e., the company's assets are separated from those of shareholders. However, when a legal person is unable to fulfil an obligation due to the fraudulent actions of a participant of the legal person, the participant of the legal person is also liable for the legal person's obligation with their assets.

The share capital of a private limited liability company is divided into shares and must be at least 1,000 euros. The company must have a general meeting of shareholders and a single management body - the company's chief executive officer (CEO). Management board (consisting of at least 3 members) and/or supervisory council (consisting of 3-15 members) are optional bodies. There are no residence requirements to the company's CEO and/or other members of other management bodies.

CORPORATE STRUCTURES, CONT'D

Moreover, both natural and legal persons can be the founders and shareholders of the company. Each shareholder in the company has such rights as are granted to them by the shares of the company they own. Under the same circumstances, all shareholders of the same class have the same rights and obligations. Shareholders can pay out the profit earned by the company only through dividends or by receiving a salary, in which case employment related taxes will apply.

A Small Partnership

Another common form in Lithuania is a small partnership (in Lithuanian: mažoji bendrija). The members of a small partnership may be held liable for the obligations of the small partnership only in the event of fraudulent actions of the members.

A small partnership is a private legal entity, all of whose members are natural persons. A small partnership cannot have more than 10 members. Profits of a small partnership may be distributed to its members before the end of the financial year. In the absence of clear voting and profit-sharing arrangements, it may be more difficult to resolve disputes among members of a small partnership.

There is no requirement to form the minimum capital of a small partnership (as opposed to a private limited liability company). The management structure of the small partnership may be (a) the meeting of the members where the representative of the small partnership is elected (however, decisions are made in all cases by a meeting of members); or (b) the meeting of the members and the chief executive officer (CEO).

Finally, members have a right to voluntarily leave the business: a member of a small partnership may leave the partnership by withdrawing their contribution or by selling / transferring their membership rights.

Comparison of a Private Limited Liability Company and Small Partnership

Private Limited Liability Company

Establishment: Establishment is possible electronically through the self-service system of the Register of Legal Entities or through a notary. Founders can be both individuals and/or legal persons.

Small Partnership

Establishment: Establishment is possible electronically through the self-service system of the Register of Legal Entities or through a notary. Only natural persons/individuals (1-10 members) can be founders.

Liability: Limited civil liability. The property of a legal entity is separated from the property of shareholders/members. The owners are liable for the obligations of the legal entity only for the amount that they must pay for the shares or with their own contributions, except in the event of failure to fulfil obligations due to fraudulent actions.

Capital and contributions The share capital must not be less than EUR 1,000. The share capital is divided into shares, which are paid in cash and / or non-monetary contribution owned by a shareholder.

Capital and contributions There is no minimum capital requirement. Contributions of members of a small partnership can be monetary or non-monetary.

CORPORATE STRUCTURES, CONT'D

Comparison of a Private Limited Liability Company and Small Partnership, CONT'D

Private Limited Liability Company

Structure: A private limited liability company must have a general meeting of shareholders and a company's chief executive officer. In addition, a supervisory board and a board may be formed, however, not mandatory.

Company chief executive officer: It is mandatory to elect the company's chief executive officer. The employment contract is signed with the company's chief executive officer.

Decision making: If all voting shares have the same nominal value, each share carries one vote at the shareholders meeting.

Small Partnership

Structure: The management structure can be twofold:

- only the meeting of the members of a small partnership, where the representative of a small partnership is elected (however, decisions are made in all cases by a meeting of members);
- the meeting of the members of a small partnership and the company's chief executive officer.

Company chief executive officer: It is not mandatory to elect the company's chief executive officer. If a chief executive officer is elected, a civil contract is signed with the company's chief executive officer.

Decision making: One member has one vote, but if a small partnership has a chief executive officer, a small partnership's articles of association may specify a different voting procedure.

Last, but not least, there are other legal forms (such as, e.g., public limited liability company, sole proprietorship, etc.) but the legal forms discussed above are the most frequently used in Lithuania and most often chosen by startups.

ENTERING THE COUNTRY

Pursuant to Lithuanian law, there are a few investment restrictions to be aware of for investors when entering the country.

Permission of the Competition Council

The expected concentration (i.e., merger or acquisition of control) must be notified to the Lithuanian Competition Council (LCC) prior to its implementation and the permission must be obtained if the combined aggregate income (without VAT) received in Lithuania in the business year before the concentration exceeds EUR 20,000,000 and the aggregate income of each of at least two undertakings concerned in the business year before the concentration exceeds EUR 2,000,000. The concentration cannot be implemented until the permission of the Lithuanian Competition Council is obtained.

ENTERING THE COUNTRY

Verification of investors' compliance with national security interests

Investors willing to invest into companies important for national security, which operate in Lithuania's strategically important economic sectors, must obtain the clearance from the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security.

Economic sectors strategically important for national security are:

- energy;
- transport;
- information technologies, telecommunications and other high technology;
- finance and credit;
- military equipment.

The verification of the investor is carried out on the basis provided by the law, which are:

- when the investor transfers equipment or assets important for ensuring national security or pledges equipment or assets important for national security to secure their claims, or mortgages them;
- when the investor acquires the relevant shares of companies important for ensuring national security or when concludes agreements on the transfer of voting rights and acquires the right to exercise the non-property rights of the shareholder;
- when the investor purchases the respective parts of the convertible bonds of companies important for ensuring national security;
- when the investor, in accordance with the procedure established by law, transfers the assets specified in the security plan of the company important for ensuring national security;
- when the investor, in order to secure their claims, pledges the assets specified in the security plan of the company important for ensuring national security, or establishes a mortgage on these assets to secure these claims.

During the verification, the investor's compliance with the criteria established by the law is assessed. If the investor is considered not to meet the interests of national security, the investor is not allowed to enter into an agreement. There may also be conditions which, if fulfilled, would eliminate the reasons causing risks to national security, thus allowing the execution of the agreement/action under consideration.

LITHUANIA

INTELLECTUAL PROPERTY

The following IP rights are registered:

Trademarks

What is protectable? A mark (words, including personal names, designs, letters, numbers, colors, the shape of goods or their packaging, sounds, etc.) with the purpose to distinguish between the goods or services of one person and the goods or services of another person and which can be recorded in the register.

Where to apply? Trademark applications can be filed either with (i) the State Patent Office of the Republic of Lithuania, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The procedure for registration of a Lithuanian trademark is similar to the procedure before the EUIPO. The registration process takes about 4-8 months, but the temporary protection of the mark applies from the publication of the application. One of the stages of registration is 3 months' time limit within which the persons concerned may lodge oppositions if they consider that the mark to be registered may be in conflict with their prior rights. If no oppositions are received, the trademark is registered and the registration is published. The application of a Lithuanian trademark can be easily filed via the online platform on https://vpb.lrv.lt/en/services/trademarks. In any case, before filing an application it is strongly recommended to perform a scan of the existing trademarks and other business identifiers.

Duration of protection? The trademark registration is valid for ten years. It can be extended for a period of ten years an unlimited number of times.

Costs? Application costs for a Lithuanian trademark for one class amount to EUR 180 (plus EUR 40 per each additional class). In addition, fees of the legal representative apply.

Patents

What is protectable? Inventions in the field of technology are patentable. This requires that the invention is novel, not obvious to a skilled professional and can be applied in industry.

Where to apply? Patent protection is territorial, meaning that applicant must register the patent in each country where protection is sought. Patent application can be filed with either the State Patent Bureau of the Republic of Lithuania, European Patent Office, or WIPO. In any case the protection granted to an invention by a patent is valid only in the territory of the country where the patent was obtained. The application of a Lithuanian patent can be filed online on https://vpb.lrv.lt/en/services/inventions.

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained by annual fees from third year.

Costs? Application costs for a Lithuanian patent for up to 15 claims amount up to EUR 86, every additional claim fee is EUR 14. In addition, fees of the legal and technical representative apply.

Unitary Patent and Unified Patent Court.
As of 1 June 2023, the Unitary Patent system has taken effect in the European Union countries, including Lithuania. The system makes it possible to get patent protection in the EU Member States having ratified the Agreement on a Unified Patent Court (UPC Agreement) by submitting a single request to the European Patent Office.
More information on Unitary Patent and Unified Patent court is available here:
https://www.epo.org/en/applying/european/unitary/unitary-patent

LITHUANIA

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? An image of the whole product or part of it, consisting of specific features of the product and/or its ornamentation – lines, contours, colors, shape, texture and/or material can be protected as design, if it is new and has individual characteristics.

Where to apply? National designs may be registered with the State Patent Bureau of the Republic of Lithuania. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the State Patent Bureau or EUIPO applicants can also file for designs with the WIPO worldwide as Lithuania is party to the Hague System for registering international designs. The application of a Lithuanian trademark can be easily filed via the online platform on: https://vpb.lrv.lt/en/services/design.

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Filing fee for a Lithuanian design application is EUR 69, plus an additional fee of EUR 26 for 11th and each subsequent design per class, and EUR 69 fee for registration and publication of design for a single design application. In addition, fees of the legal representative apply.

The following IP rights are not subject to registration:

Copyright

What is protectable? Copyright objects are original literary, scientific and artistic works that are the result of creative activity expressed in some objective form. Copyright protection is granted immediately with the creation of a work. No registration and no label required. An author can attach a copyright notice to the work, such as "all rights reserved" or the © symbol – together with the year the work was created and the name of the author.

Types of rights: Authors have economic rights (exclusive rights to allow or prohibit reproduction, publication, translation, adaptation, arrangement, dramatization or other transformation of a work, distribution of the original or copies of a work to the public, public display, etc.) and moral rights (the right of authorship, the right to the author's name, and the right to inviolability of the work).

Duration of protection? Economic rights are valid for the entire life of the author and for 70 years after their death, moral rights – for an indefinite period.

Trade Secrets

What is protectable? Trade (commercial) secrets are protected under the Civil Code and the Law on Legal Protection of Commercial Secrets of the Republic of Lithuania. A trade (commercial) secret is information that is not public, possesses commercial value or its loss would be commercially harmful, and the person takes adequate measures to protect such information.

Protection measures: The protection measures should be adequate to the type and value of the information and may include (a) organisational measures, such as non-disclosure agreements (NDAs) with employees, partners, other third parties, in certain cases non-competition agreements with employees, approval of the list of trade (commercial) secrets, internal rules and regulations, determination of access rights, etc., and (b) technical measures, such as IT security measures, passwords, physical security, etc.

Duration of protection? Trade (commercial) secret protection applies as long as appropriate measures are in place, the information is kept non-public, and it has a commercial value.

LITHUANIA

DATA PROTECTION/PRIVACY

The General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) is the main legal act applied directly, regulating and stipulating the general rules for data protection in Lithuania. The GDPR is supplemented by the Law on Legal Protection of Personal Data of the Republic of Lithuania (Personal Data Protection Law). If businesses do not have any presence (as data controller or data processor) in Lithuania, the Personal Data Protection Law is not applicable.

The relevant Lithuanian particularities determined in the Personal Data Protection Law are the following:

- National identification number (personal code) can be processed when at least one of the bases stated in Article 6 of the GDPR are met. It is forbidden to publish personal code and to process it for direct marketing purposes.
- If personal data is being processed for journalistic purposes and the purposes of academic, artistic, or literary expression Articles 8, 12–23, 25, 30, 33–39, 41–50, 88–91 of GDPR are not applied.
- The employer cannot process personal data concerning convictions and criminal offenses of a candidate or employee, except where such personal data are necessary for the purpose of verifying compliance with the laws and regulations in force for work position.
- The employer can collect personal data relating to the qualifications, professional abilities, and business qualities of a candidate from the former employer only after informing the candidate about such data collection and from the current employer only with the consent of the candidate.
- The employer must inform employees in writing or other means by submitting the information referred to in Article 13 (1) and (2) of GDPR, regarding any surveillance performed on employees (video or audio recording, reading of employee letters, etc.).
- The child must be 14 years old to give his / her consent in relation to information society service.

In Lithuania data protection supervision is divided between two supervisory authorities:

- The main supervisory authority is the State Data Protection Inspectorate (in Lithuanian: Valstybinė duomenų apsaugos inspekcija); and
- The Office of the Inspector of Journalist Ethics (in Lithuanian: Žurnalistų etikos inspektoriaus tarnyba) is supervising data protection when data is processed for journalistic, academic, artistic, or literary expression purposes.

Direct marketing and cookies

The Personal Data Protection Law defines direct marketing as an activity intended for offering goods or services to individuals by post, telephone, or any other direct means and/or for obtaining their opinion about the offered goods or services.

The Electronic Communications Law of the Republic of Lithuania requires opt-in consent (as defined in the GDPR) before engaging in direct marketing activities in respect of any natural or legal persons. Nevertheless, the Electronic Communications Law provides for an exception – direct marketing e-mails may be sent on an opt-out basis to the current customers, whose data were received in the context of the sale of a product or a service provided that customers clearly and distinctly were given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when such data were collected and on the occasion of each message in case the customer has not initially refused such use.

Also, prior consent is required for setting cookies which are not necessary for the provision of the service, irrespective whether personal data is processed or not. Thus, opt-in is required for all marketing, analytics, etc. cookies.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in Lithuania. The general rules, including those under data protection and copyright law, apply.

Once adopted and in force, the EU AI Act will apply to Lithuania. More information on the EU AI Act is available here: https://artificialintelligenceact.eu/the-act/

LITHUANIA

EMPLOYEES/CONTRACTORS

General: There are two main options how a natural person could provide services or work functions for another person:

According to civil contract. This option is allowed only if there are no employment elements. In such case, a natural person performs individual activity for a client and such natural person is basically regarded as a businessman/self-employed. There are various types of civil contracts depending on the content of the agreement, the obligations between the parties and other circumstances. Civil relationships are not regarded as employment relationships and both parties are considered as independent businesses. Civil relations are regulated more flexibly than employment relationships, and as a general rule, the parties of a civil contract can agree on work for hire regime, the procedure and conditions for termination of the contract, and other aspects.

According to employment contract. This option is mandatory, if there are employment related elements, such as, including, but not limited to: (i) continuous type of job functions; (ii) remuneration based on constant/fixed size; (iii) natural person's subordination, control, obligation to comply with internal regulations and orders of supervisors; (v) natural person's integration into the internal structure of the company; (vi) provision of work equipment.; (vii) lack of independency when working, etc. If employment elements exist, not civil, but an employment contract must be concluded. Employment relationships provide wider economic, social and legal guarantees for employees. Labor laws regulate various aspects of employment relationships and cover minimum employment standards which must be followed, including terms and conditions for conclusion, execution and termination of employment contract, occupational health and safety, maximum working time and minimal rest time, minimal wage, social partnership aspects, etc. In general cases, it is not allowed for the parties of employment contract to deviate from the mandatory labor law provisions, except specific cases (e.g., when employee's salary is bigger than 2 average national monthly gross wages).

Conclusion of a contract: If a civil contract could be concluded, then: (i) a person should register his/her individual activity in Lithuania, before concluding the contract; (ii) it is recommended to conclude a written civil contract to avoid risks of recognizing illegal work.

If an employment contract must be concluded, then: (i) a written employment contract, which complies with the Labor Code and other laws of Lithuania, must be concluded; (ii) before the start of employment, employer must provide the information about employee's employment to Social Security Fund of Lithuania (so the employee is covered by state social insurance); (iii) employer must inform the employee about working conditions, health and safety aspects, etc.

Payment of taxes and social security contributions: If the civil contract could be concluded, then the contractor declares and pays taxes and social security contributions by themself.

If an employment contract must be concluded, then the employer is responsible for proper calculation, deduction, declaration and payment of taxes, social security and other contributions.

Work for hire regime: Parties of a civil contract could agree on work for hire regime. Meanwhile, labor laws of Lithuania do not determine such work for hire regime option in employment relationships. Any employment contract should contain a working time norm in hours per day, week or another period, as the failure to comply with this working time norm may lead to various risks (e.g., overtime for exceeding working time norm). However, despite work for hire regime is not explicitly allowed in Lithuania, parties of employment contract may agree on different working time regimes (e.g., summary working time regime, flexible working time regime, individual regime, etc.).

Termination: Generally, a civil contract could be terminated according to terms and conditions provided in a civil contract.

Employment contract could be terminated only according to imperative grounds and reasons provided in the Labor Code and other laws of Lithuania, following the established procedures, terms, restrictions, and other rules. The grounds, procedures, terms, restrictions, and other rules of termination of employment contract depend on the specific existing reasons of termination. The most liberal ground of termination is the termination by the will of employer due to non-discriminatory and other specifically determined reasons, by informing the employee 3 working days in advance and paying a compensation of 6 average wages. Certain groups of employees (e.g., pregnant employees, employee's having young children, etc.) are provided with particular guarantees restricting their dismissal under specific grounds. If an employee is dismissed from work in the absence of a legal basis or in violation of the procedure established by laws, such dismissal could be recognized as being unlawful.

LITHUANIA

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STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

Lithuania has transposed the EU directives regulating consumer rights. Thus, the consumer protection law is rather strict in Lithuania as in all the EU countries.

The protection of consumer rights in the Republic of Lithuania mostly is governed by the Law on the Protection of Consumer Rights, the Civil Code (Chapter XVIII1 of Book 6), the Law on the Prohibition of Unfair Business-to-Consumer Commercial Practices. Other laws that a start-up may also be subject to are the Law on the Safety of Products, the Law on Advertising, other provisions of the Civil Code, the Law on the Information Society Services, the Rules of Retail Trade, the Product Labelling and Price Indication Rules, as well as other more general legislation. Specific legislation, hygiene standards and other requirements may also apply, depending on the product or service being offered.

These laws apply to all activities targeted to Lithuanian consumers (e.g., language, delivery to Lithuania, etc.), irrespective where the entity resides.

In the business-to-consumer (B2C) sector, businesses must guarantee the right of consumers to obtain information, to choose the seller or service provider of products or services, to purchase and use products or services, and must ensure that the products and services the consumers choose are safe and of high quality. The businesses are also required to observe fair business practices and to otherwise ensure the protection of consumer rights.

In the event of a breach of consumer protection legislation, consumers have the right to appeal to consumer dispute resolution bodies or to a court of general jurisdiction, and the public interest of consumers can be protected by the Consumer Rights Protection Authority and other institutions in the cases determined by law. At the request of a consumer, a consumer association or a state or local authority, the Consumer Rights Protection Authority also examines consumer contracts to identify unfair terms, and if it finds that a consumer contract contains an unfair term, it obliges businesses to refrain from applying it and to conclude a new contract and further perform the already concluded consumer contracts.

Failing to comply with consumer protection requirements can result in a legal dispute, administrative and financial costs, and fines of up to 3% of the business's annual revenue for the previous fiscal year, however not exceeding EUR 100,000, and in the event of a repeated infringement in the same year - up to 6% of the business's annual revenue for the previous fiscal year, however not exceeding EUR 200,000. For widespread infringements (i.e., affecting consumers in at least three EU Member States) or EU-widespread infringements (i.e., harming the collective interests of consumers in at least two-thirds of all EU Member States, accounting, together, for at least two-thirds of the population of the EU), a fine of up to 4% of annual revenue in the Member State concerned, or up to EUR 2 000 000, may be imposed on the business.

On-line activities and consumer rights

All websites must contain the following legally required information about the operator of the website:

- the name of a legal or natural person,
- the address of the registered office or residential address,
- contact details, including email address,
- the public register in which the data are collected and stored, the registration number or similar identification in that register if the person is required to be registered with the public register,
- the details of the authority supervising a person's activities (where the activities are subject to supervision),
- VAT payer's number if the person is a VAT payer,
- if the person is engaged in regulated activities or is required to have special permits or certificates (such as a food business licence, phytosanitary certificate, etc.), the details of these.

The consumer rights for distant (off-premises) contracts are regulated by the Civil Code. According to the Civil Code, a consumer may withdraw from a distant contract within 14 days since the day of delivery. Seller must inform a consumer about his/her right to withdraw the contract, otherwise a consumer can return the item within 12 months of the delivery. Some exceptions are applicable to the consumer right to withdraw, e.g., sealed goods which are not suitable for return due to health protection or hygiene reasons cannot be returned if goods were unsealed after delivery. Upon withdrawal of a contract, the seller must reimburse all the sums paid by the consumer, including the delivery costs paid by the consumer. The return costs are to be paid by the consumer.
Certain specific requirements are applicable to the sale of digital content or services.

TERMS OF SERVICE

Terms of Service constitute a contract between the service provider/seller and the client, and to be enforceable the will to enter into the contract by both parties has to exist. As a matter of practice, the will of the client is expressed through a tick-box. The consumer must have a real opportunity of becoming acquainted with the terms before the conclusion of the contract.

Information to be provided in B2C Terms of Service

In B2C cases, the stricter consumer protection rules apply (please see the answer to question 7). The information to be provided by a business to consumer before entering into a contract on-line includes the following:

- main terms of the contract, including payment and delivery arrangements, a reminder of the statutory warranty,
- information about the right of withdrawal (conditions, time-limits and procedures for implementing this right) as well as a model form of withdrawal or information to the effect that the consumer is not entitled to the right of withdrawal or, where appropriate, the circumstances in which such right of withdrawal is forfeited,
- in case of digital content: (a) functional properties of the digital content, including any technical protection measures applied; (b) compatibility of the digital content with hardware and software to the extent to which the trader is/should be aware; (c) information on updates (including security updates) that are necessary to keep the digital content in conformity,
- the procedure for handling by the trader of consumer complaints, contacts of the State Consumer Rights Protection Authority which handles the consumer complaints in an out-of-court manner, and reference to the EU online dispute resolution platform: http://ec.europa.eu/odr/.

Also, the business must give the consumer confirmation of the contract on a durable medium within a reasonable time after the date of the contract but in any event not later than the time of delivery of the products or the beginning of performance of the services.

In case of an online marketplace, the online marketplace service provider must additionally provide the following: (a) general information on the main parameters used to rank the products offered in response to the consumer's search request, including a relative importance of those parameters as compared to the other parameters; (b) whether the products, services or digital content are offered by the trader; (c) information that no consumer protection requirements are applicable to contracts where the person offering products, services or digital content is not a trader; (d) information on the allocation of contractual obligations between the person offering products, services or digital content and the provider of online marketplace services.

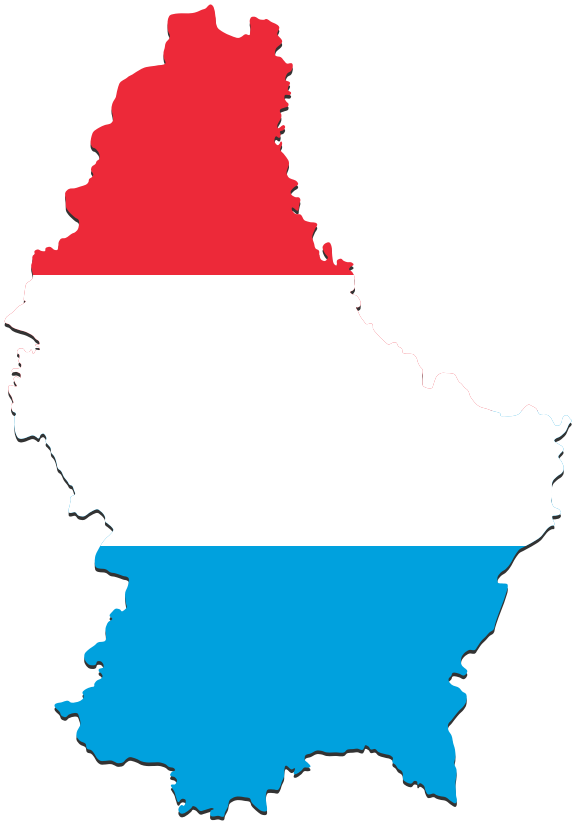
Unfair B2C contract terms

The business must ensure that the B2C Terms of Service do not contain unfair contract terms, including those that: (a) exclude or limit the trader's liability for damage in the event of the death of or personal injury to the consumer or damage to the consumer's property; (b) enable the business to alter the Terms of Service unilaterally without a valid reason or grounds specified in the Terms of Service; (c) permit the business to unilaterally alter any characteristics of products or services, etc.

WHAT ELSE?

Lithuania currently has over 265 fintech companies operating locally. The country has well-developed regulatory environment with experienced specialists in regulatory authority – Bank of Lithuania as they are responsible for the supervision of the largest fintech country in the whole European Union with over 150 licensed fintech companies. A high number of fintech companies created a talent pool for fintech companies making Lithuania an excellent choice for fintech companies considering their establishment in Lithuania.

Also, in the past few years Lithuania has been considered as of the most friendly countries for cryptocurrency companies. Since Estonia recently made crypto licensing much more difficult by implementing strict AML and other legal requirements, Lithuania has created the necessary legal environment for crypto business. Regarding the legal base, Lithuania falls in the middle between the countries that issue a full crypto license, and countries which do not regulate these activities at all. Lithuanian companies which notify regulator about their crypto activities are able to 100% legally and fully compliant with EU laws provide crypto related services. It is important to note that Lithuanian laws can be viewed as significantly more flexible in terms of the business setup and daily operations. That is why currently the biggest crypto exchanges of the world are choosing Lithuania as their main service hub.



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LEGAL FOUNDATIONS

Luxembourg's legal system is based on the civil law tradition. This means that its legal structure is primarily derived from written codes and legislation, that are constantly updated, and which are applied and interpreted by judges.

The organization of the Luxembourg legal structure is based on the nature of the dispute and divided into the following two main branches:

Private law: It governs relationships between individuals and/or private legal entities or relate to them (contracts, warranty, liability, etc.). This branch is composed of civil law, commercial law, criminal law, and employment law. The most important source of law in this context is the Luxembourg Civil code, but there are many more laws for each specific field.

Private law is governed by the judicial order, composed of three layers: (a) three Justices of peace which handle matters that do not exceed EUR 2,000.- for a decision at first and last instance or EUR 15,000.- for an appeal (in Luxembourg City, Esch-sur-Alzette and Diekirch), two District courts (in Luxembourg City and Diekirch), and the Superior Court of Justice (in Luxembourg City), composed of the Court of appeal, the Public Prosecutor's Office and the Court of cassation.

Public law: It governs any relationship involving a public authority, i.e. state administration, municipality, public company and establishment.

Public law is governed by the administrative order, composed of an administrative tribunal and administrative court, both in Luxembourg City.

Social security law could be considered as a third branch of law, which governs relationships with social security bodies. Claims for social security benefits should thus be taken before the social jurisdictions, which consist in the social security arbitration board and the superior council of social security.

Finally, the Luxembourg **Constitutional court** (Cour constitutionnelle) is composed of judges from the different orders above and it verifies the compliance of the law vis-à-vis the Constitution, which is the supreme norm of the country.

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STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Luxembourg law knows a multitude (this is often referred to as a "broad toolbox") of corporate forms, therefore it is advisable for a start-up to consult a legal advisor to check which form is best suited for its specific goals and purposes. It is worth noting that virtually all of them allow the start-up to start operations directly as of incorporation, as they acquire legal personality the day they are incorporated and there is thus no need to wait until their registration with the commercial register or other similar public registry. In addition, since Luxembourg is a multilingual jurisdiction, it is common for service providers to be fluent in English, French and German (so that the incorporation documents and any other documents a start-up needs during its lifecycle can be prepared in the aforementioned languages).

That being said, very often start-ups opt in practice for the private limited liability company (société à responsabilité limitée, hereafter S.à r.l.) given its flexible framework and comparatively low operational costs.

The main characteristics of the S.à r.l. are:

- It may have one or more shareholders, with an upper limit of one hundred (if that limited is reached, it needs to convert into another corporate form).
- The minimum share capital is EUR 12,000 (or equivalent in any convertible currency). The share capital has to be entirely subscribed and fully paid-up. This is considerably less than for the public limited liability company (société anonyme, hereafter S.A.), which has a minimum share capital of EUR 30,000.
- Unlike for a S.A., contributions in kind (i.e. contributions other than cash) by shareholders do not require the preparation of an audit report from an independent auditor, which report has cost and timing implications.

In 2016, the Luxembourg legislator has also introduced the so called simplified private limited liability company (société à responsabilité limitée simplifiée, hereafter S.à r.l.-S) which has a minimum share capital of only EUR 1,00. While thus at first sight quite attractive for start-ups, they should keep in mind that (i) a S.à r.l.-S cannot be a pure holding company and (ii) its shareholders can only be physical persons – which can become a roadblock for cross-border future fundraising efforts.

Finally, while partnerships such as the S.C.A. (partnership limited by shares), S.C.S. (simple limited partnership) and S.C.S. (special limited partnership) have a very flexible contractual framework, they are more rarely chosen by start-ups given the necessity to have at least two shareholders from the start, i.e. one general partner (actionnaire commandité), who is liable indefinitely for the obligations of the company (and thus, to limit that unlimited liability, will in turn very often be a limited liability company), and one limited shareholder (actionnaire commanditaire), having a liability that is limited to the amount of its contribution/commitment. This setup thus entails comparatively high set-up and administration/running costs. However, especially once the start-up has reached a certain growth stage, partnerships are sometimes used as pooling vehicles for employees of the start-up/of its group companies given that they allow for a separation of control and managing powers (vested in the general partner, itself controlled by the start-up or its founders) from rights which are of purely financial nature (for the employees).

LUXEMBOURG

ENTERING THE COUNTRY

According to law of 14 July 2023 (Law) which introduced a Foreign Direct Investment (FDI) screening mechanism, certain investments made by foreign investors (i.e., from a third country outside the EU/EEA) must request prior approval of the Ministry of the Economy before being implemented.

This is applicable to investments that enables the foreign investor to participate directly or indirectly, either alone (i.e., acquisition of at least 25% of the voting rights) or together with others (via voting agreements) in the control of an entity established in Luxembourg, which is active in certain sectors considered as critical, such as energy, transport, health, communication, as well as related activities that can grant access to sensitive information or premisses of the critical activities.

Should the foreign investor fail to request prior authorisation, the Ministry of the Economy can impose administrative measures and sanctions, including ordering the foreign investor to modify or restore the previous situation.

INTELLECTUAL PROPERTY

Intellectual property rights that require registration:

Trademarks

What is protectable? Any sign that is available, (i) which can be represented graphically, and (ii) which is able to distinguish the goods or services of a company from those of other undertakings, may be registered as a trademark. One can distinguish three types of trademarks: word/verbal trademarks, figurative trademarks and semi-figurative trademarks which are a combination of the two first. A trademark may for example consist of a simple word, drawings, symbols, numerals, three-dimensional signs such as the shape or packaging of the product, sound signs such as musical or vocal sounds, perfumes, or colours.

Where to apply? There is no national protection for trademarks in Luxembourg. Trademarks can be filed either with (i) the Benelux Office of Intellectual Property (BOIP), (ii) the European Union Intellectual Property Office (EUIPO), or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application of a Benelux trademark for the three Benelux countries (Belgium, Netherlands, and Luxembourg) is very similar to the one before the EUIPO. A BOIP trademark application can easily be filed via the online platform on: https://www.boip.int/en/entrepreneurs/trademarks/register-a-benelux-trademark#step-4. The BOIP reviews the application and publishes the trademark if all minimum requirements for the trademark registration are met and if no absolute grounds for refusal have been identified. The BOIP does not examine whether earlier trademarks or rights to signs of third parties' conflict with the application. After the BOIP's publication of the trademark in the gazette, the opposition period begins, during which any third party may file an opposition against the registration of the trademark. Such period is of two (2) months in case of a BOIP registration, contrary to the procedure before the EUIPO, where the duration of the opposition period is three (3) months.

Duration of protection? If no opposition is filed, the trademark is officially registered. The registration remains valid for a period of ten (10) years, which can be extended for an unlimited number of successive periods of ten (10) years.

Costs? Application costs for a Benelux trademark for three (3) classes amount to EUR 352.-. EUR 81.- are charged per additional classes.

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INTELLECTUAL PROPERTY

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Patents

What is protectable? To be protectable, inventions must be (i) novel, (ii) involve an inventive step, and (iii) be capable of industrial application, even when they relate to a product composed of or containing biological material, or to a process for producing, treating, or using biological material. Biological material isolated from its natural environment or produced using a technical process may be the subject of an invention, even when it pre-existed in its natural state[1].

Where to apply? Patent applications can be filed either with (i) the Luxembourg Intellectual Property Office, (ii) the European Patent Office (EPO) or (iii) the WIPO, depending on the territories in which trademark protection is sought. The application for a patent in Luxembourg is filed with the Luxembourg Intellectual Property Office via the Luxembourg section of the Benelux Patent Platform. A Luxembourg patent application is not examined for patentability before the patent is granted and no verification of the accuracy of the description of the patent provided by the applicant is undertaken by the Office. This means that the application will not be rejected because it may not fulfil the patentability requirements (i.e. novelty, inventive step and industrial applicability). The title constituting the patent is granted after eighteen (18) months by the Minister in the form of an order which will be entered in the register and published in the Mémorial, Recueil administratif et économique.

Duration of protection? The maximum duration of the protection is twenty (20) years from the date of application of the patent.

Costs? The application fee for a national patent is EUR 40.-. This fee must be paid within one month of filing the application. For the establishment of a research report, if requested by the applicant, additional EUR 450.- will be charged by the Luxembourg Intellectual Property Office.

[1] Article 4 of the law of 20 July 1992 amending the system of patents, as amended (hereinafter the "1992 Law")

INTELLECTUAL PROPERTY, CONT'D

Patents, CONT'D

Specificities applicable in case of an employee invention? According to the 1992 Law, the invention belongs to the employer when it is made by the employee in the performance either of an employment contract including an inventive task corresponding to his actual duties, or of studies or research explicitly entrusted to him. The same applies when the invention is made by an employee either in the course of the performance of his duties, or in the field of the company's activities, or through the knowledge or use of techniques or means specific to the company or data provided by it. In that respect, the 1992 Law provides for a specific provision stating that where the employer makes a significant profit from the patent developed by an employee, the employer is obliged to grant the inventor (i.e. employee) an equitable share of the profit thus made. All inventions not covered above and developed by the employee on its own initiative and outside working hours, naturally remain the property of the latter.

Designs or models

What is protectable? A design (i.e. two-dimensional, such as patterns, lines or colours of a product) or model (i.e. three-dimensional such as the shape or texture of a product) is only protected insofar as (i) it is new and (ii) has an individual character.

Where to apply? As for trademarks, there is no national protection for designs and models in Luxembourg. They may be registered with (i) the BOIP, (ii) the EUIPO, or (iii) the WIPO, depending on the territories in which the model or design protection is sought. The application of a Benelux design or model for the three Benelux countries (Belgium, Netherlands, and Luxembourg) is very similar to the one before the EUIPO. A BOIP design/model application can easily be filed via the online platform on https://www.boip.int/en/entrepreneurs/designs/register-a-design. The BOIP analyses the application in view of its formal requirements and, if they are respected, the application is published and registered.

Duration of the protection? The term of protection is five (5) years and can be renewed four times for additional periods of five (5) years. The maximum term of protection is thus twenty-five (25) years.

Costs? The registration of a simple design or model in Benelux amounts to EUR 150.-. The amount increases in case of multiple filings.

Intellectual property rights that do not require registration:

Authors' rights and related rights

What is protectable? Authors' and related rights apply to original literary, musical, artistic, or audiovisual works, including photographs, computer programs and databases. To be protected by those rights, the work must (i) be sufficiently original and (ii) have taken form (which excludes ideas or concepts).[1]

Duration of protection? The protection begins immediately after creation and ends seventy (70) years after the author has passed away.

Specificities applicable in case of employment: Contrary to other countries, there is in Luxembourg no automatic transfer of authors' and neighbouring rights created by an employee in the context of its employment to the employer. The transfer of such intellectual property rights must therefore be explicitly foreseen in the employment agreement or any other legal act between the parties. Such contractual provisions should be as specific as possible, as courts will interpret the grant of rights in a restrictive manner. If such transfer is not contractually foreseen, the employer may only use authors' rights and neighbouring rights after having received the explicit consent of the owner of the relevant rights (i.e. the employee). However, it should be noted that the law of 18 April 2001 on authors' rights, neighbouring rights and databases foresees an exception to the above by stating that where a computer program is created by an employee in the performance of his duties or on the instructions of his employer, the employer alone shall be entitled to exercise all economic rights (excluding moral rights) in the computer program so created, unless otherwise provided by the employment contract.

[1] Law of 18 April 2001 on authors' rights, neighbouring rights, and databases, as amended

INTELLECTUAL PROPERTY, CONT'D

Know-how and trade secrets

What is protectable? In addition to the above categories, classically seen as intellectual property rights, know-how and undisclosed commercial information (trade secrets) are also protected in Luxembourg against unlawful obtaining, use and disclosure of such information.[1] Trade secrets are protected if they meet the following three cumulative conditions: (i) the information needs to be secret, (ii) it needs to have commercial value due in particular to its secret nature, and (iii) it should have been the subject of reasonable measures by the holder with a view to preserving its confidentiality.

Duration of protection? Unlike intellectual property rights, the protection afforded to a trade secret is not limited in time. A trade secret will therefore remain protected for as long as it meets the aforementioned three conditions and, in particular, for as long as it remains secret.

[1] Law of 26 June 2019, transposing the Directive (EU) 2016/943

DATA PROTECTION/PRIVACY

The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC **("GDPR")** is applicable in all EU Member States since 25th May 2018.

The GDPR contains a number of so-called "opening clauses" that allow Member States to provide for deviating, specifying or additional requirements. The Luxembourg legislator has made use of a limited number of these opening clauses by implementing the law of 1 August 2018 on the organization of the CNPD and implementation of the GDPR **("2018 Law")**. Such specifications can be summarized as follows:

- Certain provisions of the GDPR do not apply to the processing of personal data carried out solely for **the purpose of journalism or academic, artistic, or literary expression**.
- The 2018 Law provides for specific provisions where personal data are processed **for scientific or historical research purposes, or for statistical purposes**. First, the controller may derogate from the rights of the data subject provided for in Articles 15, 16, 18 and 21 of the GDPR, insofar as those rights are likely to make it impossible or seriously hinder the achievement of the specific purposes, provided that appropriate measures, as referred to in Article 65 of the 2018 Law, are put in place. Second, the processing of special categories of personal data is not prohibited where the processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) of the GDPR, based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject, if the controller fulfils the conditions of Article 65 of the 2018 Law with respect to appropriate measures. Finally, Article 65 of the 2018 Law, provides that, having regard to the nature, scope, context and purposes of the processing and the risks to the rights and freedoms of natural persons, which vary in probability and seriousness, the controller of a processing operation carried out for scientific or historical research purposes, or for statistical purposes, must implement certain additional appropriate measures, that are listed in the same Article.
- **The processing of genetic data** for the purposes of exercising the data controller's own rights in terms of employment law and insurance is prohibited.
- The Luxembourg law introduces a new Article L. 261-1 in the Labour Code with respect to **the processing of personal data for monitoring purposes in the context of employment relationships.** According to the new provision, the employer must make sure to properly inform employees about the processing of their personal data for monitoring purposes, as well as to send the same information to the staff delegation, or in the absence thereof, directly to the Luxembourg Labour Inspectorate. The staff delegation or, if not applicable, the relevant employees, can within fifteen (15) days of receipt of such information submit a request for a prior opinion on the conformity of the proposed processing to the CNPD, which must issue its opinion within one month of the referral.

DATA PROTECTION/PRIVACY, CONT'D

In addition to the above 2018 Law, there is in another law of 1 August 2018 on the protection of individuals with regard to the professing of personal data **in criminal and national security matters**. This second law of 1 August 2018 is a transposition into national law of the Directive (EU) 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

Moreover, the law of 30 May 2005, as amended, provides for specific rules with respect to the protection of individuals regarding the processing of their personal data **in the electronic telecommunications sector**. The main data protection provisions foreseen by such law are the following:

- Sending **unsolicited communications for direct marketing** purposes is only possible if the subscribers or users have given their prior consent. Where the controller, in the context of the sale of a product or service, has obtained from a customer its electronic contact details for the purpose of sending an electronic mail, the controller may use these electronic contact details for the purpose of direct marketing for similar products or services without the prior consent of the relevant customer, provided that the said customer is clearly and expressly given the right to object, free of charge and in a simple manner, to such use of the electronic contact details when they are collected and at the time of each message, in the event that the customer has not refused such use from the outset.
- Prior consent needs to be collected from users when putting in place **cookies** which are not essential (i.e. not necessary for the provision of the service), irrespective whether personal data is processed or not. In case the collection of cookies involves personal data of users, the GDPR must be respected, and the users must notably be properly informed by the controller about the processing of their personal data in such context.

Finally, the Luxembourg National Data Protection Commission (Commission Nationale pour la Protection des Données – CNPD) is the competent supervisory authority for national data protection matters. The CNPD may also issue guidelines and recommendations with respect to certain provisions or concepts foreseen in the GDPR, that are influential and give an idea on the interpretation of certain rules, even if they are not binding as such.

ARTIFICIAL INTELLIGENCE

There is no specific legal regime for AI in Luxembourg yet. However, the general restrictions, particularly under data protection and copyright rules apply:

- Data protection: The principles of data protection must be observed in relation to the development, testing and operation of AI. In particular, the rules under Article 22 of the GDPR for automated individual decision-making need to be respected. This Article provides in its first paragraph for a general prohibition according to which "the data subject shall have the right to not be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her". This applies in case of decisions taken without any human involvement, for example with the help of an AI screening tool in the context of recruitment. A general regime foreseen under Article 22 applies in such a case.

- Copyright: According to the law of 18 April 2001 on authors' rights, neighbouring rights, and databases, as amended, authors' rights shall protect original literary and artistic works, whatever their genre and form or expression, including photographs, databases, and computer programs. Such creations can in principle not be reproduced and communicated to the public without having obtained the author's prior consent. This principle must thus be respected in presence of an AI system. With respect to AI, the aforementioned 2001 law has been amended by the Digital Single Market Directive[1] to include a provision, according to which an exception applies to the general principle in case of reproductions and extractions of lawfully accessible works and other subject matters for the purposes of text and data mining unless the use of works and other subject matter referred to in that paragraph has been expressly reserved by their rightsholders in an appropriate manner, such as through machine-readable means in the case of content made publicly available online. These provisions are relevant for AI systems that proceed to so-called "web crawling" or "web scraping" by retrieving data from the Internet to train such data with the purposes of then creating output data.

Once the proposal for a Regulation (EU) laying down harmonized rules on artificial intelligence ("AI Act") is finalized and comes into force, an artificial intelligence authority responsible for the certification and market surveillance of AI applications will be designated in Luxembourg. For the financial sector, it will be the Financial Sector Supervisory Commission (Commission de Surveillance du Secteur Financier – CSSF).

Finally, the CNPD has mid-January 2024 made a call for contributions, through which it invites public and private entities to participate and share their experiences, challenges, and expectations in relation to the development and use of AI-based tools. In particular, the CNPD would like to hear feedback on how entities are addressing the crucial issues, difficulties or solutions found in relation to data protection in the context of AI.
[1] Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market or 'DSM Directive'

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LUXEMBOURG

EMPLOYEES/CONTRACTORS

General: Luxembourg's employment law framework is rather balance and flexible. What's more, in the country's fast-paced business environment, employment law is trending towards more innovative models and greater flexibility to meet employer and employee needs. Remote working, for example, has been given codified rules and made part of the "normal" Luxembourg business model, to retain and attract talent.

Luxembourg law also contains innovative and flexible solutions for multi-employer scenarios, like split payroll arrangements or global employment agreements (enabling several employers to hire one person, to divide up their total working time, and to have them relocate).

Collective employee relations are governed by a strong tradition of social peace and a dialogue-based philosophy, encouraging social partners like unions to find mutually acceptable solutions to HR issues, instead of seeking to impose obligations.

In addition, employment costs are relatively low in Luxembourg compared to neighbouring and other highly developed countries, while staff possess a high level of know-how and skills. Social security contribution borne by the employer, for example, are among the lowest in Western Europe, at currently around 12.5%.

Due to the high levels of business immigration to Luxembourg, immigration laws are designed to attract foreign talent, with a specific tax regime for highly skilled expatriates recruited from abroad. The immigration authorities also fast-track highly skilled employees without EU citizenship who intend to relocate to Luxembourg.

Local employment authorities are generally open to discussion and solution-oriented, making HR management easier than in many other countries in Western Europe.

Hiring: There are a certain number of requirements for employers to respect at the hiring stage. Employers must provide employees with an employment contract no later than the first day of employment and register them with the social security authority. The contract must set out the basic terms and conditions of employment including identities of the parties, starting date, job title, place of work, wages, hours of work, holiday entitlement, notice, etc. Where collective bargaining agreements exist, their terms may be incorporated into the employment contract.

Contrary to other countries, there is in Luxembourg no automatic transfer of authors' and neighbouring rights created by an employee in the context of its employment to the employer. The transfer of such intellectual property rights must therefore be explicitly foreseen in the employment agreement or any other legal act between the parties. Such contractual provisions should be as specific as possible, as courts will interpret the grant of rights in a restrictive manner. If such transfer is not contractually foreseen, the employer may only use authors' rights and neighbouring rights after having received the explicit consent of the owner of the relevant rights (i.e. the employee). However, it should be noted that the law of 18 April 2001 on authors' rights, neighbouring rights and databases foresees an exception to the above by stating that where a computer program is created by an employee in the performance of his duties or on the instructions of his employer, the employer alone shall be entitled to exercise all economic rights (excluding moral rights) in the computer program so created, unless otherwise provided by the employment contract.

Termination: According to the Labour Code, an employment contract can be terminated by both parties. Different rules apply to the termination of open-ended and fixed-term employment contracts:

- open-ended employment contracts can be terminated either unilaterally by both parties during the trial period, by mutual agreement, by resignation of the employee, or by dismissal (with notice or with immediate effect).
- fixed-term employment contracts cannot be unilaterally terminated before their term has expired, except during the trial period (if any), in cases of gross misconduct, or by mutual agreement between the parties.

Dismissed employees may be entitled to receive statutory severance indemnity depending on their seniority. Some employees are, to some extent, protected against dismissal (sick employees, employees on maternity or parental leave, staff delegate, etc.).

LUXEMBOURG

CONSUMER PROTECTION

Luxembourg consumer law is mainly regulated by the general rules of the Civil code as well as the Consumer code. However, there are additional sets of rules which aim to protect consumers, such as (i) the law of 23 December 2016 on promotional and pavement sales and misleading and comparative advertising, as amended, (ii) the law of 21 April 1989 on civil liability for defective products, as amended, (iii) the law of 20 May 2005 on specific provisions for the protection of individuals with regard to the processing of personal data in the electronic communications sector, as amended, as well as (iv) the law of 14 August 2000 on e-commerce, as amended. These national consumer protection rules apply to all activities targeting Luxembourg consumers, irrespective of the place of establishment of the trader or commercial entity.

Consumer protection rules are of public order in Luxembourg, which means that they cannot contractually or otherwise be derogated from.

Some of these rules are especially relevant in case of distance selling contracts, such as the law of 14 August 2000 on e-commerce, as amended, as well as the provisions of the law of 30 May 2005 on specific provisions for the protection of individuals with regard to the processing of personal data in the electronic communications sector, as amended.

The core provisions are laid down in the Consumer code. This code notably provides for an important information obligation to consumers as well as a list of unfair commercial practices that are prohibited under certain circumstances. It also lists contractual clauses which are qualified as abusive when included in an agreement with a consumer. Moreover, the Consumer code includes provisions detailing the regime around guarantees applicable to consumer contracts, as well as with respect to the rights of consumers in their relationship with professionals, such as the right to withdrawal within fourteen (14) days without motive and without penalty. This right can only be limited in specific circumstances and if consumers are not sufficiently informed about their right of withdrawal as foreseen under the Consumer code, this right is automatically extended for additional twelve (12) months.

Finally, the Consumer code also provides for different sets of rules applying to specific types of contracts, such as distance or off-site contracts, or consumer credit contracts.

Since December 2022, Luxembourg authorities are entitled to impose fines up to 4% of the company's annual turnover or, where information on the annual turnover is not available, up to two million euros in case of non-compliance with the Consumer code, including where abusive clauses are used in terms and conditions.

In Luxembourg, there is a consumer protection association, which is the Luxembourg Union for Consumers (Union Luxembourgeoise des Consommateurs - ULC). This is a non-profit organization, which aims to protect, defend, inform, and educate consumers in Luxembourg. As a representative organisation, it also represents consumers in dealings with public and political bodies.

In addition, the European Center for consumers in Luxembourg (Centre européen des consommateurs Luxembourg) offers free of charge assistance in European consumer law matters. Further, certain mediators, such as the Luxembourg Institute for Regulation (Institut Luxembourgeois de Régulation – ILR) or the Consumer Ombudsman (Médiateur de la consommation) are supporting consumers in Luxembourg.

In practice, the ULC is the most active organism, with many members and handling numerous files each year.

Finally, it should be noted that a bill of law with respect to class actions is under discussion in Luxembourg since 2020 but has not been adopted yet.

TERMS OF SERVICE

First, the general terms and conditions of a contract pre-established by one of the parties are only binding on the other party if the latter was in a position to be aware of them when the contract was signed and if, depending on the circumstances, it must be considered to have accepted them.[1] This applies to all general terms and conditions, online and offline.

With respect to the content of the terms of services, information on the features of the product or service, as well as with respect to pricing, if applicable, must be included. Moreover, the duration of the contractual arrangement, as well as the conditions for termination must be specified. A governing law and competent jurisdiction clause should also be included in every contract.

To be enforceable, a contract of course needs to be properly signed by all parties and, if applicable, provisions with respect to electronic signatures must be fulfilled.

In a B2B context, no specific additional provisions need to be included in online terms of service to be enforceable.

In a B2C context, all information listed in Article L. 222-3 of the Consumer code needs to be included in distance contracts, which include notably any information on the right of withdrawal of a consumer.

Regarding provisions that should not be included, Article L. 211-3 of the Consumer code provides for a list of clauses considered as abusive in contracts with consumers, such as provisions excluding or limiting the legal warranty in the event of latent defect or lack of conformity, or by which the professional reserves the right to unilaterally modify or terminate the contract without any specific and valid reason stipulated in the contract. However, no specific additional clauses that would be invalid in distance contracts concluded online are foreseen.

Beyond the mandatory clauses referred to above, it is customary to include in the terms of services, whether B2B or B2C, provisions regarding liability, data protection, confidentiality, intellectual property, governing law and competent jurisdiction, etc.

[1] Article 1135-1 of the Civil code

WHAT ELSE?

Obligation do hold appropriate authorizations/business licenses: According to the law of 2 September 2011 on business licenses, as amended **("2011 Law")**, a business licence is required when having a commercial, craft or industrial activity, as well as certain liberal professions foreseen by the Law, in the Grand Duchy of Luxembourg. It is in such a case mandatory to hold a business licence, unless one of the three following exceptions applies: (i) the services are rendered without monetary compensation/for free; or (ii) the services are only provided to entities that are ultimately controlled by the same entity (>50% of its capital); or (iii) in case of an entity established in a country of the EU, EEA or the Helvetic Confederation, which furnishes services on the territory of the Grand Duchy of Luxembourg only on an occasional and temporary basis. For the Ministry to grant a business license, certain requirements need to be fulfilled by the relevant foreign entity. The entity must have a fixed place of establishment in Luxembourg (a domiciliation is expressly excluded by law) and a natural person will need to be identified and appointed as in charge of the daily management of the relevant company and hold the business license in such capacity.

Certain entities active in regulated sectors (lawyers, auditors, notaries, financial entities, etc.) require an authorization from the competent authority.

All business licenses and authorisations must be obtained prior to the commencement of the relevant activities.

VAT number: Depending on the exact activities, registration with the Luxembourg VAT is required.[1]

Mandatory information to include on a website: The website of a Luxembourg company must display at least the following information:

- Company or business name:
- Legal form of the Company (e.g. "SARL" or "société à responsabilité limitée");
- Indication of the registered office of the company;
- Contact details such as telephone number and/or an e-mail address;
- "Registre de Commerce et des Sociétés de Luxembourg" with the company's registration number;
- If applicable, VAT number; and
- If applicable, number of the business license of the company.

Language requirements: To be valid, a contract needs to be concluded in a language that is comprehensible to both contracting parties. The official languages in Luxembourg are Luxembourgish, French and German. In a B2B context, English is generally accepted, however, for contracts with consumers, a translation into at least one of the Luxembourg official languages is strongly recommended. The choice of language should be appropriate to the targeted consumers. If language requirements are not complied with, it could be considered that the Luxembourg party has not validly consented to the contract and that one of the essential conditions for the validity of a contract has thus not been fulfilled.

Late payment interests: Late payment interests are governed by the law of 18 April 2004 on payment periods and late payment interest, as amended **("2004 Law")**:

- In a B2B context, the creditor is entitled to claim interest for late payment without the need for a reminder, if (i) the creditor has fulfilled his contractual and legal obligations and (ii) the creditor has not received the amount due on the due date, unless the debtor is not responsible for the delay. Where interest for late payment is payable in commercial transactions, the creditor shall also be entitled to obtain from the debtor payment of a lump sum of forty (40) euros to cover recovery costs.
- In a B2C relationship, receivables shall automatically bear interest at the statutory interest rate from the end of the third month following receipt of the goods, completion of the work or provision of the services. This interest is only payable if the trader has, within one month of taking delivery of the goods, completing the work or providing the services, sent the consumer the relevant invoice. Moreover, the invoice must state that the professional intends to benefit from late payment interests as foreseen by the 2004 Law.

[1] Law of 12 February 1979 on value added tax, as amended

MACAU

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MACAU

LEGAL FOUNDATIONS

Macau follows the civil law system in the Portuguese civil law tradition. Its main source of law is from statutes and legal codes, with a residual role to legal doctrine and case law.

Macau is a special administrative region (SAR) of the People's Republic of China since December 1999. Under the Basic Law (Macau SAR's constitutional law), Macau is guaranteed a high degree of autonomy in all matters except foreign and defence affairs for the 50 years upon the sovereignty transfer, under the 'one country, two systems' policy - which means that Macau has its own legal, tax and economic system, and it manages its own borders.

The Macau SAR exercises a high degree of autonomy in accordance with the provisions of the said Basic Law, and enjoys executive, legislative and independent judicial powers, including including the exercise of final adjudication on all civil and criminal matters.

There are three tiers of judiciary, with the highest being the Macau Court of Final Appeal. There are no other jurisdictional layers in Macau.

CORPORATE STRUCTURES

In Macau, there are two types of companies commonly used:

- limited liability company by shares and
- limited liability company by quotas.

A limited liability company by shares must have a minimum share capital of MOP1,000,000 and is subject to more complex governance requirements (namely to have company secretary, supervisory board and board of directors) and is used for large enterprises with complex shareholder relationships or in regulated industries where this type of vehicle is required.

A limited liability company by quotas must have a minimum share capital of MOP25,000, and is generally subject to less complex governance requirements. “Quotas” are units representative of share capital which are registered with the Macau Companies Registry. Transfer of quotas is mandatory to be registered with the Companies Registry and the ownership of the company’s share capital is disclosable to the general public.

CORPORATE STRUCTURES, CONT'D

This is the most common type of corporate vehicle used in Macau, especially for small or medium-sized businesses. There are no complex governance requirements – having single shareholder and one appointed director is enough. Furthermore, there is no minimum local director requirement or restrictions on director nationality, which mean that citizens from any country may be appointed as directors in Macau companies. Directors of the company do not need to be physically located in Macau.

Differently from mainland China, in Macau there are no foreign investment restrictions, which means that citizens or companies from any country may incorporate companies locally. As such, Macau companies can be 100% owned by foreign companies or individuals.

Incorporation of a limited liaibility company in Macau is a low-cost, easy and straightforward option, and does not require the shareholders to attend physically in Macau.

ENTERING THE COUNTRY

Also differently from mainland China, there are no restrictions to foreign investment into Macau – thus citizens or companies from any country may incorporate Macau companies, which can be 100% owned by foreign companies or individuals.

Also, there is no requirement of local director or restrictions on director nationality, which mean that citizens from any country may be appointed as directors in Macau companies.

Similarly, there are no limitations to repatriation of capital or profits for Macau companies, meaning any profit or dividends can be distributed to overseas shareholders and transferred abroad.

INTELLECTUAL PROPERTY

The main types of IP rights that can be protected in Macau are trademarks, patents, industrial designs and copyright.

Trademarks

In Macau a trademark may be registered if it is a sign or group of signs represented in a special manner, capable of distinguishing the products or services of one company from those of other companies. The registrable formats of trademarks include words (including personal names), drawing, letters, numerals, sounds, shapes (3D marks) and colour arrangements.

Applicants can refer to the "Nice Classification of Goods and Services" issued by the World Intellectual Property Organization (WIPO) to classify the goods and services for their trademarks. Macau is currently following the the 11th Edition of Nice Classification of Goods and Services.

Trademark registration usually takes about eight to ten months, on the condition that all requirements are met and there is no opposition from third parties. In case an opposition is filed, the IP Office can take over 1 year or more to issue a decision.

INTELLECTUAL PROPERTY, CONT'D

Patents

Macau has a patent system similar to the one of Hong Kong, with a separate registration which relies on the examination made in mainland China by the examiners of the Chinese Patent Office (SIPO) but applying the Macau rules on patents requirements and registrability.

For applications filed outside Macau (in an OMC or Paris Convention Member State) but not yet granted, a new registration will have to be applied in Macau with priority being be claimed (within one year from the original filing).

The Patent Cooperation Treaty is not yet applicable in Macau, but there is an option to extend patents to Macau. Chinese patents (as granted in mainland China) can be extended to Macau within three months from the date of publication of the granting decision in China.

Designs

The design right is described under Macau law as drawing and models (in Chinese: "設計及新型"), being its use on the rise for the last 10 years. It is an affordable method to obtain protection and, differently from patents, subject to examination made in Macau.

The information necessary includes (i) title or short title designating the industrial model or design intended or its purpose, as appropriate; (ii) description of the innovative characteristic attributed to the subject matter containing a detailed explanation of the geometric or ornamental aspect of the subject matter; (iii) name and country of residence of the creator; (iv) drawings or photographs of the subject matter and (v) priority right claim, if any.

After submission of the application, the Intellectual Property Department (IPD) will proceed with a formal examination of all the documents within one month. After 12 months counting from application date (or from the priority date, if any) publication will be made in the Macau Official Gazette.
In 30 (thirty) months counting from application date a request for an examination report must be submitted to IPD. Requests for earlier examination are also admitted. Once granted, registration is valid for 5 years, renewable for identical periods up to 25 years.

For more detail of each of the above IP rights and its registration procedure, please refer to the website of the Economic and Technological Development Bureau of Macau.

Copyrights

Unlike other intellectual property rights, Copyright exists from the moment a certain work is disclosed publicly and does not require registration to be protected. Such automatic protection is limited in time – in Macau, the term is "life of the author + 50 years".

Note that Macau is not a party to either the Madrid Agreement or the Madrid Protocol. As such, International Registrations (IRs) cannot be extended to Macau.

MACAU

DATA PROTECTION/PRIVACY

In Macau, the general legal regime covering data protection/privacy is Law no. no. 8/2005 (the "Personal Data Protection Act" or the **"PDPA"**)

The PDPA contains provisions on:

- General definitions and data privacy principles;
- Criteria for making data processing legitimate (consent, performance of contracts, compliance with legal obligations, etc.);
- Data Subject's rights (right to information, right of access, right to object against direct marketing or any other form of commercial research, right not to be subject to automated individual decisions, right to compensation);
- Data security;
- Obligations of data processors (if any);
- Transfer of personal data outside of Macau;
- Notification and authorization requirements – the data controller is required to notify the Macau Personal Data Protection Bureau ("PDPB") of the data processing activities within 8 days counting from the date of commencement of processing activities. Data controller should seek the PDPB's authorization in certain cases prior to the processing of data (cases of processing of sensitive data, processing of credit and solvency data, combination of data, use of personal data for different purposes from those that dictated the collection of data); and
- Penalties

Macau's legal framework is essentially drawn from that of Portuguese Law No. 68/98 on the Protection of Personal Data, and its main purpose is to ensure that the processing of personal data is carried out with informed user consent and with respect of personal privacy and dignity.

ARTIFICIAL INTELLIGENCE

There is not yet any specific regime for AI regulation in Macau.

DATA PROTECTION/PRIVACY

Firstly, as a general rule, only Macau residents are allowed to work in Macau. However, in cases of justified need, non-resident workers can obtain work permits, issued by the Macau authorities, as per the following categories:

- Skilled work permits: issued for skilled workers with expertise in a specific area; and
- Non-skilled work permits: issued for non-resident workers intending to carry out general or unspecified labour (e.g. housemaids, construction work, etc.).

The issuance of work permits is subject to the verification of a number of requirements and submission of a number of documents to the Macau authorities.

Exceptionally, non-Macau residents may work in Macau as "consultants/technicians", who are deployed by their overseas employers, to deliver specific and occasional "consultancy" or "technical supervision" services to a Macau entity. This exception is regulated under Administrative Regulations no. 17/2004 ("Regulation on Prohibition of Illegal Work").

In general, employment contracts in Macau follow the principle of freedom of contract. Employment contracts are not subject to any special legal form and can be established verbally or in writing. The parties can enter into open contracts and term contracts (fixed term and variable term). For fixed term contracts, the parties do not stipulate end date of employment, which shall only be terminated under the reasons specified in the law and/or contract. For variable term contracts, the parties either agree on a fixed end date or refer to a foreseeable event as the end date (e.g. completion of a project)

Macau labour law is flexible regarding employment conditions, allowing for immediate termination with due cause without disciplinary procedures and termination without due cause with minimal prior notices of 7 and 15 days, respectively, for employee and employer.

CONSUMER PROTECTION

Aside from general principles of civil and contractual law contained in our civil and commercial codes, the main law governing consumer protection is Law no.9/2021 (**"Consumer Protection Law"**), which came into force to modernize the previous regime under law no. 12/88/M.
The following are a few of the key protections for consumers under the Consumer Protection Law:

- The Consumer has the right to be duly informed on the product or service that is being provided, so as to make proper and conscious decisions on whether to buy or request a certain service. Moreover, some of these information should be provided in both Chinese and Portuguese, or in both Chinese and English.
- The Consumer has the right to be provided goods and services that will not put the consumer's health and safety at risk.
- The Consumer has the right to have quality goods and services.
- The Consumer should not be compelled to pay for goods or services that were not expressly requested by the Consumer.
- The Consumer has the right to be protected against high or unjustifiable price fluctuations.
- In case of product defect, the Consumer has the alternative rights to have the product repaired, replaced, price reduction or cancel the purchase (return the item and have the money back).
- The Consumer has the right to claim an indemnity for damages caused to him/her.

The Consumer Protection Law exemplifies misleading or aggressive commercial practices, which are strictly prohibited. These practices are reproached given that the same affect the Consumer's decision making when buying a product or requesting a service. For example, promoting the sale of a certain product, in a training or educational session may be deemed as a misleading commercial practice. Furthermore, making persistent and unsolicited contacts with the Consumer (by any means), with the intention of selling a certain product or service, may be considered as an aggressive commercial practice.

The Consumer Protection Law introduces the concept of remote contracts, which cover e-commerce. For these contracts, the Law foresees the obligation, for the commercial operator, to disclose a set of pre-contractual information.

The body tasked with investigating and enforcing against breaches of the law - The Consumer Council - supervises and imposes sanctions to merchants who breach the provisions of the Law.

The Consumer Protection Law foresees different sanctions depending on the type of offence to the Law, with fines ranging from MOP 2,000 to MOP 60,000. In addition, the offender may also be punished with ancillary penalties which may include closure of business.

MACAU

TERMS OF SERVICE

Aside from general principles of civil and contractual law contained in Macau Civil and Commercial Codes, the main legislation to consider with applicability to TOS clauses is the law governing general clauses (Law no. 17/92/M), which sets forth a specific regulation created to protect consumers/costumers against abusive or bad faith provisions (the "GCC Law")

General Contractual Clauses are clauses created beforehand by one party to be used as a standard template to its contracts and which the counterparties adhere to as a whole, without the possibility of negotiation or amendment to the terms of said clauses.

The GCC Law sets out that the general clauses are only effective and enforceable if materially communicated to the counterparty and if properly submitted, and any terms and conditions which are not expressly included in the relevant contract (e.g., which are incorporated by reference only) shall be deemed not effective and unenforceable. The communication must be done properly and with prior notice, and to ensure that the recipient has sufficient time to consider all aspects of the General Contractual Clauses prior to accepting them.

In addition, the proponent of the General Contractual Clauses has the duty to clarify to the counterparty on the contents and extent of the clauses which terms are not clear.

Under the GCC Law, clauses that are contrary to the principles of good faith and which may lead to an inappropriate damage to the recipient shall be forbidden.

In case of doubt, the GCC Law sets out a criteria for the determination of the concept of inappropriate damage by establishing that such damage will take place when the relevant clause (i) is incompatible with the basic principles of legal regulation from which it is different; or (ii) when the clause limits rights and duties arising from the essential nature of the contract.

Under the GCC Law, namely Articles 12 and 13, there a number of specified clauses which are absolutely forbidden (i.e., they are forbidden regardless of the overall context of the contract and/or any clauses thereof) and relatively forbidden clauses (i.e., clauses which may or may not be forbidden, depending on the overall context of the contract).

WHAT ELSE?

Macau has an extremely attractive and simplified tax system – designed to be attractive to foreign investors (as tax coffers are essentially supported by the gaming industry).

Corporate (profits) tax rate is between 3 – 12%.

Tax on professional income between 7% - 12% (for higher earning threshold and with significant exceptions.

No other significant taxes aside from these two. There is no VAT and no import/export tax on general goods.

In practice, this means that most companies incorporated in Macau pay little to no tax (unless there are large profits).

Furthermore, incorporating a company in Macau is very straightforward – there are minimal paperwork and legal requirements.

As mentioned above, there is no restriction on source of ownership or funding (no local ownership or partnership requirements).

Moreover, there are no regulatory authorizations required to carry out most business in Macau (except for specific regulated industries).

Additionally, on the operational side there are no minimal operational requirements, namely it is not necessary to handle annual tax filings and keep corporate books and there are no requirements for physical office space or actual operations.

MALAYSIA

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MALAYSIA

LEGAL FOUNDATIONS

Malaysia follows a **common law system** and practices the concept of constitutional supremacy under which the Malaysian Federal Constitution is the supreme law of the land. The **Federal Constitution** sets out the roles, limitations and conferment of powers on the bodies / persons in order to facilitate the orderly and efficacious governance of the country i.e. on the Sovereign of Malaysia, Legislature (Parliament of Malaysia), Executive (Prime Minister and his cabinet) and the Judiciary (High Courts & Subordinate Courts of Malaysia).

In brief, the Malaysian judicial system is structured to include **superior courts** (consisting of the Federal Court, the Court of Appeal and two High Courts) and **subordinate courts** (consisting of Session Courts and Magistrate Courts, which respectively handle criminal and civil claims up to a certain monetary threshold). The Federal Court is Malaysia's apex court while the main function of the Court of Appeal is to hear appeals of decisions from the High Courts, which in turn possess general jurisdiction to hear criminal and civil cases, as well as hear appeals of a civil or criminal nature from the lower courts.

Malaysia also operates the **Industrial Court system**, which exists as a separate system from the mainstream judicial institutions. It is a quasi-judicial tribunal created by the Industrial Relations Act 1967 ("IRA") and deals with employment and industrial disputes in the private sector.

Malaysia also has Shariah laws which are only applicable to Muslims. Offences against Shariah laws are tried by the **Shariah courts** which are set up by the respective State governments.

CORPORATE STRUCTURES

In general, persons who wish to carry on business in Malaysia must register under one of the following legislation:

- Registration of Businesses Act 1956 ("ROBA 1956"). Businesses (sole proprietorships and partnerships) must be registered with the Registrar of Businesses.
- Companies Act 2016 ("CA 2016"). Companies must be registered with the Registrar of Companies ("ROC").
- Limited Liability Partnerships Act 2012. Limited liability partnerships must be registered with the Registrar of Limited Liability Partnerships.

CORPORATE STRUCTURES, CONT'D

Malaysian law provides the following forms of structures, which startups may wish to note:

Sole proprietorships

A sole proprietorship is the simplest form of business ownership. It is formed essentially for businesses comprised of one person (being the sole proprietor). The sole proprietor is entitled to all profits of the business and is personally liable, without limit, for all debts and obligations of the business.

Limited liability partnerships ("LLP")

An LLP combines the characteristics of a private company and a conventional partnership and is regulated under the Limited Liability Partnerships Act 2012. Two or more individuals or bodies corporate may form an LLP for any lawful business in accordance with the terms of the LLP agreement executed amongst them. Given that the liability of the partners of an LLP is limited, the LLP business vehicle helps start-ups and small and medium enterprises grow their businesses without having to worry about their personal liabilities and personal assets.

Locally incorporated company under the CA 2016

A person may incorporate three types of companies under the CA 2016 i.e. a company limited by shares, a company limited by guarantee and an unlimited company. A company limited by shares may be a private limited company or a public limited company.In a company limited by shares, the personal liability of its members is limited to the amount if any, unpaid on their shares. A private company limited by shares is a very common corporate structure.

A company limited by guarantee is typically used for non-profit purposes while unlimited companies are companies where the members' liability for its debts is unlimited. As such, we expect these types of structures to typically be less popular and / or applicable for startups compared to a company limited by shares.

Branch of a foreign company under the CA 2016

Under the CA 2016, a foreign company shall not carry on business in Malaysia unless it is registered with the ROC as a foreign company. Foreign companies intending to carry on business in Malaysia may either incorporate a subsidiary or register a branch under the CA 2016 (subject to any regulatory requirements mandating the incorporation of a local subsidiary e.g. under licence application requirements). The branch of a foreign company does not have separate legal personality and is considered an extension of the foreign company.

MALAYSIA

ENTERING THE COUNTRY

There is no overarching legislation which imposes foreign investment rules/restrictions on startups who wish to do business in Malaysia. In general, there are no restrictions on entry of startups, as the Malaysian Government's policy stance towards startup investment in Malaysia has been a welcoming one. The Ministry of Science, Technology and Innovation **("MOSTI")** released the Malaysia Startup Ecosystem Roadmap (SUPER) 2021-2030 which sets out a roadmap and action plan aimed at transforming Malaysia into a top 20 global startup ecosystem by 2030.

In recent years, certain economic sectors / sub-sectors have been liberalised to allow up to 100% foreign equity participation. These include, for example, transport services, health and social services, and computer and related services. That said, Malaysia continues to apply local equity participation requirements in various economic sectors and activities which may impact startups doing business in Malaysia depending on the economic sector in which the startup operates in e.g. the licence required for providing telecommunications services, e.g. network service activities under the Communications and Multimedia Act 1998 **("CMA")**, are likely to be subject to foreign equity restrictions.

Other foreign investment restrictions take the form of local equity participation requirements e.g. requirements for an entity to possess a prescribed percentage of shares held by Malaysian citizens or even Bumiputera (i.e. indigenous Malay) citizens. The requirements for local equity participation in foreign investments take two forms i.e. legal and non-legal or administrative controls.

Legal control: Legal control typically takes the form of equity ownership controlled through the issuance of licences, permits and employment passes or in the purchase of real property and acquisitions of any interest in real property. Where the intended operations of a company or business in Malaysia require certain operating licences, equity conditions, restrictions or prohibitions may be imposed through the approval and issuance of such licences by government or statutory bodies, or by the Securities Commission on initial public offerings.

Non-legal / administrative control: One example of non-legal / administrative control are the restrictions under the Guidelines on Foreign Participation in the Distributive Trade Services **("DTG")** published by the Ministry of Domestic Trade and Cost of Living **("MDTCA")** and it generally requires all proposals for "foreign participation" in "distributive trade" in Malaysia and any ancillary business activities (e.g. opening of chain stores, mergers and acquisitions) to be subject to the prior approval of MDTCA and for the entity carrying out the activities to adhere to requirements such as incorporation, capital and equity structure conditions, unless the foreign involvement falls within certain types of distributive trades listed in the DTG which are otherwise prohibited altogether (e.g. supermarkets and convenience stores).

"Foreign participation" means any interest, associated group of interests or parties acting in concert which comprises the following:

- individual (including permanent resident) who is not a Malaysian citizen;
- foreign company or institutions; or
- local company or local institution whereby the parties as stated in item (a) and/or (b) hold more than 50 percent of the voting rights in the company or institution.

"Distributive trade" means trade which comprises all linkage activities that channel goods and services from the supply chains to intermediaries for the purpose of resale or to the final buyers. The linkages may either be:

- direct or indirect between 2 parties (or levels) or more than 2 parties (or levels) within the chain;
- real physical processes or electronic transactions as defined under the relevant laws;
- in person or by way of electronic transactions as defined under the relevant laws; or
- transactions that may or may not involve transference of title of ownership to the goods and services.

The MDTCA has also clarified that foreign participation in companies that are purely service providers and do not distribute or supply goods are still required to obtain the MDTCA's approval prior to the commencement of business. It should be noted that products and services governed by other statutes such as petroleum products, explosives and agricultural raw materials are subject to any additional requirements under these respective acts and regulations.

Although not specifically stated in the DTG, failure to comply with the conditions and approval requirements in the DTG can result in administrative sanctions against a distributive trade company with foreign involvement such as rejection by the Malaysian immigration authorities of any application by foreigners for an employment pass.

MALAYSIA

INTELLECTUAL PROPERTY

IP registration in Malaysia is generally administered through the Intellectual Property Corporation of Malaysia **("MYIPO")**, which is a statutory body placed under the jurisdiction of the MDTCA.

Registerable intellectual property rights

The following are the main categories of IP which may be protected by registration with the MYIPO:

Patents / utility inventions

Based on the Patents Act 1983, patent rights protect inventions which are products or processes that permit in practice the solution to a specific problem in the field of technology, while utility innovations protect any innovation which creates a new product or process, or any new improvement of a known product or process, which is capable of industrial application, and includes an invention. According to MYIPO, utility innovations are obtainable for "minor" inventions and need not satisfy the requirement to be inventive, unlike patents. Patent registrations are protected for 20 years from the date of filing of the application while utility innovations are protected for 10 years from the filing subject to use, which may be extended for 2 more terms of 5 years.

Trademarks

Trademarks protect signs which are capable of being represented graphically and are capable of distinguishing goods or services of one undertaking from those of other undertakings. Trademark registrations lasts for a period of 10 years from the date of registration and are renewable for a further 10 year period thereafter.

Industrial designs

Industrial designs protect features of a shape, configuration, pattern or ornament applied to an article by any industrial process which in the finished article appeal to the eye and are judged by the eyes. Industrial design registrations are protected for a period of 5 years from the date of filing of the registration application, which may thereafter be extended for a further 4 consecutive terms of 5 years each.

Geographical indications

Geographical indications protect indications which may contain one or more words which identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin. Geographical indication registrations last for a period of 10 years from the date of registration and are renewable for further period(s) of 10 years each.

INTELLECTUAL PROPERTY, CONT'D

Unregistered intellectual property rights

The following IP rights are not protectable by registration:

Copyright

Copyright in creative works confer exclusive rights to control the reproduction, public communication, public performance, distribution and commercial rental of the creative works. The duration of copyright protection granted under our Copyright Act 1987 **("CA 1987")** is as follows:

- For literary, musical or artistic works, a copyright subsists during the life of the author plus 50 years after his death;
- For published editions, copyright subsists for 50 years from the beginning of the calendar year in which the work was first published;
- For sound recordings, copyright subsists for 50 years from the beginning of the next calendar year following the year in which the recording was first published;
- For broadcasts, copyright in a broadcast subsists for 50 years from the beginning of the next calendar year following the year in which the broadcast was first made; and
- For films, copyright in a film subsists for 50 years from the beginning of the next calendar year following the year in which the film was first published.

Trade secrets and confidential information

Trade secrets and confidential commercial information (i.e. information which is not a State or official secret) are protectable albeit not under any overarching piece of legislation. Instead, such information may be protected under the terms of a binding contract, and via legal principles established under common law (e.g. tort of breach of confidential information).

That aside, such information may be protected / regulated based on the circumstances set out in specific legislation. For instance, our Capital Markets and Services Act 2007, which regulates capital markets in Malaysia, makes insider trading an offence while other statutes such as the Personal Data Protection Act 2010 restricts data subjects from exercising rights in respect of their personal data if doing so would disclose confidential commercial information.

Madrid System

Malaysia is a member of the Madrid System since 27 December 2019 when the Madrid Protocol entered into force for Malaysia and our Trademarks Act 2019 incorporates the changes resulting from Malaysia's accession to the Madrid Protocol.

MALAYSIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

DATA PROTECTION/PRIVACY

The Personal Data Protection Act 2010 **("PDPA")** is the primary regulation in Malaysia that regulates the collection and processing of personal data of individuals by data users (the equivalent of data controllers under the European Union GDPR) in the context of commercial transactions in Malaysia. The Personal Data Protection Commissioner **("Commissioner")** and his office, the Personal Data Protection Department (Jabatan Perlindungan Data Peribadi or **"JPDP"**, or) administer and enforce the PDPA.

The PDPA is supplemented by the following pieces of subsidiary regulation:

- **Personal Data Protection Regulations 2013**, which prescribe the obligations that data users need to comply with in order to fulfil the Personal Data Protection Principles ("PDP Principles") set out under the PDPA, and also provides for inspections that may be carried out by the Commissioner;
- **Personal Data Protection (Class of Data Users) Order 2013** and the **Personal Data Protection (Class of Data Users) (Amendment) Order 2016**, which identify the relevant classes of data users that are subject to registration requirements with the Commissioner in order to process personal data;
- **Personal Data Protection (Registration of Data User) Regulations 2013**, which set out the administrative and procedural requirements to be complied with in respect of the registration of data users with the Commissioner for the processing of personal data;
- **Personal Data Protection (Fees) Regulations 2013**, which prescribe the maximum fees that may be imposed by data users for responding to data access requests made by data subjects under the PDPA, as well as the relevant fees payable by data users to the Commissioner in respect of requests to inspect / make copies of the Commissioner's grounds of decisions and entries in the Commissioner's register;
- **Personal Data Protection Standard 2015**, which sets out the minimum security, retention and data integrity standards that data users must comply with for the purposes of compliance with the Security Principle, Retention Principle and Data Integrity Principle under the PDPA;
- **Personal Data Protection (Compounding of Offences) Regulations 2016**, which identify the relevant offences under the PDPA which are compoundable and the procedures for offering, accepting and paying compounds; and
- **Personal Data Protection (Appeal Tribunal) Regulations 2021**, which set out the procedural rules governing the submission of appeals and the conduct of appeal proceedings by the Personal Data Protection Appeal Tribunal established under the PDPA.

Personal Data Protection Principles

Similar to the data processing principles found under the GDPR, the PDPA outlines seven (7) Personal Data Protection Principles **("PDP Principles")** that data users are required to comply with when collecting and processing personal data of individuals. Briefly, a summary of the requirements prescribed by the PDP Principles are as follows:

- **General Principle** – the requirement for a data user to obtain an individual's consent to process his personal data, save where exemptions under the PDPA apply. Additionally, the collection and processing of sensitive personal data[1] is subject to stricter requirements under the PDPA, and the explicit consent of data subjects is required unless there is an applicable exception under the PDPA. To this end, the exceptions to the explicit consent requirement for sensitive personal data are narrower compared to the scope of exceptions to the consent requirement for personal data generally;
- **Notice and Choice Principle** – the requirement for a data user to issue a written privacy notice, setting out the relevant information specified in Section 7 of the PDPA;
- **Disclosure Principle** – this principle prohibits the disclosure of personal data without the individual's consent, except for such purposes and to such parties as provided in the data user's privacy notice, or where otherwise exempted by the PDPA;

DATA PROTECTION/PRIVACY, CONT'D

- **Security Principle** – the requirement for a data user to take steps to protect the personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction by having regard to the matters specified in the PDPA;
- **Retention Principle** - the requirement for a data user to only keep personal data for as long as is necessary to fulfil the purpose of collection and processing of personal data. The data user must destroy or permanently delete the personal data where it is no longer required.
- **Data Integrity Principle** – the requirement for a data user to take reasonable steps to ensure that the personal data is accurate, complete, not misleading, and kept up-to-date;
- **Access Principle** – this principle confers individuals the right to request access to their personal data and to correct their data when the personal data is inaccurate, incomplete, misleading, or not up-to-date; and
- **Transfer Principle** – although not provided as one of the PDP Principles per se, Section 129(3) requires a data user to fulfil at least one of the 13 conditions outlined under Section 129(3) in order to carry out outbound transfers of personal data from Malaysia (e.g., consent has been obtained from the individual for the transfer of his personal data outside Malaysia).

[1] "Sensitive personal data" under the PDPA refers to any information relating to an individual's (a) mental or physical health or condition; (b) political opinions; (c) religious beliefs or other beliefs of a similar nature; and (d) commission or alleged commission of any criminal offence.

ARTIFICIAL INTELLIGENCE

No, there is currently no overarching legislation governing AI in Malaysia. However, there may be sector-specific instruments that set out specific requirements on the use of AI. For instance, the Guidelines on Technology Risk Management published by the Securities Commission Malaysia set out principles a capital market entity should consider when adopting artificial intelligence and machine learning.

That said, MOSTI has released a Malaysia National Artificial Intelligence Roadmap 2021-2025 which sets out Malaysia's approach in harnessing and developing its AI capabilities to propel Malaysia into a high-technology, high-income nation powered by AI. MOSTI is also reportedly preparing an AI code of governance and ethics which is expected to detail the guidelines and regulations that stakeholders in all sectors must adhere to.

EMPLOYEES/CONTRACTORS

Classification as employee or independent contractor

As is sometimes the case in other jurisdictions, the risk of misclassifying employees as independent contractors vs employees is also present in Malaysia. Principles have been established under local case law to assist in determining whether a person is an employee or an independent contractor of the "employer". In essence, this assessment turns on a number of factors such as the duration of the relationship between the parties, the degree of control exercised by the parties including the flexibility of the alleged employee's schedule. However, due to amendments to our Employment Act 1955 **("EA 1955")** in 2023, the EA 1955 raises a presumption that a person is an employee and not an independent contractor where the following are satisfied:

- The "employee"'s manner of work is subject to the control or direction of another person;
- The "employee"'s hours of work are subject to the control or direction of another person;
- The "employee"'s provided with tools, materials or equipment by another person to execute work;
- The "employee"'s work constitutes an integral part of another person's business;
- The "employee"'s work is performed solely for the benefit of another person; or
- Where payment is made to the "employee" in return for work done by the "employee" at regular intervals and such payment forms the majority of his income.

Key employment law requirements for foreign employers

Assuming that the relevant person is an "employee" and not an independent contractor, the key statutes comprising the general employment law framework in Malaysia are as follows:

- **Employment Act 1955**, which is the overarching legislation that sets out the requirements for employee contracts of service and the statutory rights and benefits employees are entitled to (e.g. annual leave, limitations on working hours etc.) among others.
- **Employees' Social Security Act 1969 and Employment Insurance System Act 2017**, which provides for the establishment of a social security system to provide social security benefits for employees and require employers to pay statutory contributions in respect of their employees.
- **Trade Unions Act 1959 and Industrial Relations Act 1967**, which regulate the relationship between employers and their trade unions and deals with the creation of the trade union, its procedures and requirements that it has to adhere to, as well as trade disputes and collective agreements.
- **Occupational Safety and Health Act 1994**, which provides a framework for employers to secure the safety, health and welfare among a workforce and protect others against risks to health and safety in connection with activities of persons at work.
- **Immigration Act 1959/63 and Passports Act 1966**, which provide the framework for the entry and removal of persons into and out of Malaysia and sets out the requirements surrounding entry permits into Malaysia.

However, depending on factors such as the type of employee (e.g. local vs foreign employee) and their income etc. the extent to which the provisions in the above laws are applicable will vary from case to case and additional laws may also be relevant.

Foreign workers and expatriates may be employed in Malaysia subject to obtaining the required employment passes/permits, and adhering to requirements such as minimum paid-up capital requirements for the employer entity, and requirements for the employer to obtain the prior approval of the Director General of Labour in order to employing a foreign employee. etc.

EMPLOYEES/CONTRACTORS, CONT'D

Whether "work for hire" regime exists in Malaysia

To the extent expressed under statute, Malaysia operates a qualified work for hire regime. For example, our Patents Act 1987 states that the patent rights for an invention created by an employee in the performance of their employment contract or work will accrue to their employer subject to provisions to the contrary in their employment contract, provided however that the employee (as the inventor) is entitled to equitable remuneration if the invention acquires an economic value much greater than the companies could have reasonably foreseen at the time the contract was concluded. Our CA 1987 similarly deems works made in the course of the author (i.e. employee)'s employment to be transferred to their employer subject to any agreement with the employee excluding or limiting such transfer.

Restrictions on termination of employees

There are restrictions on termination of employees under Malaysian laws and there is no general right for termination "at-will" in Malaysia. Termination of employees in Malaysia must be done with "just cause or excuse" and employees are protected from unfair dismissal. While the ambit of "just cause or excuse" is not defined under statute, dismissal for reasons such as misconduct and redundancy would qualify as such.

Termination must be conducted in accordance with the employee's termination notice. The termination notice period may be set out under the contract, failing which the EA 1955 sets out minimum termination notice requirements of 4-8 weeks depending on the length of employment served by the employee. However, no termination notice is required for termination due to wilful misconduct. Statutory severance payments are also applicable in Malaysia and these are set out under the Employment (Termination and Lay-Off Benefits) Regulations 1980 which have been enacted pursuant to the EA 1955. The severance payments payable vary from 10-20 days' wages for each year of the employee's employment under a continuous contract, and varies depending on the duration of employment served by the employee.

That said, please note that depending on the type of employee and the circumstances surrounding the termination e.g. whether termination is due to redundancy or transfer of assets/business, there may be requirements in respect of termination which are in addition to, or departing from the foregoing. For example, under the EA 1955, in the event that the termination is in respect of foreign employees, the employer is required to provide notification to this effect to the Director General of Labour within 30 days of the termination etc.

CONSUMER PROTECTION

Consumer Protection Act 1999 ("CPA")
Consumer protection law in Malaysia is generally governed under our CPA. The CPA applies to B2C consumers and sets out the implied guarantees for the supply of goods and services to consumers, manufacturer guarantees, regulates unfair contract terms and product liability, and provides offences on misleading and deceptive conduct, among others. The Consumer Protection (Electronic Trade Transactions) Regulations 2012 **("ETT Regulations")**, which is enacted pursuant to the CPA, sets out additional disclosure requirements which must be disclosed on the website of persons who supply goods or services through a website, as follows:

- The name of the person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace, or the name of the business, or the name of the company.
- The registration number of the business or company, if applicable.
- The e-mail address and telephone number, or address of the person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace.
- A description of the main characteristics of the goods or services.
- The full price of the goods or services including transportation costs, taxes and any other costs.
- The method of payment.
- The terms and conditions.
- The estimated time of delivery of the goods or services to the buyer.

It is an offence under the CPA for suppliers or manufacturers to purport to contract out of the CPA, and the CPA shall have effect notwithstanding anything in the contrary in an agreement and notwithstanding any contract term applying or purporting to apply the law of another country with the aim of evading the provisions of the CPA.

Sale of Goods Act 1957 ("SoGA")
Unlike our CPA, our SoGA does not limit itself to B2C contexts only and is capable of applying in a B2B context as well. However, unlike the CPA, the SoGA states that liabilities which arise under a contract of sale by implication of law may be negatived or varied by express agreement, by the course of dealing between the parties or by usage if the usage is to bind the parties to the contract.

Aside from the above, specific requirements may also apply depending on the sector in which the entity operates in. For instance, if the entity is a holder of a telecommunications licence under the CMA, the entity will be required to comply with the consumer codes published by the Malaysian Communications and Multimedia Commission.

MALAYSIA

TERMS OF SERVICE

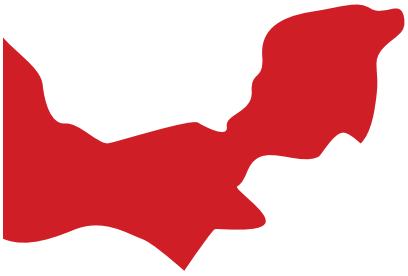
Online contracts are recognized under our Electronic Commerce Act 2006 **("ECA")** as valid and enforceable contracts. The ECA clarifies that the formation of a contract, the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be expressed by an electronic message and that a contract shall not be denied legal effect, validity or enforceability on the ground that an electronic message is used in its formation. However, as with any contract, the validity and enforceability of the contract remains subject to the contract satisfying the requirements for a valid and enforceable contract under our Contracts Act 1950 **("CA 1950")**, which is no exception for an online contract.

In this regard, an online contract will generally be a valid and enforceable contract if it consists of an offer, acceptance, consideration, and the intention to create legal relations. However, to be a valid and enforceable contract under the CA 1950 the contract must also satisfy certain conditions (e.g. agreement is made by consent of parties competent to contract, agreement must be for lawful consideration, and not voided by circumstances such as unlawful objects or considerations, restraint of lawful profession, trade or business).

That said, there may be additional requirements or restrictions which may render the online terms invalid or unenforceable which apply depending on factors such as the specific drafting, surrounding context and intention of the term itself (e.g. contract terms which are substantively or procedurally unfair may be declared unenforceable or void under the CPA; liability due to defective products may not be limited or excluded pursuant to certain product liability provisions under the CPA).

WHAT ELSE?

Apart from those as stated above, we are not aware of any other specific requirements which should be known by the foreign entity prior to entry.



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MEXICO

LEGAL FOUNDATIONS

Mexico follows the civil law system. As such, Mexican courts rely mainly on statues (i.e. Constitution, international treaties, codes, laws, regulations, rules, etc.), but judicial precedents (jurisprudencia) are also followed by Mexican courts, with certain such precedents being binding and others being merely guiding.

Our legal system has three jurisdictional layers or levels: federal, state and municipal (or local). Further, our government is divided in three branches: executive, legislative and judicial.

The Mexican Constitution distributes authority for different legal matters amongst the jurisdictional layers, with some of them being exclusive, and others being concurrently handled at more than one jurisdictional level.

For example, intellectual property, commerce, oil and gas, foreign investment and telecommunications, among others, are exclusively handled at the federal level, whilst taxes and environmental matters, also among others, are distributed concurrently at the three levels.

CORPORATE STRUCTURES

Mexican Law comprises, among others, the types of companies mentioned below. Certain common characteristics to all such forms are the following:

- Liability of the members is limited to the amount of their capital contributions.
- No minimum amounts of capital are required. On this regard, it is relatively simple to increase or reduce the capital.
- A minimum of two members (either individuals or entities) is necessary.*
- The form of a company may be changed to a different one, in a relatively easy manner.
- Except for the type of company mentioned in item b) below, management of companies may be entrusted to a single person, or to a collegiate body.

Corporation or Stock Company (Sociedad Anónima, or S.A.)

This is the most used type of company for businesses in Mexico, mainly due to the following characteristics:

- As a general rule, shares are freely transferrable.
- Otherwise, applicable statute allows shareholders to agree, among others, on restrictions to transfers of shares, the exercise of corporate and economic rights, special classes of shares.
- Mexican law provides certain minority rights for shareholders.

*Under Mexican law, a sole proprietorship business entity is also available. However, considering its restrictions, it is not deemed practical for start-ups.

CORPORATE STRUCTURES, CONT'D

Corporation or Stock Company (Sociedad Anónima, or S.A.), CONT'D

The main advantage for this type of companies is the flexibility that it allows for shareholders to enter into agreements governing their relationships. One of the disadvantages is that it necessarily requires the appointment of a statutory auditor.

Investment Promotion Stock Company (Sociedad Anónima Promotora de Inversión, or S.A.P.I.)

Under Mexican law, there are several classes of stock companies. The most relevant thereof, particularly for startups is the investment promotion stock company due to: the statutory minority rights applicable to it (requiring a lower percentage of participation in the capital than in regular stock companies); the flexibility it affords to govern the relationships among shareholders; and it being a steppingstone to becoming publicly traded.

As mentioned above, this type of company may only be managed by a board of directors, whichrepresents a disadvantage. However, besides providing flexibility for shareholders, S.A.P.I.s provide alternatives for the appointment ofstatutory auditors, which could be considered as its advantages.

Limited Partnership (Sociedad de Responsabilidad Limitada)

The second most used type of company for businesses in Mexico after stock companies are limited partnerships. However, as such, they are not attractive for start-ups.

The main differences between Mexican stock companies and limited partnerships are the following:

- Corporate parts (representing contributions of partners) are not freely transferrable, and admission of new partners requires a special approval by the partners meeting.
- The number of partners is limited to a maximum of 50.
- Agreements among partners may be questionable, as the applicable law does not expressly allow them, unlike the case of stock companies.

The only advantage for startups choosing this form of company is that it does not require the appointment of a statutory auditor (this would be entirely optional). The foregoing, considering the disadvantages of limitations to transfers of corporate parts, and to the number of partners.

MEXICO

ENTERING THE COUNTRY

Mexican legislation provides that certain sectors or activities are restricted to (i) the Mexican government (e.g. nuclear energy, postal service); (ii) Mexican individuals and entities (very limited cases); (iii)foreign investment only up to 10% (production co-ops) or 49% (e.g. explosives and firearms, newspapers, port administration); and (iv) obtaining prior approval by the National Commission of Foreign Investments, either due to the nature of the activity (e.g. railroads, legal services, education), or regardless of the activity, when the amount of the foreign investment exceeds certain amount determined on a yearly basis (currently, approximately one billion dollars).

Foreign investment needs to be registered in the National Registry of Foreign Investments.

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign perceptible by the senses and capable of being represented in a manner that makes it possible to determine the clear and precise object of protection, which distinguishes goods or services from others of the same kind or class in the market.

Where to apply? Trademark applications shall be filed beforethe Mexican Institute of Intellectual Property for trademark protection within Mexico. Mexico is part of the Madrid Protocol System; thus, if the goods or services are intended to be commercialized within other countries, a filing throughout the World Intellectual Property Organization (WIPO) under the Madrid System would be possible.

Once the trademark application is filed, the study carried out by the IMPI with respect to such application, has a duration of 4 to 6 months approximately, however, the process can be extended 6 months more if the Authority points out any impediment to grant the registration through an Official Action, which we can answer within a term of 2 months from the notification of the corresponding official notice with the possibility of requesting an extension of 2 additional months.

Duration of protection? If no oppositions are filed, once the application process is completed and the legal and regulatory requirements are satisfied, the trademark registration title will be issued, which will be valid for 10 years from the filing date of the corresponding application and will be renewable for periods of the same duration. Likewise, after the third year of the granting of the registration, a declaration of use must be filed before the IMPI to prove the real and effective use of all the products or services protected by the trademark.

Costs? The governmental fee for the study of a trademark application is 150 USD.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Any human creation that allows the transformation of matter or energy existing in nature, for its use by man to satisfy his specific needs, shall be considered an invention. Such inventions requires the following properties: (i) Novelty, which, according to Mexican legislation, is considered novel anything that is not "prior art", i.e., that is information in the public domain; (ii) Industrial Application, which implies that the invention must have a practical utility that results in a benefit to society, being susceptible to its production and use in any branch of economic activity, for determined purposes; and (iii)Inventive Step, which represents the technical development, consisting in the creative process whose results should not be deduced from the prior art in an obvious or evident way for a technician in the field.

Where to apply? Patent applications shall be filed before the Mexican Institute of Intellectual Property for trademark protection within Mexico. Applications require use of clear and specific terms to describe the patent in order to avoid a requirement or the rejectionof the applications.

Duration of protection? The term of protection corresponds to a maximum of 20 years from the filing of the application and must be maintained by annual fees.

Costs? The governmental fee for the study of a patent application, including Paris Convention is 265 USD (considering 30 sheets of annexes, each additional sheet will have a costs of 4 USD). The governmental fee for the national phase entry, pursuant to Chapter I of the Patent Cooperation Treaty is 185 USD (considering 30 sheets of annexes, each additional sheet will have a costs of 4 USD). The governmental fee for the national phase entry, pursuant to Chapter II of the Patent Cooperation Treaty is 90 USD (considering 30 sheets of annexes, each additional sheet will have a costs of 4 USD). The government fee for claiming one priority on a patent application is 65 USD.

In addition, for each year of conservation of the rights conferred by a patent, the following rates shall be paid: from the first to the fifth, for each one: 70 USD; From the sixth to the tenth, per each: 80 USD; from the eleventh to the tenth, for each one: 90 USD.

Industrial Designs

What is protectable? Designs that are susceptible of industrial application, as well as of independent creation and differ significantly from known designs or combinations of known characteristics of designs can be registered.

Where to apply? The application must be filed before the Mexican Institute of Industrial Property. Recently, in June 2020, Mexico joined the Hague System, thus, an application can also be submitted through such System in order to obtain the protection among different jurisdictions.

Duration of protection? The protection of industrialdesigns have a validityterm of five years countedfrom the filing date of the application. However, the registration is renewable for successive periods of the same duration up to a maximum of twenty-five years, subject to the payment of the corresponding fees.

Costs? The governmental fee for the study of an industrial design application is 116 USD. The governmental fee for each additional industrial design that meets the unity requirement is 4 USD. The government fee for claiming one priority on a industrial design application is 65 USD.

INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? Works of originalcreation susceptible of being disclosedor reproduced in any form and format; these works are protected from the moment they have been fixed on a material support, regardless of their merit, destination, or mode of expression. In this regard, although the recognition of copyright and its related rights does not require registration or document of any kind, nor shall it be subordinated to the fulfillment of any formality, Copyright is the recognition by the State in favor of the creations of authors. The abovementioned creations contemplate literary, musical with or without lyrics, dramatic, dance, pictorial or drawing, sculptural and plastic, caricature and cartoon, architectural, cinematographic and other audiovisual works, radio and television programs, computer programs, photographic, works of applied art, including graphic or textile design,and compilation works.

Where to apply? Applications shall be filed before the National Copyright Office.

Duration of protection? The patrimonial rights derived from the Copyright protection ends 100 years after the author has passed away, or 100 years after been disclosed.

Costs? The governmental fee for the study of a copyright application is 17 USD.

The following IP rights cannot be registered:

Trade Secrets

Trademark secrets are contemplated in the Federal Law for the Protection of Industrial Property and basically requires what in most jurisdictions are needed (e.g. a system to protect the access to the confidential information and specifications for revealing such information).

What is protectable? A Trade Secret is considered to be any information of industrial or commercial application kept confidential by a person or legal entity, this information must imply a competitive or economic advantage over third parties in the performance of economic activities, over which it has been adopted sufficient means or systems to preserve its confidentiality and restricted access. Such information must necessarily refer to the nature, characteristics or purposes of the products; to the methods or processes of production; or to the means or forms of distribution or commercialization of goods or rendering of services.

Duration of protection? Trade secrets protection can last as long as the information actually remains confidential.

How to keep trade secrets secret? The information that constitutes the Trade Secret shall be containedin documents, electronic or magnetic media, optical discs, microfilms, films, or other similar instruments. Likewise, the person who keeps the Trade Secret is allowedtransmit it or authorize its use to a third party, such authorized user shall be under the obligation not to disclosethe industrial secret by any means. On the other hand, in the agreements by which know-how, technical assistance, provision of basic or detailed engineering, confidentiality clauses may be established to protectthe Trade Secrets that they contemplate, which shall specify the aspectsthat they include as confidential.

MEXICO

DATA PROTECTION/PRIVACY

In Mexico, data protection has become a concern, as data collection and its processing have been highly and specifically regulated to grant due protection to individuals. The main statute governing data privacy are the Federal Law for the Protection of PersonalData in Possessionof Individuals (the "Data ProtectionLaw"), which is inspired by the European model provided in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on free movement of such data. Accordingly, it is based on the following principles that each data controller must abide to:

- **Legality:** All personal data shall be lawfully collected and processed.
- **Consent:** All processing of personal data shall be subject to the consent (whether express or implied) of the data subject, with certain exemptions set out in the Data Protection Law. Except for certain specific cases, processing of any sensitive personal data requires that the data controller obtains the express consent (i.e. evidenced in writing or through an electronic signature or any other authentication mechanism developed for that purpose) of the data subject to process such sensitive data.
- **Quality:** Personal data in a database needs to be relevant, accurate and up to date for the purpose for which it is meant to be used and the data controller shall only retain personal data for as long as it is necessary to fulfil the specified purpose or purposes. Regarding sensitive personal data, reasonable efforts shall be made to keep the period of processing to a minimum.
- **Purpose:** Processing of personal data shall be limited to the purpose or purposes specified in a privacy notice. No database containing sensitive personal data shall be created without justifying that the purpose for its collection is legitimate, concrete and in compliance with those activities or explicit purposes sought by the data controller. Any processing of personaldata for a purpose that is not compatible or analogousto what is set forth in a privacynotice shall require a new consent from the data subject.
- **Proportionality:** Processing of personal data must be necessary, adequate and relevant for the purpose or purposes set forth in the privacy notice.
- **Loyalty:** Processing of personal data shall favor the interests of the data subject and a reasonable expectation of privacy (understood as the level of confidence placed by any person in another one, with the exchange of personal data between them being processed as agreed between them in compliance with the Data Protection Law). Collection of personal data shall not be made through fraudulent or deceitful means.
- **Transparency:** DData controllers shall inform data subjects, by means of a privacy notice, on the personal data that will be subject to processing, and the purposes therefor. The privacy notice shall expressly state which information is of a sensitive nature.
- **Responsibility:** Data controllers shall adopt the necessary measures to comply with all data protection principles during the processing of personal data, even if the processing is carried out by data processors or third parties. Thus, data controllers shall ensure full compliance with the privacy notice delivered to the data subject by them, or by third parties with whom it has a legal relationship.

In addition to these principles, all data controllers shall comply with the duties of security and confidence, which are also applicable to data processors and third parties receiving any personal data from a data controller. The latter must verify that such duties are observed by those third parties.

Data controllers shall implement appropriate organisational, technical and physical security measures to protect personal data against unauthorised damage, loss, modification, destruction, access or processing. These measures shall be at least equivalent to those implemented for their own confidential information.

Further, all personal data shall be kept confidential, even upon the termination of any relationship with the data subject and amongst any data controller and data processor.

MEXICO

ARTIFICIAL INTELLIGENCE

Mexico has taken the first steps towards achieving a proper regulation of AI. Currently, there are initiatives to regulate different aspects of the AI, mainly to the Federal Criminal Code (to typify actions that might constitute felonies related to the use of the AI); and a constitutional reform whose mainpurpose is for the Legislative Branch to have the full capacity to legislate on AI, cybersecurity and neuro-rights.

The National Alliance of Artificial Intelligence has also been formed, with the participation of all the involved stakeholders (on a voluntary basis) organizing different working groups on issues such as theimpact of the AI in health, education and labor rights, and which will also participate in the analysis of actions that have an impact on the responsible use of AI during electoral processes.

The Federal Senate of the Mexican Republic has also installed its Digital Rights Commission, whose objectives include accelerating the legislative process in technological initiatives, including those related to the development and use of AI, which were presented but have not been discussed yet.

The Senate submitted the conclusions of six working tables organized in conjunction with the National Artificial Intelligence Alliance to analyze the main topics that should be addressed at the time of regulating AI in Mexico. These conclusions focus on the following key factors: ethics in the development and use of AI, as well as human rights and innovation in this area.

Regarding the first point, ethics, it is essential to address accountability in the development, use and application of this technology, as well as data integrity and algorithmic transparency, so that these factors are considered in an equitable and non-discriminatory approach, with human scrutiny.

On the other hand, regarding human rights provisions, it was proposed to promote diversity, equality and inclusion so that all people have access to this tool, in order to protect dignity, privacy, personal data and generate digital trust. As well as guaranteeing the qualification of teachers, adapting the educational model to technological development and promoting public policies for the preservation of indigenous languages and cultures in the application of AI, incorporating concepts such as neuro-rights, and ensuring that its development is sustainable. As for innovation, the Senate established that it is not only necessary to have a budget to develop this technology but to prioritize the same at the highest level.

EMPLOYEES/CONTRACTORS

Employment relationships in Mexico are documented through individual employment agreements which describe the general terms and conditions of employment, including benefits to be granted to the employees.

Under the applicable law, the main and default hiring modality is for an indefinite term (i.e. permanent employment), which can be subject to a probationary period (for 30 or 180 days, depending on seniority).

Exceptionally, in certain cases, individual employment agreements can be validly entered for other modalities, namely: a fixed term, for a specific project, for initial training, or for seasonal work.

Please note that all employees hired under any of these modalities are entitled to the minimum statutory benefits such as minimum wage; work shifts, rest time, national holidays and overtime; fully paid vacation period and vacation premium; year-end (Christmas) bonus; profit sharing; social security; and maternity and paternity leaves.

Both Mexican copyright and labor laws provide for a work for hire regime, which needs to be included in individual employment agreements. The default rule (unless the parties agree otherwise) is that economic rights will be divided in equal parts between employee and employer (with employees being entitled to appear as authors). Special provisions will be applicable to research and development positions.

EMPLOYEES/CONTRACTORS, CONT'D

Both Mexican copyright and labor laws provide for a work for hire regime, which needs to be included in individual employment agreements. The default rule (unless the parties agree otherwise) is that economic rights will be divided in equal parts between employee and employer (with employees being entitled to appear as authors). Special provisions will be applicable to research and development positions.

With respect to termination of employees, employment-at-will is not applicable in Mexico. Employees can only be terminated for justified causes provided in the applicable law without triggering payment of severance (being advisable to terminate an employment relationship for cause if the employer has sufficient and convincing objective evidence of the corresponding justified causes).

Termination without a justified cause implies payment of severance, which includes a 3 months' salary constitutional indemnity, and a seniority premium equivalent to 12 days' salary (capped to a maximum amount) per year of service rendered. Also, it has become a customary and widely adopted practice of conservative employers terminating employees without a justified cause, to pay 20 days of consolidated salary per each full year of service, in addition to the mentioned constitutional indemnity and seniority premium.

Lastly, with respect to the main employment matters to be considered in Mexico, please note that the outsourcing or subcontracting of personnel is forbidden. Only certain specialized services may be subcontracted.

CONSUMER PROTECTION

In general, suppliers of goods and services are obliged to undoubtedly inform to consumers (and abide by) the terms and conditions applicable to such goods and services, including prices, fees, guarantees, amounts, quality, measurements, interests, charges, terms, restrictions, dates, exceptions, etc.

Further, the Federal Consumer Protection Law provides the minimum provisions that adhesion agreements (i.e. agreements prepared unilaterally by suppliers for their acceptance or rejection by consumers, without room to negotiation) need to comply with, in order to not imply disproportionate provisions nor inequitable or abusive obligations for consumers.

Depending on the goods or services offered by a supplier, certain adhesion agreements need to be mandatorily registered before the Federal Consumer Protection Law.

TERMS OF SERVICE

E-commerce does have particular provisions to be complied with, mainly, with respect to consumer protection and data privacy. A special chapter governing e-commerce is included in the Federal Consumers Protection Law, and there isa Mexican standard (Norma Mexicana) containing the provisions that e-commerce platforms and websites must comply with, including the requirements to be met for the terms and conditions. For example, they must be in Spanish language, the procedures for applicability of guarantees, devolution of goods and publicity requirements, must be clearly included (amongst other particular provisions). Also, depending on the sector (e.g. financial), additional special provisions must be considered and included.

WHAT ELSE?

Requirements for identification of ultimate beneficiary owners have been recently heightened for, among others, incorporation of new companies. Thus, it has become more complicated to incorporate companies, particularly for foreign entities, which have a harder time evidencing chains of control up until the persons exercising such control.

Although we have found solutions for this problem, it may be relevant for start-ups, specially considering the multiplicity of their shareholders and their legal nature.

MONTENEGRO

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MONTENEGRO

LEGAL FOUNDATIONS

The legal system of Montenegro adheres to the **civil law**. According to the Constitution, all courts are obliged to adjudicate on the basis of the Constitution ratified and proclaimed international treaties and domestic laws.

Judical system in Montenegro consists of courts of general jurisdiction covering civil and criminal matters, and specialized commercial and administarive courts.

The courts of general jurisdiction are: basic courts, high courts, the Court of Appeal, and the Supreme Court.

The specialized courts are: the Commercial Court, Administrative Court and Misdemeanors Court.

The final appellate instance is the Supreme Court.

Montenegro sets EU integration as a priority and is preparing for full membership status. In that regard Montenegro have to comply with EU standards in the framework of the EU accession process.

CORPORATE STRUCTURES

The business activity organization and conduct in Montenegro is basically regulated by the Law on Business Entities (Official Gazette of the Montenegro no. 065/20 to 146/21) according to which there is following modes of business organization possible to establish:

1. Entrepreneur,
2. Partnership,
3. Limited Partnership,
4. Joint Stock Company,
5. Limited Liability Company, and
6. Foreign Entity Branch.

Out of the above stated modes of business organization, taking into consideration our experiences, the foreigners are interested only for establishing “Limited Liability Company” and “Foreign Entity Branch”.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company ("LLC")

LLC is a form of business organization highly recommended to be established for various aspects, that is to say:

- It can be organized by foreign and domestic individuals and legal entities, equally;
- Founders are liable for the company's actions up to the amount of their equity in the company;
- There is no minimum number of founders and maximum is 30;
- Minimum amount of founding capital is 1,00 EUR, and there is no maximum;
- Registered founding capital must be fully paid, but also can be disposed of freely;
- There are no registered or bearer shares, but founders hold equities in the company;
- Company's obligatory bodies are Assembly and Executive Director, while Board of Directors is optional;
- In a one-founder company, a Founder exercises all rights and obligations of the Assembly;
- Equities are not registered with the Securities Commission,
- Executive Director can be only an individual, and not corporate structure;
- LLC gains the status of independent legal entity as of the date of its registration with Montenegrin Company Registry.

LLC is a form of business organization used most often by both domestic and foreign investors, mostly because of its independency and limited liability towards the Founder.

Foreign Entity Branch (Branch)

Foreign Entity Branch is the type of business organization used sometimes by the foreign investors, for the following reasons and with the following practical aspects, that is to say:

- Branch must be registered with the Montenegrin Company Registry;
- It must conduct business activity in full compliance with the Montenegrin regulations;
- All changes in the mother company, Branch must report with the Montenegrin Company Registry;
- Branch does not have a status of an independent legal entity,
- Branch has its Founder/Mother Company and Authorized Representative as equivalent to the Executive Director in the LLC,
- Taking into consideration practical requirements of the state and municipality bodies, in all aspects of its function, Branch is equal to the LLC and requirements attached to the status of LLC.

MONTENEGRO

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STARTUP LEGAL PLAYBOOK

ENTERING THE COUNTRY

Foreign investor may be a foreign natural or legal person established abroad, a company with a share of foreign capital of over 25%, the Montenegrin citizen residing abroad for more than a year and the company established in Montenegro by a foreign entity.

Foreign investor:

- may establish a company (either alone or with other investors),
- invest in companies,
- buy a company or part of it,
- establish a part of a company;
- is taxed the same as domestic investors.

The share of foreign investors may be in cash, goods, services, property and securities.

Restriction for opening corporate bank accounts

In Montenegro, it is not possible to open any corporate bank account for companies registered in Montenegro if the founder of such company is a legal entity / company from an offshore destination or destination which is on black list of the Central bank of Montenegro. Therefore, it is important to check this before company registration, because such limitation does not exist for company registration, but it can disable the company's work.

INTELLECTUAL PROPERTY

After independence Montenegro joined WIPO in 2006 and IP regulations are developed in the proper manner and in accordance with EU regulations. In 2022 Montenegro become member of the European Patent Organisation (EPO).

IP rights that can be registered with Montenegrin Intelectuall Office are:

Trademarks

Any mark that is used to distinguish goods and services in trade and that may be graphically presented shall be offered trademark protection. Marks subject to protection include the following: words, slogans, letters, numbers, images, drawings, combinations of colours, three-dimensional shapes, combinations of such marks and of graphically presentable musical notes.

Any natural or legal person may apply for the registration of a trademark in Montenegro. Foreign applicants in Montenegro enjoy the same rights regarding trademark protection as domestic applicants, should such rights derive from international treaties or the principle of reciprocity

Application for trademark registration can be filed either with the Montenegrin Intellectual Office, or the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The registration procedures before these offices slightly differ from each other, particularly as to costs.

INTELLECTUAL PROPERTY, CONT'D

Trademarks, CONT'D

The classification system applicable in Montenegro is the International Classification of Goods and Services under the Nice Agreement, containing 34 classes of goods and 11 classes of services.
The applications with the Montenegrin Intellectual Office have to be submitted along with list of goods and services. After publication of the trademark application in IP Gazette, it is possible for a third-party to file an opposition within 90 days following the date of publication in the IP Gazette.

The trademark lasts for 10 years from the date of filing of the application for registration, and is indefinitely renewable for further 10-year periods upon payment of prescribed administrative fees. A request for trademark renewal should be filed with the IP Office before the expiration of the current 10-year term. In the event of a trademark termination due to a failure to pay the prescribed fee, the trademark holder will have the exclusive right to request, within one year of the termination and subject to filing a new application, that the trademark be registered again in its name for the same goods and services.
Montenegrin IP Office charges the administration fee for trademark registration which depends from number of classes. Application costs for Montenegrin trademarks up to three classes are in total EUR 280 for verbal trademark and EUR 288 for figurative trademark.

Patents

A patent is a right recognized for any invention from any field of technology that: 1) is new; 2) has an inventive level, i.e., 3) is industrially applicable.The subject matter of an invention protected by a patent may be a product (ex. a device, substance, composition, biological material) or a process.

Any natural or legal person may apply for the registration and legal protection of an patent in Montenegro. Foreign applicants in Montenegro enjoy the same rights as domestic applicants, should such rights derive from international treaties or the principle of reciprocity.

Patent claim can be filed either with the Montenegrin Intellectual Office, or the European Patent Organisation or the World Intellectual Property Organization (WIPO). The registration procedures before these offices slightly differ from each other, particularly as to costs.

As Montenegro become an member of EPO in 2022, it is not possible to designate Montenegro retroactively in applications filed before October 1, 2022.

The term of patent protection shall be 20 years from the filing date of the application.Prescribed fees shall be paid for the maintenance of patent, which shall be paid in respect of the third year and each subsequent year, calculated from the date of filing of the application.

Montenegrin IP Office charges the administration fee for application which depends
of the patent content (number of pages, pictures etc.).

INTELLECTUAL PROPERTY, CONT'D

Designs

The Law on Legal Protection of Industrial Design (Offical Gazzete of Montenegro no. 080/10 to 002/17) regulates the registration and legal protection of industrial design.

Industrial design shall be the appearance of the whole or a part of a product, resulting from its features, in particular the lines, contours, colors, shape, texture and/or material the product is composed of and its ornamentations.

Foreign legal and natural persons have rights with respect to design registration and legal protection in Montenegro equal to those of national legal and natural persons, if this results from ratified international agreements or from the reciprocity principle.

The protection of industrial design rights shall last for five years commencing from the application filing date and shall be subject to renewal periods of five years, not to exceed twenty five years.

The international industrial design registration shall be done in accordance with the Hague Agreement.

Montenegrin IP Office charges the administration fee for application which depends
Number of designs.

The following IP rights cannot be subject of registration with IP Office in Montenegro:

Copyright

Copyrighted work and subject matter of related rights work can't be register in the sense in which can be said about industrial property rights, but there is a possibility to log and deposit a copyrighted work and subject matter of related rights work with the competent Ministry. Until proven otherwise, it shall be presumed that the rights in registered works exist and belong to the person designated in such register as their holder.

Trade Secrets

Trade Secret are not recognised as an intellectual property in Montenegro. The protection of the trade secret is regulated by the Law on Protection of the Business Secret.

MONTENEGRO

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STARTUP LEGAL PLAYBOOK

DATA PROTECTION/PRIVACY

Processing of personal data is regulated by the Montenegrin Law on Personal Data Protection (Offical Gazette of Montenegro no. 079/08 to 022/17) , which has not been aligned with the GDPR so far.

The Law on Personal Data Protection protects data subjects, i.e., natural persons who are identified or can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to physical, physiological, mental, economic, cultural, or social identity.

The main legal condition for data processing in Montenegro is consent of the person which data will be processed.

The Law prescribes the conditions under which data processing may be done wothout consent of the person, but only in cases of necessity specified by the law.

We would like to point out that numerous laws include provisions on the processing of personal data, as: Law on Electronic Communications, Law on E-commerce, Law on Patients Rights, Labor Law etc.

The Agency for Personal Data Protection and Free Access to Information performs affairs of a supervisory authority prescribed in the Personal Data Protection Law.

In Montenegro data controllers are required to notify Agency about each personal database which they establish.

International transfer of personal data is allowed without limitation only in EU/EEA countries, but for other countries it is required the consent of the Agency.

The Law on Personal Data Protection should be amended in accordance to the GDPR in near future.

ARTIFICIAL INTELLIGENCE

The Law on Innovation Activities (Official Gazette of Montenegro no. 082/20) enables the performance of innovation activities and the development of innovations related to new technologies, and this law can be applicable to the AI field as well.

Due to the fact that a regulatory framework for AI has not yet been established in the EU, competent authorities in Montenegro monitor such developments in the EU, and after establishing the EU framework in this field, they will take actions in order to comply with EU legislation in that regard.

Montenegro also follows proposals for the regulation of that area through participation in the work of the Committee for Artificial Intelligence of the Council of Europe which is focused to ensure that human rights, democracy and the rule of law are protected and promoted in the digital environment.

CONSUMER PROTECTION

Consumer protection is recognized by fundamental legal act of the State – Constitution, which prescribes that the State must protect consumer.

Beside Constitution, the main law that regulates consumer protection is the Law on Consumer Protection (Official Gazette of Montenegro no. 002/14 to 146/21). However, there are many of other laws that regulate consumer rights: Law on Contractual Obligations; Law o Internal Trade, Law on Electronic Commerce, Law on Electronic Communications, Law on Electronic Media, Law on International Private Law etc.

Consumer Protection Council was constituted in 2014 in Montenegro, with the aim to improve the protection of consumer rights.

The Law on Consumer Protection prescribes fines for companies in the event of violation of consumer rights from 3,000 to 20,000 euros.

MONTENEGRO

EMPLOYEES/CONTRACTORS

Foreign entities should take into consideration that there are exists different regimes for employment of Montenegrin citizens and for employment of foreigners.

Montenegrin citizen can establish an employment relationship with conclusion of the employment agreement with employer, which stipulates their rights and obligation set forth by the Labor Law, general collective agreement or bargaining collective agreement.

Foreigner can work in Montenegro in accordance to Foreigners Law and Labor Law, which means that foreigner must to obtain permanent resident and work permit before entering employment agreement.

To foreigners will be issued a single permit for temporary residence and work, in the form of ID card with biometric data, which will serve as proof of legal residence, the right to work as an identification document.

The temporary residence and work permit may be issued for the employment of foreigner with 1 year validation and max 2-year extension; for seasonal employment of foreigner with 6-month validation; and for work of a seconded employee with 1 year validation period and max 2 years extension period.

Employer has obligation to register all employees at the Tax authority and to pay certain monthly amounts of contribution in accordance to the laws.

The Law prescribes Employment copyright work, which means that if an author has created a copyright work in the course of employment and in the execution of his work duties or following the instructions given by his employer it shall be deemed that all economic rights and other rights of the author to such work are, without limitations and exclusively, assigned to the employer for a term of five years from the completion of the work, unless otherwise provided by contract. Therefore, it is important with employment agreement to define the term in accordance to the employer needs.

Termination of the employment have to be in accordance to the law, and employee can in any time to terminate the employment agreement with termination notice, period. However, employer is entitled to terminate employment only in cases prescribed by the law and in practice it is very difficult, so it is important to have detailed employment agreement in order to predict unexpected situations that could make the termination more difficult.

The Labor Law prescribes also special protection and benefits for certain groups of employees (pregnant women, employees with disability etc.)

TERMS OF SERVICE

Terms of Service have to be in accordance to the law, and will be obliged only if it is previously presented to the consumer.

There is not specific provision that have to be inserted in online terms and services, other than usual provisions that follow similar type of contracts.

WHAT ELSE?

Foreign investor:

- may establish a company (either alone or with other investors), invest in companies, buy a company or part of it, establish a part of a company.
- is taxed the same as domestic investors.

The share of foreign investors may be in cash, goods, services, property and securities.

Investment opportunities in Montenegro are:

- Political and monetary stability;
- Legal framework for investment reformed according to the EU;
- Favorable tax policy: 9% tax on profit, 21% VAT, 9% income tax;
- Simple START UP;
- Liberal regime of foreign trade;
- The national treatment of foreign investors;
- A set of incentives established at national level, in form of tax exemptions, for investments in the northern part of the country and in newly established business zones;
- Investment incentives and subsidies given at local level in form of utility fees exemptions, favorable land rental/purchase price, reduction of property tax rate;
- Developed telecommunication infrastructure;
- No restrictions on profit, dividend or interests.

UBO register

The Ultimate Beneficial Owners Register has been established in line with the requirements of European law to increase transparency and prevent the abuse of the financial systems: for laundering money, for example, and for financing terrorism.

Companies, legal entities, associations, institutions, political parties, religious communities, artistic organizations, chambers, trade unions, employers' associations, foundations or other business entities, legal entities that receive, manage or allocate funds for certain purposes, foreign trust funds, foreign institutions or similar entities of foreign law, which receive, manage or distribute assets for certain purposes are required to register UBO.

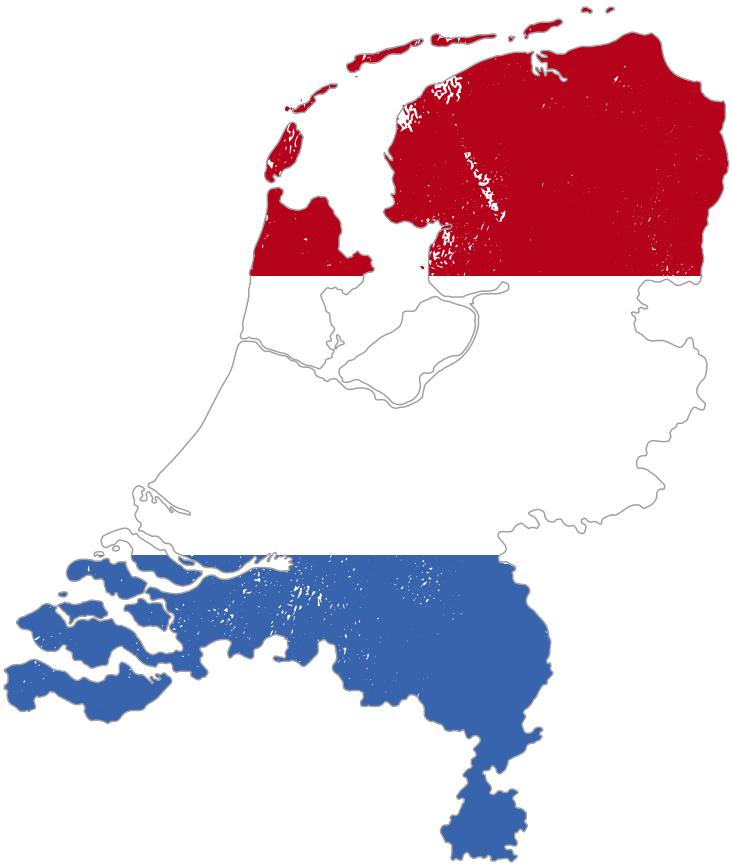
Protection and promotion of foreigner investment

Montenegro has specific legislation that guarantees and safeguards for foreign investors

In order to attract foreign investment, the Government of Montenegro established the Montenegrin Investment Agency.

In 2022 the Ministry of Economy Development in cooperation with the World Bank Group and state institutions completed the Investment Incentives Inventory with 51 investment incentives and with a comprehensive review of available financial and non-financial support programs for the private sector as well as domestic and foreign investors.

These investment incentives refer to different areas: financial; tax and customs incentives; excise taxes incentives and fees; incentives in agriculture; science; tourism and services; construction; sustainable and economic development subsidies; renewable and hybrid energy incentives etc.



THE NETHERLANDS

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LEGAL FOUNDATIONS

Civil law is the legal tradition followed by the Netherlands. Hence, the Netherlands relies on codified legislation which is mostly created by the central government in cooperation with the parliament (so-called acts of parliament or wetgeving in formele zin). Legislative powers may be delegated to lower public authorities through said acts of parliament.

The Dutch law can be divided in two global categories: public law and private law. Public law concerns the relationship between citizens and/or businesses and the government (if the government is acting as such). Private law, on the other hand, governs the relationship between citizens and/or businesses and other citizens and/or businesses. The main source of private law is the Dutch Civil Code (Burgerlijk Wetboek or BW).

Although codified law forms the core of Dutch law, it is challenging to fully understand many fields of law without taking relevant case law into consideration. Notably, final decisions by e.g. the Dutch Supreme Court (Hoge Raad) are often referred to by lower courts.

CORPORATE STRUCTURES

In the Netherlands, there are business structures with and without legal personality. The following structures without legal personality exist:

- Sole proprietorship (eenmanszaak)
- General partnership (vennootschap onder firma or vof)
- Public partnership (maatschap)
- Limited partnership (commanditaire vennootschap or CV)

In fact, these structures consist solely of one or more natural persons. From a fiscal point of view, a start-up often opts for a business structure without legal personality. From a legal point of view, this is not recommended. In a business structure without legal personality, the owners of sole proprietorships and partnerships can be held personally liable for debts and damages of the sole proprietorship or partnership, because business structures without legal personality cannot be independent bearers of rights and obligations. Therefore, it is recommended to opt for a business structure with legal personality. Business structures with legal personality can independently bear rights and obligations.

CORPORATE STRUCTURES, CONT'D

Below is a short explanation of the most used business structures with legal personality:

Private limited company (besloten vennootschap or bv)

The Dutch private limited company is the most common used business structure with legal personality in the Netherlands. There are several legal requirements that must be met in order to set up a private limited company:

- Draw up articles of association in a notarial deed for its incorporation;
- Make a deposit of (cash or in kind) EUR 0,01 starting capital;
- Register to the Dutch Business Register (Handelsregister);
- Register to the Dutch Tax Authorities (Belastingdienst).

The registration in the Business Register and the registration at the Tax Authorities are usually carried out by a civil law notary.

Public limited company (naamloze vennootschap or nv)

The other company with legal personality in the Netherlands is the public limited company. Similarly to the BV, the NV requires a notarial deed containing articles of association, a registration in the Dutch Business Register and starting capital of at least EUR 45.000.-. Due to this high initial capital investment, an NV tends to be a larger company. Thus, this is probably not the most attractive legal structure for a start-up company.

ENTERING THE COUNTRY

The Dutch Investments, Mergers and Acquisitions Security Screening Bill (Wet veiligheidstoets, investeringen, fusies en overnames (Vifo Act)) came into force on the 1st of 2023. It introduces a general foreign direct investment (FDI) screening regime for investments, mergers and acquisitions in critical sectors of the Dutch economy, as they might pose a threat to the national security.

The Vifo Act is based on Regulation (EU) 2019/452, which established a framework for the screening of FDI reviewing within the European Union. It relates to investment and acquisition activities in Dutch so-called 'targeted' companies by both EU and non-EU investors. These targeted companies are either (i) vital providers, (ii) companies that are active in (highly) sensitive technologies and/or (iii) companies that operate business campuses A non-exhaustive list of categories of vital providers can be found in the Act, which includes providers in the field of transportation of heat, nuclear energy, air transport, ports and banking. Other categories of vital providers may be designated by future Order in Council(s) (AMvB).

The Vifo Act applies to investment activities that result in an acquisition of control, or the acquisition or increase of significant influence in case of target companies active in highly sensitive technology. Targeted companies and their possible acquirers together have the duty to report notifiable investment activities to the Bureau for Verification of Investments (Bureau Toetsing Investeringen (BTI)), after which the activities will be assessed.

During the review, the BTI assesses if the activities pose a threat to the national security. In the context of the Act, national security includes maintaining the continuity of vital processes, preserving the integrity and exclusivity of information of critical or strategic significance for the Netherlands and preventing undesirable strategic dependencies of the Netherlands on other nations. After the security screening, a decision about the approval or the prohibition of the investment activities is made by the Minister.

The Vifo Act has a retroactive effect, meaning that the rules of the Act may be applicable to transactions completed between the 8th of September 2020 and the 1st of June 2023. The Dutch Minister can request parties to submit a notification of these investment activities until the 1st of February 2024.

THE NETHERLANDS

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any sign can be registered as a trademark if it is capable of being represented in a register in a clear and precise manner and has the ability to distinguish goods and services of one company from another company.

Where to apply? Trademarks may be filed with the Benelux Office for Intellectual Property (BOIP), if protection is sought within the three Benelux countries (Belgium, the Netherlands and Luxembourg). An international trademark registration may be requested via the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System. An application for trademark registration may be filed with the BOIP Trademarks via its online platform. Once the application is received, BOIP will review if the minimum requirements for trademark registration are met, and publish the application to provide the public with an opportunity to oppose the application within the first two months following publication. The trademark will be registered if no opposition is filed the or if an opposition has been decided in the applicant's favour.

Duration of protection? A trademark registration remains valid for a ten year period, if no opposition is filed. It can be renewed every ten years for a fee.

Costs? Application costs for Benelux trademarks are EUR 244.- for the first class of goods or services (EUR 27.- is charged for an additional second class and EUR 81.- per class from third class onwards). Click here for a current overview.

Designs

What is protectable? A design relates to the appearance of a product or part of a product. A design shall be protected if it is new and has individual character.

Where to apply? Designs may be filed with the Benelux Office for Intellectual Property (BOIP), if protection is sought within the three Benelux countries (Belgium, the Netherlands and Luxembourg). An application for registration may be filed with the BOIP Trademarks via its online platform. In order to obtain protection within the European Union, a Community Design may be registered with the EUIPO. The Benelux is party to the Hague Agreement which regulates the international registration of designs. As a result, it is possible to obtain protection in all or some of the treaty member states through an international application. An international application is filed directly with the WIPO.

Duration of protection? A design shall be registered for a term of five years, and may be renewed for four successive periods of five years by paying the renewal fee. Thus, the maximum term of protection is 25 years.

Costs? Application costs for a design registration amount from EUR 150.- A renewal of a registration amount from EUR 102.- Click here for a current overview.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in all fields of technology which are new, involve an inventive step and that are susceptible of industrial application shall be patentable. Computer programs are explicitly not regarded as an invention within the meaning of Dutch Patent Act (Rijksoctrooiwet 1995). Software may be patented if the software qualifies as a technological innovation.

Where to apply? Patent protection is limited to the country in which the patent is registered. Therefore, an applicant must register the patent in each country where protection is sought. Accordingly, should protection in the Netherlands be sought, a patent application will need to be filed in the Netherlands. To file a patent in the Netherlands, there are three possible options, namely file a patent application at the Dutch Patent Office (Octrooicentrum Nederland), at the EPO or at WIPO (a so-called PCT patent application).

When a patent application is filed at the Dutch Patent Office, a search into the prior art will be performed to determine whether the patented invention is new, inventive and has industrial applicability. However, a Dutch patent will be granted irrespective of the outcome of this search. An applicant may elect either the Dutch Patent Office or the EPO to perform the search.

Duration of protection? The term of protectionis a maximum of 20 years from the date of application onward and must be maintained through payment of annual renewal fees. The duration of a patent protecting a medicinal or plant invention, may be extended by means of a Supplementary Protection Certificate (aanvullend beschermingscertificaat (ABC)). This provides a patent holder with up to 5 years of additional patent protection following the 20-year duration.

Costs? Application fees for a Dutch patent are EUR 80.- (filed digitally - eOLF) or EUR 120.- (filed physically). Additionally, a mandatory search into the state-of-the-art costs EUR 100.- at national level or EUR 794.- at international level (EPO). Moreover, annual maintenance fees must be paid every year starting from the fourth year. Click here for a current overview.

Employee invention and inventor bonus? The Dutch Patent Act states that an employee who creates an invention is initially entitled to the patent, unless the nature of the employee's job is to make inventions of the type embodied in the patent application. In those circumstances the employer is entitled to the patent. In the event that the employer is entitled to the patent and the employee is not deemed to have been sufficiently compensated, the employer will be obliged to grant equitable remuneration to the employee. The amount of this remuneration shall depend on the pecuniary importance of the invention and the circumstances under which the invention was created.

Enforcement in Europe? Since 2023 there are two routes available for enforcement of a patent, depending on the patent.

The first route is where the patent is a national patent. In such a case proceedings must be instituted at national level, for example at a Dutch court.

The second route is where the patent is a unitary patent, meaning it has not been opt-out of the Unified Patent Court (UPC). The UPC has 17 European member states and has exclusive jurisdiction for infringement and invalidity proceedings in respect of a unitary patent. The UPC allows for a single court to make a decision on a matter, which will be valid in all UPC member states. Therefore, it is no longer necessary to litigate on the same matter in each member country where you wish for a decision. Both a national Dutch patent and a European patent will be deemed to be a unitary patent, unless it is expressly opt-out of the UPC.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? The Dutch Copyright Act (Auteurswet) protects the copyright of works of literature, science or art. A prerequisite for protection is that the work has it own original character and bears the personal mark of the author. Copyright protection is granted immediately with the creation of a work.

Duration of protection? Copyright protection expires seventy years after the author has passed away.

Exploitation of copyright protected work? Copyright owners have the exclusive right to publish and reproduce the work. The author may however grant third parties a license, in whole or in part, to use the work.

Trade Secrets

What is protectable? Trade secrets include information (i) that is secret, (ii) that has commercial value due to its classified nature and (iii) the party entitled to this information has taken reasonable measures for this information to remain secret. It thus covers a wide range of information, including technological knowledge ('know-how'), customer and supplier lists, market research results, and market strategies. Trade secrets may be, but are not necessarily, protected by intellectual property rights.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

Since 25th May 2018 the GDPR is directly applicable in the Netherlands. Where the GDPR leaves space for national particularities due to usage of the opening clauses, these choices are defined in the Dutch GDPR Implementation Act (Uitvoeringswet Algemene verordening gegevensbescherming or UAVG).

The relevant Dutch specifics in the Dutch Implementation Act are summarized as follows:

- The prohibition on automated individual decision-making does not apply if this decision-making, other than on the basis of profiling, is necessary to comply with a legal obligation incumbent on the controller or is necessary for the performance of a task carried out in the public interest.
- The controller may disapply its obligations and/or the data subject rights to the extent necessary to ensure any of the specified greater goods.
- The controller is not obligated to notify the data subject if an data breach to the data subject, if the controller is a financial enterprise as defined in the Financial Supervision Act (Wet op het financieel toezicht).
- Some provisions shall be inapplicable if the processing of personal data is exclusively for journalistic purposes or for the sole purpose of academic, artistic or literary expression.
- Some provisions shall be inapplicable if the processing of personal data is carried out by institutions or services for scientific research or statistics, and appropriate measures are put in place to ensure that personal data can be used only for statistical or scientific purposes.
- Some provisions shall be inapplicable if the processing of personal data is recorded in archival documents the public interest as referred to in the Archives Act 1995 (Archiefwet 1995).
- A number prescribed by law to identify a person shall only be used in the processing of personal data for the implementation of the relevant law or for purposes determined by law. An Order in Council (AmvB) may designate cases other than those referred to in the first paragraph in which these numbers may be used and under what circumstances.
- Some provisions shall not apply to public registers established by law, if a special procedure for the correction, supplementation, deletion or blocking of data isregulated by or under that law.

The Dutch Data Protection Authority (Autoriteit Persoonsgegevens) is the authority that supervises the processing of personal data in order to ensure compliance with laws that regulate the use of personal data.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in the Netherlands, yet. However, the general restrictions, particularly those defined in data protection and copyright law, apply. In the future, the Dutch Personal Data Authority will apply the upcoming European Artificial Intelligence Act (AI Act) in the Netherlands.

- The principles of data protection law – in particular Art 22 GDPR for automated individual decision-making – must be observed in relation to the development, testing and operation of AI. Thus, the use of AI must not lead to any legal or similarly serious effects for the data subject, without any human intervention. An automated decision-making process is, for example, assumed if a company uses results of an AI-application without any further quality-check and assessment.
- National copyright restrictions are particularly relevant for generative AI. This applies to both (i) the input data (especially web scraping) and (ii) the output of the specific AI application. The retrieval of data from the internet into sets of training data is considered exploiting the content in a manner which is regulated by the Dutch Copyright Act ("Aw"). The newly enacted art. 15o (Aw) on Text- & Data mining allow for such retrieval, unless reservation clauses are applicable to such retrieval (for example, via machine-readable resources for a work which is made available online). With regards to research organizations and cultural heritage institutions carrying out text and data mining for the purpose of scientific research, this opt-out does not apply (15n Aw). In such case, the output of AI may infringe the rights of the author of the original if the output is identical to or resembles the original source.
    - The Dutch Data Protection Authority (the "AP") is the supervisory body for monitoring algorithms and artificial intelligence in the Netherlands.
    - Once the AI Act comes into force, the Netherlands will not have a designated national AI authority responsible for the certification and market surveillance of AI applications. Instead, there will be a large number of supervisory and monitoring organizations that will monitor aspects of the development and deployment of algorithms and AI. National colleges of state, market regulators and inspection agencies will perform these tasks to a large extent. In addition, the National Ombudsman and the local ombudsmen will play an important role. There are also other public and private organizations that will have a monitoring role, for example, in the case of specific certification or quality supervision.

Moreover, for start-ups it is worth noting that there are currently a few (government) funding programs in place for AI-based business models in the Netherlands.

THE NETHERLANDS

EMPLOYEES/CONTRACTORS

General: In the Netherlands, people work based on an employment contract. This employment contract is preferably concluded in writing, but this is not required. Employees may enter into a temporary or permanent employment contract with an employer. A temporary contract ends by operation of law. The first contract with an employee may include a probationary period of 1 or 2 months.

Subject to exceptions in collective bargaining agreements (Collectieve Arbeidsovereenkomst or CAO) (which apply to an entire industry), three temporary contracts may be entered into for, at most, a combined period of three years.

Agreements can be made with employees about the number of working hours. A full-time employment contract in the Netherlands often comes down to a 36- to 40-hour work week. Part-time employment or employment as an on-call worker is also possible. In addition, the Netherlands has a minimum wage and a minimum number of vacation days.

Arrangements can be made with an employee that, subject to certain conditions, the employee may not work for a competitor or a relation of the employer after their employment ends.

A company may also offer a contractor agreement (freelance contract or contract for work and services) instead of an employment agreement. For these contracts, some protective provisions of labour law do not apply.

Work for hire regime: The Netherlands does not have a work for hire regime.Each agreement should contain a clause covering the licensing or transferof works made by contractual partners.

Registration with social security: Every employer must register employees with the Employee Insurance Agency (UWV), to whom each employer must pay a certain monthly amount based on the employee's salary.

Termination: In the Netherlands, an employer must have a valid reason for dismissing employees. Valid reasons are, for example, culpable conduct, disrupted working relationship (a conflict), unsatisfactory performance, reorganization, or company shutdown. There are 4 ways to terminate an employment contract.

- Employer and employee can mutually agree to end the employment contract. The terms of the termination of the contract have to be recorded in a written settlement agreement.
- If an employee does not agree with a settlement agreement, the employer must request permission from the UWV if an employee is dismissed based on:
  - economic reasons, such as restructuring;
  - or employee's long-term illness (2 years).
- For other reasons for dismissal, an employer must apply to the court for the termination of the employment contract. Valid reasons for termination through the courts are, for example, culpable conduct, disrupted working relationship (a conflict) or unsatisfactory performance.
- Summary dismissal (also called 'being fired on the spot') is the harshest form of dismissal and is reserved for the most urgent cases. In such a circumstance, the employer can terminate the employment contract without having to observe a notice period by summarily dismissing the employee. An employee has 2 months to initiate a procedure to annul the summary dismissal.

When an employment contract ends, a notice period generally needs to be observed, with the employee being entitled to the statutory transition payment and social unemployment benefits.

CONSUMER PROTECTION

Dutch consumer protection law is rather strict and regulated through various laws. The Netherlands Authority for Consumers and Markets (Autoriteit Consument & Markt or ACM) is responsible for monitoring compliance with the legal provisions regarding protection of consumers. These rules are based on European regulations and Dutch laws. The government has elaborated some acts in a Council of Order (AMvB). A ministry can elaborate such an AMvB in a ministerial regulation. The ACM further fills in its policy space with its own regulations.

The core provisions are stipulated in the Consumer Protection Enforcement Act (Wet handhaving consumentenbescherming). It provides a catalogue of clauses for businesses that enter into contracts with consumers in a store, at a distance or off-premises. Contracts that fall outside the scope of this Act are, in particular, those types of contracts concluded outside the sales area where the consumer's payment obligation is €50 or less. In this context, contracts concluded in an online environment are not considered as off-premises contracts.

The Consumer Protection Enforcement Act holds e.g. that a consumer may only be bound by an additional service or purchase if the consumer has expressly agreed to it. In addition, there is an information obligation to which the seller in store must comply with. For contracts concluded at a distance or off-premises, this information obligation differs slightly. A consumer is not bound to contracts concluded at a distance or off-premises if this information obligation is not met.

In most cases, a consumer may exercise their right to rescind a contract concluded at a distance or off-premises within a 14-day cooling off period without the need to provide any reason. Moreover, it must be clear to a consumer that placing an order in a webshop results in a payment obligation. To this end, the order button of a web shop may need to be adjusted to meet this standard.

In the Netherlands the main consumer protection association is the Dutch consumer association (Consumentenbond). The Dutch consumer association is a non-profit association that works in collaboration with consumers in order to create fair, equitable and safe markets. It mostly settles with companies to compensate duped consumers,to avoid (further)litigation and therefore uncertainty for a prolongedperiod.

GENERAL TERMS AND CONDITIONS

The Dutch Civil Code regulates the content of general terms and conditions, as well as how consumers need to be informed on the content of the existing conditions. General terms and conditions are solely enforceable if they are correctly declared applicable to the contract in question. The consumer needs to be given a reasonable possibility to become aware of the general terms and conditions. Because of this, general terms and conditions must be handed over in any event during or prior to the conclusion of the contract. As consumers must have agreed to the general terms and conditions beforehand, they are mostly handed over prior to the conclusion of the contract.

Even though handing over the terms and conditions is mandatory, it is not required that they are actually read and understood. The consumer should at least have had the possibility to read, print and store the general terms and conditions before the contract is concluded. The general terms and conditions can also be deposited at the Chamber of Commerce (Kamer van Koophandel or KvK) or the court registry. If it is impossible to hand over the terms and conditions when concluding a contract. Therefore, a reference to such a deposit will suffice. However, due to an increasing number of contracts that are concluded digitally, this exception is becoming less relevant.

The general conditions include the preconditions of a contract. The so-called 'core of the contract' or 'core terms' should not be described in the general conditions. Core terms are terms which indicate the core of the performance.

Furthermore, clauses must comply with the law, which contains restrictions in order to prevent the general terms and conditions creating an unreasonable burden. Provisions that are on the so-called 'blacklist' are automatically null and void. This means that these provisions do not apply. Provisions on the so-called 'grey list' can be annulled. Therefore, depending on the circumstances of the case, these provisions do not apply. This applies particularly to consumer contracts, whereas other rules apply to companies.

Should a customer ever argue that he or she did not receive the general conditions, the company must be able to prove that the general terms and conditions were properly provided to that specific customer. The onus therefore lies with the user of the general conditions and not with the other party. The (provisions of the) general terms and conditions are voidable if the other party has not had a reasonable opportunity to take note of the general terms and conditions. Thus, the company has an information obligation towards the customer. If the annulment (of a certain provision) is invoked, this applies retroactively. This entails that these conditions are deemed never to have been applicable.

WHAT ELSE?

Strict jurisdiction: Dutch courts are rather strict when it comes to protection of employees, consumers and data subjects. For businesses, the risk of non-compliance in these fields of law is rather high. It is thus recommendable to focus on these topics first, when rolling out a business in the Netherlands.

Strict Dutch DPA: From recent cases can be concluded that the Dutch DPA (Autoriteit Persoonsgegevens or AP) is quite strict on privacy-related issues. For example, the AP is of the opinion that a purely commercial interest cannot be qualified as a legitimate interest for the processing of personal data. This is a stricter standard than is used within Europe. In 2022 the Council of State (Afdeling Bestuursrechtspraak van de Raad van State or ABRvS), the highest administrative court of the Netherlands, passed a judgement in a case concerning processing of personal data based on purely commercial interests. However, in the end, the Council of State did not address the issue of whether purely commercial interests alone can qualify as a valid legitimate interest for the processing of personal data. Therefore, it remains uncertain whether a purely commercial interest can qualify as a legitimate interest..

NEW ZEALAND

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LEGAL FOUNDATIONS

New Zealand is a constitutional monarchy with a parliamentary democracy. The legal system is based on the common law English system and is comprised of statute law complemented by common law developed through decisions of courts. New Zealand is not divided into states or provinces, thus only one layer of legislation exists. Legislation is made by a single Parliament whose members are elected every three years.

New Zealand operates an independent and hierarchical court system consisting of the District Court, the High Court, the Court of Appeal and the Supreme Court (being the highest court), as well as various specialist tribunals such as the Employment Court, the Māori Land Court, the Human Rights Review Tribunal and the Tenancy Tribunal.

CORPORATE STRUCTURES

Legal business structures commonly used to start a business in New Zealand include companies (which may have limited or unlimited liability), sole trading, partnerships and limited partnerships.

Company: The limited liability company is the most popular business entity structure for start-ups, in part because the liability of the shareholders is limited to their capital investment in the company. Registration (i.e. incorporation) is governed by the Companies Act 1993 **(Companies Act)**. The registration process is relatively inexpensive and is completed electronically through the Companies Office website. A company:

- must appoint at least one director who is either a New Zealand resident, or a resident and director of a registered company in an "enforcement country" (currently only Australia);
- must maintain a New Zealand registered office for legal notices (which can be the company's accounting or law firm);
- must file an annual return and (subject to applicable revenue or asset thresholds) financial statements with the Registrar; and
- if the liability of the shareholders is to be limited, must register a name that ends with "Limited" or the words "Tāpui (Limited)".

The Companies Act requires all registered companies (whether limited or unlimited liability) to comply with certain recordkeeping and annual return obligations, and places additional financial reporting obligations on companies that are deemed to be "large" based on their revenues or value of assets.

CORPORATE STRUCTURES, CONT'D

Sole trading and general partnership: Becoming a sole trader is an easy and inexpensive way to start a business, as no entity registration is required. However, the individual trader has direct and unlimited liability for all aspects of the business. For that reason, it is often not a desirable option for a start-up founder, although some of that risk may be reduced via insurance and/or appropriate terms and conditions in customer and other contracts.

Where there are two or more start-up founders wishing to establish the business together, they could operate the business as a partnership (i.e. a traditional or 'general' partnership), governed by the Partnership Law Act 2019. In a partnership, all partners are equally responsible for the management and liabilities of the business. No formal registration is required, however documenting the relationship in a partnership agreement is strongly recommended in order to ensure that the partners agree on the governing terms and their respective rights and obligations. Similar to operating as a sole trader, a partnership lacks a separate legal personality for liability and tax purposes, and thus it may not be an attractive option for start-ups.

Limited partnership: A limited partnership may be formed by a general partner and at least one separate limited partner by registering under the Limited Partnerships Act 2008. Unlike a general partnership, the limited partnership is a separate legal entity that is taxed in the same 'flow through' manner as a partnership but provides both limited liability and a higher degree of confidentiality to the limited partners. The general partner acts on behalf of the partnership (and bears the liability for the acts of the partnership), and the limited partners are generally passive investors who are not involved in the day-to-day operation of the business.

Overseas company 'branch' registration: An overseas company may conduct business in New Zealand without incorporating a local subsidiary company or other separate registered entity. It must register as an overseas company with the Registrar of Companies within 10 working days of commencing business in New Zealand. A registered branch is not a separate legal entity from the overseas company, which means the overseas company and its directors may be directly liable for offences under the Companies Act and generally for the activities of the New Zealand branch. Similar to the requirements for New Zealand companies, registered overseas companies must file an annual return with the Registrar and "large" overseas companies must file audited financial statements annually. There are no local director requirements.

ENTERING THE COUNTRY

Overseas investment: An "overseas person" may be required to notify, or obtain advance consent from, the Overseas Investment Office **(OIO)** (and possibly the Minister of Finance and/or Land Information NZ) in order to complete certain transactions involving "sensitive assets". Pursuant to the Overseas Investment Act 2005 **(OIA)**:

- an "overseas person" is any person who is not a New Zealand citizen (or ordinarily resident in NZ), is an overseas entity, or is a New Zealander investing on behalf of an overseas person; and
- a "sensitive asset" includes significant business assets, sensitive land, forestry rights, and fishing quotas.

A significant business asset is generally an asset or business whose value (or purchase price) exceeds NZD100 million. The scope of what is considered "sensitive land" is more complex, but generally includes all residential land, foreshore or seabed, some non-urban land, some land that includes or adjoins other sensitive areas, specified island land, and leasehold interests over 10 years in any sensitive land.

Some transactions may be prohibited or approved subject to conditions if they are contrary to New Zealand's national interest.

Assessment timeframes range from 10 to 200 working days depending on the type of investment.

NEW ZEALAND

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

General: Intellectual property law in New Zealand is governed largely by legislation including:

- the Trade Marks Act 2002;
- the Patents Act 2013;
- the Designs Act 1953 and Designs Amendment Act 2010;
- the Plant Variety Rights Act 2022; and
- the Copyright Act 1994.

All applications for registered IP rights are made to the Intellectual Property Office of New Zealand **(IPONZ)**, which maintains a register of trade marks, patents, designs, and plant variety rights as well as geographical indications (used on wines and spirits, and soon to be extended to other foods / similar products, possessing a quality, reputation or other characteristics specific to a geographic location). All filing fee amounts reflected below exclude Goods and Services Tax **(GST)**.

New Zealand is a signatory to a number of intellectual property treaties and conventions, including the Paris Convention, the Patent Co-operation Treaty, the Berne Convention, TRIPS (Trade-Related Aspects of Intellectual Property Rights), the Singapore Treaty, and the Madrid Protocol.

The following intellectual property rights are protected in New Zealand:

Trademarks

What is protectable? Registrations can be for words, logos, shapes, colours, sounds, and smells. Trademark protection is key to protecting a business's brand, and helps to distinguish the goods and services of one business from another.

Where to apply? Applications may be filed online at the IPONZ website. International applications based on New Zealand national trademark applications and registrations can be filed with IPONZ and IPONZ can receive international registrations filed with the World Intellectual Property Organisation **(WIPO)** designating New Zealand as a country in which protection is sought. An application must contain the prescribed information, namely: the mark representation, the class of goods and/or services (and class terms), and the owner.

Duration of protection? 10 years from the filing date. Registrations can be renewed in perpetuity.

Filing fees and timeframe? Registration takes at least six months and costs NZD100 in government fees for one mark in one class. The standard fee of NZD100 is reduced to NZD70 if the specification contains only pre-approved terms contained in the online IPONZ "TM Specification Builder", and to NZD50 if an applicant has first conducted a confidential Search and Preliminary Advice report prior to application (but only if the application is formed based on the report, with no changes.This report itself costs NZD50). Additional classes cost NZD100 per class and renewal fees are NZD200 per mark, per class.

Designs

What is protectable? A registered design protects the external appearance of an object. To be protectable, designs must have a new or original ornament, shape, pattern, or configuration.However, the applicable novelty standard is local novelty, so the design only needs to be new or original in New Zealand – although practically, internet disclosures are generally considered 'New Zealand' disclosures.

Where to apply? Applications may be filed online at the IPONZ website. An application must contain various representations of drawings or pictures showing different perspectives the design, as well as a statement of novelty, identifying what the design will be applied to and stating the novel aspects that comprise the design.

Duration of protection? Five years from the date of filing (or its earliest convention date, if applicable). Registrations may be renewed for two further five year periods, to a maximum term of 15 years.

Filing fees and timeframe? The initial government fee upon application is NZD100. Renewal fees are NZD100 (first renewal) and NZD200 (second renewal).

Overlap with copyright: Registered designs are not widely used in New Zealand as New Zealand has a system of 'industrial' (three-dimensional) copyright, which provides similar (although not monopoly) protection to a registered design.

NEW ZEALAND

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
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INTELLECTUAL PROPERTY

Patents

What is protectable? To be granted protection, a patent application must satisfy the requirement of being an "invention", meaning it must be new, useful and involve an inventive step. There are some exclusions from what is considered patentable subject matter, for example, software per se, is not patentable.

Where to apply? New Zealand is signatory of the Patent Cooperation Treaty, and so applications can be filed via that route, or a direct convention application. Applications may be filed online at the IPONZ website, but are usually filed via an agent. If an agent is appointed, they must reside in Australia or New Zealand. Like most countries, an application must include a patent specification containing detailed information regarding how an invention will be made and used. It is possible to file a provisional specification (broad description of an invention) initially, to offer applicants more time for development. Again, like most countries, provided there is sufficient support for the patent claims within a complete specification, the supported claim can claim priority from an earlier filing (e.g. priority documents).

Duration of protection? Up to 20 years from the patent date (usually the date a complete specification was filed).

Filing fees and timeframe? Official fees range from NZD100 - NZD750, and renewal fees range between NZD200 and NZD1,000 per annum (increasing throughout the patent term). There is a NZD250 fee for most applications including complete specification, convention and PCT filings, although excess claim fees apply. A PCT application needs to be filed with IPONZ within 31 months of the priority date. Examination of a patent application occurs once it has been requested by the applicant. A patent registration will take a minimum of six months but, in reality, is likely to take much longer.

Plant Variety Rights

What is protectable? Plant variety rights offer plant breeders an exclusive right to the commercialization of "propagating material" for a protected plant variety (such as spores, seeds, and cuttings). To be protectable, a plant variety right must be new, distinct, sufficiently uniform and stable, have a proper name and meet the testing formalities.

Where to apply? Applications may be filed with IPONZ. The proposed variety is grown and tested to ensure it meets the requirements for protection. Applicants can claim priority from overseas UPOV applications.

Duration of protection? Generally 20 years, or 25 years for 'woody plants' and potatoes.

Filing fees and timeframe? The initial application requires a standard official fee of NZD625. Government fees for the testing stage range from NZD130 to more than NZD4000, depending on the category. The examination phase is NZD770 for each category and renewal fees are NZD385. Pre-grant oppositions are possible, and grant of a registered PVR usually takes between one and five years from filing.

Unregistered rights

Unregistered intellectual property rights are protected under contract law, the provisions of the Copyright Act 1994, the Fair Trading Act 1986 and/or the common law tort of 'passing off'.

Copyright

There is no formal system of copyright registration in New Zealand – copyright exists automatically in original "works" (artistic, literary, dramatic and musical works, sound recordings, communication works and films).

The term of copyright is generally the life of the author plus 50 years (for literary, dramatic, musical, artistic works), although this will soon be extended to 70 years due to trade negotiations with Europe and the United Kingdom. The Copyright Act 1994 also recognises and protects moral rights including the right to be identified as an author, which rights cannot be assigned but can be waived.

Trade Secrets

There is no prescribed legislation which protects trade secrets. The protection of trade secrets and confidential information can be achieved by including the relevant contractual terms in any agreement, or relying upon common law principles, and through an action for breach of confidence in the New Zealand courts.

NEW ZEALAND

DATA PROTECTION/PRIVACY

General: The Privacy Act 2020 **(Privacy Act)** and the 13 Information Privacy Principles **(IPPs)** contained in it govern the collection, use, storage, disclosure, access/correction and transfer of personal information in New Zealand. "Personal information" means any information about an identifiable individual, where an individual is a natural person (other than a deceased person). The Privacy Act applies directly to any "agency" (being any person or body of persons, whether corporate or unincorporated, and whether in the public sector or the private sector) that deals with "personal information", including agencies that are ''carrying on business" in New Zealand, even if they do not have a physical presence in New Zealand.

Compliance with the Privacy Act is overseen by the Office of the Privacy Commissioner **("OPC")**, and proceedings in relation to complaints or investigations under the Privacy Act may be commenced in the Human Rights Review Tribunal.

The Privacy Act gives the Privacy Commissioner the power to issue codes of practice **("Codes")** that modify the operation of the Privacy Act in relation to specific industries, agencies, activities or types of personal information. Codes currently in place are:

- Civil Defence National Emergencies (Information Sharing) Code 2020;
- Credit Reporting Privacy Code 2020;
- Health Information Privacy Code 2020;
- Justice Sector Unique Identifier Code 2020;
- Superannuation Schemes Unique Identifier Code 2020; and
- Telecommunications Information Privacy Code 2020.

Overall, the privacy obligations in the Codes are largely the same as the Privacy Act, with an overlay of further limitations or directions in respect of a few issues.

Transfer of personal information: IPP 11 governs the disclosure of personal information generally and IPP 12 sets out additional requirements in relation to the disclosure of personal information outside New Zealand.

The restrictions on the disclosure, and transfer outside New Zealand, of personal information under IPP 11 and IPP 12 (respectively) do not apply where the transfer is under a processor relationship, i.e. where the recipient is solely processing data on behalf of the agency.However, this processor exception is lost where the recipient uses the personal information for its own purposes.

Under IPP 11, personal information can be transferred (disclosed) outside New Zealand without additional considerations if the agency has reasonable grounds to believe:

- it is being disclosed only to the individual it concerns; or
- the source of the information is publicly available and its disclosure would not be unfair; or
- disclosure is necessary for the purposes of a New Zealand intelligence and security agency.

Personal information can also be disclosed outside New Zealand if the data subject authorises the disclosure after being expressly informed that the overseas third party may not be required to protect the information in a way that provides comparable safeguards to those in the Privacy Act (IPP 12).

In all other cases, the extra considerations in IPP 12 need to be abided by. Under IPP 12, an agency may only disclose personal information to a third party outside of New Zealand if the agency believes on reasonable grounds that the overseas third party is:

- carrying on business in New Zealand and is subject to the Privacy Act; or
- subject to privacy laws that provide comparable safeguards to those in the Privacy Act; or
- subject to privacy laws of a prescribed country (no countries have been prescribed at present); or
- otherwise required to protect the information in a way that, overall, provides comparable safeguards to those in the Privacy Act (for example, by contractual clauses between the parties). The OPC has prepared model contract clauses for this purpose; or
- a participant in a prescribed binding scheme (no such schemes have been prescribed at present).

Privacy breaches: If an agency suffers a notifiable privacy breach, it is required to notify: (a) the OPC as soon as practicable after becoming aware of the breach (note - the OPC's expectation is that this notification is made within 72 hours of becoming aware of the breach); and (b) an affected individual as soon as practicable after it becomes aware that a notifiable privacy breach has occurred, subject to certain exceptions and permitted delays.

A "notifiable privacy breach" is a "privacy breach that it is reasonable to believe has caused serious harm to an affected individual(s) or is likely to do so". The Privacy Act does not define "serious harm" but it does specify the factors that agencies must consider in assessing the likelihood of serious harm being caused by a privacy breach. The OPC has noted the following as being examples of serious harm:

- physical harm or intimidation;
- financial fraud (including unauthorised credit card transactions or credit fraud); and
- psychological or emotional harm.

NEW ZEALAND

ARTIFICIAL INTELLIGENCE

New Zealand has yet to adopt legislation or a regulatory regime specific to artificial intelligence **(AI)**. The only AI-specific policy currently active in New Zealand is the Algorithm Charter, which reflects New Zealand's commitment to ensuring trust and confidence in how the government implements and interacts with AI algorithms. This non-binding commitment does not extend to newer technologies such as large language models.

While existing laws, such as the Privacy Act 2020, the Harmful Digital Communications Act 2015 and the Human Rights Act 1993, may not specifically cite AI, they are applicable to the use of AI in New Zealand. The OPC has recently released guidance around AI and the Privacy Act which can be found here.

EMPLOYEES/CONTRACTORS

General: Employment in New Zealand is governed primarily by the Employment Relations Act 2000 which aims to promote good faith between employers and employees and endorses the right of workers to bargain collectively. Other applicable legislation regulates health and safety, privacy, human rights, and minimum entitlements such as holidays, parental leave, minimum wages and working conditions. Written employment agreements are compulsory and may be individual (i.e. negotiated between the employee and the employer) or collective (i.e. negotiated between a registered union and an employer on behalf of employees). Union membership is not compulsory.

Termination of employment: Employment may be terminated by dismissal, constructive dismissal, redundancy or resignation. Termination by dismissal is often disputed by employees if not conducted properly. Stringent procedures must be followed to prevent a claim of unjustified dismissal. Generally, the grounds on which employees can be fairly dismissed include: serious or repeated misconduct; performance issues; redundancy; and medical incapacity. Reasonable notice and a written statement explaining the reasons for dismissal are required unless serious or gross misconduct has occurred (in this case an employee could be dismissed without notice).

Contractors: Employment law is not applicable to contractors unless it is determined that the contractor is a 'de facto' employee. The result is that contractors are not legally entitled to annual leave or sick leave, they cannot bring personal grievances, they are required to pay their own tax, and general civil law determines most of their rights and responsibilities.

Work for hire regime: New Zealand has certain default rules in relation to the ownership of IP created by employees and contractors:

- Where an employee is an author of a work and that work is created during the course of their employment, then the employer will usually be the owner of the copyright and design rights in that work. Similarly, any patentable invention invented by an employee during the course of their employment, will beneficially be owned by the employer.
- If a person (e.g. a contractor) is commissioned by another person to make a certain type of work, then the person commissioning that work will be the owner of copyright in that work (regardless of whether the commissioner actually pays for the work). This default rule only applies in respect of the taking of a photograph or making of a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording.

These default rules can be changed by agreement between the relevant parties.

NEW ZEALAND

CONSUMER PROTECTION

Fair trading and consumer guarantees: New Zealand's consumer protection law is contained in a number of statutes, primarily the Fair Trading Act 1986 **(FTA)** and the Consumer Guarantees Act 1993 **(CGA)**. The FTA regulates the conduct of those in trade and the CGA establishes remedies and protections for consumers against suppliers and manufacturers of goods and services.

Broadly, the FTA prohibits:

- unsubstantiated or false representations or claims about products or services;
- deceptive or misleading advertising;
- unfair sale practices (such as bait advertising) and unfair contract terms (discussed below at section 9);

The CGA prescribes a number of mandatory guarantees for consumers, which include (but are not limited to) guarantees as to title, quality, fitness, durability, and performance of goods and services normally acquired for household, domestic, or personal use, and remedies where those guarantees are not met. The guarantees under the CGA can be contracted out of where the goods or services are being acquired for business purposes.

Spam legislation: The Unsolicited Electronic Messages Act 2007 **(Spam Act)** prohibits "commercial electronic messages" from being sent to, from, or within New Zealand without the consent of the recipient. Consent can be "express", "inferred" (on the basis of the business or other relationships between the persons concerned), or "deemed" (on the basis the message is sent to an electronic address of a person who has conspicuously published his or her address publicly, and in a business or official capacity).

Electronic messages covered by the Spam Act include emails, faxes, instant messages, mobile/smart phone texts and image-based messages of a commercial nature. This therefore applies to all electronic marketing messages sent by businesses to consumers.

TERMS OF SERVICE

General: For online terms of service to be enforceable in New Zealand, the customer must (a) agree to the terms of service; or (b) be provided with reasonable notice of these terms of service. Online terms of service will be unenforceable if they are considered unfair.

Unfair contract terms unenforceable: The FTA prohibits the use of unfair contract terms in both "standard form consumer contracts" (B2C contracts), and "standard form small trade contracts" (B2B contracts).

"Standard form" contracts are agreements which provide little or no opportunity for the customer to negotiate the contract terms. In addition, "small trade" contracts are business to business contracts which have an annual contractual value of NZD250,000 or less.

Under the FTA, a contractual term will be considered unfair if all of the following three elements are met:

- the term creates an unfair disadvantage resulting in a significant imbalance in the rights and obligations of the contracting parties;
- if relied upon, the term would cause detriment to the other party (either financial or emotional); and
- the term is unnecessary to protect the legitimate interests of the party who stands to benefit from that term.

If a party considers a term in a standard form contract is unfair, they can seek declaration from the court that it is unfair. If a term is declared unfair, the term may not be relied on or enforced by the party that benefits from that term (across any of its contracts).

WHAT ELSE?

Registrations: All New Zealand businesses must have a tax file number (an IRD number), which is obtained by applying to Inland Revenue Department **(IRD)**. Most businesses also choose to apply for a New Zealand Business Number **(NZBN)**, which is not mandatory but helps customers and suppliers to more easily engage with a business. A company is automatically issued a NZBN when it is incorporated. Additional licences or registrations may be required depending on the type of business conducted.

Goods and Services Tax (GST): A 15% tax applies to most goods and services, payable by the end consumer. New Zealand and foreign-registered suppliers may be required to register for GST, depending on the amount of their sales of taxable goods/services. A zero rating (i.e. GST-free) applies to a narrow category of transactions. GST also applies to 'remote services' provided by non-residents (i.e. offshore companies) to New Zealand individual consumers. GST registration can be done online through the IRD website.

Accident compensation scheme: All citizens and residents of New Zealand who suffer a personal injury are covered by a statutory no-fault scheme administered by the Accident Compensation Corporation **(ACC)** which operates under the Accident Compensation Act 2001. The scheme funds medical and treatment costs, loss of earnings, disability allowances, and, in the case of death, funeral expenses and benefits for dependants. The scheme covers most physical injuries and a limited range of mental injuries, regardless of whether the accident occurs in the workplace or elsewhere. Funding for the scheme comes from various sources, including levies on employers and employees. The levies an employer must pay are determined by the risk classification of the business (i.e. risk of injury at work), the employer's ACC claims history and the size of its payroll.

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LEGAL FOUNDATIONS

North Macedonia operates under a **civil law system**, characterized by a hierarchical arrangement of legal sources. Therefore, the legal system of North Macedonia has the Constitution at the top, along with ratified international treaties and the universally acknowledged principles of international law. In addition, the legal system is grounded in codified legal norms, primarily conveyed through codes and laws. These legal acts cover the domains of public, private and criminal law, and are subject to periodic updates. Laws are passed by the Assembly of the Republic of North Macedonia, which holds the legislative power in the country.

Public law encompasses the relationship between the individual and the state and is enforced mainly by the public bodies through procedures before public authorities.

Private law covers the relationship between individuals (e.g. contracts, property, inheritance etc.) and is codified in various laws. The most important law is the Law on Obligations, representing the basic legal instrument for regulating contractual relations. Furthermore, there are many other laws for specific fields (e.g., company law, employment law, tax law, e-commerce, trade law).

Criminal law is mainly codified in the Criminal Code (substantive law) and the Law on Criminal Procedure (procedural law).

Executive power is the hands of the Government of North Macedonia, while the judicial power is performed by the courts, organized in several jurisdictional layers, including primary courts, appellate courts, the Administrative Court, the Higher Administrative Court and the Supreme Court of North Macedonia. The Constitutional Court is also important, as it protects the constitutionality and legality of legal acts, as well as rights of the citizens of North Macedonia.

NORTH MACEDONIA

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STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Largest number of companies in North Macedonia are established as **limited liability companies (LLC)**, **single person limited liability companies (SPLLC)** and as of late startups have an option to establish a **simplified limited liability company (SLLC)**. The SLLC was introduced in the in 2021, as a result of the changing startup ecosystem.

The LLC is a legal entity in which up to fifty natural or legal persons as shareholders participate with one stake in the pre-agreed basic share capital of the company. The basic share capital of a company is consisted of the monetary or in-kind contributions, and it cannot be less than 5,000 euros (in Macedonian denars equivalent). Shareholders in an LLC are liable for the obligations of the company solely up to the value of their contribution.

Considering the goal of providing an opportunity to natural persons that have innovative ideas, North Macedonia introduced the **simplified limited liability company (SLLC)**. With a minimum basic share capital requirement of one euro, startups that do not have enough funds in the amount of at least 5,000 euros of founding capital are enabled to put their ideas into practice.

The procedure for establishing aa company with the Central Registry in North Macedonia is quite simple. Almost all companies are registered online through an electronic procedure, through a registration agent authorized by the Central Registry. It is possible to pay the founding capital within one year as a monetary or an in-kind contribution.

ENTERING THE COUNTRY

North Macedonia has implemented various measures to attract foreign direct investments (FDI), fostering equal opportunities for foreign investors, offering numerous incentives to encourage investment. There are no general restrictions on foreign investors. The country has established fourteen free economic zones with developed infrastructure and possibilities to apply for individualized state aid. The Directorate for Technological Industrial Development Zones is the primary point for all investors who want to invest in the free economic zones.

Invest North Macedonia is the official government agency, responsible for promoting responsible for attracting FDI in North Macedonia as well as boosting export. The country also has concluded numerous bilateral investment protection treaties (BITs) and other multilateral conventions that impose stricter standards for protection of FDI. The country is part of the CEFTA trade agreement, and other important foreign investment instruments, such as the ICSID convention. The Constitution stipulates that a foreign national in North Macedonia may acquire property rights under conditions set by law. Furthermore, the Constitution guarantees a foreign investor the right to the free transfer of invested capital and profits. A foreign person may establish the same types of companies as nationals of North Macedonia and may also be a sole proprietor (individual businessperson).

North Macedonia is especially open to foreign investment in the field of information technology and has witnessed growth in recent years. The low corporate tax rate of 10%, financial support to IT companies through grants for creating new jobs and other financial incentives enable such development.

NORTH MACEDONIA

INTELLECTUAL PROPERTY

North Macedonia recognizes various intellectual property (IP) rights, which can be protected under the applicable legislation. The Law on Industrial Property of North Macedonia **("IP Law")** governs IP rights, whereas the Law on Copyright and Related Rights **("Copyright Law")** governs copyright. The most relevant IP rights for startups which should be considered are trademark, patent, industrial design and copyright.

Please find below a short overview on IP rights and the required procedures.

Trademarks

What is protectable? A sign that can be displayed graphically and that is eligible for distinguishing the goods or services of one participant in the trade from the goods or services of another participant in the trade. A trademark protects signs which are capable of being distinguished, such as: words, letters, numbers, pictures, drawings, combinations of colours, three – dimensional shapes, including shapes of the goods or their packaging, as well as combinations of all the aforementioned signs.

Where to apply? The procedure for recognition of a trademark is initiated by filing a trademark application to the State Office for Industrial Property ("SOIP"), on a specific prescribed form, accompanied by documents prescribed with the IP Law. The applicant may also file an application for international registration of the trademark in accordance with the Madrid Agreement and the Madrid Protocol. The application for international registration is filed through the SOIP, on a specifically prescribed form. The SOIP conducts a formal and substantial examination of the application. If there are no reasons for the refusal of the application and the sign is not excluded from protection, the data from the application is published in the Official Gazette of the SOIP after a prior fee for the costs for publication is paid by the applicant. Following the publication, any legal entity or natural person may submit a notice for opposition to the SOIP. After the expiry of 90 days deadline, and if no opposition has been filed, the SOIP invites the applicant to pay the prescribed fee before adopting a decision recognizing the trademark right and entering the recognized right in the register of trademarks. If the trademark application has been filed in accordance with the mandatory contents of the application prescribed with the IP Law, the applicant acquires priority right as of the date of filing of the application.

Duration of protection? If no oppositions are filed, the trademark registration remains valid for ten years as of the date of application. The registration can be renewed an unlimited number of times for a period of ten years, upon submission of an application for renewal and payment of the appropriate prescribed fee.

Costs? The application fees (including administrative fees) for registering a trademark are approx. EUR 125 for up to three classes. For each additional class approx. EUR 20 is paid.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? A patent protects an invention in all technology fields, if the invention is: (i) novel; (ii) has an inventive contribution; and (iii) is applicable in the industry. If these conditions are met, a patent also protects an invention referring to a product composed of or containing biological material, and a procedure for obtaining biological material, its processing or use.

Where to apply? The procedure for patent recognition is initiated by filing an application to the SOIP, on a specific prescribed form, accompanied by documents prescribed with the IP Law. If the application is submitted in a foreign language, a Macedonian translation should be provided.

Duration of protection? The patent right remains valid for a period of 20 years, as of the date of submitting the application. The validity of the patent right can be extended for more than 20 years, but not more than five years, if the subject matter of the patent is a medical product, a product for protection of plants or a process for their production which have to undergo an administrative procedure for approval prescribed by aw before they are placed on the market.

Costs? The application fee (including administrative fees) for registration of patents is approx. EUR 110.

Employee invention and inventor bonus? Pursuant to the IP Law, the natural person who has created the invention by his/her inventive work, or his/her legal successor may initiate a procedure for recognition of the patent right. An employer is considered the legal successor of an inventor if it is entitled to acquire a patent for an invention created in the course of the inventor's employment based on a law or an employment agreement. Pursuant to the Copyright Law, in the event that a work of authorship is created by an employee in the course of fulfilling his work duties or on the instructions of the employer, it is considered that the material rights of the author of that work are exclusively transferred to him to the employer for a period of five years after the completion of the work, unless otherwise determined by the employment agreement or a collective agreement. After the expiration of this term, the material rights belong to the employee. However, the employer can request their exclusive transfer again, pursuant to payment of a suitable compensation to the employee for each separate type of material right. In North Macedonia, software is protected as copyright (as elaborated below), instead of a patent. As an exception, the material rights of computer programs (software) are transferred to the employer unlimitedly, unless otherwise specified with an agreement.

Industrial Design

What is protectable? Industrial design protects a design which is new and has an individual character. A design is the outer appearance of the whole or a part of a product resulting from its features, in particular the lines, contours, colours, shape, texture and materials out of which the product is made or decorated, as well as/or its ornamentation.

Where to apply? The procedure for recognition of industrial design is initiated by filing an application to the SOIP, on a specific prescribed form, accompanied by documents prescribed with the IP Law.

Duration of protection? The industrial design right remains valid for a period of five years. The validity can be extended for a period of up to five years, but not more than 25 years.

Costs? The application fee (including administrative fees) for registration of an industrial design is approx. EUR 110.

NORTH MACEDONIA

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? An intellectual and individual craftwork from the field of literature, science and art, expressed in any manner or form. Copyright protection is granted immediately with the creation of work. No registration is required. The Copyright Law treats computer programs (software) as written work, which is considered a work of authorship, protected by copyright. An author is considered a natural person who has created the work.

Duration of protection? Copyright protection ends 70 years after the author has passed away. However, the moral rights of the author do not expire.

Exploitation of copyright protected work? Copyright owners have the exclusive right to exploit the work and the right to be named as author. The author may grant third parties non – exclusive or exclusive rights to use the work. Moral rights cannot be transferred.

Trade Secrets

North Macedonia does not have a lex specialis governing the protection of trade secrets, even though several laws have provisions regulating trade secrets (Labor Law, Companies Law, Law on Obligations, etc.). Furthermore, the Ministry of Economy of North Macedonia and the SOIP are obliged to harmonize the IP Law with the EU Directive on trade secrets. For this purpose, a draft Law on Protection of Trade Secrets has been prepared.

Note that this draft law is still in the preparatory phases, and it is currently published on the website of the National Electronic Registry of Regulations of North Macedonia for comments. Its purpose is to protect uncovered knowledge and experiences and trade information (trade secrets) from unlawful acquisition, use and disclosure.

There is currently no publicly available information on the expected timeline for adoption of the new legislation on trade secrets.

DATA PROTECTION/PRIVACY

Processing of personal data in North Macedonia is regulated with the Law on Personal Data Protection of North Macedonia **("DP Law")**. The DP Law is harmonized to a great extent with the General Data Protection Regulation of the European Union (EU GDPR), although there are some differences. In general, the principles of data processing, the key obligations and rights are almost identical to the ones prescribed with the EU GDPR. However, the DP Law contains notable differences, especially regarding transfers of personal data outside of North Macedonia, appointing a legal representative (for foreign controllers/processors), etc. The competent body for protection of personal data is the Agency for Personal Data Protection of North Macedonia **("DP Agency")**.

Key obligations under the DP Law

The DP Law prescribes the same set of key obligations as outlined in the EU GDPR. To summarize, the following should be noted:

- Processing of personal data must comply with the general principles of data protection: lawfulness, fairness and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality.
- Processing of personal data must rely on at least one of the prescribed conditions under which the processing would be deemed lawful: consent; performance of a contract; compliance with a legal obligation; protecting the vital interests of the data subject or another natural person; legitimate interests. The lawful basis should be determined on a case-by-case basis,
- Processing of special categories of personal data is prohibited, unless an exception prescribed in the DP Law applies.
- Data subjects must be informed in a concise, transparent, intelligible manner which is easily accessible, using clear and plain language, in situations where his/her personal data is both collected or not collected from the data subject. The DP Law prescribes the exact information which the controller must provide to the data subject, usually through a privacy notice. This information should be provided in Macedonian language (and possibly Albanian language, where applicable).
- Controllers are obliged to implement appropriate technical and organizational measures to ensure a level of security of the processing of personal data appropriate to the risk.
- Data subjects are granted a certain set of rights which they can exercise under the DP Law (i.e. right of access; right to rectification; right to erasure (right to be forgotten); right to restriction of processing; right to data portability; right to object to processing of personal data concerning the data subject; right not to be subject to automated decision making, including profiling).
- When using new technologies for a type of processing, according to the nature, scope, context and purposes of the processing, there is a likelihood that it will cause a high risk to the rights and freedoms of natural persons before the processing is carried out, the controller is obliged to carry out a data protection impact assessment of the intended processing operations in relation to the protection of personal data.
- In situations when processing is carried out on behalf of a controller, the controller will only use processors that provide sufficient guarantees to implement appropriate technical and organizational measures which will meet the requirements under the DP Law. For this purpose, controllers and processors must conclude a data processing agreement.
- Non-compliance with the DP Law may lead to fines for legal entities (controllers/processors) of up to 2% and up to 4% of the total annual turnover from the previous financial year per misdemeanour. Smaller fines of several hundred euros are envisioned for the responsible person within the legal entity per misdemeanour.
- Without prejudice to any available administrative or non-judicial remedy, including the right to submit a request/complaint to the DP Agency, data subjects have the right to effective judicial protection when their rights determined under the DP Law have been violated.

DATA PROTECTION/PRIVACY, CONT'D

Transfer of Personal Data outside of North Macedonia

The DP Law explicitly regulates transfers outside of North Macedonia. When transferring personal data to member states of the European Union (EU) or the European Economic Area (EEA), controllers/processors must notify the DP Agency at least 15 days prior to the transfer, on a prescribed form. Other than the notification, no additional approvals are required.

Transfer of personal data to third countries and international organizations is a bit more complex. Controllers/processors are required to submit a request for approval of such transfer to the DP Agency at least 15 days prior to the transfer, unless an exception applies (i.e. an adequacy decision adopted by the DP Agency). The DP Agency has not yet adopted any adequacy decisions, and it does not recognize the adequacy decisions adopted by the European Commission. In the absence of an adequacy decision, controllers/processors should rely on other appropriate safeguards prescribed with the DP Law. These include standard contractual clauses adopted by the DP Agency or the European Commission, binding corporate rules, etc. The DP Agency also generally requires the submission of a performed transfer impact assessment with each request for obtaining approval for transfer of personal data to third countries or international organizations (notwithstanding other documents, including contracts concluded between the data importer and the data exporter, etc.).

Appointment of a Local Representative in North Macedonia

Under the DP Law, foreign data controllers/processors are required to appoint a local representative in North Macedonia to ensure compliance, when the processing activities fall under the applicability of the DP Law. A local representative is not appointed in situations where processing is occasional and does not involve to a great extent processing of special categories of personal data, or processing of personal data related to criminal convictions and criminal offenses which is unlikely to cause a risk to the rights and freedoms of natural persons, considering the nature, context, scope and purposes of the processing.

ARTIFICIAL INTELLIGENCE

There is no specific national regulatory regime for AI in North Macedonia, yet. However, the general restrictions, particularly under data protection, intellectual property and copyright legislation apply.

It is to be expected that relevant authorities will be looking into the adoption process of the proposed Regulation on Artificial Intelligence of the European Commission and that as soon as the act is adopted efforts will be made to transpose the framework into national legislation.

NORTH MACEDONIA

EMPLOYEES/CONTRACTORS

General: Foreign entities cannot directly employ workers in North Macedonia on the basis of an employment contract unless they have a registered presence in the country (i.e. established legal entity or branch or representative office). There are however possibilities to engage workers without having a local presence, based on service agreements (which do not result in establishing an employment relationship) or through private employment agencies licensed in North Macedonia for employee leasing. In service agreements, the rights from employment relationship provided by the Labour Law of North Macedonia **("Labour Law")** do not have to be granted to the contractor, however these agreements also cannot contain elements of an employment relationship. It should be noted that service agreement must not be used for performance of activities that fall under job descriptions of active job positions in the entity as it can be seen as breach of the Labour Law and the entity may be fined by the national labour inspectorate due to avoiding to provide workers with rights under employment. With respect to engagement of workers through private employment agencies, the agency acts as employer and is obliged to provide the employee with all rights under employment, whereas the employer-user to whom employees are leased, only pays the agency expenses for the employee's gross salary and agency fees. In this engagement the foreign entity would have additional expenses in the form of agency fees that it would need to pay to the agency for the mediating services.

Engaging local workers without having a registered presence may be associated with the risk of meeting the conditions for having a permanent business establishment in North Macedonia for corporate tax purposes. Depending on the type of work and the duration thereof, foreign companies should have this in mind to conduct a tax analysis beforehand.

For entities who have a presence in North Macedonia, under Macedonian labour law, workers may be engaged on the basis of an employment contract for a definite or indefinite term and on fulltime (40 hours per week) or part-time basis. The employment agreement needs to be written form, stipulating all mutual rights and obligations. Employees have certain basic rights prescribed by the Labour Law, such are the right to a minimal salary, safety and health at work, personal dignity, as well as the right to annual leave (vacation), rest during the day and week, parental leave, sick leave etc.

Foreign employees may only enter into an employment relationship if they obtain a work permit and an adequate permanent or temporary residence permit.

Work for hire: Employers can engage a person based on a "work for hire" agreement only for the purpose of performing tasks that are outside the employer's activities, in order for the person to independently execute a certain physical or intellectual work or produce or repair a certain item. It should be noted that "work for hire" should not be used for performance of activities that fall under job descriptions of active job positions in the entity as it can be seen as breach of the Labour Law and the entity may be fined by the national labour inspectorate.

Taxes and social security contributions: Employer is obliged to register employees with the Employment Agency of North Macedonia which is directly linked to the systems of the Social Security and Pension and Disability Insurance Funds of North Macedonia, as well as the Public Revenue Office of North Macedonia. Each of these institutions is responsible for the receipt of respective contributions and taxes related to employment. When the employee is registered and employment is established, the employer has to calculate and pay a monthly amount of gross salary (which includes personal income tax and social security contributions). Contributions are not paid for service contractors and their fees are only subject to personal income tax.

Termination: An employer may unilaterally terminate the employment relationship only in cases stipulated by the Labour Law. Basically, there are 3 groups of reasons:

- causes which relate to employee's work ability and their conduct (e.g., not achieving the work results, not having necessary knowledge and skills to perform their duties etc.) –"personal reasons of the employee";
- causes which relate to breach of the work order and discipline by the employee (e.g., negligence in performing work duty, irresponsible use of means of work, abuse of sick leave etc.) – "reasons of fault"; and
- causes which relate to the employer's functioning and business operations, technological, economic, or organizational changes at the employer – "business reasons" (i.e. redundancy and mass-layoffs).

In addition, employment can be terminated mutually by virtue of settlement as well as due to expiration of definite term employment contract, employee's resignation or other reasons determined by law.

In any case, it is important to note that in case of termination a strict and formal procedure must be conducted – otherwise, there is a high risk of the (former) employee initiating a court procedure before the competent court in order to protect their rights. Macedonian courts are rather rigid and inclined towards protection of the employees when it comes to interpretation of law provisions with respect to the termination procedure.

NORTH MACEDONIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

Relations with consumers are generally regulated by the Law on Consumer Protection of Republic of North Macedonia **("Consumer Protection Law")**. The Consumer Protection Law was adopted recently, and it transposes various EU directives related to consumer protection, introducing many novelties. The new law applies to both local and foreign traders which supply goods or provide services in North Macedonia.

The Consumer Protection Law offers legal solutions for better informing and educating consumers as well as providing instruments for resolution of disputes and market supervision. It governs prohibition of unfair commercial practices and of using unfair contractual provisions in consumer contracts. The specific examples of unfair commercial practices and contractual provisions are mostly the same or very similar to the ones mentioned in the EU regulations.

The Consumer Protection Law also regulates distance contracts, the special forms of marketing and the right to submit a consumer complaint. In addition, the role of consumer organizations is regulated more precisely, both at the national and local levels.

One of the most important novelties is the obligation for traders to use both Macedonian and Albanian language, which applies among other things to the following:

- packaging, stickers, instructions, declarations, and/or other appropriate documents providing product/service information to the consumer;
- documents prepared by the manufacturer, importer or wholesaler for the easier and safer use of the goods/services;
- pre-contractual information about distance contracts, off-premises contracts and/or contracts concluded on an online sales area, etc.

Generally, the rules on commercials are provided in the local Law on Audio and Audiovisual Communications. In this regard, depending on the business activity, other laws (such as the local Law on E-Commerce) may also be applicable.

TERMS OF SERVICE

Yes. Terms of service are binding for the other contracting party if the party was made aware or had to be made aware of their content, at the moment of conclusion of the contract. Usually, traders ensure compliance with these obligations through a checkbox mechanism related to the content of the terms of service, which consumers are required to select when completing a purchase.

The terms of service have to be drafted in accordance with the consumer protection regulations and must not include unfair contractual provisions, such as:

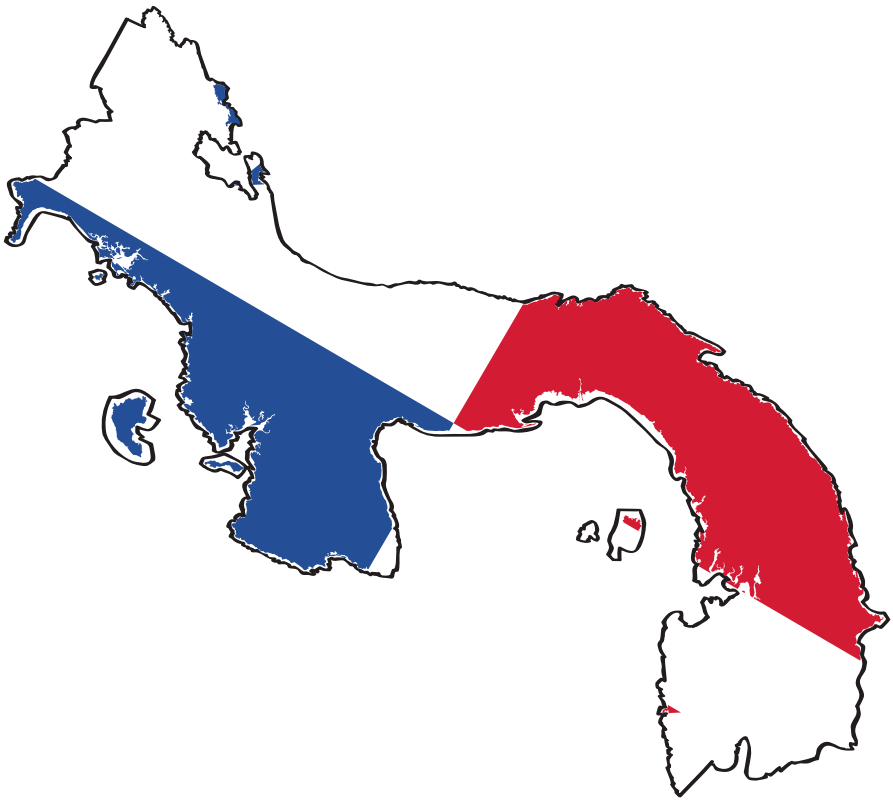
- excluding or limiting the trader's liability for consumer injury or death caused by the trader's actions;
- binding the consumer to the contract, while the trader's obligations depend solely on their will;
- allowing the trader to keep payments if the consumer withdraws from the contract, without a reciprocal right for the consumer if the trader terminates the contract;
- requiring the consumer to pay disproportionate compensation for unfulfilled obligations;
- granting the trader the unilateral right to terminate the contract, with no such right given to the consumer, and allowing the trader to retain payments if consumers fail to fulfil their obligations

Authorized entities (such as the Organizations of Consumers Macedonia, Organization of Consumers Ohrid, etc.), to safeguard the collective interests and rights of consumers, in the context of unfair contractual provision, may commence proceedings before an appropriate court or market surveillance authorities seeking to determine that a contractual provision is unfair and request a prohibition to use such provision.

Online terms of service can also be deemed as pre-contractual information about distance contracts. As such, in accordance with the Consumer Protection Law, they must be provided in both Macedonian and Albanian language.

WHAT ELSE?

Under the latest amendments to the Law on Value Added Tax of Republic of North Macedonia **("VAT Law")**, foreign entities that conduct turnover of goods and services in the country, with no registered presence in North Macedonia, must pay VAT in North Macedonia in certain circumstances. For these purposes, the foreign entity must appoint a tax representative in the country which would have the obligation to comply with all VAT requirements in the name of the foreign entity. Note that these amendments to the VAT Law are fairly new and the practice is still underdeveloped.



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LEGAL FOUNDATIONS

Panamá is organized as a unitary republic, decentralized and with autonomy of its territorial entities. Although it is divided into 10 provinces, 81 municipality, 6 indigenous tribes and 701 'corregimientos'

Panamá follows the **civil law system.** It relies on a codified system of written law which regulates different areas, such as civil, commercial, family, fiscal, criminal and procedural, labor law, among others. The main codifications are the followings:

Panamanian Civil Law is responsible for regulating the relationships between members of a community. The purpose is to preserve the interests of the subject at a moral and patrimonial level. The main source of law in this matter is the Panamanian Civil Code (Law 2 of 1916).

Panamanian commercial law regulates the formal requirements of a plural number of business tools and structures necessary for your commercial activity to always remain within the framework of the Law. The main source of law is the Commercial Code (Law 2 of 1916). In corporate matters, the regulations issued by the Ministry of Commerce and Public Registry have also an important role.

Panamanian Criminal Law is codified through two major codes: the **Criminal Code and the Code of Criminal Procedure.** The Criminal Procedure Code of Panama was adopted in Law 63 of August 28, 2008. The purpose of the criminal process is to investigate crimes and prosecute participants. Generally, a criminal proceeding involves the following parties: The Public Prosecutor's Office.

Panamanian Procedural law Procedural law is an autonomous right and is the institution that governs the entire procedure, both civil and criminal, labor, family and other areas, etc., so that fundamental guarantees to those who are a party in a legal proceeding are not violated.

Panamanian Labor law This Code regulates the relations between capital and labour, on the basis of social justice as defined in the Constitution of the Republic, establishing State protection for the benefit of workers.

Along the main codifications, panamanian law also have different layers of applicable law such as:

- General and Specific Laws
- Executive Decrees
- Ministerial and Autonomous Authorities Resolutions
- Municipality Resolutions

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CORPORATE STRUCTURES

Owning interests or having investments in Panama does not create the obligation to be legally established in the country. However, if the investor intends to conduct permanent activities in Panama, they will be required to establish a local branch or Panama company. The Panama Commerce Code provides a number of corporate forms, ranging from partnerships to stock corporations.

The principal corporate structures are the following:

Limited Liability Companies (LLC)

These companies, known as Sociedades de Responsabilidad Limitada in Spanish, are identified with the abbreviation "SRL.", which must be included in the corporate name.

The partners' liability is limited to the amount of their respective capital contributions, except for labor and tax liabilities. Partners will be held responsible in a subsidiary manner, albeit jointly, with the company for such liabilities A minimum of 2 or more partners and are required for its incorporation. There is a $2,000.00 minimum capital requirement There is no minimum capital required for incorporation, nevertheless it must be agreed by all the partners for the entity's incorporation, as well as the participation or capital of each one. is It is not necessary to pay the capital in full at the time of incorporation.

It must be constituted by means of a public deed, or private document for small companies, and then be registered in the commercial registry of the Public Registry of Panama. Likewise, the corporate purpose must be determined, which means that it can only carry out thoseactivities established in the bylaws.

An SRL. also known as a Limited Liability Company, is a type of legal entity that allows the development of any type of commercial activity in Panama.

An SRL in Panama may consist of natural or legal persons of any nationality and the capital contributed by the shareholders at the time of incorporation can be declared in any currency.

Advantages

A minimum of two (2) natural or legal persons is required.

- Moreover, it will not be limited in terms of the commercial and economic activities it can carry out since Panamanian law allows it to engage in any kind of lawful activity.
- It may even be merged with other domestic or foreign companies or transformed into another type of company if it so requires.
- Will be exempt from taxes on their profits when they have been obtained outside Panamanian territory
- The SRLs pay the tax called the 'Tasa Única Anual' which is paid annually for registration or validity

CORPORATE STRUCTURES, CONT'D

Stock Corporation

In Stock Corporations, known as Sociedades Anónimas, shareholders' liability is limited to the nominal value of their stock holdings. While Stock Corporations may negotiate their shares on local capital markets, the by-laws may establish preemptive rights for the subscription or negotiation of shares issued by the corporation. Preemptive rights for the negotiation of shares will be deemed suspended if the company's shares are negotiated in any stock exchange.

Stock Corporations must be formed by at least 3 directors, there is no minimum capital requirement, unless the purpose of the company is to engage in financial activities.

Its incorporation is made by means of a public deed and must be registered in the commercial registry at the Public Registry of Panama of the place where it was incorporated. It is important to mention that a term of duration of the company and a specific corporate purpose must be established.

It is the most popular option for foreign investors expanding into the country due to its reduced complexity and short-term creation.

Corporations are required to have: a board of directors, a legal representative, and a registered agent, who would be a panamanian licensed attorney.

Panamanian companies may be organized by two or more persons of age (who may be Panamanian or foreign), as well as legal entities, for any lawful purpose for which the subscribers or incorporators underwrite at least one action each, of the authorized share capital of the company in formation.

The formation of a company does not require the subscription of capital nor the contribution of any sum of money. For the company to enter into operation only the amount of capital must be specified in the social agreement. Share capital is represented in shares. Shares' ownership is based under the corporate secrecy principle.

The names of the directors are public and must be included in the social pact.

Advantages

- Exemption from income tax for income obtained from foreign sources or from another country, other than Panama.
- The company's low annual maintenance cost, which including annual corporate tax and registered agent fees add up to only USD 550.00
- Members or shareholders may be foreign and may also be other Panamanian companies or foreign companies.
- The Directors and Dignitaries of a Panamanian corporation may be of any nationality and may be domiciled in any country; they do not need to be Panamanians or have to reside in Panama

CORPORATE STRUCTURES, CONT'D

Simple Joint Venture Company or Limited Partnership

In this kind of structure, the commanders will have limited their responsibility to the amount of their respective contributions; the commanded members, whether or not they are managers, will be jointly and limitlessly responsible for the obligations of the company.

There are two types of partners: Commanders (Managers) and Commanded Partners (Industrial Partners).

Limited liability partners may not be involved in the management of social business nor may their name be included in the company's corporate name.

Advantages

- If some or all of the partners lack the capital necessary to carry out the initial installation expenses, they may apply for a loan, although there is a disadvantage of being in the debtor situation

Disadvantages

- Managing or commanding partners often do not easily find capitalist partners.
- The legal prohibition that limited partners cannot intervene in the management of the business makes them fear that the inexperience of the limited partners will cause the partnership to fail in the joint-stock company.

Joint stock company

Incorporation of a joint stock company will follow the requirements and procedures of Stock Corporations. The capital can be divided into shares and will therefore be governed by the Stock Corporations Act.

As for liability, at least one of the partners will respond personally and unlimitedly as a collective partner to the obligations of the company. Meanwhile, commanding partners will only respond with the value of their respective actions.

The share capital in the joint stock companies must be represented in shares as in the joint stock companies.

The certificates of shares must contain, in addition to the ordinary mentions of these titles, the expression of the partners of personal and unlimited responsibility.

The general meeting appoints a monitoring committee composed of three shareholders to monitor the work of managers, review accounts and inventories.

PANAMÁ

ENTERING THE COUNTRY

The main restriction for investment is the "commerce by retail" restriction. This restriction is stipulated by Panamá's Constitution, and retail commerce is an activity that can only be carried out by panamanians.

However, Panamá has several laws to promote investment. For legal security and certainty, Panamá's count with Law 54 of July 22 1998 for the Legal Stability in Panamá, this law aims to assure the stability and certainty of foreign investment, protecting it by granting the same responsibilities and rights as the national investment companies.

There are also special laws to ease the establishment of manufacturers and multinational companies headquarters in Panamá.

INTELLECTUAL PROPERTY

Intellectual Property in Panamá is regulated mainly by the following laws:

- Law 35 of 10 May of 1996 Industrial Property Rights Law
- Law 61 of October 5th 2012, which amends Law 35 of 1996
- Executive Decree 85 of July 4th of 2017 which regulates law 35 of 1996
- Law 64 of October 10 of 2012 of copyrights and related rights
- Law 20 of June 26th, 2000 of the Special Regime regarding the Intellectual Property of the Collective Rights of the indigenous communities and for the protection and defense of their cultural identity and its traditional knowledge and other dispositions are established.
- Executive Decree 12 of March 20th, 2001 which regulates Law 20 of June 26th of 2000.

Industrial property rights such as: trademarks, patents, geographical indications, denominations of origin, indications of origin, registered designs, unregistered designs and utility models are registered in Dirección General de Registro de Propiedad Industrial - DIGERPI- which is the Patent and Trademark Office in Panamá.

On the other hand, Copyrights are registered in the Copyright Office in the Ministry of Culture, even though registration is not compulsory in order to obtain rights.

Once the rights are constituted and a title is granted registry for border measures, intellectual and industrial property rights could be registered before the National Customs Authority and the different Free Zones in Panamá, such as Zona Libre de Colón, this will enable the authorities to act in such case there is a suspicion of infringement goods entering or leaving Panamá, and communicate as soon as possible the alleged infringement act to the owner, distributor or licensee, in order to legal measures to be taken.

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INTELLECTUAL PROPERTY

Industrial Property

International Treaties

Panamá is not a member of Madrid Protocol, nevertheless regarding industrial property, Panamá is member of several international treaties, as for example the followings::

- Paris Convention for the Protection of Industrial Property
- Berne Convention for the Protection of Literary and Artistic Works
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- International Convention for the Protection of New Varieties of Plants (UPOV)
- International Covenant on Economic, Social and Cultural Rights
- Convention Establishing the World Intellectual Property Organization
- Patent Cooperation Treaty
- Convention on Biological Diversity
- World Trade Organization- Agreement on Trade-Related Aspects of Intellectual Property Rights.
- Trademark Law Treaty
- WIPO Copyright Treaty
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

Trademarks

What is Protectable? Trademarks protect distinctive signs, which can be defined as those signs that are capable of distinguishing goods and/or services in commerce. In Panamá the trademark definition includes traditional and not traditional trademarks.

- **Traditional Trademarks:** those falling in the scope of symbols, letters, figures, images, graphics or the combinations of these elements such as Word marks, Word + logo marks, slogans, and Figurative marks
- **Non- Traditional Trademarks:** those trademarks that do not fall into the scope of the aforementioned trademarks and which sign or representation meets the distinctive character such as tridimensional marks, colors in their different combinations, sound marks, olfactive marks, and flavors marks.

In Panamá Trademarks must be filled by a licensed attorney by law requirement and shall not contain any element that could be considered as a rejection cause such as the use of state flags, traditional knowledge, among others.

Duration of Protection? Trademarks are granted for a term of 10 years. Non proof of use or continuous use is necessary for maintaining the protection, however the right holder must use the trademark in the national commerce in order to avoid cancellation actions.

Is there an extension to the protection term? Yes, Trademarks can be renewed for a period of 10 years. This renewal can be done several times and the only requirement is the payment of the maintenance fee before the expiration date. After the expiration date a grace period to apply for renewal is granted prior to the payment of penalty fee.

INTELLECTUAL PROPERTY, CONT'D

Trademarks, CONT'D

Requirements
Since Panamá is a member of the Trademark Law Treaty, the requirements lack formalities and are very simple. It will depend on the type of trademark and strategy but basically the requirements are:

- Power of Attorney. It must be simple and not require legalizations. The original is not necessary and can be a scan copy.
- The trademark denomination and logo
- The class of the Nice Classification System and the products and/or services to be applied
- Current use in Panamá.
- Applicant information, including address.

Other requirements might be necessary based on the specific case.

Granted Rights
Trademarks usually are negative rights, which means the right to stop other people from using or performing certain acts with the property, but also trademarks can be positive rights in cases they are used in commercial transactions such as licensing or franchising. For obtaining protection, application and registration are mandatory in Panamá.

The owner can impede third parties to carry out without their authorization, the following acts are an example:

- Use the trademarks in packaging or other similar media, when those mediums are going to be use with relation to the products or services related to the registered trademarks or products or services that are considered as related goods, as well as sell or offer in sale this mediums
- Use the identical or similar registered trademarks to identify the same products or services or related products to which the trademark is registered.
- Use the trademark in products that can cause likelihood of confusion or association in the consumer with respect to the origin of the products.
- Use the trademark as a domain name, email, name or designation in electronic mediums or similars

Costs
Cost will depend on a) attorney's fee, b) amount of classes and c) type of trademarks.
The cost for an application in one class is between $140.50 to $152.50 in government fees. Each additional class will cost between $112.00 to $124.00. These amounts do not include the attorney's fee.

INTELLECTUAL PROPERTY, CONT'D

Patents and Utility Models

What is Protectable? Patents are granted over inventions, which according to article 11 of Law 35 of 1996 and its amendments as "any idea applicable in the practice for the solution of a determined technical problem". Under panamanian law patents can be granted to inventions that are a product or a procedure.

Inventions will be subject of protection if they meet 3 main requirements:

- **Novelty:** this requirement is met when there is not any prior invention in the state of the art. For this purpose, the state of art constitutes any publication, divulgation, sale or commercialization or patent application in Panamá prior to the date of the patent application in Panamá.
- **Industrial Application:** this requirement is met when the invention can be used or produced in any type of industry or activity in a specific, substantial and credible matter.
- **Inventive step:** this requirement is met if the invention is not obvious for a skilled person in the art.

Alongside to the requirements mentioned above, the invention must not fall within the scope of are not considered as patentable subject matter, as follows:

- Teoric or scientific principles
- Discoveries that consist of making known or revealing something that already existed in nature, even when it was previously unknown;
- The plans and methods for the exercise of intellectual activities, games or economic or business principles;
- Computer programs per se;
- The forms of presentation of information;
- Aesthetic creations and artistic or literary works;
- The methods of surgical, therapeutic or diagnostic treatment, applicable to the human body, and those related to animals. This provision shall not apply to products, especially substances or compositions, nor to inventions of apparatus or instruments for the implementation of such methods;
- The juxtaposition of known inventions or a mixture of known products, the variation in their shape, dimensions or materials, unless it can really be verified that it meets the requirements of novelty, inventive step and industrial application.
- Inventions that are related with living matter
- Those inventions which commercial exploitation is necessary to protect the public order, State security, moral and good customs, health or life of the people or animals or to preserve vegetables or environment.

Meanwhile, an utility model is any form, configuration, or disposition of any artifact, tool, instrument, mechanism or other object, or any of its parts, that either improve or have a new functioning, use or manufacturing of the object that gives any new utility, advantage or technical effect.

Utility models must meet two requirements which are novelty and industrial application.

Duration of Protection
Patent rights are granted for 20 years. Utility models are granted for 10 years.

In Panamá there is no annuities or maintenance fee, however the term of protection payment can be splitted in a period of 5 years. This must be established at the moment of application

Is there an extension to the protection term?
No, there is no extension to the protection term. There is an exception to this rule in which the patent owner could request a complementary protection of the patent. The complementary protection timeframe will be determined depending on the unreasonable administrative delay.

Granted Rights
As well as trademarks, patents grant negative rights and positive rights. The patent holder is able to impede non authorized third parties to carry out the following acts:

If the patent is a product

- Manufacture the product
- Offer in sale, sale or use the product, or import or store it for any of these purposes

If the patent is a procedure

- Use the procedure
- Manufacture a product obtained by the patented procedure, offer in sale, sale or use the product, or import or store it for any of these purposes

Costs
The approximate cost in a patent application in government fees and other expenses are up to $800.00. It will depend on a case to case basis, and the type of patent application, for example if it is a national patent or an international application. Same applies to utility models.

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INTELLECTUAL PROPERTY, CONT'D

Industrial Models and Designs

What is Protectable? An industrial model is any tridimensional form that functions as a pattern to manufacture a product and that gives a special appearance regarding technical effects.

An industrial design will be any combination of figures, lines or colors that are incorporated to an industrial products with the purpose of ornamentation and giving a peculiar and own aspect

Industrial models and designs must meet the requirements of industrial application and novelty. Novelty will be considered as met when the model or design is an independent creation to a significant degree in comparison with known industrial models or designs.

Duration of Protection
Panamá counts registered and unregistered industrial models or designs. The duration of protection will depend on this.

- Unregistered designs: 3 years counted as from the first divulgation of the design. This protection is independent to the one that can be obtained from registration
- Registered Design: 10 years.

In Panamá there is no annuities or maintenance fee, however the term of protection payment can be splitted in a period of 5 years. This must be established at the moment of application

Is there an extension to the protection term?
Yes, registered designs can apply for a period of 5 additional years of protection.

Granted Rights
The owner of an industrial model or design can impede third parties to use without his authorization the model or design, as well as manufacture, sell, offer in sale, use, import or store it for this purpose.

Costs
The approximate cost in an application in government fees and other expenses are up to $500.00. It will depend on a case to case basis. Attorney Fee is not included.

Copyright and related rights

What is Protectable? Literary, artistic and scientific works of intellectual creations are subject to copyright in Panamá without discrimination of the medium and fixations. Protection is given to the works independently to registration.

Duration of Protection
The duration of the protection depends on different factors, such as the type of work, the type of authors, among others. However the standard protection for economic rights is the life of the author and 70 years after the death of the author. Moral rights do not expired and subsist after the author's death.

Is there an extension to the protection term?
No, there is not an extension for this term.

Granted Rights
Under panamanian law, both moral and economic rights are recognized.

Moral Rights:

- Divulgation right
- Paternity right
- Integrity right
- Modification right
- Right to retire in life the work from the commerce

Economic Rights:

- Modification right
- Reproduction right
- Distribution right
- Communication to the public right

Costs
If there is not an application for registration, having the copyright is totally free. However since filing the application and obtaining the title is advisable for cases such as infringement and commercialisation opportunities. In such a case, it will depend on the type of work and legalizations that must be met, the government expenses and sundry expenses may vary from $20.00 to $50.00. Please note that an attorney is not needed, unless it is an entity who is applying to.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is Protectable? Any commercial or industrial information of confidentiality nature that gives or allows a competitive and economic advantage against third parties.
Since trade secrets are not registrable rights, the owner must take the necessary steps to assure confidentiality and therefore, the information be considered as a trade secret. The following measures are considered as sufficient by panamanian law:

- When the material support that contains the trade secret is labeled with the words ``confidential", "secret" or any other word or warning that the information must not be revealed.
- When the material support that contains the trade secret, is in a safe space, and far from people who does not have knowledge about it
- When it has be warned to the people that has access to the trade secret, either verbally or written, about the confidentiality and inviolability of the secret
- When any other actions to keep confidentiality are taken

DATA PROTECTION/PRIVACY

The Protection of Personal Data is a system designed so that natural persons can have access and control over the use given to the information that distinguishes them directly or potentially as individuals. Since the issuance of Laws 81 of 2019, ("Data Protection Regulation" or" DPR") Panama has embarked on the development of a comprehensive protection system, which provides adequate levels of Personal Data Protection, in accordance with international standards on the matter.

Law 81 on the Protection of Personal Data of the Republic of Panama protects the rights and freedoms of citizens against public and private persons and institutions that handle personal data.

The Panamenian regime distinguishes different types of personal data, which, according totheir classification, receive a different level of protection, such classification is as follows:

Public Data: Is Data that the law or the Political Constitution have determined as such. The consent of the owner of the information is not required for its collectionand processing and the Law 6 of 2002.

Semi-private data: Is Data that are not of an intimate, reserved, or public nature. The disclosure of such data may be of interest not only to its owner but also to acertain group of people.

Private Data: Data whose nature is intimate or reserved, therefore, it is only relevant to the owner of the information; for its disclosure and processing,authorization of the owner is required.

Sensitive Data: Data that affect the privacy of the owner, which is why they enjoy special protection. An improper use of this information can generate discrimination; therefore, they can only be processed if it is necessary to safeguard a vital interest of the holder or, being this incapacitated, has expressly authorized its collection.

ARCO rights are the primary inalienable rights that the holders of personal data have to access, rectification, cancellation and opposition.

The entity in charge of supervising compliance with the regulations related to personal dataprotection is the Autoridad Nacional de Transparencia y Acceso a la Información ("ANTAI"). It is also empowered to exercise vigilance in this matter and impose sanctions for non-compliance with the regulation.

There are regulations and obligations with respect to the national and international transfer of personal data, the registration of databases in the National Data Base Registry and with data bases containing information related to national security and defense, intelligence and counterintelligence information, credit history information (financial habeas data) and State census.

PANAMÁ

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

ARTIFICIAL INTELLIGENCE

Panama doesn't have a specific legal and regulatory framework for AI.

However, in 2023, a Panamanian citizen presented a draft of a bill of law to be discussed in the National Assembly. The draft is still waiting for approval in the Legislative Branch.

The draft of a Bill of Law 014 of 2023 regulates the use of Artificial Intelligence in the Republic of Panama.

Additionally, article 19 of the Data Protection Law (Law 81 of 2019) on Data Protection also regulates automated individual decision-making.

- In December 2023, the Panamanian National Innovation Authority (AIG) initiated a public consultation to find a consultant to develop the National AI Strategy. The call for applications closed last January. AIG will be the authority responsible for the AI public policy in the country.

As to the private sector, AI is one of the innovation drivers, and numerous companies are currently implementing AI in their internal processes in Panama.

EMPLOYEES/CONTRACTORS

General: The Labour Code provides that any employer shall maintain Panamanian or foreign workers of Panamanian spouse or with ten years of residence in the country, in proportion not less than 90% of the staff of ordinary workers, and may maintain specialized or technical foreign personnel not exceeding 15% of the total number of workers.

Employers needing to occupy foreign workers shall obtain an authorization from the Ministry of Labour and Labour Development, upon verification that the percentages of nationals required are not altered.

This authorisation shall be issued for up to one year, renewable for a maximum of five years.

- Indefinite term contract
- Fixed term contract
- Contract for work or labor
- Occasional, accidental, or temporary contract

The ordinary salary consists in a fixed ordinary compensation biweekly paid; and in extraordinary compensations represented by overtime work, percentage on sales andcommissions, additional salaries, regular bonuses, and permanent travel expenses intended to provide meals and lodging to the employee.

EMPLOYEES/CONTRACTORS, CONT'D

The parties are free to agree any salary amount, as long as it is above the legal minimum wage, which for 2022 is $750 for fulltime employees.Employment contracts shall be entered in writing, signed at the beginning of any employment relationship in three copies, the company shall keep one copy and the worker shall be given another at the time of signature; the third copy will then be sent to the Directorate-General for Labour or to the regional directorates of the Ministry of Labour and Labour Development.

The ordinary week in Panama consists of a maximum of 48 working hours, with a daily maximum of 8 working hours, which will be decreased gradually from 2023 (47) to 2026 (42). The daytime working day goes from 6:00 a.m. to 9:00 p.m. The work done between 9:00 p.m. and six 6:00 a.m. is considered night work. The working day is divided into two periods: daytime from 6:00 a.m. to 6:00 p.m. and nighttime from 6:00 p.m. to 6:00 p.m. the day comprising more than three hours within the night period of work and the mixed day shall be the day comprising hours of different working periods, as long as it does not cover more than three hours within the night period.

Income Tax
The percentage payable is defined as follows:

- Less than $11,000 a year: no discount.
- $11,000 and $50,000 a year: 15% over the $11,000 surplus.
- More than $50,000 a year: 25% excess tax of $50,000

Social Security
Social insurance covers old age, disability and survival pensions and benefits of medical, surgical, pharmaceutical, laboratory, radiology, dental and maternity care.

The worker must join in a compulsory way and cancel 9.75% of the salary monthly, in the case of the thirteenth month, the deduction would be 7.25%.

Educational Insurance
The contributor must cancel a monthly fee of 1.25% of the salary except, in the case of the Thirteenth Month

There are additional charges to employers regarding the payment of payroll taxes and fringe benefits to the employees.

EMPLOYEES/CONTRACTORS, CONT'D

Termination: The employment contract can be terminated by several factors: the employer can terminate it unilaterally either for just cause, where there will be no paymentof compensation, or without just cause by paying the corresponding indemnity.

Likewise, the employee may decide to resign from his position for any reason, thusconstituting a unilateral resignation on the part of the employee or there is also the possibility of termination by mutual agreement. In Panama, the employer may not terminate the employment relationship for an indefinite period, without any justified cause provided for by law.

The worker may terminate the employment relationship, without just cause, by written notice to the employer fifteen days in advance, except in the case of a technical worker, case in which the notification must be given two months in advance.

Causes of termination laboral

- Mutual consent
- By expiration of the term agreed.
- For the conclusion of the work subject to the contract.
- For the death of the worker.
- For dismissal.
- Resignation of the worker.
- By unilateral decision of the employer

Mutual consent

- It requires writing.
- No registration of the Ministry of Labour and Labour Development is required.
- Good faith is presumed.
- It is valid as long as there is no infringement of acquired rights.
- Don't break out.

Expiration of the term agreed

- Applies to defined contracts.
- The term must appear in the contract.
- An end notification is recommended.
- There should be no work continuity.

For conclusion of the word

- It has to be a certain play and it has to be agreed in writing.
- There must be an end notification.

CONSUMER PROTECTION

The regulatory provisions relating to consumer protection are included in the Executive Decree 46 of 2009, regulating provisions of Law 45 of 2007 that dictates rules on consumer protection and antitrust and dictates another provision.

Autoridad de la protección y defensa de la Competencia (ACODECO)

The fundamental objective is "to protect and secure Consumer Rights and the process of free economic competition and free competition, eradicating monopolistic practices and other restrictions on the efficient functioning of markets for goods and services in order to preserve the supreme interest of the consumer"

Consumer rights

- The right to be protected against products or services that pose a risk or danger to your life, health or physical safety.
- The right to receive from suppliers all information on the characteristics of the product or service offered.
- The right to access a variety of products and services.
- The right to the protection of their economic interests, through fair treatment, in any consumption relationship.

PERU

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PERU

LEGAL FOUNDATIONS

The legal foundations of Peru are based on its constitution and its legal system, which is primarily derived from civil law traditions. The current constitution of Peru was adopted in 1993.

Key components of Peru's legal foundations include:

- Constitution: The constitution of Peru is the supreme law of the land, outlining the structure of government, the rights and responsibilities of citizens, and the principles upon which the legal system operates. It establishes the separation of powers among the executive, legislative, and judicial branches of government.
- Civil Code: Peru's Civil Code, enacted in 1984, governs private law matters such as contracts, property rights, family law, and inheritance.
- Criminal Code: Peru's Criminal Code defines criminal offenses and prescribes penalties for violations of the law. It also outlines procedures for criminal investigations and trials.
- Administrative Law: Administrative law in Peru governs the activities of government agencies and regulates interactions between individuals and the state.
- International Treaties and Agreements: Peru is party to various international treaties and agreements that influence its legal framework, including human rights conventions, trade agreements, and environmental treaties.

Regarding jurisdictional layers, Peru is divided into several administrative and territorial units, each with its own level of government and legal authority. The important jurisdictional layers in Peru include:

- National Level: At the national level, Peru is governed by the central government, which includes the executive, legislative, and judicial branches based in the capital city of Lima.
- Regional Level: Peru is divided into 25 administrative regions, each with its own regional government. Regional governments have authority over matters such as economic development, transportation, and regional planning.
- Local Level: Within each region, there are numerous local governments, including provinces, districts, and municipalities. Local governments are responsible for providing basic public services, such as education, healthcare, sanitation, and public safety, to their constituents.

Overall, Peru's legal structure is characterized by its civil law tradition, codified laws, and a system of government with multiple jurisdictional layers at the national, regional, and local levels.

PERU

CORPORATE STRUCTURES

Startups are companies that focus on innovation and the development of new products and services, primarily leveraging information technologies. These businesses, like any other, consist of a combination of capital, expertise, and workforce. However, what sets startups apart is their emphasis on creating and introducing novel solutions to the market, often driven by technology. The purpose of this chapter is to be a simple and user-friendly guide for creating and operating a startup in Peru, with an emphasis on societary aspects.

What type of company do I need to establish?
First It is necessary to be familiar with the existing types of companies in Peru and determine which one is most convenient according to the needs of the business and the General Law of Companies of Peru, Law No. 26887. The most commonly used business forms are Anonymous Societies and Limited Liability Companies because they offer flexibility in the structuring and management of the company and provide limited liability for partners or shareholders. This means that their liability is limited to the amount of their contribution to the social capital, providing greater personal protection for investors. Following we will explore the subject in grater detail.

Anonymous Companies

There are three types of Anonymous Companies: Ordinary Anonymous Company, Open Anonymous Company, and Closed Anonymous Company.

Ordinary Anonymous Company (S.A.)

Ordinary Anonymous Companies must have a minimum of 2 shareholders and a maximum of 750. If an Ordinary Anonymous Company exceeds this limit, it is classified as an Open Anonymous Company.

The General Shareholders' Meeting, as the supreme body, has the authority to decide on fundamental aspects of the company. This includes the modification of the social bylaws, the merger, division, or reorganization of the company, capital increase, appointment and removal of the general manager, approval of the social management, dissolution, and liquidation, among others. Each decision is recorded in minutes and attached to the corresponding Minute Book.

The administration of the company is entrusted to the Board of Directors and the General Manager. The Board of Directors, a collegiate body elected by the General Meeting, must have a minimum of three directors, confirmed by the General Meeting, with a term of office for specified periods, not exceeding three years nor less than one. The position is remunerated, and the determination of such remuneration is established in the bylaws or by decision of the board.

It is important to note that the position of director is limited to natural persons, without restrictions on nationality or residence in Peru. In contrast, the position of General Manager can be held by a legal entity or a natural person, provided they are domiciled in Peru.

Open Anonymous Company

The Open Anonymous Company is a type of commercial company with a significant capital level, requiring a minimum of 750 shareholders. Additionally, it must register all its shares in the Public Registry of the Securities Market to be offered to the general public. It is essential to highlight that limitations on the transfer of shares are not allowed.

Closed Anonymous Company

In this type of company, the number of shareholders must range from 2 to 20. The Closed Anonymous Company does not register its shares in the Public Registry of the Securities Market and has a legal framework very similar to the Ordinary Anonymous Company. The right of preferential acquisition is established, granting every shareholder the faculty to acquire, with preference over third parties, the shares that other members of the company wish to sell. Despite this, the General Law of Companies allows the inclusion of other agreements and timelines for the transfer of shares and even the elimination of this right according to the will of the shareholders.

The management of the company is under the responsibility of the General Manager and, if applicable, the Board of Directors, although the bylaws may establish the absence of the latter. In situations where it is decided to do without the Board of Directors, the General Manager will assume all the responsibilities established by the General Law of Companies for this body.

On the other hand, the holding of the General Shareholders' Meeting can be carried out in a non-presential manner, using any means that allows written, electronic, or other communication, provided it guarantees the authenticity of the process.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company

The organs of the Limited Liability Company are the General Shareholders' Meeting and the General Management. In contrast to Anonymous Companies, this type of business requires a minimum of 2 partners and a maximum of 20. The capital is divided into equal, acumulative, and indivisible social participations, with no possibility of being incorporated into securities. When transferring participations to third parties, other partners have the right of preferential acquisition, without the option to agree otherwise. Additionally, the transfer of participations must be carried out through a public deed and registered in the Public Registry.

What type of company is recommended to establish for a startup?

A startup typically begins with friends or family, initiating as a small project based on innovation, so it is recommended to establish a Closed Anonymous Society . This corporate structure is specifically designed for "family businesses," streamlining decision-making processes swiftly and with lower costs. Additionally, it is essential to consider that, if shareholders decide to transition to another type of company, the General Law of Societies allows the possibility of transforming the business into a different corporate form, contingent upon prior agreement from the General Shareholders' Meeting.

Finally setting up a closed anonymous company for a startup entails the possibility of convening the General Shareholders' Meeting through private communications addressed to the shareholders. Moreover, it allows conducting General Meetings remotely, facilitating the approval of agreements without the need for physical gatherings. Likewise, share transfers are carried out privately. This scenario contrasts with the Limited Liability Company, where such actions need to be registered in the Public Records.

ENTERING THE COUNTRY

Peru promotes equal treatment between foreign and domestic investors, providing a favorable environment for foreign startup companies. The main regulations supporting this principle include Legislative Decree No. 662, Legislative Right No. 757, and Supreme Decree 162-92-EF. These regulations guarantee:

- Equality of treatment for national and foreign investors, without discrimination.
- Freedom in trade, industry, export, and import.
- Possibility to repatriate profits or dividends abroad after tax payment.
- Guarantee of holding and use of foreign currency.
- Right to choose the most favorable exchange rate in the market.
- Freedom to re-export invested capital.
- Unrestricted access to domestic credit.
- Freedom to contract technology and send royalties.
- Right to acquire shares from national investors.
- Option to contract insurance for foreign investment.
- Possibility to subscribe to legal stability agreements with the State.

Forms of Foreign Investment

Foreign startup companies have various options to invest in Peru, including:

- Direct investment in share capital.
- Contributions for contractual joint ventures.
- Investments in local goods and properties.
- Portfolio investments.
- Intangible technological contributions.
- Other forms of investment that contribute to the country's development.

Access to Economic Sectors

Most economic activities in Peru allow foreign investment without restrictions and do not require prior authorization. However, some activities such as air and maritime transport, private security, investments in protected natural areas, and the manufacture of war weapons have restrictions on foreign investment.

Property Rights and Freedom of Organization

Property rights are inviolable in Peru, although expropriations may occur with prior compensation. Foreigners have the same property rights as Peruvian citizens, with certain restrictions in areas near borders. Companies have the freedom to organize and develop their activities as they see fit, within the limits established by regulations related to industrial safety, environmental conservation, and health.

INTELLECTUAL PROPERTY

There are two main branches of intellectual property: 1. industrial property, which is the one that seeks to protect all those products that are intended for industry or commerce; they are basically tools to participate in the market, and 2. copyright, which applies to all artistic or literary creations in respect of which the human being has absolute and unlimited freedom.

Within industrial property we have two large groups: distinctive signs and inventions. Within the distinctive signs, the most common, most used, most widely used and most accessible tool is the trademark. Trademarks are the signs that will serve to identify a product or service in the market. On the inventions side, we will be able to find some types of inventions that can be protected, and, basically, we have two. The invention as such, something new, something novel, which are the patents of invention; and the utility models, which are small inventions, so to speak, that seek to solve technical problems, but in addition to the invention. technical problems, but adding to something that already exists.

On the copyright side, the copyright is exclusively inherent to the person; however, within the copyright itself there may be moral rights, which are unwaivable, unseizable and imprescriptible in favor of the authors; and economic rights, which are all the rights that the author has to be able to profit from his work. Only in the case of economic rights, these can be assigned, sold, transferred, etc. So, what copyright will seek, precisely, is to protect all types of creations, of original character, which may be related to any order, to any type of direction with respect to art, it may be painting, music, literature, drawings, sculpture, etc.

So, trademarks are registered, copyrights are registered, while in the case of inventions in utility model and the utility model inventions and the invention as such receive a patent.

Finally, the distinctive signs, as a rule, are granted for a term of ten years, after which it can be renewed every ten years in an unlimited manner. This does not happen with inventions and new technologies, invention patents, which are the highest recognition at the inventive and development level of a technical solution, are protected for a term of 20 years, while utility models, which are technical improvements to something already existing, are granted for a term of ten years. After which, both enter the public domain.

On the other hand, there is specific legislation on trade secrets, which is contained in and regulated by Andean Decision 486, Common Regime on Industrial Property, as well as Legislative Decree 1044, Law for the Repression of Unfair Competition. The protection provided by these regulations applies only to the Peruvian territory. However, a trade secret, by its nature, will constitute confidential information in any part of the world (which has regulations on the matter), as long as it has not been disclosed. In order to be protected, it must comply with 3 requirements at the same time: 1. to be secret, 2. to have commercial value (because it is secret) and 3. to have been subject to reasonable measures of protection. reasonable measures of protection. The trade secret is protected for an indefinite period of time, subject to the conditions set forth above remaining in force.

PERU

DATA PROTECTION/PRIVACY

The Peruvian data protection regime comes from the Political Constitution of Peru, which provides that computer services, computerized or not, public or private, do not provide information that affects the personal and family privacy of individuals.

Likewise, the applicable regulations consist of Law 29733, Law for the protection of personal data and the Regulation of Law No. 29733. Likewise, there is a Directorial Resolution 019-2013-JUS/DGPDP, Directive for the Security of Information Administered by the Banks of Information Managed by Personal Data Banks, which although it is not binding, helps to chart and determines the organizational, legal and technical security measures to be adopted according to the category of data bank used.

On the other hand, there are additional rules such as: Directorial Resolution 080-2019-JUS/DGTAIPD, Guide to the Duty to Inform , Directive 01-2020-JUS/DGTAIPD, on Treatment of Personal Data through Video Surveillance Systems, Emergency Decree 007-2020, Digital Trust Framework Law, Ministerial Resolution 326-2020-JUS, Methodology for the Calculation of Fines for the Protection of Personal Data and finally, Directorial Resolution 074-2022-JUS/DGTAIPD, which approves the Model Contract Clauses for the International Transfer of Personal Data.

ARTIFICIAL INTELLIGENCE

Peruvian legislation regarding AI and digital governance encompasses several significant provisions.

- The Digital Government Law establishes a comprehensive framework for data governance and management in the public administration, imposing minimum requirements for data collection, processing, publication, storage, and openness.
- Resolution of the Secretary of Digital Government No. 003-2019-PCM/SEGDI creates the Government and Digital Transformation Laboratory, aimed at fostering cross-sector experimentation and co-design in digital innovation, including the use of emerging technologies such as artificial intelligence (AI).
- Urgency Decree No. 007-2020 establishes the Digital Trust Framework, which requires the ethical use of AI and other data-intensive technologies.

The National Artificial Intelligence Strategy (NAIS) is based on strategic axes such as talent formation and attraction, fostering economic development through AI adoption, promoting the necessary technological infrastructure, facilitating access to high-quality public data, and adopting ethical guidelines for responsible and transparent AI use. Additionally, NAIS aims to foster collaboration both nationally and internationally in the field of artificial intelligence.

EMPLOYEES/CONTRACTORS

The Peruvian labor regime of the private sector contemplates the possibility of hiring workers for an indefinite or fixed term.

The employment contract is for an indeterminate or indefinite term provided that three (3) essential elements of an employment relationship are identified (personal rendering of services, subordination and remuneration). Fixed-term or fixed-term employment contracts are those that imply the rendering of services of a temporary nature, for which reason the existence of some justification or objective cause that supports such temporality will always be required.

Indefinite-term employment contracts
These employment contracts may be entered into verbally or in writing. The employment relationship begins on the day on which the effective rendering of services in a subordinate manner and with the consideration of a remuneration. Additionally, the first three (3) months of the rendering of services will be considered as a trial period, so during this time the employer will evaluate if the employee meets the requirements to perform in the agreed job. If the employee is not qualified to render the service, the employer may dispense with the employee's services without the need to invoke a just cause for dismissal.

Fixed-term employment contracts
They are agreed exceptionally and provided that the employer can prove the objective cause of temporary hiring, otherwise it could imply a denaturalization of the referred contract and that it is considered an undetermined term employment relationship (the objective cause must be real and must be verifiable). The employment contract must be executed in writing.

EMPLOYEES/CONTRACTORS, CONT'D

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Work Regime: There is no work for hire regime in Perú. Therefore, each agreement should contain a clause covering the licensing of works made by the contractual partners. Such clause should be as specific as possible

Are there restrictions on terminations of employees? If the employer dismisses an employee without just cause, he is obliged to pay compensation. In the case of workers with indefinite term contracts, it is equivalent to one and a half ordinary monthly remuneration for each year of service of the worker; however, the ceiling of such indemnity is 12 remunerations. In the case of workers with fixed-term contracts, it is equivalent to one and a half ordinary monthly remuneration for each month remaining until the end of the contract, with a ceiling of 12 remunerations. In some cases the judge may order the reinstatement of the worker in his job. Pregnant women and union leaders have special protection against dismissal (null dismissal).

The obligations associated with the remuneration paid to a worker are as follows:

Social Security Health Insurance - 9% of remuneration
Bonuses - Two additional remunerations per year in July and December.
Compensation for Time of Service - One additional remuneration per year in a bank deposit
Vacations - One month per year
Profit sharing - A percentage of profits (from 5% to 10%) depends of the activity.

PERU

CONSUMER PROTECTION

A foreign entity should first be aware that the scope of application of the Consumer Protection and Defense Code, Law No. 29571 (hereinafter referred to as the "Law"), encompasses all instances involving a consumer-provider relationship, whether established or conducted directly or indirectly within the territory of Peru. Such consumer relationships may arise in discrete situations completed in a single act or in those that endure over time.

The Peruvian authority responsible for protecting consumer rights is the National Institute for the Defense of Competition and the Protection of Intellectual Property (hereinafter referred to as "Indecopi"). It has jurisdiction when the contract is both celebrated and executed within the national territory. It also maintains authority when the contract is celebrated in the national territory but executed abroad. In the event that the contract is celebrated abroad but executed in Peru, the Peruvian authority is also competent, especially if the issue is related to the adequacy of the service. However, if the contract is celebrated abroad and executed in Peru, but the problem arises due to incorrect information provided abroad, our authorities would not be competent; instead, it would fall under the jurisdiction of the authorities of the country where the contract was celebrated.

Certainly, in accordance with Peruvian legislation, we shall commence by elucidating the precise definitions of consumer and a provider.

- **Consumers:** According to Peruvian regulations, individuals, whether natural or legal, who acquire, use, or enjoy products or services as final recipients, for their own benefit or family or social group, are considered consumers.
- **Providers:** Providers are natural or legal persons, whether public or private, who, in a habitual manner, manufacture, produce, manipulate, package, mix, package, store, prepare, sell, or supply products or provide services of any nature to consumers.

Main rights of consumers and obligations of Providers

Right to obtain information
This right ensures that consumers have clear and complete access to relevant information about the products or services they are considering acquiring. On the other hand, providers have the obligation to provide accurate and understandable information on various aspects, such as features, prices, terms of use, potential risks, and warranty terms.

Right to suitability
This implies that consumers have the entitlement to receive products or services that are suitable for their specific needs, and, in turn, suppliers have the obligation to ensure the suitability of their offerings, thereby promoting fair and satisfactory transactions.

Right to non-discrimination
Providers cannot establish any discrimination based on origin, race, gender, language, religion, opinion, economic status, or any other kind, regarding consumers, whether they are in or exposed to a consumer relationship. If there is differential treatment towards consumers, it must be based on objective and reasonable grounds.

Right to protection against abusive commercial practices
For consumers, this right implies being treated with honesty and transparency in all commercial transactions. Abusive commercial practices, such as misleading advertising, coercion, or manipulation, are prohibited, and consumers have the right to report and seek redress if they fall victim to such practices.
On the other hand, suppliers are obligated to adhere to ethical and legal standards in their commercial practices. They must refrain from using abusive methods and ensure that the information provided to consumers is accurate, clear, and complete. Additionally, they should respect consumer rights and provide fair treatment in all commercial interactions

PERU

TERMS OF SERVICE

In Peru, terms and conditions are linked to compliance with the Consumer Protection and Defense Code (Law No. 29571), regulated and supervised by INDECOPI. The main references are as follows:

- Information about the service provider: Clear and accurate information about the identity of the service provider must be provided, including their name, address, contact information, and legal registration.
- Description of services: The terms and conditions must clearly describe the services offered, including their main features, terms of use, and any relevant limitations.
- Payment conditions: Payment conditions must be clearly specified, including service prices, accepted payment methods, payment deadlines, and any applicable additional charges.
- Intellectual property rights: Intellectual property rights over the content and services offered must be clearly established, as well as any usage restrictions for users.

Regarding the terms and conditions that are prohibited in Peru, there are no specific provisions listed. However, terms and conditions that are contrary to the law or infringe upon consumer rights may be considered invalid or unenforceable.

TERMS OF SERVICE

In a global context where increasing importance is given to environmental care, Peru is not oblivious to this trend and has established regulations to protect and preserve its natural resources. Therefore, the relevance of Peruvian environmental regulations for startups wishing to operate in the country will be analyzed.

General Environmental Law (Law No. 28611): This law establishes the principles and general standards for environmental protection and sustainable development in Peruvian territory. Its impact on startups lies in the need to comply with established environmental standards, which may require the implementation of additional measures to reduce the environmental impact of their operations.

Environmental Impact Assessment (EIA) (Supreme Decree No. 019-2009-MINAM): The EIA is a mandatory process for projects, works, or activities that may generate significant impacts on the environment. Startups planning to develop such projects must undergo this procedure, which could involve additional costs and delays in the implementation of their initiatives.

Environmental Quality Standards (Supreme Decree No. 002-2008-MINAM): These standards establish environmental quality standards for various components of the environment, such as air, water, and soil. Startups must comply with these standards to ensure that their activities do not contaminate the environment or jeopardize human health.

Impact on Startups

- **Additional Costs:** Compliance with environmental regulations may entail additional costs for startups, whether in conducting environmental studies, implementing cleaner technologies, or paying fines for non-compliance.
- **Compliance Requirements:** Startups must allocate resources to ensure compliance with environmental laws, which may require hiring specialized personnel or adopting more sustainable business practices.

Corporate Image: Compliance with environmental regulations can improve the corporate image of startups, making them more attractive to investors, customers, and consumers who value environmental responsibility.

POLAND

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POLAND

LEGAL FOUNDATIONS

Poland is a member of the EU and Polish legislation is harmonised with EU law.

Poland adheres to the civil-law system, which means it relies on written statutes and other legal codes governing public, private and criminal law.

Private law governs the relationships between individuals, including contracts, warranties, liabilities and more. It is primarily codified in the Civil Code (KC). The primary set of rules overseeing the formation, organisation, operation, termination, merger, division and transformation of commercial companies is the Commercial Companies Code (KSH). Additionally, there are numerous other laws that pertain to specific fields, such as employment (Labour Code), e-commerce and consumer protection.

While the Polish legal system is a civil-law system, it's worth noting that case law, particularly that of the Polish Supreme Court and the Polish Supreme Administrative Court, exerts a substantial influence on the application of the law. The final rulings of these courts frequently serve persuasive precedents and must generally be considered by lower courts. Therefore, case law also contributes to the development of the legal framework.

The country is homogeneous, and the same rules apply in all parts of the country.

However, the opportunity to access, for example, EU grants or other forms of assistance, may vary depending on the region where the business operates or employs individuals.

Poland has a strong talent pool and a thriving start-up scene.

In Poland, relatively lower labour costs attract entrepreneurs, while the high standard of education ensures easy access to talented individuals, particularly in the IT sector. This contributes to the development of a dynamic start-up scene in the country.

POLAND

CORPORATE STRUCTURES

With a large domestic market and an abundance of IT talent, Poland is rapidly emerging as a European hub for start-ups.

The most popular business structures that start-ups can consider are a limited liability company (sp. z o.o.) and a simplified joint-stock company (PSA). The latter one is a new type of company introduced in Poland in 2021, specifically designed for start-ups.

Both legal forms limit the liability of shareholders, facilitate easy entry of investors and enable effective management of the entity's activities.

In the case of Polish start-ups, they often begin as partnerships (general partnership or limited partnership), but at the stage of attracting external investors, they usually change their form to a limited liability company (sp. z o.o.) or a simplified joint-stock company (PSA).

The process of registering a company in Poland is fast and cost-effective. You can establish a company through a notarial deed and then the process of setting up the company typically takes up to 3 weeks.

Alternatively, if we need a standard company with standard Articles of Association, we can establish it faster and cheaper using a special online system for registering and updating company data (the so-called S24 system).

The incorporation of a company with standard AoA and creation of necessary documents take place in the online S24 system provided by the government. The system enables for straightforward management of the entity and most typical changes can be made online using templates available within the system. However, it is necessary to have either qualified signatures to sign the documents or access to a local bank account.

In theory, the establishment of a company online should take place within one day (hence the name of the system S24), but in practice, it may take 2/3 days to a week. It is also possible to purchase a ready-made shelf company from a law firm or shelf company provider.

The minimum share capital for a limited liability company is PLN 5,000, while for a simplified joint-stock company, it is PLN 1. The bodies of an LLC include the shareholders' meeting, a management board and optionally a supervisory board (the supervisory board is mandatory in companies where the share capital exceeds PLN 500,000 and there are more than twenty-five shareholders).

A simple joint-stock company (PSA) is a new type of company introduced into Polish law in 2021, designed with start-ups in mind, aiming to simplify processes such as establishing an Employee Stock Ownership Plan (ESOP). Depending on the needs of the start-up and the preferences of the investor, two types of control over the company are possible: by a Management Board or by a Board of Directors (which introduces a new one-tier concept for Poland, combining both management and supervision).

Joint stock companies (SA) in the Polish market are structured in a manner that makes them the preferred form for much larger organisations or those aiming to be listed, with an already developed structure and significantly more capital (minimum share capital is PLN 100,000). This legal form enables many passive shareholders who do not actively participate in the company's operations.

POLAND

ENTERING THE COUNTRY

Poland is a member of the EU and open to foreign investments.

In general, there are no significant investment restrictions in Poland. Most of these restrictions are unlikely to affect start-ups or their investors, as the minimum threshold for being affected is a turnover in Poland exceeding EUR 10 million in any of the two preceding financial years.

Protected Strategic Companies
The new investment control rules mandate that foreign investors from outside the EU, EEA or OECD must notify the Office of Competition and Consumer Protection (UOKiK) about investments that would lead to acquiring specific decision-making powers in protected Polish companies. These companies include, among others: i) publicly listed companies, ii) companies with assets listed in the unified register of facilities, installations, equipment and services classified as critical infrastructure, iii) companies engaging in business activities within industries specified in the Act on the control of certain investments (the "Act"), traditionally regarded as strategic, (including energy, gas, telecommunications, fuel and chemical industries, and with newly added features such as pharmaceutical production or meat, milk, fruit and vegetable processing) and), iv) companies active in IT services dedicated to industries specified in the Act, traditionally regarded as strategic, which at the same time generate revenues from sales and services in Poland exceeding the equivalent of EUR 10 million in any of the two financial years preceding the notification.

Merger Control
Polish and EU merger control regulations will apply to investments in Poland. However, transactions in which the total turnover of the target in Poland does not exceed EUR 10,000,000 are generally not subject to control. Therefore, in the case of start-ups, it is unlikely that thresholds will be exceeded.

Real Estate
Additionally, the acquisition of real estate or a company owning real estate by non-EU or EEA nationals requires approval from the Ministry of Interior and Administration. However, this restriction does not apply to investments in listed companies.

POLAND

INTELLECTUAL PROPERTY

The fundamental legal acts governing the intellectual property rights in Poland include the Copyright and Related Rights Act and Industrial Property Law. Protection of trade secrets is primarily regulated by the Act on Combating Unfair Competition.

Trademarks

What is protectable? Trademarks are symbols utilised by businesses to distinguish their products or services. A trademark can encompass any symbol that allows the products of one company to be distinguished from those of another and it can be represented in the trademark registry in a manner that enables the unambiguous and precise identification of the protected subject matter.

Where to apply? Trademarks can be registered with either the Polish Patent Office, the European Union Intellectual Property Office (EUIPO) or the World Intellectual Property Organisation (WIPO) under the Madrid System, depending on the desired territories for trademark protection. An application with the Polish Patent Office can be submitted also through a proxy. The Patent Office evaluates whether there are any circumstances preventing the granting of the protective right and subsequently publishes the trademark application in the Patent Office Bulletin. Following this publication, other parties have a three-month window to file an opposition. If no opposition is raised within three months of the announcement in the Patent Office Bulletin, the Patent Office issues a decision to grant trademark protection. Once the decision to grant trademark protection becomes final, the Patent Office will register the trademark in the public trademark register.

Duration of protection? The trademark protection rights last for 10 years from the date of filing the trademark application with the Polish Patent Office. At the request of the holder, the trademark protection may be extended. To renew protection for another 10 years, the required protection fee must be paid to the Patent Office account by the statutory deadline.

Costs? The fee for one class of goods varies depending on the form of application, either PLN 450 or PLN 400. For each additional class of goods, the fee is PLN 120. For a statement of priority use, there is a fee of PLN 100 for each priority.

Patent

What is protectable? A patent is granted for an invention, defined as a technical solution to any problem. Patents are always granted to the creator of the invention, who must be a human being whether the invention is the result of a deliberate action or chance. To qualify for a patent, an invention must meet certain criteria:

- it must be new, meaning it is not part of the state of the art, which refers to the current knowledge in the relevant field,
- it must involve an inventive step, meaning it is not obvious to someone skilled in the relevant field of technology,
- it must be suitable for industrial application.

Where to apply? Patent protection is granted on per-country basis, meaning the applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Polish Patent Office, EPO or WIPO. The registration procedures before these offices vary slightly, particularly in terms of costs.

Duration of protection? The term of protection is a maximum of 20 years from the date of the invention notification.

Costs? The application fee is PLN 550 or PLN 500, depending on the form of application. There is a fee of PLN 100 for each priority statement.

INTELLECTUAL PROPERTY, CONT'D

Patent, CONT'D

Employee invention and inventor bonus? According to the Polish Industrial Property Law, if an invention is created as a result of the creator's performance of duties under the employment (labour) relationship, the right to obtain a patent for the invention shall belong to the employer, unless the parties have agreed otherwise. This means that if an employee makes an invention in the performance of their employment duties, the right to a patent for that invention will belong to the employer. Such a situation arises when the employee's activities that may lead to the invention are performed as part of their employment duties and are identical to the work performed for the employer. For the employer to acquire rights to the invention, the research work carried out by the employee resulting in the invention should take place at the expense of the employer. The parties to the employment relationship may, by contract, establish separate terms regarding this matter. An employee who has created an invention while carrying out their employment duties is entitled to receive remuneration from the employer.

If the parties have not agreed on the amount of remuneration, it shall be determined in fair proportion to the entrepreneur's benefit from the invention, taking into account the circumstances under which the invention was made, and in particular the extent of assistance given to the creator in making the invention and the extent of the creator's labour obligations in connection with the invention.

Utility Model

What is protectable? A utility model is a technical solution - new and useful, related to the shape, construction or combination of elements not structurally connected of an object with a permanent form. To obtain protection, a utility model must exhibit the following characteristics:

- novelty: the solution was previously unknown,
- technical nature: at least one new and useful element can be identified,
- utility: it is functional and serves a practical purpose,
- object of permanent form: it concerns an element distinguishable from its surroundings.

Utility models share a fundamental similarity with inventions – both involve new technical solutions. However, unlike inventions, utility models do not require an inventive step to be considered non-obvious. A solution that is non-obvious and constitutes an object of permanent form can be protected as both an invention and a utility model.

Where to apply? Utility model protection is granted on a per-country basis. Applications for utility models can be filed with the Polish Patent Office.

Duration of protection? Utility models are protected for 10 years from the filing date of the utility model application.

Costs? The application fee is PLN 550 or PLN 500, depending on the form of application. There is a fee of PLN 100 for each priority statement.

Designs

What is protectable? A design encompasses any industrially or artisanally produced object, including packaging, graphic symbols and typographic typefaces, excluding computer programs, as well as an object consisting of a number of interchangeable components that allow it to be disassembled and reassembled (composite product), or an interchangeable component of a composite product if, once incorporated into the composite product, it remains visible during its ordinary use (any use, excluding maintenance, operation or repair). Protection for industrial designs pertains to the external appearance of any industrial or craft product. In simple terms, an industrial design refers to the shape or appearance of an object. This includes the texture of the material, the color, ornamentation, or the typeface. Virtually any object, provided it is new and original, can be submitted to the industrial design registry and protected. An industrial design is considered new if, before the priority date for obtaining registration rights, an identical design has not been made available to the public through use, exhibition, or other disclosure.

INTELLECTUAL PROPERTY, CONT'D

Designs, CONT'D

Where to apply? National designs can be filed with the Polish Patent Office. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the EUIPO, applicants can also file for designs with the WIPO worldwide. The Polish Patent Office examines the application in terms of form and substance, and then issues a decision. If the right of registration is granted for an industrial design, it is entered into the register. The Patent Office issues a certificate of registration and announces the registration in the Patent Office Bulletin.

Duration of protection? The right from registration of an industrial design is granted for a maximum period of 25 years, divided into 5-year periods, starting from the date of filing the application with the Polish Patent Office.

Costs? The fees for an application for an industrial design are as follows: PLN 300 for the application, PLN 100 for each priority statement, PLN 70 for publication of information about the granted registration in the Patent Office Bulletin, and PLN 150 for the first period of protection covering the 1st, 2nd, 3rd, 4th, and 5th protection years.

The following IP rights cannot be registered:

Copyright

What is protectable? Copyright arises spontaneously in Poland and does not require registration. The creator is entitled to both personal and property rights to the product of their work, which are protected under the Polish Copyright and Related Rights Act. The term "work" means any expression of creative activity of an individual character, established in any form, regardless of value, purpose and manner of expression (e.g., literary and artistic works). Copyright protection is granted immediately upon the creation of a work. No registration or labeling is required.

Duration of protection? Generally, copyright expires 70 years after the death of the creator. For co-authored works - copyright expires from the death of the last surviving co-author.

Exploitation of copyright protected work? The creator holds exclusive rights to use and dispose of the work and to receive compensation for its use. This means that only the creator has the right to their work, can dispose of the rights to the work, and is entitled to compensation for its use. The author's personal rights safeguard the creator's connection with the work, which is timeless and cannot be waived or sold. In particular, the creator has the right to: claim authorship of the work, attribute the work with their name or pseudonym, or release it anonymously, decide on the initial publication of the work to the public and control the use of the work.

Employee copyright: The employer, whose employee has created the work in the course of his or her employment, acquires the economic IP rights. The personal rights of the creator, on the other hand, remain with the employee forever, although the contract may restrict their exercise. The rule that the employer automatically acquires work results and IP rights only applies to employees with an employment (labour) contract. The creation of such works must be part of the author's employment duties in the employment contract for the economic rights to pass to the employer. An employment contract must also be in writing. In the case of work for hire and contractors (B2B relationships) or other civil law contracts (other than labour relationships), the agreement must include a clause concerning the transfer of copyright to the company. Furthermore, the agreement must be in writing, either with a wet signature or qualified electronical signature (QES). Without a written agreement, the transfer of IP will not be valid and only a limited license will be granted. Moreover, the IP assignment clause must specify the so-called fields of exploitation, describing the permitted use. Given the widespread use of freelancers in the Polish IT market, it is crucial to thoroughly review contracts with individuals involved in creating computer systems to ensure that these contracts contain properly worded and executed transfer of copyright clauses.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protected? Trade secrets themselves are not recognised as an intellectual property asset. However, the Act on Combating Unfair Competition and other laws protect business information of commercial value that is kept secret. A trade secret is defined as technical, technological, organisational information of an enterprise or other information of economic value which, either in its entirety or in the particular compilation and collection of its elements, is not generally known to persons who normally deal with this type of information or is not readily accessible to such persons, provided that the person entitled to use or dispose of the information has taken diligent measures to keep it confidential.

Duration of protection? Trade secret protection applies for as long as appropriate measures are in place and the information retains its commercial value.

NDA It is advisable to sign additional confidentiality agreements as a good practice.

DATA PROTECTION/PRIVACY

Since 25th of May 2018, the General Data Protection Regulation (GDPR) has been applicable. In Poland, the GDPR is supplemented by the Act on Personal Data Protection and sector-specific regulations. For instance, in electronic communication, regulations are provided by the Act on the Provision of Electronic Services and Telecommunications Law. In the area of employment, regulations are governed by the Labour Code (KP).

The specific provisions in Polish law in the discussed area are as follows:

- The Personal Data Protection Act regulates the functioning of the Polish supervisory authority, including its conduct of inspections. It also includes provisions for the notification of the appointment of the Data Protection Officer (DPO) to the supervisory authority, as well as civil and criminal liability for violations of data protection laws.
- Some provisions of the GDPR do not apply to the processing of personal data for journalistic purposes by media owners.
- Phone calls and electronic messages for advertising purposes require the data subject's prior consent (opt-in model).

Prior consent is required for setting cookies which are not necessary for the provision of the service, regardless of whether personal data is processed. Therefore, opt-in consent is necessary for all marketing cookies. The rules for processing employees' personal data, including employee monitoring, are described in the Labour Code. The Polish Data Protection Authority (PUODO, Prezes Urzędu Ochrony Danych Osobowych) is the competent supervisory authority for personal data protection. Several noteworthy guidelines have been issued by the supervisory authority (available only in Polish). These include guidelines on CCTV, guidelines on data protection in the workplace and guidelines on controllers' obligations related to data breaches. The latter guidelines provide important information regarding situations where there is a high risk of a violation of an individual's rights and freedoms, as well as specifying what information should be provided to the data subject in connection with a data breach.

Unfortunately, there are not yet official guidelines on the processing of personal data in connection with the use of cookies or similar technologies, or the collection of consents for the use of cookies. The competence regarding the recognition of practices concerning the collection of cookie consents lies outside the PUODO. Specifically, the President of the Office of Electronic Communications is competent in this regard but has not been publicly active in making recommendations regarding the application of the relevant provisions of the Telecommunications Law.

Moreover, a violation of rules on direct marketing may result in action being taken by other authorities, such as the President of the Office of Competition and Consumer Protection or the President of the Office of Electronic Communications.

The Polish Data Protection Authority follows a rather data subject-friendly approach..

POLAND

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

ARTIFICIAL INTELLIGENCE

There is currently no specific national regulatory regime for AI in Poland. However, general restrictions, particularly under data protection and copyright law, apply to AI-related activities. In the future, the upcoming AI-Act will be applied in Poland.

The principles of data protection law, especially as outlined in Art. 22 of the GDPR concerning automated individual decision-making, must be adhered to in relation to the development, testing and operation of AI. Thus, the use of AI must result in any legal or similarly serious effects on the data subject, without any human intervention. An automated decision-making process is assumed, for example, if a company utilises the results of an AI-application without any further quality-check and assessment.

National copyright restrictions are particularly relevant for generative AI. This applies to both the input data, especially web scraping, and the output of the specific AI application. The output of AI may infringe the rights of the author of the original if it is identical to or resembles an original source.

EMPLOYEES/CONTRACTORS

Labour relation: The terms and conditions of an employment (labour) agreement in Poland are regulated by the Labour Code. Statutory rules provides employees with numerous rights and gives to the employee sense of stability. This stability stems from statutory notice periods, which are 2 weeks if the employee has been employed for less than 6 months, 1 month if employed for a minimum of 6 months, and 3 months if employed for at least 3 years). Furthermore, employees have the right to annual holiday, typically totaling 26 days each calendar year, and), the opportunity to take maternity and parental leave, along with other privileges outlined by law. Moreover, new employees are required to undergo an initial medical examination and receive health and safety training. Employers are obliged to register employees as insured in the social security institution. The employment agreement also grants employees the right to take sick leave, as determined by a doctor, and employees are entitled to renumeration for days off due to illness.

An employment agreement may be concluded for various terms:

- trial period,
- fixed term,
- indefinite period.

The maximum length of all fixed-term employment agreements concluded with an employee is 33 months and no more than 3 fixed-term agreements may be entered into, after which the next fixed-term agreement is considered to be an indefinite-term employment agreement.

Employees within 4 years of reaching retirement age are protected against termination of the employment agreement.

B2B / freelancer: Self-employment (B2B/contractor-based model) is quite popular in Poland. It is often favoured due to its potential tax and social contributions efficiency, prompting parties to opt for self-employment over traditional labour employment contracts. However, it's important to note that the adoption of this model is not always justified and may be related to some risks.

EMPLOYEES/CONTRACTORS

Who qualifies for the self-employment model?
Only certain positions and types of work are eligible for outsourcing and may qualify for the self-employment model. In the case of software developers, it is common to employ them based on a self-employment basis. These consultants typically register their own business activities as sole traders or freelancers and invoice the company accordingly. Senior software developers often prefer this model due to potential tax savings. Furthermore, it is fair to say that employment based on self-employment B2B contracts is the prevailing standard in IT sector in Poland. However, there are instances where this arrangement may be questioned by authorities.

Self-employment is particularly convenient for software developers who work for more multiple entities or co-operate with companies on a non-regular basis. However, in practice, they often work for just one company. While this practice may be subject to scrutiny, it is widely accepted and popular in the market.

It is important to note that employees should not be compelled to work as self-employed individuals. Each case must be evaluated individually, and employers should not automatically replace labour contracts with other types of civil law contracts.

Advantages of self-employment
The use of contractors is popular among IT companies in Poland because this model is often more cost and tax-efficient for better-paid positions, allowing parties to pay less in Social Contributions (a fixed amount). However, a disadvantage is that pension savings for the employee will be lower.

All self-employed individuals may benefit from flat 19% income tax rate. However, self-employed IT consultants may choose and be taxed at a flat rate on revenues, typically at 12% or even 8,5% in some cases (turnover-based), instead of the progressive tax rates of 17% and 32% applicable to in the case of labour contracts.

Self-employed individuals are obliged to pay on their own all contributions and taxes arising from the contracts they conclude. The remuneration may be increased by VAT, but this usually has a neutral effect on the company. Cooperation in B2B model is convenient for employers, as it is more flexible, less formalistic, and easier to terminate than labour relations.

CONSUMER PROTECTION

Poland, like every country in the European Union, has a comprehensive system of legal acts designed to protect the health and economic interests of consumers. Compliance with these regulations is obligatory for every entrepreneur, and there are specific legal sanctions for violations. Polish consumer protection laws are regulated in various statutes, notably the Competition and Consumer Protection Act and the Civil Code. Furthermore, specific provisions are outlined in the Act on Counteracting Unfair Market Practices, the Act Against Unfair Competition and in the Act on the Provision of Electronic Services.

A consumer is defined as a non-business individual. However, certain forms of consumer protection are also extended to sole proprietors in Poland. This applies solely to contracts related to business activities that are not of a professional nature for a sole proprietor.

When engaging with consumers, it is crucial to recognise that, by law, the consumer is considered the weaker party in the contract. Among the most significant rights of consumers is the right to withdraw from the contract and file a claim for defective goods based on warranty or guarantee. Contracts with consumers must not contain prohibited (abusive) clauses. These are provisions included in a contract by the seller without individual agreement with the consumer, which further infringe upon the consumer's interests or describe their rights and obligations in a manner contrary to good morals. Such contracts are not binding on the consumer by law. An example of an unlawful clause could be one that makes terminating the contract conditional on the payment of a penalty or one that excludes the company's liability for non-performance or improper performance. However, provisions defining the main benefits of the parties, such as the price or remuneration, if unambiguously worded, cannot be considered prohibited clauses.

When dealing with consumers, it is essential to ensure proper communication of prices for goods and services. At the point of sale or service provision, the price and unit price should be clearly displayed. Information about reduced prices should be prominently posted in a location accessible to the public and easily visible, either directly next to or near the goods, or within the service description.

If goods are sold online, such as through online shops, consumers have the right to return the goods within 14 days and request a refund of the price paid without providing a reason. This right can only be restricted in specific circumstances. If the consumer is not informed of their right of withdrawal, the right remains valid until 12 months after the expiration of the initial 14-day return period. However, if the consumer is informed of their right of withdrawal within these 12 months, the withdrawal deadline expires 14 days after they are informed.

In case of consumer disputes, special institutions, including inspectorates of the Commercial Inspection, can assist in resolving them.

Moreover, it is important to communicate with Polish consumers in Polish (Act on the Polish language) any notices and information directed to Polish consumers shall be in Polish.

POLAND

TERMS OF SERVICE

The mandatory elements of the terms of service for the provision of electronic services are outlined in the Act on the Provision of Electronic Services. According to this law, the terms of service must include, at a minimum:

- the types and scope of services provided electronically,
- the technical requirements necessary for cooperation with the information and communication system used by the service provider,
- prohibition on the provision of unlawful content by the recipient of the service,
- conditions for the conclusion and termination of contracts for the provision of services electronically,
- complaint procedure.

The service provider is required to provide the terms of service to the recipient of the service free of charge before the conclusion of the contract for the provision of electronic services. Additionally, upon request, the terms must be provided in a manner that allows the recipient to access, reproduce and record the content of the regulations using the information and communication system they utilize.

Furthermore, information important for consumers must be provided in Polish.

WHAT ELSE?

Taxes
Poland has developed a robust ecosystem of tax incentives aimed at fostering the growth of start-ups. These incentives include reducing income tax rates for small taxpayers (9%) and for income generated from IP (5% under the IP box). Furthermore, Polish tax law allows companies to opt-in to the Estonian tax regime, where taxation of company income is deferred until profits are distributed. Another noteworthy feature of Polish tax law is the system of tax reliefs, which allow for the reduction of taxable income by reporting additional tax costs associated with certain qualified expenses. These expenses include those related to R&D activities, robotisation or expenses related to staff engaged in innovative projects (such staff may also report increased tax costs in their individual taxation). There are also incentives for investors, such as the VC relief, which pertains to the costs of equity investments in certain types of companies.

Lengthy Court Proceedings
Court proceedings in Poland, particularly in the Warsaw courts, are known for their lenghty duration. The wait for the first hearing averages around six months, and overall, proceedings in civil, commercial or labour cases can extend for about two years.

National and EU Subsidies
Polish companies have access to various national and EU subsidies. This is particularly relevant for start-ups, as they can take advantage of numerous programs supporting R&D and innovation initiatives.

PORTUGAL

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PORTUGAL
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PORTUGAL

LEGAL FOUNDATIONS

Portugal can be described as a civil law justice system, with Roman law serving as the foundation of the country's legal system, and German law, among others, providing a significant contribution to the development of the Portuguese Civil Code. Portugal is not under a federation regime and counts only with two autonomous regions: Azores and Madeira' island.

Portuguese legal system is divided into several branches (i) Civil law, which governs the relationships between individuals and organizations; (ii) Administrative law, which governs the relationships between individuals and the State; (iii) Commercial law, regulating commercial transactions and business relationships; (iv) Labour law, governing the relationships between employers and employees; (v) Criminal law, focused on the definition and punishment of criminal offences; (vi) Tax law, regulating the legal relationships established between the state and the taxpayer, with regard to tax collection; and (vii) Constitutional law, which governs the organization of the state, individual rights and duties as well as the relationships between the different branches of the government.

As foreseen in article 209 of the Constitution of the Portuguese Republic, the Portuguese judiciary branch is divided between two separate sets of courts: the civil courts and the administrative courts (which may organize in some case by area of expertise – e.g. competition court). The jurisdiction of the Constitutional Court (Tribunal Constitucional) and the Court of Auditors (Tribunal de Contas) is also provided for, in addition to that of the Arbitration Courts and the Courts of Peace.

CORPORATE STRUCTURES

The most suitable and common vehicles to envisage starting a business in Portugal are commercial limited liability companies, either public limited liability company (sociedade anónima – "S.A.") or private limited liability companies by "quotas" (sociedade por quotas — "Lda."). Both vehicles ensure the limitation of shareholders' liability to the extent of their investment in the company, in public limited liability companies vis a vis the capital they have subscribed, and, in private limited companies with the shareholders being responsible before the company for the payment of the other shareholders' participations, with the Articles of Association potentially setting forth that the shareholders will be liable towards creditors of the company up to a certain amount (which can be a joint or subsidiary liability).

Since common law systems do not typically have "quotas", they do not differentiate between shares and "quotas". In light of the preceding, we have mainly referred to shares and shareholders (even when referring to private limited liability companies).

CORPORATE STRUCTURES, CONT'D

Public limited liability company (S.A.)

Five shareholders or single shareholder | Minimum capital of € 50,000

The share capital of public limited liability companies (S.A.) is represented by shares (ações) which consist of securities.

As a general rule, public limited liability companies (S.A.) may be incorporated by a minimum of five shareholders (either individuals or legal entities), being also possible to incorporate a public limited liability company (S.A.) with a single shareholder, as long as said shareholder is a legal entity.

Public limited liability companies (S.A.) have a minimum starting share capital of € 50,000 being divided into shares, and formed either by direct incorporation, in which case there must be a private subscription of the entire share capital, or through a public subscription of its shares. Furthermore, 70% of contributions in cash may be postponed for a maximum period of 5 years.

Shares are nominative (being prohibited bearer shares) and may be in book entry form or represented by certificates and must be registered (i) with the company, in a share ledger book, (ii) with a banking entity or (iii) with a central registration entity.

The identity of shareholders does not appear in the commercial registry certificate, meaning that the information on the ownership is not available to the public at every moment. However, the commercial registry will always have available for consultation the incorporation deed which contains information on the founding shareholders. In addition, a list with the updated shareholder structure has to be submitted to the commercial registry (and becomes available for consultation) whenever the company registers any change that entails the amendment of its Articles of Association.

Governance:
Public limited liability companies (S.A.) have a somewhat complex and intricate organization structure with three main governing bodies – Board of Directors, Shareholders' General Meeting and Audit Board. The alternative structures are:

- Board of Directors (or Sole Director when the share capital does not exceed €200,000) + Supervisory Board (or Sole Auditor);
- Board of Directors (including an Audit Commission) + Statutory Auditor ("Revisor Oficial de Contas" or "ROC"); or,
- Executive Board of Directors (or Sole Director when the share capital does not exceed €200,000) + General and Supervisory Board + Statutory Auditor.

Companies which adopt the structure mentioned in (i) must have a Supervisory Board + a Statutory Auditor/Audit Firm whenever they issue securities admitted to trading on a regulated market, or if two of the following limits are exceeded (for two consecutive years):

- Total balance sheet: €20,000,000;
- Net turnover: €40,000,000;
- Average number of employees during the period: 250.

CORPORATE STRUCTURES, CONT'D

Private limited liabity companies (Lda.)

Typical for small and medium enterprises | Capital split in quotas, with minimum of €1

As for private limited liability companies by "quotas", its capital is split in quotas with a minimum of 1 € per quota. It is possible to incorporate a private limited company with only one shareholder provided that some requisites are met, with the term "unipessoal" is added to its name and provided that any given individual can only have one wholly owned private limited company ("unipessoal").

Quotas do not have a physical representation, being registered with the Portuguese Commercial Registry (which means that information on their ownership is, at every moment, available to the public) and cannot be listed in a Stock Exchange.

These companies correspond to the typical structure adopted by small and medium companies as they prove to be less cumbersome and with a lighter governing structure.

Governance:
Private limited liability companies have a simplified governance structure rarely comprising more than two bodies:

- Shareholders' General Meeting (if the company is a Sole Shareholder company this corporate body will only be comprised of the Sole Shareholder);
- 1 or more Managers.

In principle, this type of company requires only the appointment of a chartered accountant (Técnico Oficial de Contas) to certify the accounts, not being mandatory the appointment of a supervisory body. However, companies which do not have an Audit Board or an Auditor must appoint an Auditor to audit the company's accounts when the company, for two consecutive years, meets two out of the following three requirements (i) Total of assets greater than € 1.5 M (ii) Net sales and other revenue greater than € 3M and (iii) an average number of employees during the financial year greater than 50.
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Branch

Extension of the foreign company | No legal personality

Foreign companies may also carry on their business activities in Portugal by setting up a branch. The branch, which shall be deemed as an extension of the foreign company and not an autonomous legal entity, lacking a separate legal existence ("personalidade jurídica") being the foreign company wholly responsible for all debts incurred by the branch.

Similarly, any rights acquired by the branch are considered acquired by the parent company itself.
Although a branch is not an autonomous and independent legal person for purpose of Portuguese law, but an extension of its parent company, it may act as employer, entering into employment agreements with the employees.
The name of the Portuguese branch is going to be the name of the parent company added by the expression "Sucursal em Portugal" ("Branch in Portugal").

PORTUGAL

ENTERING THE COUNTRY

In Portugal no foreign capital entry restrictions are applicable, with foreign and domestic investment being treated equally.

As a general rule, Portuguese law does not discriminate based on nationality as it does not impose any specific restrictions on foreigners or foreign investment in corporate matters.

However, foreign companies that envisage to carry out its business activities herein for a period longer than a year are obliged to register a permanent representation. If a permanent representation is not registered, the foreign company will be deemed bound by all acts carried out herein with any of the individuals that act on its behalf, as well as the company's managers, being jointly and severally responsible for the obligations undertaken and acts carried out in the name and on behalf of the foreign company.

Authorisation will be required only when investing in regulated sectors such as insurance, banking, energy, media and financial services, among others.

Lastly, foreign investors in Portugal must also take into account EU and national competition rules and other EU policies that might be applicable to the case at hand.

INTELLECTUAL PROPERTY

Trademarks

What is protectable? Any sign which can be represented graphically and is able to distinguish the goods and services from other companies can be registered as a trademark.

Where to apply? Trademarks can be filed either with (i) the Portuguese Institute of Industrial Property, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. The application of a Portuguese trademark is very similar to the procedure before the EUIPO. The application can be easily filed via the online platform on Trademark | Justiça.gov.pt. The Portuguese Institute of Industrial Property then reviews the application and registers the trademark if all trademark requirements are met. With publication in the Industrial Property Bulletin, the two months opposition period begins. Within this time period third parties can oppose the trademark.

Duration of protection? A trademark registration remains valid for a ten-years-period. It can be renewed every 10 years after that for a fee.

Costs? Application costs for Portuguese trademarks for one class amount to EUR 129.08.* (EUR 32.72. are charged per additional classes). In addition, fees of the legal representative apply.

PORTUGAL

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions that are novel, not obvious to a skilled professional and can be applied in industry.

Where to apply? Patent protection will be granted only per country, meaning that applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Portuguese Institute of Industrial Property, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs.

Duration of protection? The term of protection is in any case a maximum of 20 years from application and must be maintained by annual fees.

Costs? Application costs for Portuguese patents is EUR 109.07.* In addition, fees of the legal and technical representative apply.

*Assuming electronic filing

Designs

What is protectable? Industrial or craft product or parts of it can be protected as design.

Where to apply? National designs may be registered with the Portuguese Institute of Industrial Property. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Via the EUIPO Portuguese applicants can also file for designs with the WIPO.

Duration of protection? The term of protection is five years and can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? Application costs for designs until 5 products amounts to EUR 109.07.* In addition, fees of the legal representative apply.
*Assuming electronic filing

Utility Model

What is protectable? Utility models are very similar to patents and can be registered for technical inventions. A major difference is that the publication deadline for an application of a Utility Model is 6 (six) months.

Where to apply? See comments on patent applications above.

Duration of protection? In contrast to patents, the term of protection is only 10 years.

Costs? Application costs for a Portuguese Utility Model amount to EUR 190.87.* In addition, fees of the legal and technical representatives apply.

*Assuming electronic filing

Copyright

What is protectable? Expressions of the intellectual creation of an author are protectable under the Portuguese Copyright and Neighbouring Rights Code. Copyright protection is granted immediately with the creation of a work. No registration is required. However, copyrights can be registered before IGAC – Inspeção-Geral das Atividades Culturais.

Duration of protection? Copyright protection ends 70 years after the author has passed away.

Trade Secrets

What is protectable? The Portuguese Code of Industrial Property protects know-how and business information of commercial value that is kept secret. Thus, protection required that companies take appropriate non-disclosure measures (e.g. marking information as trade secrets, implementing IT security measures, particularly access restriction and concluding NDAs).

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

Apart from the GDPR rules, the following shall be considered since they were introduced by the GDPR execution law in Portugal:

- Some GDPR and GDPR-related rules are applicable to deceased people.
- The use of video surveillance is limited to the grounds set forth in law and must comply with specific requirements.
- Personal data relevant for the employee contribution period may be stored by organizations without term. Consent is not valid as legitimate base for processing employees' data if (i) it results in a legal or economic advantage to the employee or if (ii) such data processing activity occurs under the performance of a contractual obligation (as per article 6/1/b of GDPR).
- Video surveillance images can only be used for disciplinary proceeding purposes if a criminal procedure is taking place under the same facts.
- Biometric data can only be used for assiduity and punctuality control or to provide access to the employer's premises (only representations of biometric data may be used, and the collection process must guarantee the irreversibility of the data collected).

Specific rules are also applicable with regard to privacy on electronic communications. The use of cookies requires specific and granulated consent of the user, and the unsolicited marketing electronic messages are subject to the data subject consent, except if, under exceptional circumstances, there is a prior commercial relation with the data subject from which the sender may deduce that the data subject is expecting to receive such communication. For these cases and for those where the message is addressed to legal entities, an opt-out tool must always be accessible.

In addition to the above, please note that CNPD – Comissão Nacional de Proteção de Dados, the Portuguese data protection authority issued Regulation 798/2018 which stipulates all data processing activities where a data protection impact assessment under Article 35 of GDPR is required. CNPD has also issued several guidelines in relation to the processing of personal data, being the most recent the Guidelines 1/2022 on Direct Marketing and the Guidelines 01/2023 on the Organizational and Security Measures applicable to the processing of personal data.

ARTIFICIAL INTELLIGENCE

Portugal currently does not have a specific regulatory framework for AI. However, the EU's forthcoming AI Act will be directly applicable in Portugal, marking a significant step towards a specific AI regulation. Moreover, the Product Liability Directive and AI Liability Directive are expected to introduce significant changes to Portuguese legal framework, particularly affecting civil liability and consumer protection provisions. These European directives are expected to be transposed into Portuguese legislation within 2-years of their publication.

Even without a dedicated AI regulatory framework, Portugal has several sector-specific regulations that are applicable to AI:

- **Privacy law**: the GDPR and its Portuguese enactment, along with e-Privacy Law address privacy issues. These regulations specifically target automated decision-making processes, providing a legal foundation for privacy protection in the context of AI.
- **Cybersecurity law**: the Law No. 46/2018 and Decree Law 65/2021 outline security protocols and notifications requirement, reinforcing cybersecurity measures that are critical for AI systems.
- **Consumer law**: the Consumer Portuguese laws covers a broad spectrum of consumer rights, including product safety, advertising standards, and the right to accurate information. The Portuguese legislative framework encompasses laws related to digital advertising, e-commerce, distance and off-premises contracts and digital goods, contents and services, general contractual clauses.
- **Intellectual and Industrial Property law**: the protection of intellectual and industrial property, including copyright and related rights under the Portuguese Code of Copyright and Related Rights and the Portuguese Industrial Property Code, extends to datasets used for AI training. The sui generis database rights, as established by Directive 96/9/EC and transposed into Portuguese law, protect the data within these datasets. The Decree-Law no 47/2023 transposes the EU Directive on copyright and related rights in Digital Single Market, introducing exceptions for text and data mining, allowing for the reproduction and extraction of works for text and data mining purposes under certain conditions.

The Portuguese Constitution itself would always serve as a regulatory landscape for AI tools, in particular with regard to fairness, transparency and respect of fundamental human rights. Therefore, the Portuguese regulatory landscape, while not AI-specific, provides legal provisions that allow in broad terms a fair and secure development of AI in the Portuguese territory.

EMPLOYEES/CONTRACTORS

The provision of work in Portugal takes one of two forms, those being services providers (contractors) or the employment contract itself. When it comes to making a decision, the organization looking to hire will have to reflect about the type of service to be provided, and thus decide on the nature of the relationship to be established. In this regard, it should be noted that according to the Portuguese Labor Code, employment comprises the commitment of an individual to provide manual or intellectual activity to an employer, which is materialized on the employer's power to give orders to the employee, on the way to perform the work. On the other hand, in contracts for the provision of services, the work, whether manual or intellectual, to which the provider is obliged is not subject to the employer's power of direction - a fact that contrasts with the typical reality of relationships established through an employment contract.

From an employment contract perspective, the contracting entities are subject to a series of obligations which they must comply with – minimum wage, working time arrangements, absence regime, payment of vacation and Christmas allowances, social security contributions, withholding of taxes and others –, otherwise being liable for administrative offenses. As far as the provision of services is considered, the contracting entities will not have to assume such a large number of obligations, given that most of them will be borne by the service provider (contractor) itself.

The different types of employment contract are foreseen in labor law and must comply with a set of formal requirements. It should also be noted that temporary and transitional contracts are subject to proper justification, otherwise they could be declared open-ended contracts.

The rights over a work created by an employee during an employment agreement, or work-for-hire, are granted to the author or employer, in accordance with what has been agreed before the creation of the work. In the absence of such an agreement, it is assumed that the rights belong to the intellectual creator. This is the general regime laid down in Article 14 of the Portuguese Copyright Code and Related Rights, although there are special regimes for specific works, e.g., software and photographic works.The procedures for terminating employment contracts are described in labor law, leaving no possibility of termination apart from those expressly provided for. Employment contracts may be terminated by expiry, termination, dismissal for reasons attributable to the employee, collective dismissal, dismissal for unsuitability and termination by the employee. Terminations that do not meet the legal requirements may be considered unlawful by the court and may result in reinstatement and indemnities.

CONSUMER PROTECTION

The governing of consumer relations in Portugal is quite complex and comprehensive. Most of the laws derive from EU directives and regulations, notwithstanding some additional requirements added by the Portuguese lawmakers.

The main concerns to consider when engaging with consumers in Portugal are:

- Quality of goods and services: goods and services for consumption must be fit for their intended purpose and produce the effects in accordance with the standard laid down by law or, if no law is applicable, pursuant to the legitimate expectations of the consumer.
- Protection of health and physical safety: It is prohibited to supply goods or services which, under normal or foreseeable conditions, involve risks incompatible with their use.
- Information rights: providers of goods and services must inform consumers about the price, term, warranties, delivery time and assistance on a clear, objective and suitable manner. This is mandatory also for manufacturers, importers, distributors, storekeepers and all those which form the supply chain. All information to Portuguese consumers must be provided in Portuguese.
- Protection of consumer's economic interests: consumer may not be forced to pay for goods or services he/she did not order; also, consumers are entitled to post sale assistance.

There are also specific concerns regarding advertising: regardless the mean used for the advertising message (which includes TV, radio, social media or others), advertisements must not:

- use national or religious symbols, or historic characters on a negative manner;
- appeals to the use of violence or any criminal activity;
- act against the dignity of the human being;
- contain any discrimination in relation to race, language, territory, religion or gender;
- use the image or words of a third party without its permission;
- use obscene language;
- encourage any behavior against the environment protection; or
- use any political or religious content. Advertisement must also be explicitly identified as such and be faithful to the facts of the promoted item or service. To be noted that there are significant restrictions to advertisement with children (even if not acting as the main characters of the message), as well as specific rules for the advertisement of alcoholic drinks, tobacco, hazard games, medicines and others.

All merchants must make available to consumers, if requested, the official complaints book (either on-premises or online). Additional rules apply to the use of the official complaints book in Portugal.

Regarding the warranties' legal regime, to be noted that the maximum warranty term for immovable goods is of 10 years, and of 3 years for movable goods and digital services. Digital services must also abide by some additional rules regarding the functionality, compatibility and interoperability of the services provided.

For online transactions with consumers, some additional rules apply at distance contracts have a specific regime that should be taken into account. All merchants must provide to consumer, before he/she enters into the contract (non-exhaustive list): its identification, its address, telephone number, email, taxpayer number, description of the goods or services ordered, full price (including taxes and posting), duration and registration or license number (if applicable). The terms of sale must be provided to the consumer in a durable format. To be noted the right to withdraw: in most cases, consumer is entitled to withdraw from contract with no penalties within 14 days after receiving the good or the service.

Geo-blocking prohibitions and online dispute-resolution mechanisms approved by EU regulations are also in force in Portugal.

PORTUGAL

TERMS OF SERVICE

In Portugal, all terms must be explicitly accepted by the user. This means that any material changes to the terms of use must also be accepted (or not rejected, depending on how the terms govern this topic) by the user. Some liabilities cannot be capped under a limitation of liability clause (e.g.,. limitations on death or personal injury). Having a complaints procedure set in the terms of service does not prevent the merchant of adhering to the official complaints book (if and when applicable). Reverse engineering of software is lawful and must be accepted if necessary for the interoperability of such software with other software of the beneficiary. Non-solicitation clauses are null under Portuguese law. When online dispute resolution or any other type of arbitration is not applicable or has not been activated by the consumer, appeals over any complaints must be settled in the courts. An electronic signature convention is highly recommended if this signature system is used for entering the terms. If the terms of use are adhesion terms, additional rules apply. In some business sectors other specific restrictions may also apply.

WHAT ELSE?

Under Portuguese law, a tax identification number will be mandatory for both foreign individuals and legal entities who intend to invest or be appointed to a government body of a Portuguese company, with the need to appoint a tax representative when said foreign investor is not based in an EU member country.

ROMANIA

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ROMANIA

LEGAL FOUNDATIONS

Founding Principles

Romania has EU-shaped legislative and institutional frameworks.

Apart from the EU founding treaties and legislation, the Romanian legal system is shaped by multilateral or bilateral treaties dealing with foreign investment issues, exercise of economic activities, freedom of trade, etc.

The Constitution of Romania provides for the fundamental principles of private property and free market economy, as well as explicit limitation and control of powers vested in public authorities.

Foreign investments in Romania generally benefit from the EU standards of protection: (a) no discrimination between national and foreign (including other EU members) investors and investment types and industries; (b) right to repatriation of profits (dividends) compliant with the conditions applicable throughout the EU; (c) protection against nationalization, expropriation and similar measures other than on the grounds and following the procedures strictly regulated by law; (d) right of recourse to dispute-settlement mechanisms.

The Constitution of Romania and secondary legislation also guarantee free access to justice.

Civil Law Legal System

The Romanian legal system is a civil law system, based on the interpretation and implementation of legal enactments.

Therefore, legal precedents are not acknowledged as a formal source of law (although precedents may be presented to courts for exemplification purposes, with the latter not being bound to observe them).

However, the High Court of Cassation and Justice may be asked to issue binding decisions setting forth a set of rules to be followed by all courts of law when ruling over matters in respect of which there is no unitary practice. Save for the previously referred case, the rulings issued by the High Court of Cassation and Justice are not binding but the lower-level courts usually follow their directions.

The European Court of Human Rights' practice (applicable also to legal entities in certain cases) should be considered and applied, as rule, in the Romania's domestic jurisprudence and authorities' approach. The practice of the Court of Justice of the European Union is also mandatory to follow.

LEGAL FOUNDATIONS, CONT'D

Judicial system

The Constitution of Romania guarantees the independence and immovability of the magistrates.

The Constitutional Court of Romania ensures compliance of the most important legal enactments (laws and government ordinances) with the Constitution of Romania and its principles, while the courts of law do so for the secondary and tertiary legislation (government decisions, orders, instructions, etc.).

The Romanian (civil) court of law system is comprised of: (a) common courts (Romanian: "judecătorii") – located in the main towns; (b) tribunals – located in each county and in Bucharest; (c) courts of appeal – corresponding to larger regions (i.e., to 2-5 counties); and (d) the High Court of Cassation and Justice – the highest jurisdiction in Romania (this court has also a relevant role in interpreting and securing the unitary application of the legislation at national level).

According to its size or nature, a claim may be settled in first instance by any of these courts. Specialized courts, as well as specialized sections within the courts, are organized in matters like labor law, administrative and fiscal law, insolvency.

Romanian justice is organized on the principle of double jurisdiction. Therefore, as a rule, case decisions issued by a first instance court are subject to challenge before a higher court.

Romanian nationals and companies have also access to the European courts, including the Court of Justice of the European Union and the European Court of Human Rights.

CORPORATE STRUCTURES

A business presence may be set up in Romania in one of the five legal forms provided under the Romanian Company Law, namely:

- general partnership;
- limited partnership;
- limited partnership by shares;
- limited liability company; and
- joint-stock company.

Each of the above legal forms of company has legal personality.

In addition, a business presence may also be set up as representative office or branch. The Romanian law does not recognize to any of these presences separate legal personality from their parent companies' and so there is no separate patrimony nor separate liability of a representative office or branch.

A branch may be used to carry out business in Romania under similar conditions with a Romanian company (except for some specific restrictions, e.g., land ownership), but cannot exceed in any case the scope of business/operations that the parent company is entitled to perform in its country of incorporation according to its by-laws.

CORPORATE STRUCTURES, CONT'D

The representative office's business would be limited to conducting marketing and promotional activities, finding potential business partners for the parent company, receiving offers or otherwise intermediating transactions for the benefit of the parent company or support its business activity.

Except for certain types of businesses that could only be organized as joint stock companies (e.g., banking, pension, insurance, securities, and investment companies), any corporate legal form could be chosen to carry out a business activity.

EU companies occasionally choose to open and run branches in Romania to benefit from the passporting rules under the EU law.

Most business activities in Romania are conducted through either a joint stock company (SA) or a limited liability company (SRL), while the other forms of organization are rarely met in practice, mainly because they entail the partners' personal liability for the obligations of the company. By contrast, in case of both the SA and the SRL, the law excludes the shareholders' personal liability for companies' obligations, save for exceptional cases when the corporate veil would be pierced.

Except for restrictions in furtherance of the foreign direct investments screening regime (please refer to section #3 below), there are no general restrictions relating with the foreign ownership of Romanian companies.

Below is a comparative presentation of the main matters of interest in relation to the SA and SRL forms of companies:

Joint Stock Company (SA)

Number of shareholders
Minimum: 2 shareholders

Share capital
Minimum amount: RON 90,000 (approx. EUR 18,000).

Types of contributions
Cash contributions are mandatory. In-kind contributions are allowed. Contributions of receivables are allowed upon setting up an SA (being assimilated to in-kind contributions), except for the case in which the SA is established by public subscription. Contributions of receivables are not allowed for share capital increase purpose. Conversion into shares of debts of the company towards its shareholders/ other creditors is permitted. Contributions by form of labor and/or services are not allowed.

Shares
Unless otherwise provided for in the company's bylaws, shares are freely transferable between shareholders and to third parties.

Nationality requirements
There are no requirements from the perspective of local nationality/residency of the company's directors/members of the board of directors or similar corporate bodies (i.e., they may be Romanian or foreign citizens in any proportion).

The directors or board members must register for fiscal purposes in Romania (even if the income potentially derived in Romania is not subject to the Romanian income tax).

Business activities
The activities conducted by a Romanian company must be listed in the by-laws thereof, in detail, according to the Romanian Code of Classification of the Activities from the National Economy (i.e., Romanian version of NACE), with the specification of the main activity intended to be performed.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company (SRL)

Number of shareholders
Minimum: 1 shareholder
Maximum: 50 shareholders

Share capital
Minimum amount not contemplated by law.

Types of contributions
Cash contributions are mandatory upon setting up an SRL. In-kind contributions are allowed.
Contributions of receivables are not allowed for either setting up an SRL or share capital increase purposes. Conversion into shares of debts of the company towards its shareholders/other creditors is permitted. Contributions by form of labor and/or services are not allowed.

Shares (i.e., social parts)
Social parts can be freely transferred between shareholders.

Unless otherwise provided for in the company's by-laws, transfer of social parts to third parties must be approved by the shareholders representing at least ¾ of the share capital. Other restrictions to the transfer may be included in the company's bylaws.

Nationality requirements
Similarly with the SA.

Business activities
Similarly with the SA.

The SRL allows for the minimization of the efforts associated with the functioning and maintenance of a company in Romania; however, its legal regime is not comprehensively regulated under the Romanian Company Law; consequently, the SRL's bylaws must be carefully drafted to properly address all aspects of interest to the shareholders (including mechanisms for the transfer of shares such as tag along, drag along, etc.).

In addition to the partnerships with legal personality governed by the Romanian Company Law, the Romanian Civil Code permits the setting up of partnerships without legal personality. The partners are personally liable for the partnership's liabilities, which renders this format rather unattractive to start-ups.

Business activities may also be carried out in Romania by individuals acting independently (i.e., as opposed to activities under employment agreements). Such individuals must register with the Romanian Trade Registry as either (i) authorized individual, (ii) family enterprise or (iii) individual enterprise. An individual carrying out business under any of the above-mentioned forms would be fully and personally liable with his or her private and business assets.

ROMANIA

ENTERING THE COUNTRY

Foreign direct investments are currently subject to scrutiny in Romania under the regime established through Government Emergency Ordinance no. 46/2022, implementing the EU Regulation (EU) 452/2019 establishing a framework for the screening of foreign direct investments into the European Union ("FDI Regulation").

Implementing a foreign direct investment prior to its approval is prohibited, subject to:

- administrative fines of up to 10% of the total turnover derived in the financial year prior to sanctioning[1]; and
- the annulment of the transaction, in case a foreign direct investment/ new investment/ EU investment (please see the definitions below) has been implemented in breach of the provisions of Regulation (EU) 452/2019 or of GEO 46/2022 AND affects security or public order of Romania or is likely to affect projects or programs of interest to the European Union.

This specific regime applies to investments if falling under the below categories:

- **foreign direct investments,** defined as: investments of any kind by a foreign investor[2] aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking, to which the funds are made available in order to carry on an economic activity in Romania, including investments which enable effective participation in the management or control of a company carrying out an economic activity;

- **new investments,** defined as: initial investments in tangible and intangible assets, linked to the start-up of the activity of a new undertaking (setting up a new location for carrying out the activity for which financing is required, technologically independent from other existing units); an expansion of the capacity of an existing undertaking (the increase of production capacity at the existing site due to the existence of an unmet demand); a diversification of the production of an undertaking into products not previously manufactured (obtaining products or services not previously produced in the concerned unit); a fundamental change in the overall production process of an existing undertaking);
- **changes in the ownership structure of a foreign investor**, should following such change, control be exercised, directly or indirectly by (a) non-EU citizens, (b) non-EU based companies or (c) other non-EU entities without legal personality;
- **European Union investments**[3], defined as: investments of any kind by a European Union investor aiming to establish or maintain lasting and direct links between the European Union investor and the entrepreneur to whom or the undertaking to which the funds are made available in order to carry on an economic activity in Romania, including investments which enable effective participation in the management or control of a company carrying out an economic activity.

Separately, while not expressly regulated, we understand that the Romanian authority also intends to apply this regime to (EU/non-EU) internal restructurings.

The obligation to file an FDI notification before the Romanian competent authority is triggered if two cumulative conditions are met:

- the economic activity concerns one of the areas provided by Decision of the Romanian Supreme Council of National Defense 73/2012 ("Decision 73/2012"), by reference to certain criteria provided by the FDI Regulation – Decision 73/2012 regulates the areas of activity subject to national security scrutiny in a rather broad manner, mentioning, among others4, security of information and communication systems; and
- the investment exceeds EUR 2 million (although, exceptionally, foreign direct investments below the EUR 2 million threshold can also be subject to review and authorization if they can impact or entail risks on security or public order).

A EUR 10,000 examination fee per FDI notification has been recently introduced (due at the date of submission). It shall be reimbursed in case the Romanian competent authority finds that an investment falls outside the scope of the FDI regime.

ENTERING THE COUNTRY, CONT'D

Footnotes:
[1]While the screening regime has recently extended to EU investors, the fine sanctioning the implementation before approval does not yet cover the EU investors, but it is expected to apply also to them (there is no visibility on the actual timing for this change in the sanctionning regime).

[2] A non-EU investor is defined as: (a) a natural person, who is not a citizen of an EU Member State, who has made or intends to make a foreign direct investment in Romania; (b) a legal person whose headquarters is not located in an EU Member State, which has made or intends to make a foreign direct investment in Romania; (c) a legal person whose headquarters is located in an EU Member State, which has made or intends to make a foreign direct investment in Romania, in which control is exercised directly or indirectly by: a natural person who is not a citizen of an EU Member State, a legal person whose headquarters is not located in an EU Member State or another legal entity, without legal personality, organized under the laws of a State which is not an EU Member; (d) the fiduciary trustee of an entity without legal personality which has made or intends to make a foreign direct investment in Romania, or a person in a similar position, provided that the person is not an EU citizen (for natural persons) or does not have its headquarters in an EU Member State (for legal persons) or the person was incorporated according to the laws of a state that is not an EU Member.

[3] An EU investor is defined as: (a) a natural person who is a citizen of an EU Member State, who has made or intends to make an investment in Romania; (b) a legal person whose headquarters is located in an EU Member State, which has made or intends to make an investment in Romania; (c) a legal person whose headquarters is located in an EU Member State, which has made or intends to make an investment in Romania, in which control is exercised directly or indirectly by: a natural person who is a citizen of an EU Member State, a legal person whose headquarters is located in an EU Member State or another legal entity, without legal personality, organized under the laws of a State which is an EU Member; (d) the fiduciary trustee of an entity without legal personality which has made or intends to make an investment in Romania, or a person in a similar position, provided that the person is an EU citizen (for natural persons) or has its headquarters in an EU Member State (for legal persons) or the person was incorporated according to the laws of a state that is an EU Member.

INTELLECTUAL PROPERTY

The following IP can be registered:

Trademarks

What is protectable? Any signs (i.e., word/s, names, drawings, letters, numerals, colors, graphical representations, the shape of a product or its packaging, sounds) distinguishing the goods and services of one company from those of other companies and being represented in a clear and precise manner, can be registered as a trademark. In addition, a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin, may be protected as a geographical indication.

Where to apply? To obtain protection in Romania, trademarks must be filed with the (Romanian) State Office for Inventions and Trademarks **("IPO")**. The procedure for registration of a Romanian trademark is very similar to the procedure before the European Union Intellectual Property Office ("EUIPO"). The application can be easily filed online. (information available in Romanian only). The IPO examines a Romanian trademark application to ensure that it complies with the registration requirements, but only as regards absolute grounds for refusal, without any prior rights assessment. If interested third parties do not file any observations or oppositions within the legal deadlines, the IPO SOIT will issue the certificate of registration. A straightforward application process typically takes around 10 to 12 months. Protection may be also obtained through filing the trademark with the EUIPO (with validity in Romania including) and the World Intellectual Property Organization ("WIPO") under the Madrid System (by designating RO/EM in the trademark application).

Duration of protection? The duration of protection for a Romanian/EU or international trademark is 10 years from the date of application, indefinitely renewable for ten-year periods.

Costs? The SOIT fees for a word trademark, filed in relation with one class of goods/services, amount to approx. EUR 200. Additional IPO fees are due for figurative black and white/color trademarks and if filed for several classes of goods/services. Counsel fees for representation (if case) also apply.

ROMANIA

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? To be patentable in Romania, an invention must be new, involve an inventive step (i.e., not obvious for a person skilled in the art of the relevant field) and be susceptible of industrial application. An invention may relate to a product or a process.

Where to apply? To obtain protection in Romania, an invention must be registered with the IPO. The Romanian Patent Law requires that inventions created by individuals of Romanian nationality on the territory of Romania must first be filed for protection with the IPO, however no sanction is provided for failure to comply. Protection may also be obtained and recognized in Romania for patents filed with the European Patent Office ("EPO") and validated in Romanian or with WIPO, which entered national phase in Romania.

Duration of protection? The duration of protection for Romanian patents is of 20 years from the date of the application, subject to the payment of annual fees.

Costs? The IPO fees for a patent application amount up to approx. EUR 500. Additional IPO fees may be due, such as for search reports, claiming international priorities, etc. Counsel fees for representation (if case) also apply.

Employee invention and inventor bonus? Specific rules govern inventions made by an employee. According to the Romanian special Employee Inventions Law, for inventive mission inventions resulting from the inventor-employee's performance of duties expressly assigned to him/her in the employment agreement and job description, the rights vest with the employer and no additional remuneration / bonus is due. For employment related inventions obtained during the employment agreement or within two years following the termination of such agreement, as the case may be, by knowledge or use of the employer's expertise, by use of the employer's material resources, as a result of the employee's training and development due to the employer's care and on its expense, or by use of information resulting from the employer' activity or made available by it, the employee is entitled to an additional remuneration / bonus, if the employer claimed the invention after the employee's report thereon. Parties may agree that for the development of the invention and the assignment of the rights thereon, the additional remuneration shall be included in the salary paid to the employee.

Utility Models

What is protectable? New technical solutions /innovations can be protected in Romania as utility models. Protection is obtained similarly with that for patents, and the requirement for absolute novelty applies as well, except that the utility models are registered without conducting substantive examination (though a search of prior registered utility models and patents or applications for utility models and patents is provided to the applicant and published in the file of the registered utility model).

Where to apply? For protection in Romania, utility model applications must be filed with the IPO.

Duration of protection? By contrast to patents, the validity of the utility model may not exceed 10 years from the filing date.

Costs? The IPO fees for a utility model registration (including maintenance fees for the first 6 years of protection) amount up to approx. EUR 530. Counsel fees for representation (if case) also apply.

Designs

What is protectable? A product's visual (outer) appearance can by protected by design/models' rights. Copyright protection may also apply (please refer to the next section for details).

Where to apply? Protection may be recognized in Romania through registration as national designs with the IPO. Romania is a party to the Hague System for registering international designs and protection may be also recognized in Romania for Community designs registered with EUIPO.

Duration of protection? The protection period for a Romanian design is of 10 years as of the regular filing date with the possibility of further periods of renewal up to 15 (leading to an overall 25-year protection).

Costs? The IPO fees for a new application for one design (black and white), including maintenance for the first 10 years of protection, amount up to approx. EUR 330. Additional IPO fees may be due for filing and examination of additional designs or representations, designs in color or for claiming international priority. Counsel fees for representation (if case) also apply.

INTELLECTUAL PROPERTY, CONT'D

The following IP cannot be registered:

Copyright

What is protectable? The Romanian Copyright Law provides for protection of literary, artistic, scientific, or other intellectual creations that are original, irrespective of their value or purpose. The law also provides for protection of the related or neighboring rights (i.e., rights of performing artists, producers of sound recordings and audiovisual recordings, or broadcasting organizations) and recognizes a sui-generis right in favor of the makers of databases. Copyright protection is recognized simultaneously with the creation of the work. No registration and no label are required, as Romania is a party to the Berne Convention for the Protection of Literary and Artistic Works.

Duration of protection? Under the Romanian Copyright Law, moral rights are perpetual, not time-barred. Economic rights are protected throughout the author's lifetime and for the following 70 years after the author's death or 70 years after the death of the last surviving author in case of joint authorship. Related/neighboring rights are protected for 50 years from the date of the interpretation or execution (in case of performers' rights) or the first fixation of the work (in case of producers' rights) or the first broadcasting of the program (in case of broadcasting organizations' rights).

Exploitation of copyright-protected work? Under the Romanian Copyright Law, copyright owners have the exclusive right to exploit the work. The owner may grant third parties non-exclusive or exclusive economic rights to use the work, in whole or in part; moral rights cannot be waived nor transferred.

Trade Secrets

What is protectable? Trade secrets are not recognized as intellectual property assets. They are only protected under the Unfair Competition Law, provided that (i) they consist of information that is commercially valuable because it is secret, known only to a limited group of persons, and that (ii) the rightful holder of the information has taken reasonable steps to keep it secret. Companies must therefore act appropriately to prevent unauthorized disclosure (e.g., marking the information as constituting a trade secret; implementing IT security measures, particularly access restriction; using confidentiality agreements with business partners and employees).

Duration of protection? Protection shall apply if appropriate measures to keep the information secret are in place and the information has commercial value.

ROMANIA

DATA PROTECTION/PRIVACY

GDPR applies in Romania and the Romanian legislator made limited use of the opening clauses of the GDPR.

The following main Romanian laws are currently applicable and complement the GDPR provisions: Law no. 190/2018 on the measures for implementing the GDPR ("Law no. 190/2018") and Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector.

For the purposes hereof, we have only covered few particularities resulting from the domestic legislation implementing the GDPR.

Amongst others, Law no. 190/2018 provides for specific (local) rules on the processing of certain categories of personal data (e.g., genetic, biometric, and health data, national identification number), as well as in connection with processing personal data in the public interest or in the context of employment. For example:

- The processing of genetic, biometric or health data for automated decision-making or profiling purposes is permitted with the explicit consent of the data subject or if the processing is carried out pursuant to express legal provisions, implementing appropriate measures to protect the rights, freedoms, and legitimate interests of the data subject.
- A data protection officer must be designated, and training should be provided for the individuals involved in the data processing, in addition to what the GDPR expressly requires, when processing the national identification number based on the legitimate interests pursued by the controller or by a third party.
- In case of monitoring the workers through electronic means or video surveillance systems based on the legitimate interests pursued by the controller or by a third party, the following is mandatory, in addition to the GDPR requirements: consultation with the trade union or, where appropriate, the employees' representatives before introducing the monitoring systems; there being no other effective less intrusive methods to achieve the purpose; storage period to be no more than 30 days, except in situations expressly provided for by law or in duly justified cases.

The law also provides for certain derogations when processing data (i) for journalistic purposes and for the purposes of academic, artistic, or literary expression or (ii) for the purposes of scientific or historical research, for statistical purposes or for archiving purposes in the public interest.

ARTIFICIAL INTELLIGENCE

Romania has not enacted local AI regulations.

It is anticipated that the EU AI act (not yet approved) will apply starting from 2026 (unless the proposed calendar for its entrance into force changes).

Per the current draft of EU AI act, AI systems will classify into four categories:

- **Unacceptable risk systems** – they will be prohibited to use.
- **High risk systems** – they may be used subject to compliance with specific requirements (e.g., conducting a fundamental rights impact assessment before putting the AI system into use);
- **Limited risk systems** – they may be used subject to compliance with light transparency-related obligations (e.g., disclosing that content is AI-generated to permit the users to make informed decisions);
- **Minimal risk systems** – their free use is permitted.

ROMANIA

EMPLOYEES/CONTRACTORS

General: The rules governing the employment relationships in Romania are structured on a four-layer model:

- labour legislation, amongst which Law no. 53/2003 (the "Romanian Labour Code") is the general regulation on the rights and obligations of the employer and of the employees;
- industry/group of companies/company-level collective labour agreements;
- employer's internal policies and procedures (if developed at group level, they could be applicable to the Romanian subsidiary/ies if fully harmonized with the Romanian legislation, drafted in Romanian, and approved by the competent body of the Romanian employer); and
- individual employment agreements (required to observe a minimum content imposed by the law).

Any company having the capacity of employer in Romania must comply with general employment-related requirements (resulting from the Romanian Labour Code and secondary legislation), such as: using the standard template of employment agreement setting forth the minimum mandatory clauses, implementing the general registry of employees, conducting/implementing social dialogue and collective bargaining agreements, ensuring protection of motherhood, taking measures for prevention against and sanctioning of any form of discrimination, occupational safety and health, etc.

The employment agreement and associated requirements: The employment relationship is characterized by certain limitations, restrictions and by strict employee protection requirements.

The individual employment agreement must be in writing, be based on the parties' consent, concluded at least in Romanian language, and registered with the General Registry of Employees at the latest on the day before the employee starts working.

The individual employment agreement must comprise the elements provided by the framework model (approved by secondary legislation). Specific clauses negotiated by the parties with the observance of the legal limits/requirements may also be included in the individual employment agreement.

As a rule, the individual employment agreement is concluded for an indefinite term. Fixed-term individual employment agreements could be concluded as an exception and only in the cases expressly provided by the Romanian Labour Code.

By reference to working time, the individual employment agreement can be concluded for full-time or part-time schedules. A full-time individual employment agreement corresponds to an 8 working hour per day schedule (with a total of 40 working hours per week), while a part-time individual employment agreement corresponds to a schedule consisting in a number of working hours lower than the number of working hours under a similar full-time individual employment agreement.

Work for hire regime: In respect of patents, please refer to the Patents section (the case of inventive mission inventions). As regards copyright, the following specific rules apply under the Romanian Copyright Law with respect to works created within the framework of an individual employment agreement:

- economic copyright in computer programs created by employees, within the scope of their job attributions or at the employer's instructions, vest in the employer, unless otherwise provided in the individual employment agreement;
- copyright in works other than computer programs (e.g., copyright in logos, trademarks, designs, etc.) remains with the employee, in the absence of a specific and comprehensive assignment clause transferring the rights to the employer; to comply with the Romanian law requirements, such assignment clause should indicate: the patrimonial rights assigned to the employer, their modalities of exploitation, duration, and scope of the assignment, and the remuneration paid to the employee (it can be included in the monthly salary paid to the employee).

Termination: Romanian courts of law are very employee-oriented and implementing a termination is quite a complicated process. The employer may dismiss an employee only on grounds specifically permitted by law, which include gross or repeated misconduct, poor performance, medical incapacity, and redundancy. The employer must give to the employee the statutory minimum notice where the dismissal is on grounds of redundancy, poor performance or medical incapacity, while the employee must give notice of resignation in most circumstances. Any type of dismissal implies specific requirements and procedures to be followed to be valid, which may turn out to be burdensome for the employer.

Contractors: Independent contractors may also be hired in Romania, to provide services under independent contractor agreements. There is a risk of reclassification into dependent agents, hence assimilated to employees, with the relevant financial exposure for the employer (in terms of both taxes to be paid and rights to be recognized to the contractors similarly with those recognized to employees).

CONSUMER PROTECTION

The paragraphs below outline specifics of the Romanian domestic legislation in addition to or in furtherance of the applicable EU legislation.

General Requirements
Per the Government Ordinance no. 21/1992 on consumer protection, consumers need to receive complete, correct, and precise information on the essential characteristics of products and services, to allow consumers to have the possibility of making a rational decision on the products/services offered to them and to be able to use the same in full security, according to their purpose. The scope of the information to be provided to the consumers varies in consideration for the type of entity obligated to provide information, i.e., producer, seller of the product or service provider. All information will be provided to consumers in Romanian language.

Under the Order no. 72/2010 of the President of the National Authority for Consumers' Protection, entities promoting and/or offering their products and/or their services through websites or online platforms are obliged to display on their home page a visible link to the official web address of the National Authority for Consumers Protection (https://anpc.ro).

Per the Government Ordinance no. 38/2015 concerning the alternative dispute resolution between consumers and traders, the latter must display on their website, in a clear, comprehensible, and accessible manner, a link to the appointed entities for alternative dispute resolution in Romania (https://reclamatiisal.anpc.ro/).

General Rules on Disclosure of Information to the Consumer in E-Commerce
Law no. 365/2002 on e-commerce activities requires electronic service providers to make available to the recipients of the services/products a minimum set of information that is easily, directly, and permanently accessible; this includes identification data of the provider and information on the prices charged by the provider with respect to the products and services offered to the consumer (e.g., including or excluding VAT and the precise tax amount).

In addition, for contracts concluded by the providers with consumers, via electronic means, Law no. 365/2002 sets forth the information that must be made available to the consumers prior to the latter placing the order. Such information includes data on the technical steps necessary for the conclusion and execution of contracts, contract language, and whether the provider stores the contracts following conclusion and whether these are accessible to the consumers.

The Government Emergency Ordinance no. 34/2010 regarding the consumers' rights under contracts concluded with professionals (including distance contracts) provides for additional requirements relating with the scope of the information to be provided to the consumers, e.g., payment and delivery means, legal warranties applicable to the sold products, post-sale assistance, if case be.

Information Regarding Prices
Government Decision no. 947/2000 regarding the means to indicate the prices of products offered to consumers for sale requires that the selling price and unit prices be expressed in local currency, New Romanian Lei (RON). If the sellers also offer information regarding the price in other currencies, it must be clear and easy to understand.

Commercial Practices
Certain sales practices are prohibited under the Romanian law (e.g., sale of a product/the performance of a service subject to the consumer buying an imposed predetermined quantity or to simultaneously purchasing other product or service).

Certain commercial practices are deemed unfair and are also prohibited under the Romanian law (e.g., any practice including false or deceptive information and causing or being likely to induce to the (average) consumers a transactional decision that they would not have otherwise made, relating with, for example, the main characteristics of the product, the existence of a specific price advantage, necessity for servicing, for a separate part, for replacement or repairs).

B2C Contracts
Under Romanian law, a 14-day cool-off period is applicable in respect of distance contracts concluded between consumers and professionals. The consumers are entitled to terminate the contracts for convenience and without incurring any costs other than costs for non-standard delivery (chosen by the consumer) and costs for returning the products if already delivered to the consumers. Certain limitations apply, specifically provided under the Romanian law.

ROMANIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

TERMS OF SERVICE

According to Romanian law regarding abusive clauses in contracts concluded between consumers and professionals, certain clauses are deemed abusive and hence invalid, including:

- clauses permitting the professionals to unilaterally amend the contract in the absence of a justified reason provided in the contract;
- clauses permitting the professionals to unilaterally amend the contract clauses, without the consumers' consent, regarding the product or service's characteristics or the delivery deadline (for goods) or the supply period (for services);
- clauses limiting or cancelling the consumer's right to claim indemnification in case of the professional's failure to comply with its contractual obligations;
- clauses limiting the professional's liability per the applicable law for death or bodily injuries to consumers due to a professional's action or omission in connection with the utilization of the goods or services;
- clauses providing that the price shall be determined upon delivery or clauses allowing the professionals to increase the prices without permitting the consumers to terminate the contract.

Other clauses not negotiated with the consumer may be deemed abusive if, either by themselves or along with other clauses, they trigger a significant imbalance between the parties' rights and obligations, which is to the consumer's detriment and contrary to good-faith requirements.

The National Authority for Consumer Protection may file court actions aiming at obliging the professionals to amend all on-going contracts that include an abusive clause and their terms of service.

In addition, the consumers have the right to ask the courts to rule on the annulment of abusive clauses.

WHAT ELSE?

Corporate Seat
Romanian companies must have an address prior to registration with the Romanian Trade Registry; for this purpose, a physical office space is necessary (virtual addresses of P.O. box type are not permitted for registered office purposes). The premises may be owned or (sub)leased, a Regus-type office address being acceptable as registered office.

Official Language
Romanian is the only official language of the country. Consequently: (i) any interaction between individuals/legal entities and Romanian authorities (courts included) must be in the Romanian language; and (ii) the public authorities must draft their official acts in the Romanian language. In case of providing the Romanian authorities with documents in other languages, sworn translations thereof into Romanian language are needed. Particularly, we note that, since the private sector often uses and accepts English as business language, to the extent public authorities (e.g., tax authorities) need to scrutinize legal documents drafted in English, the translation thereof into Romanian must be available.

Lobbying
Lobbying is not recognized nor regulated under Romanian law. Governmental affairs activities are or could be deemed to meet the characteristics of certain criminal (corruption) offenses.

Consequently, as much as communication between the public and the private sectors is needed, interaction upon the initiative of an individual company as well as communication during audits conducted by various authorities require careful tailoring and implementation to avoid exposure to administrative or even criminal liability. It is of essence that interaction with the public institutions and public officials be unequivocal, confined to clear rules, and, where possible, documented.

RUSSIA

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RUSSIA

LEGAL FOUNDATIONS

The Russian Federation has a civil law system. The sources of law in the Russian Federation include (i) the Constitution of the Russian Federation; (ii) the Federal Constitutional laws; (iii) the Federal laws; (iv) the Presidential decrees and orders; (v) the decrees and orders of the Government of the Russian Federation; (vi) the laws of the constituent entities of the Russian Federation; (vii) the acts of local authorities, as well as (viii) the international conventions and treaties (in case of due ratification).

The principal source of law in Russia is legislation, which includes primely codified laws (e.g., the Civil Code, the Tax Code etc.) and other laws (e.g., the Federal Law on Joint Stock Companies, the Federal Law on Limited Liability Companies, the Federal Law on Protection of Competition etc.). Unlike the common law system, the case law does not play such a major role; however, the Supreme Court is authorized to analyse existing case law and issue binding guidelines for the lower courts.

As for the jurisdictional layers, there are two levels – federal and regional. Spheres of competence are divided between federal and regional authorities, which therefore have the capacity to enact legislation within the limits of their jurisdiction. In that respect it is important to note that almost all aspects that concern the matters of tax, civil, administrative, customs, criminal and other fundamental spheres of law belong to federal competence.

CORPORATE STRUCTURES

There are different ways for foreign investors to start doing business in Russia: (i) to establish Russian legal entity or to acquire participatory interest/shares in an existing Russian company; (ii) to be registered as an individual entrepreneur; (iii) to establish representative offices or branches of foreign legal entities; (iv) to incorporate a JV with a business partner; (v) to sell products to distributors; (vi) to incorporate a subsidiary.

Below we considered the most principal legal structures primarily used for starting business in Russia.

Individual Entrepreneur

An individual entrepreneur is a natural person who is registered to do business without forming a legal entity. To be registered as an individual entrepreneur, a foreign citizen shall obtain a temporary residence permit/permanent residence permit. This form of doing business is used in case the person is planning to run a small business, that does not require many people and large capitalization (e.g., opening a family restaurant or a small shop). On the one side, this form of doing business has lots of related advantages: (i) simplified registration procedure; (ii) lower state fees, and (iii) smaller taxes. On the other side, an individual entrepreneur is not able to conduct several types of licensed activities, as well as the individual entrepreneur has unlimited liability with respect to its own property.

CORPORATE STRUCTURES, CONT'D

Legal Entities

Under Russia law, there are different types of legal entities (both commercial and non-commercial). For the purposes of doing business, the following are the most popular:

Joint Stock Company

Joint Stock Company (JSC) is a business entity whose share capital is divided into "shares" which are subject to the Russian securities laws. The maintenance and keeping of the shareholders' register of the JSC shall be delegated to a licensed registrar. There are two types of JSCs: (i) public joint stock company, shares of which are publicly traded (PJSC); and (ii) non-public joint stock companies, shares of which are not publicly issued or not issued to an unlimited group of persons (NPJSC). Unlike the latter, PJSCs are subject to stricter regulation in terms of disclosure of information, reporting and corporate governance rules.

Joint Stock Companies are usually used for business that require a more significant financial investment (e.g., banks, insurance companies, industrial and other large-scale enterprises).

Limited Liability Company

Limited liability company (LLC) is a business entity whose share capital is divided into "participatory interest(s)" which fall outside the scope of Russian securities laws. Nowadays, LLC is the most popular form of business in Russia with more flexible corporate governance rules, more simplified incorporation rules, easier financing methods and lesser formalities, in certain aspects, than JSCs.

Branches and Representative Offices

Neither Branche nor Representative Office is considered as a legal entity from the Russian law perspective, but rather a body representing the interests of a foreign legal entity in Russia. The functions of a Representative Office are limited to representing the interests of the parent foreign company in Russia. A Branch has more extensive powers, so it may fulfill all or part of the functions of its foreign founder, including the functions of a representative office.

The Branches shall be properly accredited by the Federal Tax Service. The Representative offices shall also be accredited by the Federal Tax Service. However, representative offices of certain foreign companies – depending on their businesses – are accredited by other authorities (for example, representative offices of foreign banks are accredited by the Central Bank of Russia).

The establishment of Branches or Representative Offices increases the mobility of a foreign company, reduces costs, and consequently leads to higher profits.

RUSSIA

ENTERING THE COUNTRY

Currently, there are a number of requirements for regulatory clearances of transactions in Russia.

Merger control approval

Direct acquisition of over 25% of shares/over 1/3 of participatory interest in a Russian target will be subject to the merger control approval in Russia provided the filing financial thresholds are met. Also, indirect acquisition of the rights to determine terms of business or indirect acquisition of over 50% in a Russian target (or in a foreign company (companies) supplying to Russia in excess of RUB 1 billion for the year preceding the transaction's closing) will be caught provided the filing thresholds are met. Separately, acquisition of fixed and intangible assets located in Russia may require merger control clearance under certain circumstances. Joint ventures in the territory of Russia between competitors could also be subject to merger control clearance. Mergers between Russian companies and creation of a Russian company (if it is contributed with either of the above) may also fall under the merger control requirements.

Financial thresholds are:

- the worldwide aggregate group value of assets of the acquirer and the target according to the latest accounts exceeds RUB 7 billion or their aggregate worldwide turnover in the last calendar year exceeds RUB 10 billion; AND herewith
- the worldwide group value of assets of the target (but without the seller's assets if it loses control as a result of the transaction) according to the latest accounts exceeds RUB 800 million; OR
- If a transaction's price exceeds RUB 7 billion (this is an alternative threshold if the above-mentioned conditions are not met, for example).

FDI approval

The FDI clearance (national security review) applies to foreign investors, which acquire shares/assets/indirect control over Russian companies, which exercise at least one of the 51 statutory activities having strategic importance for the Russian national security.

Under certain circumstances, the thresholds may be very low (e.g., 25% or even 5%). Therefore, it is important to analyze the transaction in detail if it is established that a Russian strategic company may be in its perimeter.

Also, additional requirements may apply (pre-transaction UBO disclosure, post-transaction notification). Other actions, such as obtainment of a regulatory "strategic" license by a Russian company under control of a foreign investor, or obtainment of a foreign citizenship/residence permit by a Russian national, who controls a strategic company, may also be caught.

Separately, if an acquirer is under control of a foreign state (international organization), acquisition of over 25% of voting shares (rights) in any Russian company (or of the blocking rights) may be the subject to the separate FDI filing.

Counter-sanctions approvals

In 2022 various counter-sanctions approval procedures were introduced in the Russian law which potentially target majority of transactions with foreign investors from "unfriendly" jurisdictions. A list of "unfriendly" jurisdictions was adopted by the Russian Government and includes such countries as the United Kingdom, member states of the European Union, Canada, the USA, Japan, Switzerland, Norway, etc. A company will have the status of being "unfriendly" even if it is from the "friendly" jurisdiction or from Russia, but it is ultimately controlled by an "unfriendly" company.

If an "unfriendly" company is a party to a transaction with Russian JSC or Russian LLC, then the regulatory clearance from the special Government Commission must be received prior to closing. Separately if an "unfriendly" company is a party to a transaction, and a Russian resident is another party thereto, where the subject matter of the transaction is securities, an approval may be necessary regardless of whether these are securities of a Russian or a foreign target.

Some transactions may require an approval from the Russian President rather than the Government Commission (there is a separate list/criteria for this).

Also, there are restrictions on the payment of dividends from Russian companies to their parents from the "unfriendly" jurisdictions. Such dividends may either be paid using the special C-type account (with very limited operations possible) or should not exceed RUB 10 million monthly along with the repayment of other debts to "unfriendly" counterparties (e.g., repayments of loans are under the same restrictions). However, an approval from the Ministry of Finance/Central Bank may be received for the payment of dividends/repayment of loans without these restrictions.

ENTERING THE COUNTRY, CONT'D

The Government Commission issued the guidelines clarifying what factors it would consider when deciding to grant the approval for transactions aimed at sale by "unfriendly" persons of their Russian companies. The following criteria should generally be met (although we understand that exceptions on a case-by-case basis are also possible and the list of conditions is under constant review):

- an independent appraisal report regarding the fair market value of assets to be sold prepared by a professional Russian independent appraiser from the recommended list is attached to the application stating the value of assets transferred;
- an expert opinion from an expert being the member of a self-regulatory organization of appraisers is attached to the report;
- the sale price of assets transferred represents at least a 50% discount to the fair market value indicated in the independent appraisal report prepared by a professional Russian independent appraiser;
- key performance indicators (KPI) for the acquirer/target with respect to the business to be purchased are established;
- settlements are to be made either in RUB in Russia, to special C-type account opened in favor of a company from "unfriendly" jurisdiction, or a deferred payment condition is introduced if payment is to be made outside Russia;
- an obligation is undertaken to voluntarily transfer to the federal budget funds in the amount of at least 15% of the fair market value of assets;
- all other regulatory consents have been received;
- if a target if a public company, or there is an option agreement for shares buyback, some other conditions may be imposed.

The criteria for approval of the payment of dividends to "unfriendly" parents are the following:

- the distributable amount is not more than 50% of the net profit for the previous year;
- retrospective analysis of the dividend payments for the previous periods is taken into account;
- the foreign owners of the company intend to continue their commercial activities in Russia;
- views of the Russian regulatory authorities and of the Central Bank are taken into account on the assessment of the significance of the company's operations and the impact of its activities on the technological and production sovereignty of Russia and the Russian social and economic development;
- fulfillment of key performance indicators (KPI), to which there have been a commitment, where such fulfillment is confirmed by the relevant regulatory authorities;
- dividends can be paid on a quarterly basis provided that the company fulfills the set key performance indicators;
- OR, as an alternative condition, an "unfriendly" parent/shareholder made investments into Russian economy, including aimed at the widening of production volumes in Russia, or development of new technologies. In this case the distribution of dividends may be permitted in the amount not exceeding the amount of these investments.

RUSSIA

INTELLECTUAL PROPERTY

The following IP rights can be registered in Russia:

Trademarks

What is protectable? It could be a word, design, 3D design or combination of these. It could also be a sound, a scent, a color or moving holograms etc. Almost anything can be applied as a trademark if it is able to indicates the goods and services from the others on the market.

Where to apply? Trademarks can be filed either with (i) the Federal Service for Intellectual Property (Rospatent) or (ii) the World Intellectual Property Organization (WIPO) under the Madrid System. Registering a trademark is a complex procedure in Russia that involves the application moving through two main stages: a formal examination and a substantive one. At the formal stage the examination checks whether the application meets the minimum filing requirements and at the next stage the examination reviews the application to determine whether it complies with all applicable rules and statutes. There is no opposition procedure in Russia. However, the law allows third parties to file written observations against a pending application that should be considered by the examination of Rospatent.

Duration of protection? The trademark registration remains valid for a ten-years-period and it may be renewed an unlimited number of times.

Costs? Application official costs for a Russian trademark for one class amount approx. EUR 332 and EUR 23 for each additional class up to five, and approx. EUR 45 for each additional class over five. Any fees are subject to verification before filing.

Patents

The objects of patent rights in Russia are inventions, utility models and industrial designs.

Invention

What is protectable? A technical solution in any field relating to a product (in particular a device, substance, microorganism strain, plant or animal cell culture) or a process (a process of performing actions on a material object using material means), including the use of the product or process for a certain purpose, is protected as an invention in Russia. An invention is granted legal protection if it is new, involves an inventive step, and is industrially applicable.

Where to apply? Patent applications can be filed with (i) the Federal Service for Intellectual Property (Rospatent) or (ii) the World Intellectual Property Organization (WIPO) under the PCT system or (iii) the Eurasian Patent organization (EAPO). The term for entering the Russian national phase of a PCT application is 31 months from the priority date. The term for filing a conventional patent application in Russia is 12 months from the priority date.

Duration of protection? The term of protection is, in any case, a maximum of 20 years from the application and must be maintained by payment of the annual fees.

Costs? The application official fees for a Russian patent claiming one independent claim amount approx. EUR 132. Any fees are subject to verification before filing.

INTELLECTUAL PROPERTY, CONT'D

Utility Model

What is protectable? Utility models are quite similar with inventions, but unlike patent they do not require an inventive step. Particularly a utility model in Russia is granted legal protection if it is new and industrially applicable.

Where to apply? Applications for utility models can be filed with the Federal Service for Intellectual Property (Rospatent). In Russia, it is also possible to enter the national phase of a PCT application as a utility model. The procedure of the national phase entry is the same as for patents.

Duration of protection? The term of protection is only 10 years, also requires payment of the annuities.

Costs? Application costs for Russian utility model amount approx. EUR 35. Any fees are subject to verification before filing.

Industrial Designs

What is protectable? An industrial design is granted for the artistic and design solution of a factory or handicraft-made article which determines the appearance of such article. An industrial design is granted legal protection if it is new and original by its essential features.

Where to apply? Russian designs may be registered with (i) the Federal Service for Intellectual Property (Rospatent) or (ii) the Eurasian Patent organization (EAPO). Russia is also a party to the Hague System for registering international designs, thus applications may also be filed through WIPO.

Duration of protection? The term of protection is five years and it can be renewed five times for another five years-period by paying the renewal fee. The maximum term of protection is limited by 25 years.

Costs? Official costs for an industrial design application amount EUR 70. Any fees are subject to verification before filing.

Copyright

What is protectable? The objects of copyright are works of science, literature and art, regardless of the merits and purpose of the work, and regardless of how it is expressed. The objects of copyright also include computer programs, which are protected as literary works in Russia. Copyright as well as related rights do not require any registration under the Russian law and enjoy protection by virtue of the mere fact of its creation.

Where to apply? No registration of work or any other formality is required for the emergence and protection of copyright in Russia. Still a voluntary registration system of software and databases is available for rightsholders in Russia. The Federal Service for Intellectual Property (Rospatent) performs such registration. In order to have the rights recognized, the author may also register the copyright by depositing its work with the organisations involved in the collective management of copyright and related rights in Russia. Such registrations prove the existence of the software, database or any other artistic work in an objective form at a certain date which may be quite important in case of a dispute.

Duration of protection? Copyright protection lasts for the life of the author plus 70 years.

Costs? The state fee for registration of a copyright for a software or a database with Rospatent amount approx. EUR 60. Various other fees may also be required during the copyright application process depending on the registration authority. Any fees are subject to verification before filing.

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Trade Secrets (Know How)

What is protectable? Trade secrets include any business, professional information that has commercial value as long as it remains unknown to third parties. The owner of the trade secret must take active measures to protect the secrecy and ensure that there is no free access to it by third parties.

Duration of protection? Trade secrets protection can last as long as the information actually remains a secret.

How to keep trade secrets secret? Formally, no special registration procedure is required in order to provide for business secret protection. However, the trade secret regime is still recognised as the most effective for the protection of know-how in Russia. Generally, it is necessary to define a list of information that constitutes a trade secret, establish a procedure for handling this information and monitor the access to it to keep it confidential.

Counter-sanctions regulation

Licensing: New counter-sanctions regime of making payments was established by the Presidential Decree No. 322 dated May 27, 2022. Under its provisions the Russian residents shall pay in Rubles to a Special O-type account for their use of IP, the exclusive rights to which belong to the following categories of right holders, which:

- are foreign persons connected with "un-friendly" states (excluding of right holders which duly fulfills their obligations under IP-related agreements concluded with Russian counterparties);.
- supported economic or political sanctions against Russia, its citizens, or legal entities;
- prohibited or established the ban on the use of their IP in Russia or stopped, suspended, or significantly limited the production (supply) of goods after February 23, 2022, due reasons not related to economic feasibility;
- committed public actions aimed at discrediting the use of the Russian army.

However, the right holders, the debtors are entitled to apply to the Government Commission for permission to transfer funds from the Special O-type account to the other account of the right holder. Also, if the right holder does not give written consent to making a payment to the Special O-type account, the debtor has the right not to make payments until such consent is received.

Transfer of ownership: In December 2023, a draft presidential Decree was published that introduces the procedure for approving transactions concluded between residents of Russia and foreign entities of unfriendly states and entities controlled by them.

The Draft Decree pertains to transactions that involve the assignment and pledge of exclusive rights. Upon adoption, the conclusion and/or execution of such transactions will be subject to the approval of the Government Commission for Control over Foreign Investment in Russia. Failure to obtain such approval may result in the transactions being recognized as invalid.

RUSSIA

DATA PROTECTION/PRIVACY

Legal Acts

Data protection in Russia is governed by the Constitution, which establishes the right to privacy, and other federal laws. The Federal Law of the Russian Federation on Personal Data (the «**Law on Personal Data**») is a comprehensive data protection law that governs the processing of personal data. Provisions of the Labor Code contain additional requirements regarding the processing of employee personal data. The Russian Federation is also a party to the Convention for the Protection of Individuals with regard to Automated Processing of Personal Data No. 108 (the "**Convention No. 108**").

Scope of the law

The Law on Personal Data regulates the relationships relating to the processing of personal data by governmental bodies, municipal bodies, legal entities, and persons by automatic means, including via the Internet, or without such means, if the processing of personal data without the use of such means corresponds to the character of the operations as involving the personal data by automatic means.

The Law on Personal Data applies to entities having physical presence in Russia and processing personal data there and starting from September 2022 also applies to foreign entities and individuals if they process personal data of Russian data subjects based on the agreement with such data subjects or relying on their consent for personal data processing.

The Law on Personal Data applies to "operators". An operator is an entity or individual that alone, or together with other entities, processes or organizes the processing of personal data and determines the purposes and the content of the processing. The Law on Personal Data requires operators to register with the Roskomnadzor by submitting a notification, which must meet specified requirements.

Data Processing Principles

The Law on Personal Data sets forth general principles for processing personal data, such as:

- The processing must be lawful and fair;
- The processing must be limited to specific and lawful predetermined purposes;
- The processing must be consistent with the purposes for which the personal data was collected;
- Merging databases containing personal data that was processed for different (incompatible) purposes is prohibited;
- Personal data may be stored as long as necessary to accomplish the stated purposes for the processing, etc.

Legal basis for data processing

Generally, organizations must obtain prior express consent from the data subject to process personal data. The individual's consent must be "specific, substantive, informed, conscientious and unambiguous" and may be given by an individual through his or her representative.

Individual consent is not required if personal data processing is conducted for the following primary purposes:

- to comply with Russian laws or international agreements or the operator's legal obligations;
- to fulfill a contract to which the data subject is a party, beneficiary, or guarantor, or to conclude an agreement initiated by the data subject, or that has the data subject as its beneficiary or guarantor;
- for statistical or other scientific purposes, provided that the personal data has been anonymized, and will not be used for marketing or political campaigning;
- to protect the life, health, or other vital interests of a data subject, if it is impossible to obtain the relevant individual's consent;
- to exercise rights and protect the lawful interests of an operator or third parties, provided that such processing does not violate the data subject's rights; or
- to attain socially important goals provided that the data subject's rights and freedoms are not violated.

DATA PROTECTION/PRIVACY CONT'D

Special categories of personal data and biometric personal data may be processed only with the written consent of the relevant data subject or under certain limited circumstances set by law.

Data subject's rights

The key right granted to individuals is the right to withhold consent to process their personal data. The Law on Personal Data also provides individuals with extensive rights to access their personal data. This inter alia includes the right to obtain:

- confirmation that an operator is processing the individual's personal data and the purpose for the processing;
- information on the legal basis for the processing and the operator's processing methods;
- information on persons who may have access to the personal data, etc.

Obligations of data controllers

The Law on Personal Data requires operators to take or ensure legal, organizational, and technical measures necessary to protect personal data against unauthorized or accidental disclosure, destruction, alteration, blocking, copying, transfer, or other unauthorized processing.

Data localization
In addition, on September 1, 2015, an important data localization law took effect in Russia. The law implies that upon collection of personal data relating to Russian citizens, a data controller must ensure that certain operations on personal data of the Russian citizens (namely recording, systematisation, accumulation, storage, adaptation/alteration, and retrieval) is carried out in database(s) located in Russia once such data is collected. This is the so-called localisation requirement.

Data breach
If the data breach leads to a violation of a data subject's rights, the operator must notify the Russian DPA ("Roskomnadzor"):

- within 24 hours of the time of discovery - and report in the notification the alleged causes of the data breach and harm to data subjects' rights, the measures taken to eliminate the consequences of the data breach, and the person authorized by the operator to interact with the Roskomnadzor on the issues related to the data breach, and
- within 72 hours from the time of discovery - and report in the notification the results of the internal investigation of the data breach and the identity of the individuals who caused the data breach (if any).

However, there is no obligation to notify a data subject in case of data breach.

On January 23, 2024 the State Duma passed in first reading bills that increase administrative and provides criminal liability for data breaches:

- fines for administrative offences are proposed to be increased, including the introduction of a turnover fine based on the annual income of a company that has allowed repeated personal data breaches, as well as a significant increase in the fine for failing to notify the DPA of a data breach.
- new offences are proposed to be introduced into the Criminal Code relating to the illicit trade in and breach of personal data, and criminal liability is introduced for creating and/or operating information resources.

There is a high possibility that both bills will be passed into law this year.

Cross-border data transfer

The Law on Personal Data contains restrictions on transferring personal data outside of the Russian Federation. On March 1, 2023, new rules on cross-border transfers of personal data came into force. Operators are only allowed to transfer personal data outside of the Russian Federation after providing notification to the Roskomnadzor which must be submitted before the operator commences any cross-border transfers. The Roskomnadzor has 10 business days to consider and respond to the request.

The law generally permits operators to transfer personal data to countries that are considered as adequate jurisdictions in terms of data protection (states-parties to the Convention No. 18 and those which considered as such by Roskomnadzor). Operators are not permitted to transfer personal data to countries that do not ensure adequate data protection while the Roskomnadzor considers the operator's notification for cross-border transfer of personal data.

DATA PROTECTION/PRIVACY, CONT'D

Cross-border transfers also may be restricted or banned by the Roskomnadzor if required by a competent authority, depending on the purpose of the restriction or ban – e.g., to ensure national defense and state security; protection of the economic and financial interests of the Russian Federation; protection of the rights, freedoms, and interests of Russian citizens; and sovereignty, security, territorial integrity of the Russian Federation, and other interests in the international arena by diplomatic and international legal meanness days to consider and respond to the request.

ARTIFICIAL INTELLIGENCE

There is no specific regulation on AI in Russia. The basic principles on use and development of AI are provided by the Presidential Decree No. 490 "On the development of artificial intelligence in the Russian Federation". According to the Decree, AI is a set of technological solutions that allows imitating human cognitive functions (including self-learning and search for solutions without a predetermined algorithm) and obtaining results comparable, at least, to the results of human intellectual activity. The set of technological solutions includes information and communication infrastructure, software (including that which uses machine learning methods), processes and services for data processing and solution search.

The Decree establishes fundamental principles for the development and use of artificial intelligence, including:

- protection of human rights and freedoms, including the right to work, and enabling citizens to acquire knowledge to adapt to the digital economy;
- safety, inadmissibility of using AI for intentional harm;
- transparency, explainability of AI work and the process of achieving its results, access for users of products to the AI algorithms used in these products.

From the point of view of intellectual property law, AI is not distinguished as a separate category, it is recognized as software, which means that AI does not have a legal personality and, among other things, does not acquire rights to the results of its activities (they are presumed to be owned by the developer / the owner). All responsibility for the use of AI lies with the AI developer / the owner.

Furthermore, there is the Federal Law No. 258-FZ "On Experimental Legal Regimes in the Sphere of Digital Innovation". The law allows companies to use AI technologies in the regulatory "sandbox" if the company's technology is included in the government's list. Also, at the end of 2023, the Government prepared a draft law proposing to introduce mandatory insurance of AI regulatory sandbox companies for damage to the life, health or property of others as a result of the use of AI, which demonstrates lawmakers' interest in AI use and development.

The regulation of AI in Russia is not only shaped by legislation, but also by soft law, for example:

- the AI Alliance developed an AI Code of Ethics, which sets non-binding best practice standards for the development and use of AI.
- the Bank of Russia has published an overview report on the conditions, risks and recommendations to the use of AI in the financial market.

In the coming years, the Russian Federation is expected to regulate AI in selective manner according to a risk-based approach, using the method of co-regulation reflected in the Concept for the Development of AI in Russia up to 2024.

EMPLOYEES/CONTRACTORS

Employment relations

Having a permanent presence in Russia is a key requirement for an employment relationship to arise in Russia under Russian law. Employees work under employment contracts governed by Russian labour law and usually perform their job functions on a continuous basis.

Once the employee begins work, the employer (a Russian legal entity, the branch office or representative office of a foreign company registered as per Russian law requirements) shall conclude a written employment contract within three business days in two originals, each signed by the employer and the employee. An employment contract shall be executed in Russian or bilingual, with the Russian language prevailing. The written employment contract shall contain the mandatory provisions prescribed by Russian labour law, as well as it may contain some additional terms, which shall not worsen employees' statutory rights (for instance, the term of the probationary period, dismissal termination notice, number of vacation days may not be reduced, etc.).

Generally, an employment contract is concluded for an indefinite term. Fixed-term employment contract is permitted only in certain specific circumstances and only for a maximum term of 5 years, non-renewable. A fixed-term employment contract shall stipulate the grounds of its limited duration. Failure to specify such grounds may entail the reclassification of a fixed-term employment contract to an employment contract concluded for an indefinite term.

Employment rights and obligations: Under Russian labour law, employers and employees have corresponding general rights and obligations. For instance, employees are entitled to receiving timely and in full amount salary, work pursuant to the concluded employment contract, suitable work environment compliant with the state labour safety, obligatory social, pension and medical insurance, leisure, etc. Employees are obliged to perform in good faith their employment duties, observe labour discipline and internal rules, treat with due care the employers' property, etc., as well as employers are entitled to require them to do it.

Minimum monthly wage: According to the effective Russian legislation, starting from January 01, 2024, the federal minimum wage of an employee is 19,242 Rubles per month. Russian authorities increase this amount each year (several times or more), depending on the economic situation in the country. The established amount is binding for all employers in Russia regardless of their type of business activity and form of ownership. The monthly base salary of an employee, who has worked a month on a full-time basis, shall not be less than the established amount of the minimum monthly wage. Besides, employers shall also comply with the regional minimum wage of an employee established in the respective region of Russia by local (regional) authorities. For instance, starting from January 01, 2024, the minimum wage in Moscow is 29,398 Rubles per month. Moscow companies shall pay an employee, who has worked a month on a full-time basis, a salary not less than this rate.

Remote work: Employers and employees are also entitled to agree on working remotely. Russian labour law stipulates the following types of remote work regime: (a) permanent remote work (during the term of an employment contract); (b) temporary remote work (no more than for 6 months); (c) periodic remote work, when the period of remote work is followed by office work (mix of remote and office work). Implementation of each remote work regime shall be duly formalized in accordance with Russian law requirements. Remote working from abroad is not regulated and, according to the general explanations, is not allowed by law.

Work for hire regime: Under Russian law, by default, an employer has exclusive right (i.e. the right to use in any way not contradicting the law, to permit or prohibit such use to third persons) to any work for hire created by its employees according to the task, or in the course of performance of the employee's job duties under the employment contract.

However, the right of authorship (i.e. the right to be considered the author of intellectual property) is an untransferable moral right of the employee.

EMPLOYEES/CONTRACTORS, CONT'D

As per the law, the employee shall be entitled to remuneration for creation of work for hire and other intellectual property upon certain conditions as prescribed by the law. The amount of such remuneration (a fixed amount or percentage of income from the use of the work, a regular payment, or a one-time payment), conditions and procedure of its payment can be determined by the employer and the employee in the employment contract or in the separate agreement which is usually an appendix to the employment contract.

In case of a dispute, to confirm that the exclusive rights to a work for hire belong to the employer, it is recommended ensuring the proper fixation of a work for hire creation and the duly executed exclusive rights transfer to the employer by signing any confirmative documents (for example, acceptance certificates, notices or reports on the creation of works, etc.).

Termination: An employment contract may be terminated only on the grounds stipulated by the Russian Labour Code (e.g., mutual agreement between the parties, expiration of a fixed-term contract, employee's initiative, employer's initiative (according to strict procedure), etc.).

Under Russian law, employees are entitled to terminate their employment at any time with at least two weeks written notice for regular employees (one month for the general manager of the organization). The term of notice cannot be contractually prolonged. The employee may withdraw their resignation at any time during the notice period, in which case the employer shall cancel the termination procedure.

Generally, the company is not obliged to notify state agencies about dismissal cases. Exceptions include collective dismissals, due to a company being wound up and redundancies, and dismissal of a foreign employee.

Besides, Russian law stipulates certain categories of employees, who are protected from the dismissal at the employer's initiative (except for the company's liquidation). These categories are pregnant women, female employees having a child under the age of 3, single mothers having a child under the age of 14 or a disabled child under the age of 18, member of the election commission with the decisive right of vote (until the end of the respective authorities), member of the election commission with the deliberative right of vote (during the election campaign or the referendum campaign), etc., as well as employees, who are on annual leave or on sick leave on the day of dismissal.

Contractual Relations

Contractors work under service contracts governed by civil law. They are usually engaged to perform specific work for a certain period of time, which is required for the provision of specific services.
Contractors have a different legal status compared to employees: they are not equal, as well as the respective relations are governed by different laws – civil law applies to contractors, and labour law – to employees. Besides, contractors cannot be compelled to comply with the internal labour regulations of an employer or any other internal policies or procedures.

Russian labour law does not allow concluding the service contracts that are in reality de-facto employment relations between an employee and employer. A relationship between a company and an individual that was initially regarded as a contractor relationship may be deemed to be an employment relationship either by the company that initially engaged the individual or upon the written request of the individual. It might also be recognized as employment by an order of the state labour inspectorate or the court. If the relationship between the organization and the individual is classified as employment, the employment will be deemed to have commenced on the day the individual started to perform their duties.

Russian civil law does not establish strict requirements with respect to the content of a service contract (it is the so-called concept of contractual freedom). Such a contract shall be executed in two originals, each signed by the contractor and the company (the client), in Russian or bilingual, with the Russian language prevailing (or other foreign language if the contract is governed by foreign law). The contract shall indicate the specific timeframes for providing services, the respective list of services, remuneration (either once paid or by instalments), etc.

EMPLOYEES/CONTRACTORS, CONT'D

Contractual Relations, CONT'D

Legal status of a contractor: With regard to Russian law, a service contract can be concluded with a contractor acting in Russia with a legal status of (a) a natural person, or (b) an individual entrepreneur, or (c) a self-employed person. In each case there may be certain specifics, which shall be taken into account when formalizing and implementing contractual relations (e.g. tax issues and applicable tax regimes, etc.).

Russian law also prohibits to engage an ex-employee as a self-employed person under a service contract for two years from the date of their dismissal.

New social guarantees: Starting from January 1, 2023, individuals (providers under service contracts) are subject to compulsory social insurance, as well as they shall receive the same social guarantees as regular employees, including (in addition to mandatory pension and health insurance) sick leave payments, maternity and child-care payments, etc. In turn, companies shall pay contributions to compulsory social insurance in the event of temporary disability and in connection with maternity for these categories of individuals. The above changes did not affect individuals who have the status of individual entrepreneurs or are self-employed (i.e., providers who concluded civil law contracts and apply the special regime "Tax on Professional Income").

Work for hire regime: Russian law stipulates the same work for hire regime as for employment relations, which is applicable to contractual relations too. There are two regimes for works created under a service contract. The application of the regime depends on whether a contractor is an author is or not.

If a contractor is not an author of a work (e.g. an author is an employee of a contractor), a company (a client), by default, has exclusive right (i.e. the right to use a work in any way not contradicting the law, to permit or prohibit such use to third persons) to any work for hire created by such a contractor according to the task and at the expense of the company, or in the course of providing by the contractor services under the service contract. However, the right of authorship (i.e. the right to be considered the author of intellectual property) is an undeniable right of the author. If a contractor is an author of the work, the exclusive rights belong to the contractor by default. A company (client) only has the right to use that work for the purpose for which the work was created.

As per the law, the contractor shall be entitled to remuneration for creation of work for hire and other intellectual property upon certain conditions as prescribed by the law. The amount of such remuneration shall be agreed by the company and the contractor depending on the value of each specific created intellectual property.

At the same time, it is possible to establish different work for hire regime in the particular service contract in accordance with Russian law.

Termination: A service contract can be terminated at any time subject to the specific conditions set in the particular contract. Generally, such a contract may be terminated upon mutual agreement of the parties, as well as unilaterally by each party by sending the respective written notification to another party in advance under the condition of full reimbursement of losses to the company (the client) or all prior mutually agreed expenses incurred by the contractor. The parties usually establish the detailed procedure in the contract.

EMPLOYEES/CONTRACTORS, CONT'D

Foreign national employees and contractors

A foreign national employee/contractor shall obtain a work permit (for employees/contractors from visa-required countries), or a migration patent (for employees/contractors from visa-free countries), prior to commencement of work in Russia, as well as a work visa (if a visa is required to enter Russia). In turn, a company (either an employer or a client) shall obtain a special permissive document for engaging foreign national employees and contractors.

There are two main procedures for obtaining the work visa and work permit for foreign nationals from visa-required countries: standard procedure and simplified procedure for highly-qualified specialists (foreign) HQS.

The standard procedure is very bureaucratic and multistage and takes from 3 up to 4 months. Work permits and work visas, issued under this procedure, are valid for up to 1 year. Foreign nationals applying for a work permit, under the standard procedure, shall confirm their knowledge of Russian language, history of Russia and basics of Russian laws, by passing a respective test. In addition, such foreign nationals are also required to pass an extended medical examination.

The procedure for (foreign) HQS is less complicated and faster and takes about 1 – 2 months. The main condition for this is that a foreign national (HQS) shall have experience, skills and a certain degree of achievement in the sphere in which they intend to be employed/engaged under service contract. The main qualification requirement to use this procedure is an amount of salary/remuneration: it should not be less than 167,000 Rubles per month, under the employment contract/service contract. Please note that, starting from March 01, 2024, a new minimum salary (remuneration) threshold of no less than 750,000 Rubles per quarter will be set for HQS. The work permit issued for (foreign) HQS is valid for up to 3 years. The work visa for (foreign) HQS is issued for the term of validity of the work permit, i.e. maximum for 3 years, and such a work visa is multiple entry, from the date of issuance.

According to effective migration requirements regarding mandatory medical examination, state fingerprint registration and photographing, all foreign nationals who entered Russia after December 29, 2021, for employment (including HQS) shall undergo mandatory examinations and submit documents to the migration authorities (in person). The term for the undergoing of the procedures is 30 calendar days from the date of entry.

Russian law requires notifying the immigration authorities about hiring a foreign employee or concluding a service contract with a foreign contractor, as well as about termination of employment contract/service contract with a foreign employee/contractor. The notification shall be filed with the migration authorities no later than 3 business days from the day of the respective hiring/concluding a service contract, or their termination.

Besides, Russian law also requires notifying the migration authorities on the salary payment/remuneration of (foreign) HQS. The notification shall be filed with the migration authorities quarterly. Russian law also stipulates other obligations of a company with respect to hiring/engaging foreign nationals.

CONSUMER PROTECTION

Consumer rights are strictly regulated at the federal level by the Law of the Russian Federation of February 7, 1992 No. 2300-1 "On Protection of Consumer Rights" (the **"Consumer Rights Protection Law"**), Rules for the sale of goods under a retail sale agreement adopted by the Decree of the Government of the Russian Federation of December 31, 2020 No. 2463 as well as general provisions of the Civil Code of the Russian Federation and others applicable laws and decrees to the extent not contrary to the Consumer Rights Protection Law.

Russian law defines a consumer as a natural person who intends to order or purchase, or who orders, purchases or uses goods (works, services) solely for personal, family, household and other needs not related to business activities.

The Consumer Rights Protection Law regulates general issues of consumer protection in relation to goods (works, services), including product quality and safety, shelf life/service life/warranty period for products (for technically complex goods, additional regulation is provided, the list was approved by Decree of the Government of the Russian Federation of November 10, 2011 No. 924), necessary and accurate information about to goods/works/ services and the manufacturer (seller/aggregator), the responsibility of the manufacturer (importer, seller, authorized representative of the manufacturer) of goods/contractor of works/ services, unacceptable conditions of the contract with the consumer (please see question 7) and others.

For certain types of services, additional rules may apply (for example, educational, hospitality, tourism, or other services).

Online trade of goods: Additional regulation is provided for online trade of goods to consumers (e.g., via web shops or aggregators of information about goods (services)). For online trade of goods, special rules apply for the seller's obligations to inform the consumer and the return of goods of good quality. The consumer has the right to reject goods at any time before its transfer, and after the transfer of the goods - within 7 days. The possibility of rejection of the goods also applies to those goods of good quality, which in the case of offline sale are not subject to rejection. Further, if consumers are not sufficiently informed about the right of reject goods of good quality, this right is automatically extended for up to 3 months. Special regulation is provided for aggregators of information about goods (services).

Liability and state control: An important feature of consumer protection legislation is that the consumer has the right to make claims about the quality of the goods against the seller, as well as the importer, the manufacturer and the authorized representative of the manufacturer, not directly presenting claims to its direct seller. The claim of the consumer is subject to satisfaction within 10 days from the date of its making.

The Consumer Rights Protection Law provides for liability for violation of consumer rights in the form of payment of a legal penalty, compensation for losses and moral damage, as well as in the form of a fine of 50% of the amount awarded by the court in favor of the consumer. The amount of compensation for non-pecuniary are usually not significant.

In addition to the Consumer Rights Protection Law, violation of consumer rights provides for administrative liability in the form of a fine in accordance with the Code of Administrative Offenses of the Russian Federation. Criminal liability is provided for the production, storage or transportation for the purpose of sale or sale of goods, performance of work or services that do not meet the requirements for the safety of life or health of consumers, in accordance with the Criminal Code of the Russian Federation, to which responsible persons of a legal entity (usually the general director) may be involved.

Federal Service for Consumer Rights Protection and Human Welfare (Rospotrebnadzor) is a state body exercising control over the observance of consumer rights. Consumers have the right to apply to the court for protection of rights. Consumers are not required to comply with the pre-trial dispute resolution procedure. Russian courts are rather strict as it comes to protection of consumers.

RUSSIA

TERMS OF SERVICE

In the relationship between commercial companies there are no special restrictions on the content and terms of the contract concluded between them (including the Terms of Services). In this case, the parties are guided by the principle of freedom of contract and must comply with all requirements applicable to any other contracts (for example, the parties may not limit liability for damage caused by willful breach of contract). The only things to keep in mind are the requirements of public law (for example, currency control requirements, see our comments on question 9) and the requirements to the form of the contract itself (for example, if the company intends to use electronic documents, the contract terms should include a procedure for authenticating and identifying the signatory of the other party).

Thus, the main restrictions apply to the so-called "consumer contracts," where in terms of Russian law there is a "knowingly weak/unprotected party".

The Consumer Rights Protection Law prohibits the inclusion in any contract with the consumer of conditions that infringe on the rights of the consumer, inter alia, the following:

- right of the contractor/ seller to unilaterally terminate the contract, or modify its terms (unless such right is provided by law);
- limitation of the contractor's/ seller's liability for non-performance or improper performance of obligations (unless it is explicitly permitted by law);
- conditions reducing the amount of the penalty / fine stipulated by law;
- waiver by the consumer of its right to claim; etc.

If included in the consumer contract, these conditions may be declared void by the court (as infringing on the rights of consumers), and the company - seller / contractor may also be held liable for violating the rights of consumers with the imposition of an administrative fine for such a violation (both the company and its official may be held liable).

As to the form of the contract and the applicable public rules, the same rules apply to consumer contracts as to contracts between commercial entities.

WHAT ELSE?

Attention should also be paid to the requirements of public norms of the legislation of the Russian Federation, such as the requirements of currency control legislation, which establishes a number of rules for transactions between Russian and non-Russian persons (companies, individuals), as well as liability for violation of such requirements. Such requirements include, among other things, the obligation of the Russian company to repatriate (i.e., to ensure timely crediting of its account) the funds owed to it under the contract from a non-Russian person.

Tax issues should also be a subject of attention for a company that plans to operate in the Russian Federation (even in the absence of a physical presence), since a number of tax requirements may also be applicable to a foreign person (for example, if the services provided by a foreign person relate to so-called "digital services", the company will be required to register with the tax authority of the Russian Federation and pay VAT charged on the cost of services).

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SAUDI ARABIA

LEGAL FOUNDATIONS

The fundamental law of the Kingdom of Saudi Arabia (KSA or Saudi Arabia) is Shari'ah Law. Shari'ah law is a collection of principles derived primarily from the Holy Quran and the Sunnah (witnessed sayings and actions of the Prophet Mohammad – (peace be upon him)). Additionally, it is important to note, that Saudi Arabia also has a variety of statutes and regulations, each of which is prepared so as not to be inconsistent with Shari'ah. (So, it would be incorrect to assume that there are no 'legislative instruments' beyond the Qur'an itself.)

Saudi Arabia has as of 21 December 2023 enforced the new Civil Transactions Law. The Civil Transactions Law has, for the first time, codified contract law in Saudi Arabia. The objective of the Civil Transactions Law is to bring certainty and clarity over the rules governing civil transactions as well as attracting foreign investment through a more predictability in judicial rulings (previously judicial rulings were solely based on Shari'ah law principles and judges had wide discretion in handing out judgements).

It is important to note that the Civil Transactions Law is not an abrogation of Shari'ah Law, but rather a codification of Shari'ah law principles. It is also worth noting that with respect to commercial transactions in Saudi Arabia the law has retrospective application.

CORPORATE STRUCTURES

The Saudi Companies Law provides that the following types of entities may be established in Saudi Arabia:

- General partnership;
- Limited partnership;
- Joint stock company;
- Simplified joint stock company; and
- Limited liability company.

Additionally, foreign companies can also establish branch or representative offices in Saudi Arabia.

For foreign investors looking to set up business in KSA the most common forms of legal entities used are either limited liability companies or branch offices.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company (LLC)

An LLC is the most common structure chosen by foreign investors. It can be 100% foreign owned, by a single shareholder (provided that the proposed business activities do not require a minimum Saudi shareholding.)

LLCs can only have a single class of ordinary shares and the liability of each shareholder is limited to their respective capital contribution.

Generally, there is no minimum share capital requirement. Certain business activities may have specific minimum capital requirements (e.g., trading activities or certain banking and insurance activities).

LLCs can be managed by one or more General Managers or by a board of managers. Non-Saudi nationals can be managers however, foreign General Managers, must have a Saudi residence visa (commonly known as an "Iqama").

Branch office

Foreign companies can establish a branch in KSA. A branch acts on behalf of the foreign parent company and lacks independent legal status within KSA. The branch can carry out business activities that are similar to its foreign parent companies' business activities.

Unlike an LLC, the paid-up capital of a branch doesn't limit liability (it primarily serves as security for the branch's proposed activities in the Saudi market). The foreign parent company remains fully liable for the branch's activities in KSA.

Joint stock company

A Joint Stock Company (JSC) is one of the most heavily regulated type of company in KSA. A JSC can be publicly listed or closed (non-public) and may have foreign ownership subject to sector-specific regulations. They are more suitable for businesses that contemplate public listing or larger businesses with substantial capital requirements.

A JSC can also issue different classes of shares and have one or more shareholders. The minimum capital requirements for a JSC is Saudi Riyals (SAR) 500,000 (approx. USD 133,000)

Simplified joint stock company

A major change introduced in the new Companies Law in 2023 was the introduction of the Simplified Joint Stock Company (SJSC). A SJSC is a new form of company that aims to cater to the growing demands of entrepreneurship and venture capital growth.

Like a JSC, a SJSC can be publicly listed or closed (non-public) and may have foreign ownership, subject to sector-specific regulations.

An SJSC can be established by one or more persons and there is no minimum capital requirement.

An SJSC allows investors to issue multiple classes of shares without the need to comply with the strict corporate governance requirements that are needed for JSCs.

SAUDI ARABIA

ENTERING THE COUNTRY

Prior to establishing or investing in any form of entity in KSA, foreign investors need to obtain an investment license from the Ministry of Investment of Saudi Arabia (MISA, formerly known as SAGIA). After obtaining an investment license from MISA, foreign investors can apply for a commercial registration from the Ministry of Commerce (MOC).

In order to apply for an investment license, a foreign investor must provide a number of documents including the articles of association of the foreign shareholder, audited financial statements for at least one year, passport copies of the ultimate shareholders and managers. There are also requirements for the documents to be notarised, legalised, and translated into Arabic.

The requirement for audited financial statements typically means that only foreign companies rather than individuals can be shareholders (unless the foreign individual has a special form of "premium" residence visa, in which case there is a dispensation from this requirement).

The investment license process typically takes five to ten working days from the date of submission of the application and the supporting documents.

The commercial registration application requires submission of the MISA investment license, the articles of association of the KSA company, a lease contract for office space in KSA, and a bank certificate (for the capital). The commercial registration process typically takes between ten to fifteen working days from the date of issuance of the MISA investment license.

The fees for obtaining the investment license and the commercial registration vary depending on the types of business activities and the amount of capital.

By way of example the MISA investment license fee for services activities is SAR 12,000 (approx. USD 3,200) for the first year and SAR 62,000 (USD 16,500) per year for subsequent years and the MOC registration fee for an LLC is SAR 1,775 (approx. USD 470) for the first year and SAR1,200 (approx. USD 320) for subsequent years.

After obtaining the investment license and the commercial registration, the Saudi company needs to complete a number of registrations with other government authorities, such as the Chamber of Commerce, the labour office, the Municipality, the General Organisation for Social Insurance, and the Zakat, Tax and Customs Authority. These registrations and approvals can typically be obtained within ten to fifteen working days of receipt of the commercial registration (some sector-specific or location-specific licenses that may take longer).

SAUDI ARABIA

INTELLECTUAL PROPERTY

International Conventions

Saudi Arabia is a member or signatory of several key international treaties and conventions on intellectual property, including:

- Convention Establishing the World Intellectual Property Organization
- Berne Convention for the Protection of Literary and Artistic Works
- Paris Convention for the Protection of Industrial Property
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Patent Cooperation Treaty
- Patent Law Treaty

Saudi Arabia has also recently joined the Madrid Convention, although its implementation locally is still being considered.

Copyright

The Copyright Law 2003 protects works created in the fields of literature, art and science, irrespective of their type, means of expression, importance or purpose of authorship. It also protects derivative works such as translations, compilations and databases. There is no requirement to register copyright under Saudi law. The Kingdom of Saudi Arabia is also a member of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works.

Protection is granted to authors for audio works, audio-visual works, films, collective works and computer software for a period of 50 years from the date of first publication.

Agreements for the assignment of future intellectual property (i.e., intellectual property that is yet to be created) are null and void under the Copyright Law. Contracts (specifically employment contracts) which purport to assign yet to be created intellectual property must be considered carefully.

Patents and Designs

In Saudi Arabia patents and industrial designs and models are protected under the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Models, which gives effect to the Paris Convention for the Protection of Industrial Property domestically. Additionally, the GCC Patent Law provides for the single registration of patents with effect throughout the GCC. The GCC Patent Office is based in Riyadh.

A patent is protected for 20 years from the date of filing the application whereas an industrial design and models are protected for a period of 10 years.

Patents are subject to an annuity due at the beginning of each year subsequent to the year in which the application was filed and payable within a period of 3 months. Late payment of annuity fees is allowed within 3 months thereafter the annuity fee is doubled. SAIP's e-filing systems allows for e-filing, e-publication and e-registration certificates.

INTELLECTUAL PROPERTY, CONT'D

Trademarks

Trademarks are governed by the Trademarks Law and are also governed by the GCC Trademarks Law of 2014 which provides a unified trademark law and registration system for countries in the Gulf Cooperation Council (GCC) (Bahrain, Kuwait, Oman, Qatar and Saudi Arabia). Under the GCC Trademark Law the following can be registered as trademarks: names, words, signatures, letters, figures, drawings, logos , hallmarks titles, seals, pictures, engravings or packaging. Additionally sounds and smells may also be registered under the GCC Trademark Law.

Saudi Arabia is a member of the Paris Convention for the Protection of Industrial Property. The International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement is followed in Saudi Arabia. The GCC Trademark Law is followed in Saudi Arabia.
E-Registration certificates are available through the e-filing system of the Saudi Authority for Intellectual Property (SAIP). The duration of a trademark registration is 10 years from the filing date according to the Hegira (Islamic) calendar (equivalent to approximately 9 years and 8 months in the Gregorian calendar).
Registration is renewable for similar periods of 10 years each. According to the provisions of the GCC trademark law, a grace period of 6 Hegira months with a late fee is allowed for filing a renewal application after the expiration of the protection period.

The costs associated with trademark processes in Saudi Arabia vary depending on the nature of the application. Requirements for trademark registration encompass an official proxy, a detailed description of goods and services, a sample of the mark, and priority documents if applicable. Renewals necessitate an official proxy and the original or a copy of the trademark registration certificate. Additional processes such as trademark assignment, merger/license, change of name or address, application to cut out goods, trademark cancellation, and trademark search come with their own set of requirements and potential costs.

Trade Secrets

Trade secrets are governed by the Regulation for the Protection of Confidential Commercial Information 2005 (Trade Secrets Law). As per the Trade Secrets law, any information can be deemed to be a trade secret if the information meets any of the following criteria:

- if it is usually not known in its final form, or in any of its minute constituents or if it is not usually easily obtainable by those engaged in this type of business.
- if it is of commercial value due to its confidentiality.
- if the rightful owner takes reasonable measures to maintain its confidentiality under its current circumstances

There is no limit for protection of trade secrets. Provided the owner of a trade secret maintains the confidentiality of a trade secret, it can be protection indefinitely.

Saudi Authority for Intellectual Property

The Saudi Authority for Intellectual Property is the intellectual property regulator in KSA. In April 2023, it published a draft Intellectual Property Law aimed at revitalising the intellectual property system in KSA.

The draft law aims to harmonize and provide consistency between the various intellectual property laws currently in force. Interestingly, the draft law also seeks to address protection and ownership of intellectual property created by artificial intelligence. It is unclear whether the draft law will be implemented or not.

SAUDI ARABIA

DATA PROTECTION/PRIVACY

Overview
The Saudi Personal Data Protection Law (PDPL) is the Kingdom's first comprehensive data protection law. The PDPL came into effect in September 2023 and currently, businesses have a 'grace-period' for compliance, ending in September 2024.

The PDPL has extra-territorial scope, in that it applies to the processing of "personal data" (by any means) that, relates to individuals that takes place in the Kingdom, including processing of Personal Data of individuals residing in the Kingdom by parties that are outside the Kingdom.

Consent is the primary legal basis for processing personal data under the PDPL. However, personal data may be processed without the consent of the data subject under the following exceptions:

- If the processing serves actual interests of the data subject, but communicating with the data subject is impossible or difficult
- If the processing is pursuant to another law or in implementation of a previous agreement to which the data subject is a party
- If the controller is a public entity and the processing is required for security purposes or to satisfy judicial requirements
- Processing is necessary for the purpose of legitimate interest of the controller (without prejudice to the rights and interests of the data subject) and provided that no sensitive data is to be processed.

The PDPL and processing personal data pursuant to the PDPL are based on the following general principles:

- The purpose of collecting personal data must be directly related to the purposes of the controlling entity, and not conflict with any provision of law.
- The methods and means of collecting personal data may not conflict with any provision of law, and be appropriate to the circumstances of its owner, and be direct, clear, safe, and free from methods of deception, misleading or extortion.
- The content of personal data must be appropriate and limited to the minimum necessary for achieving the purpose of collecting it, while avoiding including anything that leads to specifically identifying its owner, as long as the purpose of collecting it is achieved.
- If it becomes clear that the personal data collected is no longer necessary for achieving the purpose of its collection, the controlling entity must stop collecting it and immediately destroy the data that it has previously collected.

These obligations aim to ensure that the collection of personal data is lawful, fair, relevant and proportionate, and that the data subject's rights and interests are respected.

Under the PDPL, data subjects have the following rights with respect to their personal data:

- Right to be informed
- The right of access and the right to obtain personal data in a readable and clear format
- The right to request correction, completing or updating personal data and the right to request the destruction/ erasure of personal data
- The right to restrict processing and the right to object to processing
- The right to lodge a complaint
- The right to withdraw consent (if consent is the only applicable legal basis for processing)

Comparison with GDPR
While the PDPL is broadly similar to the GDPR, although there are some significant differences which we summarise below:

- Legitimate interest basis for processing personal data cannot be relied on for "Sensitive Data" and the PDPL only recognises the legitimate interests of a controller (i.e., legitimate interests of a third party is not recognised)
- International transfers of personal data outside the Kingdom must meet one of the limited purposes for transfer and must meet certain conditions.
- Marketing and advertising communications require the prior consent of data subjects
- The PDPL contemplates a registration requirement for controllers to register wit the competent authority.

The competent supervisory authority is currently the Saudi Data and Artificial Intelligence Authority (SDAIA). SDAIA is in the process of establishing its operations before the end of the grace-period.

Breaches of the PDPL can attract significant penalties with fine of up to SAR 5 million (approx. USD 1.3 million). However, during the grace-period the likelihood of enforcement actions being taken is low.

ARTIFICIAL INTELLIGENCE

SDAIA is also the responsible authority for the regulation of Artificial Intelligence in the Kingdom. Although there is not a formal AI regulation in the Kingdom as of yet, SDAIA has been actively publishing guidance on AI. Recently SDAIA published its second version of AI Ethics Principles (AI Principles) which aims to establish a principles-based ethical framework for the development of AI technologies in the Kingdom.

The AI principles equally apply to all public, private, and non-profit AI stakeholders, whether they are developers, designers, users, or individuals that are affected by AI systems within the Kingdom.

The AI Principles framework is based on seven key principles and accompanying controls. the principles are:

- Fairness
- Privacy & Security
- Humanity
- Social & environmental benefits
- Reliability & safety
- Transparency & explainability
- Accountability & responsibility

The AI Principles provides several self-assessment tools for assessing and mapping AI risks against the principles. Entities are primarily responsible for ensuring their own compliance with the AI Principles and as such, should appoint certain key roles for assessing and monitoring compliance including a Responsible AI Officer and an AI System Assessor.

In addition to the self-assessment tools, entities are also encouraged to register with SDAIA under an optional registration scheme. Registered entities will be motivated to ensure high levels compliance through a badge system that reflects their commitment to compliance. Such a system will no doubt influence end users in identifying trustworthy AI tools and technologies.

SDAIA has also recently published guidance for the government and private sector with respect to the development and use of Generative AI in Saudi Arabia.

EMPLOYEES/CONTRACTORS

General
Matters relating to an employment relationship are governed by the Labour Law and its Executive Regulations. Non-Saudi (and non-GCC) nationals must be employed and sponsored by their employer to work in KSA. To obtain sponsorship, employees must seek prior approval from both the Ministry of Human Resources and Social Development (MHRSD) and the Ministry of Interior to obtain a work and residence permit (i.e., Iqama) by submitting several documents including attested educational and professional qualifications.

Contractors
In accordance with the Labour Law, a non-Saudi cannot be engaged as a contractor or work on a self-employed basis. Non-Saudi nationals can only work in KSA if they have been granted a work permit by MHRSD.

In contrast, Saudi nationals can be engaged as a contractor, but the Labour Law does not provide guidance on how this relationship should be managed. It would be important to ensure that the terms of any consultancy/contractor agreement are carefully drafted to ensure that it cannot be argued that the individual has an employment relationship under Labour Law.

Work for hire regime
Non-Saudi nationals cannot compliantly work under a work for hire regime in KSA, unless the arrangement is recorded on the official government outsourcing platform referred to as the 'Ajeer' system. This is on the basis that non-Saudi nationals can only work for their sponsoring employer at the sponsoring employer's registered place of work. The Ajeer system temporarily allows a non-Saudi national to be assigned to another entity on a short-term basis. In contrast, Saudi nationals can work on a work for hire basis.

Registration with social security
All employees must be registered with the General Organisation of Social Insurance (GOSI). Saudi national Employees and their employers must make social insurance contributions to GOSI towards the state pension scheme and the Unemployment Insurance Scheme. There are no contributions needed for non-Saudi nationals. A further statutory social security contribution that is paid by employers only (i.e. no deductions are made from employees' wages) is for occupational injury and illness insurance, which is also administered by GOSI. The contribution must be paid by employers in respect of all employees, both Saudi and non-Saudi nationals.

Termination
Generally speaking, employees are very well protected and the evidential threshold to summarily terminate an employee under Article 80 of the Labour Law is very high. An employee has 12 months from the date of termination to challenge the reason for termination in the Labour Courts. Additionally, any employees who are pregnant or on maternity leave (including any period of sickness resulting from the pregnancy) have special protection against termination.

For collective dismissals, if the number of Saudi national employees exceeds one percent of the entire workforce or a group of 10 Saudi workers are to be collectively dismissed, the employers have an obligation to notify the local MHRSD office 60 days prior to issuing a written notice to terminate.

SAUDI ARABIA

CONSUMER PROTECTION

There is no comprehensive consumer protection legislation in KSA. A draft Consumer Protection Law was published for public consultation in 2022, however as of yet it has not come into force.

With respect to e-commerce, the E-Commerce Law provides some consumer protection provisions which include:

- A seven-day cooling off period
- Prohibitions on the use of consumer personal data for unauthorized purposes
- Prohibition on electronic advertisements that include any false display, statement, allegation, or misrepresentation that may lead, directly or indirectly, to deceiving or misleading consumers

TERMS OF SERVICE

As per the E-Commerce Law, service providers in addition to the terms and conditions, a service provider must provide consumers with a statement that includes the following minimum information:

- Procedures required to conclude a contract
- Information related to the service provider (contact details etc.)
- Basic characteristics of the products or services
- Total prices for products or services, including all charges, taxes and delivery fees (if any)
- Arrangements relating to payment, processing and delivery of goods or services
- Information on warranties (if any)

WHAT ELSE?

Saudi Arabia has recently launched it Regional Headquarters (RHQ) programme to encourage multinational companies, that meet certain thresholds, to establish their RHQ in the Kingdom. Although this programme is not of general application, it will be material for in scope multinational companies that can benefit from the tax and employment related incentives on offer.

Additionally, as of January 1, 2024, eligible multinational companies that do not have an RHQ in the Kingdom will no longer be considered for contracts with Saudi government entities.

SERBIA

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SERBIA

LEGAL FOUNDATIONS

Serbia is a civil law system with a hierarchy of constituent legal sources, whereby the Constitution, ratified international treaties and universally accepted rules of international law stay at the top. Serbian legal system also relies on sets of codified legal norms (mainly through codes and laws) in the field of public, private and criminal law, updated from time to time:

Serbian public law covers the relationship between individuals and the Serbian country and is enforced mainly through public bodies (e.g., procedures before public authorities).

Private law governs the relationship between individuals (e.g. contracts, liability etc.) and is codified in various laws. One of the pillars in this context is the Law on Obligations, regulating private relationships and resulting rights and obligations on a more general level. Besides this law, there are many more laws for each specific field (e.g., employment, trade, e-commerce, company law).

Criminal law is mainly codified in the Serbian Criminal Code (material provisions) and in the Serbian Law on Criminal Procedure (procedural provisions).

In terms of the political system, Serbia is a unitary parliamentary country, with three main formally independent powers – executive, legislative and judiciary.

Serbian laws are enacted by the Serbian National Assembly. Serbia also has autonomous provinces and local self-governments which have their own bodies and pass their own bylaws (always in accordance with the national laws), usually in matters with specific local importance (such as water and waste management), whereby the criminal framework is exclusively enacted at a national level.

SERBIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Serbian law provides for various corporate structures in which a business can be conducted, whereby **limited liability company** and **entrepreneurship** are the most relevant and commonly used with start-ups. Besides the mentioned, Serbian laws also knows of forms such as public, i.e., joint-stock company, certain forms of partnerships, branch or representative offices of local or foreign entities, although these are generally not as widely used and as beneficial for start-ups.

Certain business activities (e.g., banking, insurance) can only be performed through specific corporate forms and are thus limited from freedom of choice of form in which they would operate. Moreover, certain business activities entail fulfilment of a set of regulatory requirements prior to their performance (e.g., trade of medicines and medical devices), i.e., the sole incorporation would not be sufficient to dive into the business.

Besides the incorporation procedure explained below, in order to become operational, there are few other registrations and formalities that both limited liability company and entrepreneurs have to perform in order to become operational – including general tax registration, VAT registration (if applicable and if not done as part of the registration procedure), registration with the public revenue authoritiesand opening of a bank account.

Limited Liability Company
(društvo sa ograničenom odgovornošću – d.o.o.)

A limited liability company is a separate legal entity, established by one or more legal entities and/or individuals. It is by far the most common corporate form in Serbia. The liabilities of such a company cannot pass to the shareholders except in specific circumstances (e.g., if there are grounds for "piercing of the corporate veil").

Unlike more complex forms, a limited liability company has a rather straightforward incorporation procedure, performed with the Serbian Business Registers Agency (SBRA), with low minimum requirements in relation to the share capital (approx. EUR 1). Contributions of its founders can be both in money or "in kind" such as equipment, goods, know-how, etc.

Corporate governance of the limited liability company can be organized as one-tier (the shareholders' meeting and one or more directors) or two-tier system (with additional supervisory board). Regularly, start-ups opt for one-tier system as a less complex structure from an administrative point of view.

Entrepreneurship
(preduzetnik, preduzetništvo)

An entrepreneur is a single natural person registered with the SBRA to conduct business activity. With respect to liability, entrepreneurs remain fully and personally liable for all obligations incurred in connection with the performance of their activities, with all of their property, both personal and that accrued through entrepreneurship.

This form is very common for small businesses at the beginning of their lifecycle. Most commonly,businesses start off as entrepreneurs because of the simple incorporation procedure, lower maintenance costs and easier bookkeeping methods. Later on, entrepreneurs regularly turn to the form of limited liability company when they reach a certain level of expansion, e.g., reaching a greater turnover, expanding the team, or starting with product/services placement on the market.

When it comes to taxation, entrepreneurs are either lump-sum taxpayers or bookkeepers, depending on a number of circumstances relating to the business they conduct.

Incentives for Start-ups: Both entrepreneurs and limited liability companies can opt for various incentives introduced by Serbian government. These include IP box regimes, R&D deductions, tax credits, etc. Usually, these incentives are conditioned for certain areas such as innovative activities, or less-developed areas of Serbia and are subject to frequent changes and updates. Also, investors have an interest to invest in start-ups in Serbia, as there are also incentives for them to entrust funds to developing businesses.

SERBIA

ENTERING THE COUNTRY

Serbian Law on Investments generally warrants equal treatment to domestic and foreign investors. In this regard, the Law on Investments prescribes the following rights:

- freedom to invest,
- protection of acquired rights,
- guarantees against expropriation,
- national treatment of foreign investors,
- freedom to effectuate payments towards foreign entities, and
- the right to transfer of profits and property of the foreign investor - this includes in particular the right of foreign investors to free transfer of financial and other assets in relation to the investment (such as profits), after the payment of all taxes and other relevant obligations.

In addition to the mentioned Law on Investments, foreign investments are protected in Serbia by bilateral investment treaties (Serbia currently has 46 bilateral investment treaties in force), treaties with investment protection mechanisms (such as CEFTA), and other investment related instruments (such as ICSID Convention).

Generally, Serbia is notably open towards foreign investments, especially in the IT/tech sphere, where numerous tax relief and benefit schemes were recently introduced to boost foreign capital involvement.

INTELLECTUAL PROPERTY

Serbian law recognizes various intellectual property rights, whereby some of them need to be registered in order to enjoy legal protection. Most relevant for start-ups, these include (i) trademark, (ii) patent, and (iii) industrial design.

Below is a short overview of IP rights and required procedures.

Trademarks

What is protectable? Any sign suitable for the distinguishing in the channels of commerce of goods and services and which can be shown in the Trademark Register in a manner which enables the competent bodies and the public to determine the protected sign. Once registered, no other brand can use the same or similar product name for the same or a similar product.

Where to apply? Trademarks can be filed with the Serbian Intellectual Property Office **(Serbian IPO)** for trademark protection within Serbia. If the goods or services will be marketed in other countries, a filing with the World Intellectual Property Organization **(WIPO)** through the Serbian IPO underthe Madrid System will also be needed. The Serbian IPO then examines whether the application for trademark registration contains all the essential elements prescribed by Serbian law and if so, enters data from the application into the E-register of trademarks. The date of entry also represents the date of acquiring the priority right on the sign from the application. Afterwards, the Serbian IPO will conduct a formal and substantive examination of the application and if there are no reasons for its refusal, the data from the application is published in the Intellectual Property Gazette. After the expiry of three months from the publication date, if no opposition has been filed or if the opposition has been rejected or refused by a final decision, the Serbian IPO shall invite the applicant to pay the prescribed fee and register the trademark.

Duration of protection? The trademark registration remains valid for 10 years from the date of application. It can be renewed an unlimited number of times, upon submission of an application and payment of the appropriate prescribed fee.

Costs? The trademark application fee is RSD 18,960 (approx. EUR 160) for written applications and RSD 14.220 (approx. EUR 120) for applications submitted electronically for up to three classes. Graphs are additionally charged with a fee of RSD 3,800 (approx. EUR 32). The same fee applies for written applications and RSD 2,850 (approx. EUR 24) for applications submitted electronically for each additional class. Maintenance fee for the period of ten years is RSD 37.890 (approx. EUR 320) for up to three classes (fee for each additional class is RSD 5.690 (approx. EUR 50).

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Any innovation that solves a certain technical problem in the form of a product or process. There are three main characteristics of protectable invention: (i) novelty, (ii) inventiveness, and (iii) industrial applicability.

Where to apply? Patent application is filed with the Serbian IPO. The application can be filed in a foreign language, providing the translation in the Serbian language subsequently, within two months.

Duration of protection? The term of protection lasts a maximum of 20 years from the date of application and must be maintained by annual fees which gradually increase with each following year. Serbian law also recognizes petty patents, protected up to 10 years.

Costs? The application fees for registering patents or petty patents for up to ten claims amount up to RSD 9,450 (approx. EUR 80) and RSD 920 (approx. EUR 8) for each additional claim. Maintenance fees go from RSD 13.250(approx. EUR 110) up to RSD 113.670 (approx. EUR 970).

Employee invention and inventor bonus? The employer has the right to protect the employee's invention, unless otherwise stipulated in the contract between the inventor and the employer. If the employee's invention is protected in the name of the employer, the inventor has moral rights related to that invention, as well as the right to compensation. When it comes to software, it should be noted that under Serbian law software is always protected as copyright (rather than patent), the patent protection does not seem to be of much practical importance in that respect. Patent protection may, on the other hand, be of importance in cases where the employer participates (individually, or with others) in coining of inventions.

Industrial Design

What is protectable? Industrial or craft item, or item suitable for production in an industrial or craft manner. Otherwise, it is a "work of art" that can only be protected by copyright.

Where to apply? Protection procedure is initiated by filing the application for the grant of the industrial design to the Serbian IPO.

Duration of protection? The term of protection is five years and can be renewed five times in five years-periods by paying the renewal fee. The maximum term of protection is therefore 25 years.

Costs? The application fee for registration of an industrial design is RSD 18.960 (approx. EUR 160), and RSD 13,250 (approx. EUR 110) for each additional industrial design. Maintenance fees go from RSD 11,360 (approx. EUR 100) to RSD 18,960 (approx. EUR 160).

On the other hand, there are other intellectual property rights which do not require formal registration/steps in order to enjoy legal protection, including most notably copyright and trade secrets.

INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? Original intellectual creation of an author, expressed in a certain form, regardless of its artistic, scientific or other value, its purpose, size, contents and way of manifestation, as well as the permissibility of public communication of its contents. Copyright protection is granted immediately with the creation of a work. No registration is required, although copyright can be deposited at the Serbian IPO. The deposition is optional and serves mainly to provide material evidence of facts that may be relevant in a dispute or for another similar purpose. Also, copyright deposition can be an eligibility requirement for certain incentives.

Software as copyright? Software is not patentable but is considered a work of authorship, enjoying protection form the moment of its creation. Authors are natural persons who created the work of authorship (e.g., code), although companies can be holders of copyright. Also, accompanying technical and user documentation in any form of their expression, including preparatory material for their production, are considered as works of authorship.

Duration of protection? Copyright protection ends 70 years after the author has passed away. However, the moral rights of the author do not expire.

Exploitation of copyright protected work? Copyright owners have the pecuniary rights to exploit the work and the moral rights connected to the author, such as the right to be named as author. The author may grant third parties non-exclusive or exclusive rights to use the work, but moral rights are non-transferable.

Trade Secrets

Trade secrets are protected under the Law on Protection of Trade Secret and are not subject to registration. This law prescribes that information will enjoy protection as a trade secret if it meets the following criteria:

- information is secret because it is not known or easily accessible to persons who generally come into contact with such information in the course of their activities;
- it has, as a secret, a commercial value;
- the holder of the information has taken reasonable steps to preserve its secrecy.

There is no time limit to the legal protection granted to trade secrets. Trade secrets are regularly also contractually protected by non-disclosure agreements, which enables additional legal certainty.

SERBIA

DATA PROTECTION/PRIVACY

Processing of personal data in Serbia is principally regulated by the Personal Data Protection Law (DP Law). The DP Law presents a copy of the GDPR to a large extent. As a result, it may be argued that, at least formally, Serbian data protection legislation corresponds to that in the EU to a substantial extent. Generally, the principles of data processing and the key obligations under the DP Law are copied from the GDPR with no substantial exceptions. On the other hand, there are some noticeable differences, mostly concerning cross-border transfer of personal data, as explained in more detail below.

Key obligations under the DP Law
The DP Law introduces the same set of key obligations as the GDPR does. This means that it is particularly important that companies ensure that:

- the processing of personal data complies with the general principles of data protection: lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, security and accountability;
- there is an appropriate legal basis for processing of personal data, which is determined on a case-by-case basis;
- the data subjects are properly informed about all aspects of processing prior to initiation of the processing. This can be performed by providing them with a privacy notice containing all information required under the DP Law;
- appropriate security measures for the protection of collected data and personal data breach procedures are implemented;
- data subjects are offered the ability to exercise their rights granted under the DP Law (e.g., access, right to be forgotten, right to object to processing, etc.);
- adequate recordkeeping documents are maintained (i.e., so-called Records of Processing Activities).

Information which should be presented to data subjects
Under the DP Law, each data subject should be duly informed of a set of information explaining how their personal data are processed. The set of information as required under the DP Law mirrors the information required under Article 13 of the GDPR. The text should be made available in Serbian language and should be made easily available to the data subjects. For example, employees should be presented with respective privacy policies prior to initiating work and a copy thereof would best stay available on internal communication platform. Online customers can be presented with their privacy policy before they insert their data on check-out, by way of a pop-up banner leading them to the text of the privacy policy.

Transfer of personal data
Similar to the GDPR, legal requirements for cross-border data transfers depend on the final destination of the personal data being transferred. As a general rule, if the data is being transferred to a country which provides an adequate level of personal data protection under Serbian law, the implementation of additional safeguards is not needed. These countries include all European countries as well as the US (but only in case of transfers to commercial organizations participating in the EU-US Data Privacy Framework), Canada (only commercial organizations), Israel, Japan, New Zealand, Argentina, Armenia, Georgia, Azerbaijan, Cape Verde, Mauritius, Mexico, Morocco, Senegal, Tunisia, Uruguay and the Republic of Korea.

On the contrary, where the data is being transferred to a country which is not considered a country which enables adequate level of personal data protection under Serbian law (e.g., the US, in case of transfers to commercial organizations which do not participate in the above mentioned EU-US Data Privacy Framework), one of the additional safeguards must be implemented. The safeguards recognized under the Serbian law follow the ones from the GDPR, but insist on appropriate authorization of the relevant transfer safeguards/legal grounds by the competent Serbian authorities, rather than by the EU Commission or EU supervisory authorities.

Finally, another notable difference from the GDPR is the generally low penalties under the DP Law, reaching a maximum of RSD 2 million (approx. EUR 17,000), comparatively lower against the GDPR potential fines.

SERBIA

ARTIFICIAL INTELLIGENCE

In Serbian legislation, specific regulations regarding artificial intelligence ("AI") are yet to be developed; the framework for such regulations is still in its early stages.

With that being said, in 2020, the Republic of Serbia adopted the Artificial Intelligence Development Strategy for the period 2020-2025, in alignment with the European Initiative on Artificial Intelligence. This initiative outlines the policy set by the European Commission in the field of artificial intelligence.

The Strategy represents an action plan aimed at fostering further development of AI and its implementation in various areas of life such as education, scientific and technological development, the application of AI in public administration, the IT industry, and the development of next-generation networks. In addition to the development and implementation plan for AI, the measures prescribed by this strategy should ensure that AI in Serbia develops and is applied in a safe manner and in accordance with internationally recognized ethical principles.

EMPLOYEES/CONTRACTORS

General: Under Serbian labour law, workers may be engaged on the basis of an employment contract, a non-employment contract or as entrepreneurs. Generally, the type of contract itself determines the status and the minimum rights and obligations thereunder.

Employer and employee must conclude an employment agreement in written form, which stipulates their mutual rights and obligations. Employee has certain basic rights prescribed by the Employment Law, such are the right on minimal salary, safety and health at work, personal dignity, as well as the right on annual leave (vacation), rest period during the day, parental leave, sick leave etc. However, instead of concluding the employment agreement, it is possible to conclude service agreement instead, in which case the rights from employment relationship provided by the law do not have to be granted to the contractor.

In this case, it is important to pay attention to the so-called Independency Test, introduced in 2020 with the aim to limit the more favorable tax treatment of entrepreneurs in Serbia, in cases where they actually perform work for a specific company in a manner substantially similar to that of regular employees, rather than as independent contractors. Failing the test (i.e. fulfilling at least five of the total of nine criteria) means higher taxation rate for the contractor. Also, particular attention should be made with respect to regulating the IP rights arising from engagement of contractors.

Foreign employees may only enter into an employment relationship if they obtain a work permit and a permanent or temporary residence permit.

Work for hire: Employers can engage a person based on a "work for hire" agreement only for the purpose of performing tasks that are outside the employer's activities, in order for the person to independently execute a certain physical or intellectual work, or produce or repair a certain item.

Taxes and social security contributions: Employer is obliged to register employees with the Central Register of Compulsory Social Insurance and to calculate and pay a monthly amount (taxes and social security contributions) based on the employee's salary.

Termination: Employer may terminate the employment relationship with the employee only in cases stipulated by the law. Basically, there are 2 groups of reasons:

- Causes which relate to employee's work ability and his conduct (e.g., not achieving the work results, not having necessary knowledge and skills to perform his duties, sentencing of the employee for the crime committed in the workplace etc)
- Causes which relate to breach of the work duty or work discipline of the employee (e.g., negligence in performing work duty, irresponsible use of means of work, etc.)

In addition, employment can be terminated if due to technological, economic or organizational changes at employer the need to perform certain work ceases or there is a reduction in the scope of work.

In any case, it is important to note that strict procedure with respect to termination must be conducted – otherwise, there is a high risk of the (former) employee initiating the procedure before the competent court in order to protect his rights. Serbian courts are rather rigid when it comes to interpretation of law provisions with respect to the termination procedure and are usually protective of the employee.

CONSUMER PROTECTION

Consumer protection is an area to which Serbian legislators paid particular attention, providing natural persons who qualify as consumers a preferential status through a number of favorable provisions. This is done mainly through the Serbian Consumer Protection Law **(Consumer Protection Law)**, a rather fresh law transposing much of the EU level of protection of consumers.

Consumer Protection Law provides for a wide set of rights of the consumers, such as the right to safety, to being informed, to being able to choose and to have means for redress. On top of these basic rights, the legislator pinpointed some distinctive behaviors of traders which are particularly unfair in the view of a consumer. To put an end to such behaviors, Consumer Protection Law knows of the so-called (i) deceptive business practices (e.g., if the information provided by the trader may deceive the consumer with respect to the nature, price or the features of the product), (ii) pushy business practice (e.g., repeatedly addressing the consumer against his will, by telephone, fax, e-mail or other means of electronic communication), and (iii) unfair contractual provisions (e.g., denying the consumer the right to seek redress).

The Consumer Protection Law also regulates the distance agreements, prescribing various obligations for the trader with respect to informing consumers, as well as giving the right to the consumer to withdraw from an agreement within 14 days without cause.

Consumer Protection Law also has provisions regulating direct marketing, requesting an explicit consent of the consumer to such marketing activity, as well as the requirement to transmit the promotional nature of a message, each time the message is conveyed for promotional purposes. The protection consumers enjoy under these provisions is additional to that enjoyed under the Law on Advertising, a general law governing advertising and prohibited advertising activities.

Finally, depending on the particular business conducted in relation to consumers, the applicability of the Law on Trade, regulating trade in a general manner, and the Law on E-Commerce, regulating particularities regarding e-commerce, may come into play and should be considered by a business.

TERMS OF SERVICE

Terms of service become binding to the other party only if the content of the terms was made known to the other party or must have been known to it at the time of conclusion of the agreement to which they relate.

Specifically, when the other party is a consumer, the online terms of service are preferably communicated to the consumer via a tick-box with a the possibility to acquaint with the content upfront and throughout the contractual relationship.

From the perspective of the Consumer Protection Law, terms of service should avoid including the so-called unfair contractual provisions (mentioned in the previous section). These include, for example:

- exclusion or limitation of the consumer's right to seek redress;
- stipulating for an exclusive right to determine whether the delivered goods or rendered services are in accordance with the agreement;
- stipulating for an exclusive right to interpret contractual provisions;
- exclusion or limitation of the trader's liability for the death or bodily injury of the consumer due to the trader's actions or omissions;
- preventing or limiting the possibility for the consumer to get acquainted with the evidence or shifting the burden of proof to the consumer in the case where the burden of proof is on the trader;
- determining the local jurisdiction of the court outside the place of residence of the consumer.

WHAT ELSE?

Compulsory membership in the Chamber of Commerce and Industry of Serbia:
Membership in the Chamber of Commerce and Industry of Serbia is mandatory for all companies on the territory of Serbia, which implies the duty to pay a unique monthly membership fee, while the newly established companies are released from the duty of paying the membership fee in the first year following the day of their incorporation.

SINGAPORE

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SINGAPORE
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SINGAPORE

LEGAL FOUNDATIONS

Singapore is a sovereign republic and has a legal system based on English common law. Its body of law is created incrementally by judges through the application of legal principles to the facts of particular cases. Apart from the common law, Singapore has also enacted several legislations to govern specific areas of law. It is mandated that any legislation contrary to the Constitution of Singapore shall, to the extent of the inconsistency, be void.

The Constitution lays down the fundamental principles and basic framework for the three organs of state, namely, the Executive, the Legislative and the Judiciary:

- The Executive comprises the Cabinet. The Prime Minister and other Ministers are elected to make up the Cabinet, which is responsible for the government's general direction while being accountable to Parliament.
- The Legislative comprises Parliament and it is responsible for enacting legislation.
- The Judiciary functions to independently administer justice and is made up of the following courts:
  - The Supreme Court (which consists of the Court of Appeal and the High Court)
  - The State Courts (which consists of the District Courts, the Magistrate's Courts and other courts and tribunals)
  - The Family Justice Courts (which consists of the Family Courts, Youth Courts and Family Division of the High Court)

The Supreme Court and State Courts hear civil cases and criminal cases; while the Family Justice Courts hear family cases and selected criminal cases involving youth offenders.

Decisions of the Singapore Court of Appeal (the apex court in Singapore) are strictly binding on the High Court, the District Courts, the Magistrate's Courts and other lower courts.

Singapore courts interpret the legislations and apply it to the facts in each case. The courts are empowered under the Civil Law Act to administer the common law as well as equity concurrently.

SINGAPORE

CORPORATE STRUCTURES

In Singapore, there are a few main types of business structures to choose from. They are:

- Sole-Proprietorship (one owner)
- Partnership (two or more owners)
- Limited Liability Partnership
- Limited Partnership
- Company

We set out details of the relevant business structures below. Generally speaking, the only form of business structure that is suitable for a "start up" to set up its business in Singapore would be a private limited company.

Company

A company incorporated under the Companies Act is a separate legal entity from its directors and shareholders. A company can sue and be sued in its own name, can own property in its name and is generally liable for its own debts and liabilities. A company has perpetual succession until wound up or struck off. A company can also issue shares, including shares with differential rights as to dividend, voting or liquidation, and this makes it suitable as a vehicle for raising capital from professional investors like venture capital funds.

There can be various types of companies in Singapore including, among others, a private company limited by shares and a public company limited by shares. A private company limited by shares has a limit of 50 shareholders, and the right to transfer shares in the company must be restricted. A public company limited by shares may have more than 50 shareholders and does not need to have provisions in its Constitution that restrict the right to transfer shares.

The minimum issued share capital of a company must be at least SGD$ 1.0. Application to incorporate a company is submitted online via the BizFile+ portal of ACRA. If all the documents are in order and no approvals by other regulatory agencies are required, incorporation of a company can typically be completed within 24-48 hours. A foreigner must engage the services of a registered filing agent (for example, a corporate secretarial firm or law firm) to submit the online application. A company must have at least one shareholder, which can be a natural person or a corporate entity.

A company must have at least one shareholder, which can be a natural person or an entity.

Every company must have at least one director who is locally resident in Singapore. A director must be a natural person who is at least 18 years old. Foreigners who do not have a locally resident director can engage a nominee directorship services to satisfy the resident director requirement. A company director is responsible for managing the affairs of the company and setting the company's strategic direction. A company director is required under the Companies Act to ensure accurate and timely record keeping, prepare financial statements (if required under applicable law) and comply with corporate filings and other disclosures. The director also has the legal duty to advance the interests of the company, act honestly and in good faith in exercising the given powers.

Companies must appoint a company secretary within 6 months from the date of incorporation who must be locally resident in Singapore. A company secretary must be a natural person and having certain qualifications. This is typically outsourced to a corporate secretarial firm in Singapore. A company secretary is responsible for the statutory compliance of the company, such as the filing of annual returns. The role of company secretary is usually outsourced to a named individual from a Singapore law firm or Registered Filing Agent.

A company must also appoint an auditor within 3 months from incorporation unless exempted. A "small company" is exempt from auditing its financial statements. A company qualifies as a small company if:

- it is a private company in the financial year in question; and
- it meets at least 2 out of 3 of the following criteria for the immediate previous two financial years:
- total annual revenue ≤ $10m;
- total assets ≤ $10m;
- no. of employees ≤ 50.

CORPORATE STRUCTURES, CONT'D

Limited Liability Partnership

A limited liability partnership **("LLP")** registered under the Limited Liability Partnerships Act 2005 of Singapore is a separate legal personality from its partners. One of the advantages of an LLP is that it gives owners the flexibility of operating a partnership while at the same time having a separate legal personality like a company.

Every LLP shall have at least 2 partners, which may be an individual (who is at least 18 years old) or a body corporate. In addition, every LLP shall have at least one manager who is a natural person, has attained the age of 18 years and is otherwise of full legal capacity and is ordinarily resident in Singapore (for example, Singapore citizens, permanent residents or holders of an EntrePass/Employment Pass).

An LLP is required to keep accounting records, profits and loss accounts and balance sheets that will sufficiently explain the transactions and financial position of the LLP. An LLP is also required to lodge annual declaration of solvency.

Sole Proprietorship

A sole proprietorship does not have a separate legal personality so the owner has unlimited liability and the owner may be personally liable for the debts and losses of the business. In general, sole-proprietors are considered to be self-employed persons.

In the case where the owner is residing outside of Singapore, at least one authorised representative who is ordinarily resident in Singapore (i.e., not Singapore citizens, permanent residents or EntrePass/Employment Pass holders) must be appointed. An authorised representative must be a natural person (who is at least 18 years old) and of full legal capacity.

Unlike companies, sole-proprietors have lesser ongoing compliance requirements (for example, they do not have to adhere to annual reporting requirements).

For all the above, there are also other compliance and regulatory requirements which may be applicable under the relevant legislation.

Limited Partnership

A limited partnership **("LP")** is a partnership consisting of at least one general partner and one limited partner. A LP does not have a separate legal personality from its partners.

A general partner has unlimited liability and can take part in the management of a LP. A general partner is responsible for the actions of the LP and is liable for all debts and obligations. However, a limited partner's liability is capped at the amount of his agreed investment and is not liable for any debts and obligations of the LP beyond this amount. A limited partner shall not take part in the management of the LP. Otherwise, he will be treated as a general partner with unlimited personal liability.

An individual or a corporation may be a general partner or a limited partner of the LP. An LP must appoint a local manager (who is at least 18 years old) if all the general partners are not residing in Singapore (i.e., not Singapore citizens, permanent residents or EntrePass/Employment Pass holders). The local manager is personally responsible for discharging all the obligations of the LP and is subject to the same responsibilities, liabilities and penalties as a general partner if the general partner defaults in respect of such obligation.

Partnership

A general partnership is a business owned by at least 2 partners subject to a maximum of 20 partners. The partners of a partnership may be natural persons or corporate entities. Unlike a company and an LLP, a general partnership is not a separate legal entity. The partners of a general partnership have unlimited liability and are personally liable for all the debts and losses of the partnership.

In the case where all the partners are residing outside of Singapore, at least one authorised representative who is ordinarily resident in Singapore (i.e., not Singapore citizens, permanent residents or EntrePass/Employment Pass holders) must be appointed. An authorised representative must be a natural person (who is at least 18 years old) and of full legal capacity.

SINGAPORE

ENTERING THE COUNTRY

In Singapore, there are no general legislation that provides comprehensive rules on foreign investment specifically. However, foreign investment in certain sectors and strategic industries which require safeguards to protect consumers or where national interests are concerned are restricted to some extent. In general, Singapore regulates foreign investment in the following sectors:

- Financial Services and Banking;
- Media;
- Legal Services; and
- Land Ownership and Real Estate.

Where there is sector-specific regulation, Singapore does it through:

- Enacting relevant legislation such as the following:
  - Broadcasting Act
  - Newspaper and Printing Presses Act
  - Banking Act
  - Securities Futures Act
  - Financial Advisers Act
  - Residential Property Act
  - Competition Act.
- Implementing licensing regime through the relevant regulatory authorities, such as:
  - Info-communications Media Development Authority (IMDA)
  - Monetary Authority of Singapore (MAS)
  - Legal Services Regulatory Authority (LSRA)
  - Competition & Consumer Commission of Singapore (CCCS)

The Singapore government encourages foreign investment and adopts a consultative approach between the regulatory authorities, stakeholders and foreign investors. Foreign investors may also tap into the various governmental grants, assistance and tax incentives administered by Enterprise Singapore and other governmental agencies or partners. However, most require some form of local shareholding (usually about 30%).

INTELLECTUAL PROPERTY

The following types of intellectual property rights can be registered in Singapore:

Trade Marks

What is protectable? Any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

Where to apply? National trade mark applications can be filed with (i) the Intellectual Property Office of Singapore (IPOS) and international trade mark applications can designate Singapore as one of the countries for protection through (ii) the World Intellectual Property Organization (WIPO) via the Madrid System. An application for trade mark registration can be filed with the new IPOS e-services portal, IPOS Digital Hub. Once the application is received, IPOS will conduct its own searches, ensure compliance with registration requirements, and publish the application in the Trade Marks Journal for 2 months to provide the public with an opportunity to oppose the application. The trade mark will be registered if no one opposes the application or if an opposition has been decided in the applicant's favour.

Duration of protection? The trade mark registration remains valid for 10 years. 6 months before the expiry of the registration, the applicant can file for a renewal of the registration to extend the protection of your trade mark for another 10 years.

Costs? The government application costs for national trade mark applications for each class is SGD 280 per class (if fully adopted from the registry's pre-approved database of goods/services descriptions). Otherwise, it would be SGD 380 per class. This excludes any fees of the legal representative.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? To protect inventions that are novel, inventive and industrially applicable.

Where to apply? Patent applications can be filed with either (i) the Intellectual Property Office of Singapore (IPOS) or PCT National Phase Entry route through (ii) WIPO. If you are a Singapore resident, you are required to obtain written authorisation from IPOS before filing an application for a patent outside of Singapore. This is called a National Security Clearance.

Duration of protection? The term of protection is a maximum of 20 years from application and must be maintained by renewal fees during the 20-year period.

Costs? The government application costs for Singapore patents is a minimum of SGD 2,470. This excludes any fees of the legal representative.

Employee invention and inventor bonus? Pursuant to the Singapore Patents Act, an invention made by an employee shall, as between him and his employer, be taken to belong to his employer for the purposes of the said Act if:

- the invention was made in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties; or
- the invention was made in the course of the duties of the employee and, at the time of making the invention, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had a special obligation to further the interests of the employer's undertaking.*

There is no statutory provision for inventor bonus and parties may negotiate on such additional compensation beyond salary.

*https://sso.agc.gov.sg/Act-Rev/221/Published?DocDate=20020731&ProvIds=P1IX-

Designs

What is protectable? Features of a shape, configuration, colours, pattern or ornament applied to any article or non-physical product that give that article or non-physical product its appearance. It protects the external appearance of the article or non-physical product.

Where to apply? National trademark applications can be filed with (i) the Intellectual Property Office of Singapore (IPOS) and international trade mark applications can designate Singapore as one of the countries for protection through (ii) WIPO via the Hague System.

Duration of protection? Protection for a registered design lasts for an initial period of 5 years from the date of filing the application. The registration may however be renewed every 5 years up to a maximum of 15 years, subject to the payment of renewal fees.

Costs? The government application costs for national design applications for each design is SGD 200. This excludes any fees of the legal representative.

Other less common IP rights that can be registered are:

- Geographical Indications
- Plant Variety Rights

INTELLECTUAL PROPERTY, CONT'D

The following IP rights cannot be registered:

Copyright

What is protectable? An expression of ideas in tangible form is protected. This includes literary, dramatic, musical and artistic works. Additionally, films, sound recordings, television and radio broadcasts, cable programmes and performances are also protected by copyright. Copyright protection is enjoyed by the author automatically upon the creation of a work and expression of the work in tangible form. No registration is required.

Duration of protection? Authorial works (with known authors) will be protected for 70 years from the death of the author. Films and anonymous or pseudonymous works will be protected for 70 years from the making of the work, the making available of the work to the public, or first publication, depending on whether and (if so) when these acts are carried out.

Exploitation of copyright protected work? Copyright owners have the exclusive right to use and exploit the protected work. It is the right to prevent others from reproducing, publishing, performing, communicating to the public, or adapting your work.

Trade Secrets

What is protectable? Trade secrets are a type of confidential information protected in Singapore under the common law. Confidential information and trade secrets are not registrable intellectual property rights and not protected under any legislation in Singapore. In considering whether a breach of confidence is made out, the following will be considered:

- Whether the information has the quality of confidentiality.
- Whether the information was imparted in circumstances importing an obligation of confidentiality. An obligation of confidentiality can be found even where confidential information has been accessed or acquired without the company's knowledge or consent.
- If the above two elements are satisfied, an action for a breach of confidence is presumed and it is then for the defendant to rebut this presumption and prove that his conscience was unaffected.*

To protect confidential information, including trade secrets, it would be prudent for the company to put in place relevant clauses in its contracts with employees, third parties and other related entities to ensure protection. This includes including confidential information provisions in employment agreements and entering into non-disclosure agreements with potential investors.

Duration of protection? As long as appropriate measures are in place and information has the quality of confidentiality, confidential information protection applies.

*{https://www.ipos.gov.sg/about-ip/trade-secrets) (https://www.ashurst.com/en/news-and-insights/legal-updates/singapore-court-of-appeal-provides-greater-protection-of-confidential-information/)

SINGAPORE

DATA PROTECTION/PRIVACY

The Personal Data Protection Act (PDPA) provides a baseline standard of protection for personal data in Singapore. It comprises various requirements governing the collection, use, disclosure and care of personal data in Singapore.

It also provides for the establishment of a national Do Not Call (DNC) Registry. Individuals may register their Singapore telephone numbers with the DNC Registry to opt out of receiving unwanted telemarketing messages from organisations.

The Personal Data Protection Commission (PDPC) was established to administer and enforce the PDPA as well as to implement policies related to personal data protection and develop Advisory Guidelines to help organisations understand and comply with the PDPA.

If the PDPC investigates and finds that an organisation has breached any of the PDPA provisions, the PDPC will direct the organisation to take steps to ensure compliance such as:

- Stop collecting, using or disclosing personal data in contravention of the PDPA;
- Destroy personal data collected in contravention of the PDPA;
- Provide access to or correct the personal data; and/or
- Pay a financial penalty.

To comply with the PDPA, it is critical to implement personal data protection policies and communicate such policies to your employees. It is also compulsory under the PDPA for your business to appoint one or more Data Protection Officer(s) (DPO) to supervise your business' collection, usage and disclosure of personal data (among other obligations).

There are ten obligations under the PDPA:

1. Accountability Obligation
Undertake measures to ensure that organisations meet their obligations under the PDPA such as making information about your data protection policies, practices and complaints process available upon request and designating a data protection officer (DPO) and making the business contact information available to the public.

2. Notification Obligation
Notify individuals of the purposes for which your organisation is intending to collect, use or disclose their personal data.

3. Consent Obligation
Only collect, use or disclose personal data for purposes which an individual has given his/her consent to.Allow the individual to withdraw consent, with reasonable notice, and inform him/her of the likely consequences of withdrawal. Once consent is withdrawn, make sure that you cease to collect, use or disclose the individual's personal data.

4. Purpose Limitation Obligation
Only collect, use or disclose personal data for the purposes that a reasonable person would consider appropriate under the given circumstances and for which the individual has given consent.

An organisation may not, as a condition of providing a product or service, require the individual to consent to the collection, use or disclosure of his or her personal data beyond what is reasonable to provide that product or service.

5. Accuracy Obligation
Make reasonable effort to ensure that the personal data collected is accurate and complete, especially if it is likely to be used to make a decision that affects the individual or to be disclosed to another organisation.

6. Protection Obligation
Reasonable security arrangements have to be made to protect the personal data in your organisation's possession to prevent unauthorised access, collection, use, disclosure or similar risks.

DATA PROTECTION/PRIVACY, CONT'D

7. Retention Limitation Obligation
Cease retention of personal data or dispose of it in a proper manner when it is no longer needed for any business or legal purpose.

8. Transfer Limitation Obligation
Transfer personal data to another country only according to the requirements prescribed under the regulations, to ensure that the standard of protection is comparable to the protection under the PDPA, unless exempted by the PDPC.

9. Access and Correction Obligation
Upon request, organisations have to provide individuals with access to their personal data as well as information about how the data was used or disclosed within a year before the request.

Organisations are also required to correct any error or omission in an individual's personal data as soon as practicable and send the corrected data to other organisations to which the personal data was disclosed (or to selected organisations that the individual has consented to), within a year before the correction is made.

10. Data Breach Notification Obligation
In the event of a data breach, organisations must take steps to assess if it is notifiable. If the data breach likely results in significant harm to individuals, and/or are of significant scale, organisations are required to notify the PDPC and the affected individuals as soon as practicable.

11. Data Portability Obligation
At the request of the individual, organisations are required to transmit the individual's data that is in the organisation's possession or under its control, to another organisation in a commonly used machine-readable format.

Exceptions may apply to the obligations above.

There are also sector-specific obligations that the PDPC has since issued advisory guidelines to assist companies in complying with its obligations under the PDPA.

ARTIFICIAL INTELLIGENCE

Singapore offers a highly favorable environment for AI development and application, backed by substantial funding and strategic policies. The National AI Strategy, unveiled in 2019, positions Singapore with the goal of becoming a global frontrunner in the creation and application of significant, scalable AI solutions by 2030. This strategy includes a focus on integrating AI within five primary sectors: transport and logistics, municipal services, management and prediction of chronic diseases, education, and ensuring border safety and security. Beyond these sectors, AI's application extends across various industries, including finance and hospitality, where robots serving as waiters in restaurants have become a common sight.

Singapore does not currently have any specific legislation for the general use of AI.

ARTIFICIAL INTELLIGENCE, CONT'D

However Singapore has adopted a strategy in overseeing AI utilization by various industries. There are several legislations which regulate AI-enabled or AI-based technology. For example, AI-enabled medical devices (AI-MDs) are regulated under the Health Products Act 2007, along with all other medical devices, except those which pose as low risk.[1] The Road Traffic Act 1961 was amended to include the regulation of the trial and use of AI-enabled autonomous motor vehicles in Singapore, including to make rules for the regulation of (1) any trial of automated vehicle technology or an autonomous motor vehicle on any road, and (2) use on a road of an autonomous motor vehicle. Under the Road Traffic (Autonomous Motor Vehicles) Rules 2017, the trial of autonomous motor vehicles (AVs) on any road (which includes public roads) is only allowed if the person has specific authorisation from the Land Transport Authority of Singapore (LTA).[2]

AI has been identified by the Singapore government as one of four frontier technologies which is essential to growing Singapore's Digital Economy, alongside Cybersecurity, Immersive Media and the Internet of Things.[3] In 2019, Singapore, through the Smart Nation and Digital Government Office, unveiled the National AI Strategy, outlining plans to deepen the use of AI to transform the economy[4]. In 2023, the government launched the Singapore National AI Strategy 2.0 (NAIS 2.0) to building a trusted and responsible AI ecosystem, driving innovation and growth through AI[5].

To complement this national initiative, there are voluntary guidelines issued by key government agencies to encourage the responsible development, deployment and use of AI:

- the Model Artificial Intelligence Governance Framework (the "Model AI Governance Framework") which was introduced in 2019 and updated to its current second edition in 2020 was released by the Infocomm Media Development Authority (IMDA) and Personal Data Protection Commission (PDPC), along with an AI governance testing framework and a software toolkit under AI Verify. The testing framework consists of 11 AI ethics principles are consistent with recognised AI frameworks such as those from EU, OECD and the Model AI Governance Framework. AI Verify helps AI developers validate the performance of their AI systems against these principles through standardised tests.[6] The Model AI Governance Framework is to be read along with the Implementation and Self-Assessment Guide for Organisations (ISAGO), which sets out a series of questions to test for compliance;
- while the Model AI Governance Framework is intended to target "traditional AI", a new draft Model AI Governance Framework for Governance AI was recently proposed on 16 January 2024 by the AI Verify Foundation and IMDA to address issues which are unique to generative AI (e.g. hallucination, copyright infringement, value alignment), building upon the existing Model AI Governance Framework[7]; and
- the IP and Artificial Intelligence Information Note issued by the Intellectual Property Office of Singapore (IPOS) was released in 2022 which aims to outline key IP issues that AI creators should be aware of, and provides an overview of how different types of IP rights can be used to protect different AI inventions. It also sets out the various initiatives that IPOS can offer to support AI e.g. SG Patent Fast Track Pilot Programme to fast track patent applications for AI in as fast as six months[8].

Apart from the above industry-neutral guidelines, the following government agencies have issued industry-specific guidelines in relation to the use and development of AI in the financial and healthcare sectors:

- the Principles to Promote Fairness, Ethics, Accountability and Transparency ("FEAT") in the Use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector, was published in 2018 by the Monetary Authority of Singapore (MAS), for firms offering financial products and services with a set of foundational principles on the responsible use of AI and data analytics ("AIDA")[9]; and
- the Artificial Intelligence in Healthcare Guidelines ("AIHGle"), which was published in 2021 by the Ministry of Health (MOH), the Health Sciences Authority (HSA) and the Integrated Health Information Systems (IHiS) to set out good practice for developers and implementers of AI in healthcare and complement the HSA's regulatory requirements for AI-based medical devices (AI-MDs)[10]. The HSA regulates multiple aspects of AI-MDs development as part of its medical device registration process to ensure the quality, safety, and efficacy of AI-MDs, and requires continued post-market surveillance to ensure continued real-world effectiveness.[11]

ARTIFICIAL INTELLIGENCE, CONT'D

Lastly, there is also no legislation relating to AI-related liability, unlike the proposed EU Liability Rules for Artificial Intelligence[12]. There is no reported case law or judicial decision published in relation to civil or criminal liability where AI does not perform as expected in Singapore. It is unlikely that the Singapore government will introduce any legislation relating to AI-related liability. In the context of autonomous vehicles, the Singapore government appears to take a position that issues of liability for AVs can be resolved through proof of fault and the common law as it is with accidents involving human-driven vehicles or other technologies such as autopilot systems for airplanes and navigational systems for maritime vessels, and product liability law to draw analogies from[13].

There is a reported judgment on whether the law of unilateral mistake in contract law can be extended to AI-enabled technology, where the Court of Appeal (the apex court in Singapore) in a rare 5-judge coram in 2020 had remarked that "[t]he law must be adapted to the new world of algorithmic programmes and artificial intelligence, in a way which gives rise to the results that reason and justice would lead one to expect. The introduction of computers no doubt carries risks, but I do not consider that these include the risk of being bound by an algorithmic contract, which anyone learning of would at once see could only be the result of some fundamental error in the normal operation of the computers involved. Computers are outworkers, not overlords to whose operations parties can be taken to have submitted unconditionally in circumstances as out of ordinary as the present. I do not think that the obvious malfunctioning of a computer-based system should be given the dominance that [the Respondent's] case implies."[14]In other words, Singapore courts are reluctant to take a clear position regarding civil liability in relation to errors attributed to AI-enabled technology (in this case, a cryptocurrency exchange where trading was conducted via an algorithmic system) and have instead focussed the analysis on the company's i.e. the human failure to make certain necessary changes to several critical operating systems on the technology.

It remains to be seen whether Singapore will legislate the series of guidelines and principles but it takes a broadly consistent approach with other major jurisdictions such as the EU, USA, Japan, Australia, China and UK in terms of the principles that apply to the use of AI.

[1] https://www.hsa.gov.sg/medical-devices/regulatory-overview
[2]https://www.lta.gov.sg/content/ltagov/en/industry_innovations/technologies/autonomous_vehicles.html
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[13] Ng Chee Meng (Minister for Education (Schools) and Second Minister for Transport), speech during the Second Reading of the Road Traffic (Amendment) Bill, Singapore Parliamentary Debates, Official Report (7 February 2017), vol 94, at 63–67 and 86–93.
[14] Quoine Pte Ltd v B2C2 Ltd [2020] 2 SLR 20; [2020] SGCA(I) 2 at [193].

EMPLOYEES/CONTRACTORS

Employees: Under the Singapore Employment Act, an employer and employee may enter into any agreement, whether written or oral, express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his or her employer as an employee and includes an apprenticeship contract or agreement. It is also known as a "contract of service". Further, an employer must give each employee (who is employed for at least a continuous period of 14 days) of the employer a written record of the key employment terms of the employee not later than 14 days after the day that the employee starts employment with the employer.

Engaging of employees would require the employer to comply with the minimum conditions of service prescribed by the relevant act, otherwise, those terms are illegal and void to the extent that it is so less favourable. For example, the Singapore Employment Act prescribes the minimum number of paid public holidays, annual leaved and sick leave that all employees covered under the said act are entitled to.

Independent Contractors: The engagement of independent contracts is not governed under any specific legislation in Singapore. There is also no work for hire regime in Singapore. Therefore, each contract i.e. a "contract for service" should contain a clause covering the ownership and/or licensing of works made by such independent contractors. If silent, it would be governed by the default position under the relevant applicable laws depending on the type of work. For example, under the Singapore Copyright Act, creators of commissioned photographs, portraits, engravings, sound recordings and films will now be the default copyright owners of such content unless parties vary the default position via contract.

Central Provident Fund (CPF) Contribution: If the employer is employing a Singaporean or Singapore permanent resident under a contract of service, the employer is required to pay both the employer and employee's share of CPF contributions every month. The employer is entitled to recover the employee's share from the employee's wages. No CPF contribution is required for foreigners.

Termination: Either party to a contract of service may at any time give to the other party notice of intention to terminate the contract of service. The Singapore Employment Act provides for some restrictions on terminations of employees for employees covered under the Employment Act. This includes the following:

- Minimum notice of termination
- Salary in lieu of notice of termination
- Termination without notice on the ground of wilful breach by the other party of a condition of the contract of service
- Dismissal on the grounds of misconduct or otherwise

There are other restrictions on terminations of employees where the employees fall within certain categories such as female employees during their maternity leave and dismissal on the ground of age for employees who are below the minimum retirement age.

Instead, the employment contract typically sets out other rights relating to termination of employment. This includes restrictive covenants, garden leave and other clauses relating to termination.

CONSUMER PROTECTION

The main legislation is the Consumer Protection (Fair Trading) Act 2003 **("CPFTA")** known as the "Lemon Law" which was enacted to protect consumers against unfair practices and to give consumers additional rights in respect of goods that do not conform to contract, and for matters connected therewith. Under the CPFTA, the Consumers Association of Singapore **("CASE")** and Singapore Tourism Board **("STB")** are the first points of contact for consumer complaints. CASE will assist aggrieved consumers to obtain redress, and in some cases, compensation through negotiation and/or mediation.

The CPFTA defines what is an "unfair practice". To help businesses and consumers better understand what constitutes an unfair practice, the Second Schedule to the CPFTA sets out a non-exhaustive list of unfair practices. For example, if a consumer has purchased a defective product, the consumer has the right to require the seller to:

- Repair or replace the product; or
- Request for a full or partial refund if the defective product cannot be repaired or replaced.

CASE has established the Advertising Standards Authority of Singapore **("ASAS")** which has published a Singapore Code of Advertising Practice **("SCAP")** which is the guiding principle that companies may wish to comply with especially on the following:

- advertising food and beverage products to children,
- social media guidelines,
- gambling advertisements and promotions, and
- the display of full prices.

There are also other sector-specific advisories which may be applicable to protect consumers such as MAS' issuance of Guidelines On Provision Of Digital Payment Token Services To The Public **("PS-G02")** on 17 January 2022 to all Digital Payment Tokens **("DPTs")** service providers to ensure that their marketing campaigns, advertisements and promotions for buying or selling of DPTs or facilitating the exchange of DPTs are consistent with the risk disclosures under the PSA, which requires that all actual and potential customers be provided with a risk warning statement highlighting the risks associated with trading in DPTs.

Further, consumers are protected under the Unfair Contract Terms Act **("UCTA")** in Singapore which was enacted to impose further limits on the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise. For example, UCTA prohibits a person from using a contract term or notice to exclude his own liability for negligent acts causing death or personal injury on another.

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TERMS OF SERVICE

Terms of services are generally enforceable in Singapore whether as "click-wrap", "shrink-wrap" or "browse-wrap" method, however, it is subject to common law principles under contract law such as offer and acceptance. For example, the Court of Appeal had found that a contract was formed when an online retailer sent out automated e-mail responses containing the confirmation of purchase. In that case, the offer was made when the consumer placed an order online. This offer was then accepted when the retailer responded with a confirmation of the order.

Further, online transactions are regulated by the Electronic Transactions Act in Singapore which recognises the formation of contracts through online and electronic means and enforceability of these contracts.

It may also be subject to the UCTA where for the company uses any standard terms of service to:

- Exclude its own liability for breaches of terms,
- Excluding or limiting its own liability for breaches of terms, and
- Relying on a term to render a different kind of service from that which was reasonably expected of him, or not service at all,
- unless the standard contractual term is reasonable.

Also, the Sales of Goods Act applies to all contracts for the supply of goods (including digital products) but does not apply to supply of services.

In practice, the consumer should have prior notice of the terms of service. Therefore, it would be prudent to provide clear terms of service on a website or mobile app, or specific linking and reference to such terms when a consumer places an order.

Terms of service must also incorporate some sort of agreement or incorporation language (i.e. you agree to the terms of service through your continued use of the website / app). Where possible, it would be preferable to obtain express agreement through a clear action (i.e. a checkbox or button where the consumer can select "I agree to the terms of service"), particularly where any limitation of liability, indemnification, liquidated damages, or other provisions that require agreement from the consumer are included in such terms of service.

WHAT ELSE?

Tax Considerations: Singapore asserts its jurisdiction to tax primarily on the basis of source. Tax is imposed on income sourced in Singapore, as well as foreign sourced income received in Singapore, unless specified exemptions apply. Singapore does not have a capital gains tax regime. Only revenue gains are taxable.

Companies are taxed at a flat rate of 17% of its chargeable income. This applies to both local and foreign companies. The tax exemption scheme for new start-up companies and partial tax exemption scheme for companies are tax reliefs available to reduce companies' tax bills.

Goods and Services Tax **("GST")** is levied on all goods imported into Singapore. It is calculated based on:

- Customs value of the goods, plus all duties, or
- Value of the last selling price plus all duties, if there has been more than one sale (when the last buyer is the party declaring the payment permit)

The current GST rate is 9% with effect from 1 January 2024.

Banking: There are generally no restrictions imposed on both resident and non-resident companies in holding bank accounts. Savings accounts are, however, generally not offered in Singapore to companies. Opening a bank account is typically a straightforward process, subject to all requested information and documents provided. The extent of documentation required largely depends on each bank's Know Your Client / Anti Money Laundering requirements. Investors with good credit standing should generally be able to utilise a wide range of credit facilities in Singapore. These credit facilities include overdrafts, and short-term advances to medium and long-term loans, import and export financing facilities etc.

From recent experience, it is increasingly more difficult for companies to open a bank account in Singapore unless there is a local resident director who is also an employee and executive.

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LEGAL FOUNDATIONS

Slovenia has a civil law legal system which is based on the continental European civil law tradition. Its legal principles and rules are derived from statutes and codes, which are enacted by state authorities, rather than from case law. Other general legal acts may be adopted at both the state and local levels.

Nevertheless, there are cases in which common law may be applied, especially in the contractual relations of business entities – for example, Article 12 of the Slovenian Code of Obligations stipulates that business customs, usages and practices established between the parties shall be taken into account when assessing the required conduct and its effects.

Similarly, the case-law of higher-instance courts, although not a mandatory source of law, is generally observed and followed by the lower-instance courts.

CORPORATE STRUCTURES

The fundamental regulation in the area of company law in the Republic of Slovenia is the Companies Act, which sets out the basic rules for the establishment and operation of companies, sole proprietorships, related parties, economic interest groupings, branches of foreign companies and their status transformation.

Although there are several forms of both capital and personal companies, the most appropriate and widely used for start-ups are the limited liability company (družba z omejeno odgovornostjo) and the joint-stock company (delniška družba).

Limited liability company

Incorporation

An LLC can be established by **one or more** domestic or foreign **natural or legal persons** who adopt articles of association, in the form of a notarial deed. An LLC combines the positive features of capital and personal companies – it has a simple form, relations between partners are more personal, it combines limited liability of partners and freedom of decision-making. Ownership of LCC is divided into shares. Multiple persons can be co-owners of the same share in the LLC.

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CORPORATE STRUCTURES, CONT'D

Limited liability company, CONT'D

Liability

Partners of an LLC **are not personally liable** for the company's obligations. While their liability is limited to the amount of their initial contributions, the company is liable for its obligations with all its assets (**Exception:** separate personhood may be void by way of rules on "piercing of the corporate veil").

Shareholders

There is a **hard cap on the number of shareholders**. An LLC can have a **maximum of 50 partners**, exceptionally more – if the Ministry of the Economy, Tourism and Sport allows it.

Registering new partners requires an amendment to the articles of association and is thus costlier. The process usually goes as follows:

- a share transfer agreement must be concluded in the form of a notarial deed;
- existing shareholders must be notified and waivers of pre-emptive right acquired (unless articles of association exclude it);
- articles of association need to be amended to reflect the new ownership;
- transfer of the business share is registered in the court register.

Capital requirements / business shares

The share capital consists of the initials (and subsequent) contributions of the partners and must amount to at least EUR 7,500.00. The minimum capital contribution is EUR 50.00, which can be paid in cash or in kind. If the value of an in kind contribution exceeds EUR 100,000.00, its valuation must be carried out by an auditor.

Pre-emptive right of other partners

A partner who intends to sell his business share must notify the other partners in writing and offer them his share for sale, as they have a right of first refusal. The pre-emptive right of other partners can be limited in the articles of association. If none of the partners asserts a right of pre-emption on the share, it can be offered to a third party.

Vinculation clauses

A vinculation clause is a clause that stipulates that the consent of the majority or all of the partners is required for the sale of a business share to a third party. Such clause may be included in the articles of association but is otherwise not prescribed by law.

ADVANTAGES

- partners are not liable for the company's obligations;
- flexibility in internal governance;
- ability to exclude voting rights of certain partners;
- no hard-cap on the number of shareholders.

DISADVANTAGES

- a maximum of 50 partners (unless the Ministry's approval is granted);
- adding new partners comes at a greater cost (amendment to articles of association).

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CORPORATE STRUCTURES, CONT'D

Joint-stock company

Incorporation

A joint-stock company can be established by **one or more** domestic or foreign **natural or legal persons** who adopt articles of incorporation, in the form of a notarial deed. There are two ways of establishing a joint-stock company: simultaneous establishment or successive establishment (depending on whether closed access or open access if preferred).

Liability

Shareholders of a joint-stock company **are not personally liable** for the company's obligations. While their liability is limited to the amount they have invested in purchasing shares, the company is liable for its obligations with all its assets (**Exception:** separate personhood may be void by way of rules on "piercing of the corporate veil").

Capital requirements/Shares

The minimum amount of share capital is EUR 25,000. Shares can be paid in cash or in kind. At least 1/3 of the share capital must consist of shares paid in cash, and up to 2/3 can be paid in kind. Shares can only be issued in dematerialized form and may be formed as shares with a nominal amount or as no-par shares. The company may not have both forms of shares at the same time. The minimum nominal amount of a share is EUR 1.00 (higher nominal amounts must be in multiples of EUR 1.00).

Based on the rights derived from the shares, shares may be issued as ordinary (regular) and preferred (preferential). **Only preferred shares may be issued without voting rights**, but the company may not have more than half of such shares in the composition of the share capital. **Issuing shares that grant varying numbers of votes, despite having an equal share in the share capital, is explicitly prohibited.**

Management

The law prescribes the formation of bodies, their powers, and the relationship between them with mandatory norms. However, the company is free to choose either a two-tier system of company management with a management board and a supervisory board or a one-tier system with a board of directors. Both systems have in common that the decision-making and management functions are separate and take place in two bodies. The decision-making function takes place in the general meeting, in which all shareholders participate, the management function takes place in the board or the board of directors.

In a single-tier system, the company is governed only by the general assembly and the board of directors. In a two-tier system, the company is governed by three bodies – the general assembly, the board and the supervisory board. The powers of the bodies are exhaustively listed in the law. The bodies are independent from each other, decisions that are within the competence of one body cannot be taken by another, nor can one body change the decisions of another. There is also no hierarchy between them, except in terms of appointment – the general assembly appoints the supervisory board, the supervisory board appoints the board.

Formation requirements:

- Management board: at least 1 director
- Supervisory board: minimum of 3 members
- Board of directors: minimum of 3 directors; may elect executive directors

ADVANTAGES

- shareholders are not liable for the company's obligations;
- there is a possibility of entering into legal transactions between the company and its shareholders;
- flexibility in internal governance;
- easy to register new shareholders;
- ability to issue different classes of shares;
- no hard-cap on the number of shareholders.

DISADVANTAGES

- it has a more complex incorporation process;
- the majority of statutory rules cannot be derogated from
- rights from shares are indivisible;
- no interim dividends can be paid out in the first year of establishment;
- brokerage account set up & the KYC process involved;
- brokerage account costs for participants.

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ENTERING THE COUNTRY

A foreign direct investment must be notified to the Ministry of Economy if the following three conditions are cumulatively met:

- the transaction is **carried out by a foreign investor**;
- the transaction is a foreign direct investment through which the investor acquires **at least 10% of the capital or voting rights** in a Slovenian company; and
- **the foreign direct investment may affect the security or public order of the Republic of Slovenia**, in particular in cases where the target company is actually and predominantly active in one of the listed "critical areas":
  - critical infrastructure, whether physical or virtual, including infrastructure in the energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure and sensitive facilities, as well as land and real estate essential for the use of such infrastructure;
  - critical technology and dual-use goods, including artificial intelligence, robotics, semiconductors, cyber security, aerospace and defence, energy storage, quantum and nuclear technologies, as well as nanotechnology and biotechnology;
  - supply of critical resources, including energy or raw materials, and food security;
  - access to, or the ability to control, sensitive information, including personal data;
  - freedom and pluralism of the media; or
  - projects or programmes of interest to the European Union as defined in Annex I of Regulation 2019/452/EU.

If all three conditions are met, the FDI must be notified to the Ministry by either the foreign investor, the target company, or the acquired company **within 15 days of the conclusion of the SPA by which the foreign investor acquires, directly or indirectly, at least 10% of the capital or voting rights** in a company established in the Republic of Slovenia.

Under local law, both direct and indirect ownership fall within the scope of the screening regulation – i.e. the definition of a foreign investor includes also a legal person established in a third country who holds, directly or indirectly, at least 10% of the capital or of the voting rights in a legal person established in an EU Member State and who intends to make a direct foreign investment in the Republic of Slovenia or has already made such an investment. A foreign direct investment is further defined as an investment made by a foreign investor, the purpose of which is to establish or maintain permanent and direct or indirect links between the foreign investor and a company established in the Republic of Slovenia, by means of the first and any subsequent acquisition, directly or indirectly, of at least 10 % of the capital or voting rights of the company.

Failure to notify may result in a fine ranging between EUR 100,000 and EUR 250,000 EUR for small companies. A fine between EUR 200,000 and EUR 500,000 may be imposed on medium-sized and large companies. Within a legal entity, the person responsible for such notification may be fined up to EUR 10,000.

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

An important role in the Slovenian intellectual property has the Slovenian Intellectual Property Office (SIPO), as certain IP rights can only be acquired through an administrative procedure. The main tasks of SIPO therefore include carrying out procedures for granting of national patents, registration of national trademarks and designs.

Intellectual property right that can be registered:

Trademarks

Object of protection: A trademark is a legally protected sign if such a sign makes the goods or services of a particular undertaking distinguishable from those of another undertaking and can be displayed in the register in such a manner as to enable the competent authorities and the public to determine clearly and precisely the subject matter of the protection.

Procedure: The trademark can be registered, depending on the planned territorial protection. The applications can therefore be submitted to either (i) SIPO, (ii) the European Union Intellectual Property Office (EUIPO), or (iii) the World Intellectual Property Organization (WIPO) through the Madrid System. The procedure for registering a trademark in Slovenia starts with an application to the Slovenian Intellectual Property Office. SIPO reviews the application and registers the trademark if all minimum trademark requirements as mentioned are met. SIPO does not carry out a full examination of trademark applications, i.e. whether the possible registration of a trademark would infringe the earlier rights of others. This will only be carry out if there is an opposition filed by the holder of the earlier right. With publication in the Trademark Gazette, the three months opposition period begins.

Duration of protection: The validity of a trademark is 10 years from the date of filing of the application and may be extended indefinitely for the same period.

Costs: Application costs for three classes amount EUR 250. (EUR 70 are charged per additional classes). The fees do not include possible legal representative fees.

Patent

Object of protection: A patent is an exclusive right of a natural or legal person for an invention that involves an inventive step and is industrially applicable. This requires that the invention is novel, not obvious to a skilled professional and can be applied in industry. Novelty is attributed to a technical solution when it is not within the existing state of the art, implying that it has not been disclosed to the public through oral or written descriptions, use, or any other means prior to the patent application's filing date. Involvement of an inventive step is determined by an expert's recognition that the subject of an invention is not a result of the state of the art.

Procedure: The patent can be registered, depending on the planned territorial protection, with (i) SIPO, (ii) the European Patent Office (EPO) or (iii) WIPO. The registration procedures before these offices differ from each other, particularly as to costs.

Duration of protection: The term of the patent is 20 years, provided the holder pays maintenance fees. Before the end of the ninth year of the patent's validity, the holder must submit written evidence to the Office that the patented invention fulfils all the substantive criteria, i.e. novelty, an inventive step and industrial applicability. If the written evidence is not submitted in due time, the validity of the patent lapses irrevocably after the tenth year. It therefore is in essence a utility model.

Costs: The basic application costs for patents for the first theee years is EUR 110. In addition, fees of the legal and technical representative apply.

Employee invention and inventor bonus: The Employment-Related Inventions Act defines the invention takeover from the workers who had created it in the course of their employment. In general, the employer has three months to take over such an invention from the workers or not. The Act also stipulates that the worker receives a bonus. This is based mainly on the economic usefulness of his invention, the employee's duties with the employer and the employer's share in the creation of the invention.

INTELLECTUAL PROPERTY, CONT'D

Designs

Object of protection: An industrial design is an exclusive right of a natural or legal person protecting the design of an industrial or craft product. The design of a product is defined by the features of the lines, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

Procedure: Design applications can be submitted to either (i) SIPO, (ii) EUIPO, or (iii) WIPO through the Hague System. National designs may be registered with SIPO. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Applicants can also file an international application in accordance with the Hague Agreement for industrial designs. With a single application, protection can be obtained in more than 50 contracting states to these agreements at the same time, i.e. in all of them or only in those indicated by the applicant in the application form. The acquisition of protection has the same effect as if the application had been filed separately in each country and all the formalities for obtaining protection under national legislation had been fulfilled.

Duration of protection: The term of an industrial design is one or more periods of five years from the date of filing of the application, up to a total term of 25 years. It may be renewed every five years on payment of the appropriate fees.

Costs: Application costs for designs amount to EUR 80. The fees do not include possible legal representative fees.

Intellectual property rights that require no registration:

Copyright

Object of protection: Copyright works are individual intellectual creations in the fields of literature, science and the arts, which can be expressed in any mode. Copyright belongs to the author by virtue of the creation of the work. This means that no formalities such as registration are needed for a work to enjoy copyright protection.

Rights conferred by the protection: The essence of copyright is that it constitutes a monopoly of the author over the exploitation of their work. As such, copyright guarantees the author:

- respect for their moral interests and
- orespect for the economic benefits of the exploitation of their work.

In the first case, we are talking about moral rights, which protect the author with respect to their intellectual and personal ties to the work. Under moral rights, the author enjoys the exclusive right of first disclosure, recognition of authorship, respect for the work and the right of withdrawal.

In the second case, we are talking about economic rights, which protect the author's economic interests by giving the author an exclusive right to authorise or prohibit the exploitation of their work.

Duration of protection: Moral rights are perpetual. Economic rights last for the lifetime of the author and last, for his/her beneficiaries, 70 years after his death.

Trade Secrets

Object of protection: Slovenia's Trade Secrets Act has implemented the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016, which defines Trade Secrets as information that meets all of the following requirements:

- it is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- it has commercial value;
- reasonable steps have been taken under the circumstances, by the person lawfully in control of the information, to keep it secret.

Duration of protection: Trade secrets confers on its holder a protection unlimited in time, as long as the secrecy is maintained.

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DATA PROTECTION/PRIVACY

The GDPR (Regulation (EU) 2016/679) applies since 25 May 2018. The GDPR gives some leeway to EU Member States to implement a few provisions (implemented through the Personal Data Protection Act (Official Gazette of RS, no.163/22) such as:

- The age for child's consent in relation to information society services has been lowered from 16 years to 15 years.
- Video surveillance can only be carried out for purposes that are stipulated in the Personal Data Protection Act, whereas the conditions for video surveillance of workplace are more strictly regulated. The Act also stipulates specifically the content of the notice on video surveillance. Video surveillance of passenger traffic and video surveillance in public areas is newly regulated.
- The processing of biometric data contrary to the provisions of Personal Data Protection Act is prohibited. Another law may provide for the processing of biometric personal data and the conditions for its use but may also restrict the use of biometric personal data. The processing of biometric personal data in the private sector may only be carried out in accordance with the statutory provisions if it is strictly necessary for the performance of the activity, for the safety of persons, the security of property, the protection of classified information or the protection of business secrets.A private sector entity may also process biometric personal data to protect the accuracy of the identity of its customers. Before the processing of biometric personal data begins, individuals must be informed in writing and, in the case of employees, the controller must carry out prior consultation with the employees on the proportionality of the processing. The law also provides that in the context of marketing or similar other commercial activities, biometric personal data may not be requested, obtained or further processed in exchange for certain services, even if those services are free of charge to the data subject.

In relation to unsolicited communications via electronic means and cookies, the provisions of the Slovenian Electronic Communication Act must be taken into consideration as well.

The Slovenian Information Commissioner (Informacijski pooblaščenec) is the regulatory authority in relation to data protection, overseeing all types of processing relating to the GDPR and the abovementioned acts. The Information Commissioner also regularly issues guidelines and opinions on different areas of data protection.

ARTIFICIAL INTELLIGENCE

As of January 2024, there is no specific AI regulation enacted in Slovenia. However, we are eagerly awaiting the EU's AI Act, which will be the world's first comprehensive legal framework for artificial intelligence. Although its text is not yet finalized, it will undoubtedly (judging by the already agreed provisional rules) have a profoundly transformative effect on business:

- Businesses utilising high-risk AI systems will have to meet **compliance requirements before placing them on the market**. This involves a conformity assessment regarding data set quality, record keeping, transparency, human oversight, and cybersecurity.
- **Non-compliance will lead to substantial fines**. Up to 6% of global annual turnover or up to EUR 30 million. This represents a significant increase over the GDPR's fines.
- Fines for non-compliance can be imposed on a wide array of AI businesses, such **as providers, deployers, importers, distributors and notified bodies**.
- Not complying with the AI Act might lead to your business **being held liable for damage caused** by an AI system under the AI Liability Directive.
- The AI Act puts a **definitive stop to certain AI business practices and AI systems being placed on the EU market**.

SLOVENIA

EMPLOYEES/CONTRACTORS

General: Employer and employee must conclude an employment agreement, which stipulates their rights and obligations set forth by mandatory law, collective agreements, and employer's by-laws. A written employment agreement is a must and as a rule the employment agreement should be concluded for indefinite time. Employment agreements for a limited period are possible if one of the reasons stipulated in the law exists. There are restrictions for the maximal duration of the agreements entered for a limited period, provisions prohibiting hidden employment relationships and so forth. The parties may agree on probation work which may last up to six months.

Entry into an employment agreement must be followed by the registration of employment into social schemes performed by the employer at the latest upon commencement of work.

Termination: Employees are very well protected. They can challenge unlawful terminations within 30 days since the termination has been served.

In addition, certain groups of employees (e.g., works council members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection as well as certain protection which is not related to termination (e.g. ordering of overtime).

There are four different grounds for unilateral ordinary termination by the employer: (i) termination due to business reasons, (ii) termination due to incapacity, (iii) termination caused by employee's fault, (iv) termination due to inability to carry out work in line with disability regulations, and (v) termination due to unsuccessful probation work. The employer may also unilaterally terminate to employment agreement by giving an extraordinary termination due to severe violation of employment obligations. The Slovenian Employment Relationship Act stipulates the termination procedure, remedies, and other rights of the employee as well as the related termination notice periods that the employer must adhere to in each of these situations.

Contractors: The main risk to be aware of when hiring contractors in Slovenia is of the contractor being reclassified as an employee due to the nature of the relationship between company and contractor. It is very important that the so-called "elements of employment relationship" do not exist. Note that it is important how the relationship is actually implemented by the parties in practice and not only what the written agreement stipulates.

Works Made in the Course of Employment: Material copyrights and other rights generated by an employee while carrying out their work for an employer is by default assigned to the employer without further compensation or documentation needed for 10 years from the completion of work. The parties can agree also for a longer period, subject to payment of appropriate compensation. However, the mentioned provisions do not apply in case of software development agreements. The Slovenian regulation includes a special exemption, namely where a computer program is created by an employee in the execution of his duties or following instructions given by his employer, or where it is created by an author under a contract, it is deemed that the economic rights and other rights of the author to such a software are transferred to the employer or person commissioning the work, exclusively and without limitations, unless otherwise provided by contract.

Works Made in the Course of contracting relations: Where the entity decides to appoint students or contractors for provision of certain services (there are strict provisions relating to the prohibition of service contract which are in their substance employment agreements), each agreement should contain a clause covering the licensing of works made by such contractual partners. Such a clause should be as specific as possible, in order to ensure that relevant intellectual property rights have been assigned.

SLOVENIA

CONSUMER PROTECTION

Slovenian consumer protection law is quite **strict** and is mostly based on EU legislation. It is mainly regulated by the Consumer Protection Act, which applies to **all activities targeted at consumers in the territory of the Republic of Slovenia**, regardless of where the entity is domiciled.

The Consumer Protection Act regulates **distance selling contracts** (e.g. online sales) and imposes various pre-contractual information obligations on the trader. These include, for example, the obligation for traders to provide information on the consumer's right to withdraw from the contract within 14 days without giving any reasons. This right can only be limited in certain exemptions. Furthermore, if the consumer is not adequately informed about the right of withdrawal, the withdrawal period is automatically extended for up to one year.

In addition to the Public Use of the Slovene Language Act, the Consumer Protection Act also sets out **language requirements**, namely that the trader must conduct its business with Slovenian consumers in the Slovenian language (and in the areas of the Italian and Hungarian minorities, also in the language of the respective minority). When labelling goods, services and digital content, the trader must provide the Slovenian consumers with the necessary information on the characteristics, conditions of sale, use and purpose of the goods, services and digital content in a language easily understandable to consumers in the territory of the Republic of Slovenia (in principle, the Slovenian language), or the company may also use commonly understandable symbols and images instead of text.

The Consumer Protection Act prohibits **unfair commercial practices**, i.e. misleading or aggressive practices that distort or are likely to distort the economic behavior of the average consumer, and contains a list of the so-called "black-listed" practices that are always considered unfair. In addition, the Consumer Protection Act sets out the obligation of traders to ensure that goods are of satisfactory quality and safe for use, contains the provisions on the mandatory one-year warranty for technical goods and sets out the rights of consumers in the event of defective goods (i.e. repair, replacement, compensation).

Advertising is subject to the provisions of the Consumer Protection Act, which apply to both B2C and B2B advertising activities. For direct marketing, the provisions of the Electronic Communications Act must also be taken into account, which require the explicit consent of the consumer for such marketing activities. Otherwise, advertising is subject to the Slovenian Advertising Code, a self-regulatory tool in the advertising industry. It is not legally binding, however, if the Advertising Tribunal finds that the advertisement does not comply with the Slovenian Advertising Code, the Advertising Tribunal may request the advertiser to correct or withdraw the disputed advertisement or file a motion or report with the Market Inspectorate.

Enforcement of the Consumer Protection Act provisions is primarily the responsibility of the Market Inspectorate, which can impose fines of up to EUR 50,000 depending on the seriousness of the offence.

SLOVENIA

TERMS OF SERVICE

Yes. In B2B transactions, the provisions of the Obligations Code apply, according to which the Terms of Service established by one party must be published in the usual manner and are only binding on the other party if they were aware or should have been aware of them at the time the contract was concluded. The general terms that are contrary to the purpose of the contract or good commercial practice are null and void.

In B2C transactions, the Terms of Service must be in clear and intelligible language and consumers are bound by the Terms of Service only if they have been informed of the full text before concluding the contract. This requires the trader to expressly bring the Terms of Service to the consumer's attention and ensure that they are easily accessible to the consumer. The online Terms of Service are preferably communicated to the consumer via a tick-box where the consumer explicitly acknowledges that they have read, understood and agree to the Terms of Service.

Unclear contractual terms are interpreted in favor of the consumer, and unfair contractual terms are null and void. The Slovenian Consumer Protection Act provides that a contractual term shall be considered unfair if it:

- causes a significant imbalance in the contractual rights and obligations of the parties to the detriment of the consumer; or
- causes the performance of the contract to be unreasonably unfavorable to the consumer; or
- causes the performance of the contract to be substantially different from what the consumer reasonably expected; or
- is contrary to the principle of good faith and fair dealing.

If (at least) one of the above conditions is met, the following clauses in particular are considered to be unfair contractual terms:

- excessive unilateral termination clause in favor of the trader;
- one-sided rights of the trader to change the material contractual terms, price or characteristics of the goods, services or digital content;
- exclusion of liability for death, personal injury, gross negligence, willful misconduct, defective goods;
- consumer's waiver of objections based on nullity, voidability, non-performance or improper performance of the contract;
- securing an unreasonably long period of time for the fulfilment of the consumer's order;
- limitation or exclusion of the consumer's right to legal remedy and access to evidence;
- renewal of the contract for a fixed period, if the consumer has an unreasonably short period to express their will not to extend the contract;
- contractual penalty in favor of the trader;
- shifting the burden of proof to the consumer, which, under the applicable law, is borne by the trader, etc.

If the trader imposes unfair contractual terms on the consumer, the trader may be fined between EUR 5,000 to EUR 50,000.

WHAT ELSE?

Bank account: Prior to incorporation, a corporate bank account must be opened for the payment of the initial share capital, for which the bank needs to be provided with the company's articles of association and other requested information and documents. While the process of opening a bank account is generally straightforward, the extent of required documentation can vary based on each bank's Know Your Client / Anti Money Laundering requirements. Recent experiences indicate that most Slovenian banks strictly follow their Know Your Client procedures, making it more difficult to open a bank account and incorporate companies. This is particularly true for foreign entities with a complex and diverse ownership structure, which may face difficulties in evidencing chains of control up to the ultimate beneficiary owners.

Employee share ownership plan regulation: The draft ESOP law, which is still being negotiated but is expected to be passed this year, aims to regulate the system for buying back shares from outside owners or owners who retire and leave the company, and for integrating new employees into the ownership of the company. It proposes a regulatory framework that would provide greater certainty for stakeholders and also offers tax benefits to owners who would sell shares to an ESOP trust, to employees who would receive financial benefits through an ESOP trust, and to companies that would finance an ESOP buyout. It is based on an expert proposal that is the result of several years of research and is based on the most successful employee ownership models (including the American ESOP, the British EOT and the Spanish Mondragon).

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

SOUTH AFRICA

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LEGAL FOUNDATIONS

The Republic of South Africa is a constitutional state, with a supreme Constitution and a Bill of Rights. All laws must be consistent with the Constitution. But South Africa has a mixed legal system - a hybrid of Roman-Dutch civilian, English common law, and legislation enacted by Parliament, ("statutes"). This means that South Africa does not have a codified legal system.

The Roman-Dutch common law of South Africa is the uncodified law of Holland and is most visible in the substantive private law. The English common law influence can be seen in procedural aspects of the legal system and methods of adjudication particularly in procedural law, with adversarial trials, detailed reporting of cases and adherence to precedent.

As a general rule, South Africa follows English law in both criminal and civil procedure, company law, constitutional law and the law of evidence. While Roman-Dutch common law is followed in the South African contract law, law of delict (tort), law of persons, law of things, family law, etc.

The South African court system is organized in a clear hierarchy and consists of from lowest to highest legal authority: firstly, many Magistrates' Courts, secondly, a single High Court with multiple divisions across the country, thirdly, the singular Supreme Court of Appeal (SCA), which is a purely appellate court and lastly the Constitutional Court the apex jurisdiction/position.

Several specialized courts have also been created by legislation to deal with specialized areas of law important to the public. These courts exist alongside the court hierarchy with their decisions being subject to the same process of appeal and review through the normal courts. Within these specialized courts, there exist, to name a few, the Competition Tribunal and Competition Appeal Court, the Electoral Court, the Land Claims Court, and the Labour and Labour Appeal Court.

CORPORATE STRUCTURES

What are the most common forms of business vehicles used in South Africa?
The following business entities can be established in South Africa, and different establishment requirements apply to each:

- limited liability companies
- personal liability companies
- partnerships
- sole proprietors
- joint ventures

CORPORATE STRUCTURES, CONT'D

Limited Liability Companies

Although there are various structures for doing business available to investors who wish to establish a corporate presence in South Africa, the most common form of structure used is a limited liability company, which is governed by the Companies Act 71, 2008 (Companies Act) of which the private company is the most common. The Companies Act provides that a person is not, solely because of being a shareholder or director of a company, liable for any liabilities or obligations of the company, except to the extent that the Companies Act or the company's memorandum of incorporation (MOI) provides otherwise. The MOI is the founding document of the company and sets out the rights, duties and responsibilities of shareholders, directors and third parties in respect of the company.

Personal Liability Companies

A personal liability company is a profit company that meets the criteria for a private company and the company's MOI states that it is a personal liability company. This means that under the Companies Act, the company's MOI there is a prohibition of offering any of its securities to the public. There must also be a restriction on the transferability of its securities. The present and past directors of a personal liability company will further be jointly and severally liable, together with the company, for any debts and liabilities that are or were contracted during their respective periods of office. Personal liability companies are used mainly by professional practices, such as firms of architects, attorneys and engineers, whose business activities are regulated by an authority that does not permit its members to enjoy the protection of limited liability.

Sole Proprietorship

A sole proprietorship is not a separate legal entity and there is no need to register it. Such a business has no existence separate from the owner. As a result, there is no legal framework applicable. If a sole proprietor wishes to trade under a business name the name will need to be registered with the Companies And Intellectual Property Commission, ("CIPC").There is no legal framework applicable to sole proprietors and therefore there are no costs or fees involved.

Partnerships

A Partnership is an association of two or more persons formed by contract in terms of which each of the partners agrees to make some contribution to the partnership. The business is carried on for the joint benefit of the partners and its object is the acquisition of gain. Being an unincorporated entity, a partnership does not have a legal personality independent from the partners themselves. Unless the partnership agreement provides otherwise, partners are the co-owners of the partnership property, which is owned jointly in undivided shares. Unlike mere co-ownership, however, a partnership must also involve community of profit and loss and exist to make a profit. There is no requirement that a South African national be a partner. There is no fixed fee attached to the formation of a partnership, as a partnership is created through a private agreement between the partners. The partners will likely incur legal costs concerning the drafting of the partnership agreement and oversight of the legal process. Each partner must contribute or undertake to contribute something to the partnership. This contribution need not be monetary, so long as it has appreciable or commercial value. A partner may contribute property, labour, skill or expertise, among others.

Joint ventures

Joint ventures is not a distinct legal entity under South African law and there is no legal framework regulating joint ventures specifically. Joint ventures can be formed using various legal structures including partnerships, business trusts or incorporated entities. There are no registration or incorporation procedures specific to joint ventures. Depending on the legal structure that a joint venture takes, specific registration or incorporation procedures will need to be adhered to. There is no requirement that a South African national be a participant, manager, or director of a joint venture.

SOUTH AFRICA

ENTERING THE COUNTRY

Navigating the regulatory landscape for foreign investment in South Africa is crucial for any international client considering entering the market. South Africa, with its strategic location and status as a gateway to the African continent, offers numerous opportunities for foreign investors. However, like any country, it has specific rules and restrictions designed to regulate foreign investment and ensure it aligns with national interests and economic development goals. Here's a detailed overview of the key considerations:

Foreign Investment Regulations
South Africa is generally open to foreign investment in most sectors, and it actively encourages foreign direct investment (FDI) as a means to drive economic growth, improve international competitiveness, and create employment opportunities. However, there are certain regulatory frameworks and restrictions that foreign investors should be aware of:

- **Exchange Control Regulations:** South Africa has exchange control regulations that affect the movement of capital in and out of the country. These regulations are administered by the South African Reserve Bank (SARB). While they have been liberalized significantly over the years, certain restrictions and reporting requirements still apply to foreign investors, especially regarding repatriation of profits and dividends, and loans from foreign shareholders.
- **Sector-Specific Restrictions:** Certain sectors have restrictions on foreign ownership, aimed at protecting national interests or promoting local participation. For example, in the broadcasting, telecommunications, and defense industries, there are limits on the percentage of foreign ownership allowed. It's crucial for investors to verify sector-specific regulations before proceeding.
- **Broad-Based Black Economic Empowerment (B-BBEE):** The B-BBEE framework aims to redress the inequalities of Apartheid by promoting economic transformation and enhancing the economic participation of black South Africans. Foreign companies operating in South Africa are encouraged to comply with B-BBEE guidelines, which can affect government procurement contracts, licenses, and concessions. Compliance is often considered in regulatory approvals and can impact the overall investment climate for foreign entities.

Investment Incentives
South Africa offers various incentives to attract foreign investment, including tax incentives, grants, and subsidies in specific sectors such as manufacturing, automotive, film production, and renewable energy. The Department of Trade, Industry and Competition (DTIC) provides detailed information on available incentives and eligibility criteria.

Entry and Establishment of Foreign Businesses
Foreign entities can establish a presence in South Africa in several forms, such as a subsidiary, branch, or through a business visa if setting up a new business or investing in an existing one. The choice of entity has implications for tax, repatriation of funds, and compliance obligations.

- **Business Visas:** South Africa offers business visas to foreign nationals intending to establish a business or invest in an existing business in the country. Applicants must meet specific criteria, including a minimum investment amount, contribution to the creation of local employment, and a viable business plan. The process involves obtaining a recommendation from the DTIC and approval from the Department of Home Affairs.

Protection of Foreign Investment
South Africa is a signatory to several bilateral investment treaties (BITs) and is a member of international investment agreements that provide protection to foreign investors. These agreements typically include provisions on non-discrimination, fair and equitable treatment, protection from expropriation without compensation, and mechanisms for dispute resolution.

Conclusion
While South Africa offers a conducive environment for foreign investment, with strategic advantages and incentives, it is essential for foreign investors to navigate the regulatory landscape carefully. Understanding the exchange control regulations, sector-specific restrictions, B-BBEE compliance, and the legal framework for establishing a business presence is crucial. Additionally, leveraging the protections offered by international investment agreements can provide a layer of security for foreign investments.

It is advisable for clients to undertake thorough due diligence and seek expert legal guidance for their unique needs when considering an investment in South Africa. This ensures compliance with local laws and regulations, optimizes the benefits of available incentives, and mitigates potential risks associated with foreign investment.

SOUTH AFRICA

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

Navigating the landscape of Intellectual Property (IP) rights in South Africa is crucial for any international client looking to operate within the country. South Africa has a well-established legal framework for the protection of IP, which is designed to safeguard the interests of creators and innovators while promoting economic growth and development. Here's an overview of the key aspects of IP registration and protection in South Africa, including the status of trade secret legislation and the country's participation in the Madrid System.

Where IP Can Be Registered in South Africa
In South Africa, intellectual property can be registered under various categories, each managed by specific governmental bodies or legislation:

- **Patents and Designs:** The Companies and Intellectual Property Commission (CIPC) administers the registration of patents and designs in South Africa. Patents protect new inventions for 20 years, subject to annual renewal fees, while design protection covers the appearance of an article, offering up to 15 years of protection depending on the type of design.
- **Trademarks:** Trademarks are also registered with the CIPC. A registered trademark provides protection for the particular sign, logo, or slogan associated with goods or services, typically for an initial period of 10 years, renewable indefinitely in 10-year increments.
- **Copyrights:** Unlike patents, trademarks, and designs, copyright does not require registration in South Africa. It automatically protects original literary, musical, artistic works, and software among others, from the moment of creation, provided the work is materialized in some form. Copyright protection lasts for the lifetime of the author plus 50 years after their death.

Protections Afforded by Registration
Registration of IP in South Africa affords the owner exclusive rights to use, manufacture, sell, or license their creation, as well as to take legal action against infringement. These protections are crucial for businesses to safeguard their competitive edge and for creators to benefit from their inventions or creative works.

Trade Secret Legislation
South Africa does not have specific legislation that deals exclusively with trade secrets. However, trade secrets are protected under the common law by way of confidentiality agreements and breach of contract actions. Businesses typically rely on these legal mechanisms to protect sensitive information that is not public knowledge and adds value to the company.

Madrid System Participation
South Africa is a member of the Madrid System for the International Registration of Marks, a treaty administered by the World Intellectual Property Organization (WIPO). This system allows for the filing of a single application to register a trademark in multiple countries, including South Africa. For international businesses, this provides a streamlined and cost-effective method for securing trademark protection in various jurisdictions through one centralized application process.

Conclusion
For international clients looking to operate in South Africa, understanding and leveraging the country's IP registration and protection framework is essential. While South Africa offers robust mechanisms for safeguarding intellectual property, businesses should also be proactive in employing strategies such as confidentiality agreements to protect trade secrets, given the lack of specific trade secret legislation. Participation in the Madrid System further enhances the ease with which international trademarks can be protected in South Africa, aligning with global standards and practices in IP management.

SOUTH AFRICA

DATA PROTECTION/PRIVACY

In South Africa the Protection of Personal Information Act 4 of 2013 (also known as "POPIA") and its Regulations give effect to the Constitutional right to privacy as enshrined in section 14 of the Constitution of the Republic of South Africa, 1996. POPIA regulates and protects the processing of the personal information of all data subjects by a responsible party.

Application of POPIA? POPIA applies to the processing of personal information entered in a record by or for a responsible party by making use of automated or non-automated means and where the responsible party is domiciled in South Africa. If the responsible party is not domiciled but makes use of automated or non-automated means in South Africa then POPIA shall apply unless those means are used only to forward personal information through South Africa.

Who is a data subject? Any person to whom personal information relates.

Who is a responsible party? Either a public or private body, as defined, or any other person which alone or in conjunction with others, determines the purpose of and means for processing personal information.

What is personal information? Any information relating to an identifiable, living natural person and where it is applicable, an identifiable, existing juristic person.

How does a responsible party lawfully process the personal information of a data subject? POPIA sets out eight conditions with which a responsible party must comply in order to lawfully process the personal information of a data subject, namely:-

Condition 1: Accountability
The responsible party must ensure that all the conditions are being met and that the consent of the data subject is obtained, unless certain exceptions apply.

Condition 2: Processing Limitation
The responsible party must ensure that the processing of personal information is adequate, relevant and not excessive.

Condition 3: Purpose Specification
A responsible party may only process the personal information of a data subject for a specific, explicitly defined and lawful purpose related to the exercise of its functions and obligations.

Condition 4: Further Processing
If a responsible party is required to process the personal information of a data subject for any reason that is not compatible with the initial purpose for which that information was collected then it must be identify and explain to the data subject the purpose of the further processing and obtain their consent, subject to certain exceptions.

Condition 5: Information Quality
All reasonably practicable steps should be taken to ensure that all personal information which is being processed by a responsible party is complete, accurate, not misleading and is updated where necessary.

Condition 6: Openness
Subject to certain exceptions, the responsible party must ensure that the data subjects are aware of the following:

- What information has been collected;
- Whether the information is being collected from another source other than the data subject;
- The name and address of the responsible party;
- Whether the supply of personal information is voluntary or mandatory;
- The consequences of a failure to provide personal information;
- Any particular law authorizing or requiring the collection of the personal information (e.g. Income tax Act);
- Whether the responsible party intends to transfer the personal information across borders and the level of protection afforded to the personal information by the country or international organization to whom the information was transferred; and
- Any further information.

Condition 7: Security Safeguards
A responsible party must make every effort to secure the integrity and confidentiality of the personal information collected and processed.

Condition 8: Data Subject Participation
A data subject may request access to the relevant personal information collected by a responsible party and subject to certain exceptions either refuse access thereto or request the personal information collected by a responsible party to be corrected, deleted or destroyed.

A responsible party is also prohibited from processing the **special personal information** of a data subject which includes religious beliefs, race or ethnic origins, trade union membership, political persuasion, health or sex life, biometric information or criminal behaviour.

DATA PROTECTION/PRIVACY, CONT'D

Who monitors and enforces compliance with POPIA? The Information Regulator, an independent body established in terms of POPIA. It is accountable to the National Assembly.

Registration of Information Officers? Public and private bodies are required to register their information officers with the Information Regulator in terms of section 55 of POPIA.

Who must be registered as an Information Officer? The information officer of:
- a public body; and
- a private body

Information officers may also appoint and register deputy information officers who will assist with the ensuring that the lawful processing conditions are complied with.

How can information be lawfully accessed? The provisions of sections 18 and 53 of the Promotion of Access to Information Act 2 of 2000 **("PAIA")** applies to requests made in terms of section 26 of POPIA.

In contrast to POPIA, PAIA gives effect to the right to access information and accordingly data subjects and third parties may approach public and private bodies to request information held by them. On request, public and private bodies are obliged to release the requested information unless PAIA expressly prohibits the release thereof.

The provisions of PAIA and POPIA should therefore be considered together.

Penalties due to non-compliance with POPIA? Any person convicted of an offence in terms of POPIA is liable, depending on which sections of POPIA were contravened, to a fine or to imprisonment or both.

Policies that should be readily available?
- POPIA Policy
- Personal Information Breach Policy
- Data Retention Policy
- PAIA Manual (private bodies)

ARTIFICIAL INTELLIGENCE

Like with many emerging markets and developing countries, when it comes to the 4IR South Africa does not have a specific regulatory regime exclusively dedicated to artificial intelligence (AI). However, this does not mean that AI operations in South Africa are left entirely without legal oversight. Instead, AI, like in many other jurisdictions, falls under the purview of various existing laws and regulations that indirectly affect its development, deployment, and use. Additionally, there are ongoing discussions and initiatives aimed at better understanding and potentially regulating AI more directly. There are also many corporations and businesses have taken proactive steps in developing AI Policies, Frameworks and Guidelines based on many international trends and regulations that have been developing. Here's a detailed overview:

General Regulatory Framework

Data Protection and Privacy: The cornerstone of AI regulation in South Africa is the Protection of Personal Information Act (POPIA), which came into full effect in July 2021. POPIA is akin to the GDPR in the European Union and aims to protect personal information processed by public and private bodies. It imposes strict requirements on the processing of personal data, including obtaining consent, ensuring data quality, and securing personal information. AI systems processing personal data must comply with POPIA's provisions.

Consumer Protection: The Consumer Protection Act (CPA) also has implications for AI, especially in terms of product liability, fair marketing practices, and the right to privacy. AI developers and providers must ensure that their solutions do not mislead consumers and that they provide adequate information about the AI's functionality and potential risks.

ARTIFICIAL INTELLIGENCE, CONT'D

General Regulatory Framework, CONT'D

Intellectual Property (IP): The South African IP regime covers aspects relevant to AI, including copyright, patents, and trademarks. While software per se is not patentable in South Africa, the innovative algorithms and methods underlying AI technologies might be protected under certain conditions. Additionally, copyright might protect AI-generated content, although this area remains legally grey.

Cybersecurity: The Cybercrimes Act, which addresses cybercrimes and cybersecurity, has implications for AI systems, especially regarding the unauthorized access, interception, or interference with data, which could include AI-generated data.

Sector-Specific Regulations

Certain sectors may have additional regulations that impact AI applications. For example, the financial services sector regulated by the Financial Sector Conduct Authority (FSCA) and the South African Reserve Bank (SARB) may impose specific requirements on AI systems used in fintech. Similarly, healthcare AI applications must navigate regulations enforced by the Health Professions Council of South Africa (HPCSA) and comply with the National Health Act and other relevant laws.

Ethical Guidelines and Future Directions

South Africa is also engaging in discussions about ethical AI use. The Department of Communications and Digital Technologies (DCDT) has shown interest in developing policies around digital technologies, including AI. While not legally binding, these discussions and potential guidelines will influence future regulatory frameworks and best practices for AI in South Africa.

International Considerations

For international clients, it's crucial to note that AI regulation is an evolving field globally. Many countries are in the process of developing or refining their AI regulatory approaches, focusing on ethical guidelines, risk-based frameworks, and sector-specific regulations. Participation in international forums, such as the OECD's AI Policy Observatory or adhering to principles set by the G7 and G20, may also influence South Africa's future stance on AI regulation.

Conclusion

While South Africa does not currently have a dedicated AI regulatory regime, various existing laws indirectly regulate AI's use and application. Companies operating or planning to operate in South Africa must navigate this complex legal landscape, ensuring compliance with data protection, consumer protection, IP rights, and sector-specific regulations. Additionally, staying informed about ongoing discussions and potential future regulations in both South Africa and internationally is crucial for long-term compliance and strategic planning.

As a law firm we offer our clients professional cyber and technology services and have assisted then in developing AI Polices, Guidelines and Toolkits for both the South African and International markets.

SOUTH AFRICA

EMPLOYEES/CONTRACTORS

South Africa has one of the most regulated labour markets in the world. It has ratified several ILO conventions, and these are given effect to by way of local legislation.

South Africa's Labour Relations Act (66 of 1995) provides for both individual and collective labour law rights. The LRA establishes an unfair dismissal and unfair labour practice dispensation. Disputes are typically conducted in tribunals such as the Commission for Conciliation, Mediation and Arbitration ("the CCMA") or in Bargaining Councils established in specific industries. Certain disputes are reserved for adjudication by a specialist Labour Court.

South African has adopted a National Minimum Wage Act (9 of 2018) in terms of which a National Minimum Wage Commission makes recommendations on the minimum wage applicable to all 'workers' (a term which is widely defined and may apply to persons engaged on contract / not limited to employees). The NMWA creates lower wages for certain classes of persons including farm workers and workers engaged in terms of the Government's Expanded Public Works Programme. The failure to pay minimum wage falls within the jurisdiction of the CCMA tribunal.

In addition to the NMWA, the Basic Conditions of Employment (Act 75 of 1997) sets minimum terms and conditions of employment including in relation to working hours, lunch breaks, overtime pay, the contents of written particulars of employment, etc. The BCEA distinguishes between employees earning below and above a statutory remuneration threshold with certain rights only applying to employees earning below that threshold. The BCEA also provides for Labour Inspectors to ensure compliance.

Finally, the Employment Equity Act (55 of 1998) provides for positive steps to address the past imbalances in the working world created by Apartheid, including by requiring certain employers to adopt numerical targets applicable to previously disadvantaged groups and to give preference to suitably qualified candidates from those groups. It also prohibits the discrimination of persons based on 'listed' or 'analogous' grounds such as race, gender, ethnicity, etc. The EEA fits generally into the wider Broad Based Black Economic Empowerment framework that has emerged after the end of Apartheid.

No work for hire regime: There is no work for hire regime in South Africa. It is however not uncommon for Contracts of Employment to conclude clauses dealing with the cession and assignment of intellectual property created in the course and scope of employment to employers. These agreements are enforceable in South African Courts.

Registration with social security: The vast majority of employers are required to register their employees with the Unemployment Insurance Fund (UIF) and make payment of an employer contribution amounting to 1% of an employee's remuneration together with an equitable 1% deduction from the employee's remuneration over to the UIF (subject to a statutory cap).

Termination: The termination of employment in South African generally falls within three broad types, namely **(1)** termination for misconduct, **(2)** termination for incapacity (ill-health or poor work performance) and **(3)** termination for occupational requirements / retrenchments (based on the economic, technological or structural requirements of the employer).

Employees are very well protected. They can challenge termination of their employment relationship based on any of the following grounds:

- constructive dismissal (i.e. employment situation intolerable)
- not guilty of the alleged misconduct, or dismissal too harsh a sanction)
- not incapacitated, or the failure by an employer to follow a fair procedure in relation to the incapacity
- unfair termination of fixed-term contract of employment (i.e., where there was no 'justifiable reason' to fix the term of the contract or the employee had a reasonable expectation of renewal)
- unfair retrenchment
- selective non re-employment
- termination after a transfer of employment where less favourable conditions are applied by the new employer.

The employer typically bears the duty to show that the dismissal was fair.

Dismissal for certain defined reasons may constitute an 'automatically unfair' dismissal.

CONSUMER PROTECTION

Consumer Protection in South Africa is governed by legislation of parliament in the form of the Consumer Protection Act 68 of 2008, (the "CPA"). This act affects many areas of law, on relationships between consumers and suppliers. The Act essentially regulates the marketing (including advertising) of goods and services, contracts between consumers and suppliers, supply and service relationships between suppliers and consumers, discriminatory practices in the consumer market, product liability and relationships between franchisors and franchisees.

In any dealings with a consumer in the ordinary course of business, a person must not engage in any conduct contrary to or calculated to frustrate or defeat the purposes and policy of the CPA. The purposes and policy of the CPA include the promotion and advancement of the social and economic welfare of consumers in South Africa by:

- establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally, promoting fair business practices, and protecting consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices, and deceptive, misleading, unfair or fraudulent conduct;
- reducing any disadvantages experienced in accessing any supply of goods or services by certain vulnerable consumers;
- improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
- promoting consumer confidence, empowerment and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
- providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and
- providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

The application of the Act
The CPA applies to every transaction occurring within the Republic.

The provisions of the CPA cannot be avoided by suppliers. A supplier must not make a transaction or agreement subject to any term or condition if its general purpose or effect is to defeat the purposes and policy of the CPA; or if it directly or indirectly purports to waive or deprive a consumer of a right in terms of the CPA, avoid a supplier's obligation or duty in terms of the CPA; set aside or override the effect of any provision of the CPA; or authorise the supplier to do anything unlawful in terms of the CPA, or to fail to do anything that is required in terms of the CPA.

The CPA is concerned primarily with the activities of "supply" and "marketing" by a supplier in the course of business. The interaction between suppliers and consumers may specifically entail agreements and transactions between consumers and suppliers but may also involve marketing in the form of the promotion or supply of goods or services and advertising, as well as conduct preceding and accompanying the conclusion of agreements and the execution and enforcement thereof.

The application of the CPA extends to a matter irrespective of whether the supplier resides or has its principal office within or outside the Republic, operates on a for-profit basis or otherwise, is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public-private partnership, or is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public.

SOUTH AFRICA

TERMS OF SERVICE

Navigating the intricacies of online terms of service (ToS) in South Africa requires a nuanced understanding of both local legislation and international best practices. As an expert in contract and internet law, I'll provide a detailed overview of the key considerations that must be taken into account to ensure that an online ToS is enforceable in South Africa.

Compliance with South African Law
Consumer Protection Act (CPA), 2008
The CPA is a cornerstone in South African law that affects online terms of service. It mandates transparency and fairness in contracts to protect consumers. Key provisions that must be considered include:

- **Right to Fair and Honest Dealing:** ToS must not contain any terms that can be considered excessively unfair, deceptive, or that would mislead the consumer.
- **Right to Plain and Understandable Language:** Terms must be presented in a clear, concise manner that is easily understandable to the average consumer. This is crucial for enforceability.
- **Right to Fair, Reasonable, and Just Terms:** Any clauses that are excessively one-sided or that waive consumer rights in an unjust manner are not enforceable.

Protection of Personal Information Act (POPIA), 2013
POPIA governs the processing of personal information. It requires that ToS include:

- **Consent for Data Processing:** Explicit consent must be obtained for the collection, processing, and sharing of personal data.
- **Data Protection Measures:** The ToS must outline the measures taken to protect personal data.
- **Data Subject Rights:** The rights of individuals regarding their personal data (e.g., the right to access, correct, or delete data) must be clearly stated.

Electronic Communications and Transactions Act (ECTA), 2002
ECTA provides for the regulation of electronic transactions and communications, requiring:

- **Disclosure Requirements:** Certain information must be disclosed in ToS, including the full name and legal status of the website owner, physical address, and contact details.
- **Cooling-off Period:** Consumers generally have a 7-day cooling-off period after concluding an electronic transaction, during which they can cancel without penalty.

Prohibited and Mandatory Clauses
Prohibited Clauses

- **Unfair Exemption Clauses:** Clauses that exempt a service provider from liability for damages caused by their gross negligence or intentional misconduct are not enforceable.
- **Unilateral Changes:** Terms that allow the service provider to unilaterally change the agreement or prices without notice and consent are likely to be challenged.
- **Hidden Fees:** Any hidden fees or charges not clearly disclosed upfront can be deemed deceptive under the CPA.

Mandatory Clauses

- **Governing Law and Jurisdiction:** It's advisable to explicitly state that South African law governs the ToS and to specify the jurisdiction for resolving disputes.
- **Cancellation and Refund Policy:** Under the CPA and ECTA, terms regarding cancellation, returns, and refunds must be clearly outlined.
- **Dispute Resolution:** Including a clause on how disputes will be resolved (e.g., arbitration, mediation) can be beneficial and is often encouraged.

International Considerations
Given the global nature of the internet, it's also important to consider international laws and regulations, especially the General Data Protection Regulation (GDPR) if the services are offered to individuals in the European Union. Compliance with such regulations should be integrated into the ToS to ensure global enforceability and to protect against potential legal challenges.

Conclusion
Crafting an online ToS for operation in South Africa requires careful consideration of local laws such as the CPA, POPIA, and ECTA, alongside international regulations where applicable. Ensuring transparency, fairness, and the protection of consumer rights is paramount. It's advisable to seek legal expertise in drafting these documents to ensure they meet all legal requirements and are fully enforceable in South Africa.

WHAT ELSE?

Doing Business with Government in South Africa from an Administrative and Public Law Perspective

- Government has various business-development support programs that are designed to create a conducive environment for foreign investment and enterprise development.
- Direct Foreign Investment ("DFI") is generally considered as a catalyst for investment and economic development in South Africa and which, in turn, promotes (local) enterprise development.
- Inherent within the economic development strategy of South Africa is the recognition of the catastrophic consequences of South Africa's past history of apartheid, which created inequalities between races and genders, with white males being more privileged than white females, Indian and coloured males than Indian and coloured females, and black males more privileged than black females-in that order of inequality.
- The advancement of previously disadvantaged group (-generally referred to include Indians, Coloured people and Africans) is regulated through various pieces of legislation, some of which is suffused within legislation aimed at promoting foreign investment and enterprise development, meaning that some of the legislation intended to promote direct investment and enterprise development also regulates the promotion of previously disadvantaged groups (as commonly known as historically disadvantaged individuals ("HDIs")).
- Doing Business with Government [Foreign/External and Local Companies]

EMPLOYMENT EQUITY ACT (EEA)-Applies only to designated employers

The purpose of the Act is to achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- Implementing affirmative action measures to redress the disadvantages in employment experienced by **designated groups** (Historically Disadvantaged Individuals) to ensure their equitable representation in all occupational levels in the workforce.

In implementing affirmative action measures, designated employers (employers with a turnover set out in Schedule 4 of the EEA (it provides for different thresholds for different sectors) or which employ more than 50 people) are required to conduct an analysis of their employment policies, practices, procedures and the work environment so as to identify employment barriers that adversely affect members of the designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

In conducting the analysis and developing measures to promote the representation of HDIs, they are required to prepare and implement an Employment Equity Plan, which must not be shorter than one year and not longer than five years which sets out the designated employer's plan and timetable for the achievement of goals and objectives for each year of the plan (towards full representation of HDIs in the workplace. The government has currently issued sector codes which prescribe how much representation there should be of HDIs in each occupational level.

BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT

Broad-based black economic empowerment (BEE) is a government policy that is intended to promote the advancement of Black people (HDIs) in terms of economic transformation and advancement through the enhancement of their participation in the economy; recognizing the effect of apartheid over the years in the development of HDIs.

The Broad - Broad-Based Black Economic Empowerment Act, 2003 (as amended) regulates the promotion and implementation of BEE, by amongst others, rating companies on a scale of level 1 to 8 (scale 1 representing the highest level of BEE participation to 8, being the lowest level or rating). The higher the BEE rating the higher the entity is scored to benefit for purposes of doing business with the government and securing state tenders. The government also issues sector codes that provide indices for BEE ratings per sector (e.g. manufacturing, legal, transport, banking etc.).

When the state contracts with private entities, it issues a Request for Proposals ("RFP") inviting companies to submit their proposals. The RFP is scored out of 100 in terms of a 90/10 (RFPs above R50 000 000.00) or 80/20 preference point system (RFPs with a rand value of up to R50 000 000.00)

WHAT ELSE?

BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT, CONT'D
The pricing portion of the response to the RFP from bidders is scored out of 90/80 points. The BEE rating of the bidder will be scored out of 10/20 points and the two scores will then be combined. A high BEE score can, therefore, result in the bidder achieving a better total score than another bidder with a low BEE score even though the bidders have similar scores for the pricing portions of their bids. Some organs of state do set BEE as a pre-qualification criterion, by setting a minimum BEE rating that bidders must have before they can qualify to participate in the RFP, meaning that bidders falling below that BEE level are automatically disqualified.

This practice has been declared unconstitutional by the Constitutional Court of South Africa, but somehow public entities do manage to get around this by covertly setting criteria that ensures maximum BEE participation in the contract, in various ways-e.g., requiring that a specific percentage of the contract be allocated to HDIs (sometimes with a specific BEE rating), Local suppliers, Small to Medium Enterprises with a stipulated minimum BEE rating.

Foreign companies are sometimes exempted from complying with BEE, under circumstances, but may still be required to outsource 20% of the contract to local suppliers or small to medium enterprises with higher BEE ratings.

Transacting with private entities
Having a high BEE rating is not only useful for purposes of doing business with government, but a high BEE rating gives an entity a competitive edge in terms of doing business with other private entities that do require high BEE scores to tender for government work.

One of the elements used for BEE assessment and thus rating, is preferential procurement. The more an entity procures from entities with high BEE ratings, the higher its overall score for BEE. This means that entities may not be doing business directly with government but stand out as preferred suppliers for other private entities which in turn, require high BEE ratings do work with government.

EMPLOYMENT OF FOREIGNERS
Some foreign companies may wish to bring their own employees (foreign nationals) along to work in their local office or operation.

The employment of foreign nationals is governed by the Immigration Act read with the Employment of Foreign Nationals Act.

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STARTUP LEGAL PLAYBOOK

SPAIN

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SPAIN

LEGAL FOUNDATIONS

Spain follows the civil law system. Law principles are codified into a referable written system, which serves as the primary source of law. The Spanish codified laws system unfolds into two main blocks:

Public law: governs the relationship between the bodies holding public power and the citizens. Public law mandates are generally binding and embrace broad areas of law such as constitutional law, criminal law, procedural law, tax law and administrative law, among others.

Private law: governs the relationships amongst individuals and is based on the autonomy of the will principle. The Spanish Civil Code (Código Civil) is one of the main sources of private law, together with commercial legislation such as the Commercial Code (Código de Comercio) or the Capital Companies Law (Ley de Sociedades de Capital), to name a few.

Spain is organized as a **decentralized state**, meaning that while its national laws apply throughout the entire territory, some of the seventeen Spanish autonomous communities (similar to regions or States) have their own legal systems applicable in relation to certain matters. Aragon, Catalonia, the Balearic Islands, Extremadura, Galicia, Navarra and the Basque Country have Special legislation is matters such as family law, real estate, wills or –just some of them- contracts and obligations.

Custom and general principles of law are the other two sources of Spanish legal system besides from codified law. Court precedent and jurisprudence, in particular the rulings issued by the Spanish Supreme Court (TS) and the Constitutional Court (TC) are often used as interpretation tools in case of ambiguity, setting binding precedent and becoming an indirect source of law with a strong impact on the Spanish judicial system.

CORPORATE STRUCTURES

The Capital Companies Law sets the most relevant form of Companies in Spain:

- the corporation **(S.A.)**
- the limited liability company **(S.L.)**
- the partnership limited by shares **(S. Com. por Acciones)**

Traditionally, the **corporation ("S.A.")** has been commonly used by medium size or big-ticket companies and is mandatory, among others, for public stock traded companies in Spain, whereas the limited partnership less used. Limited liability companies ("S.L.") are by far the most commonly used, among other reasons, because of its greater flexibility, lower capitalization requirements, wider margin in setting up, drafting bylaws and internal governance.

CORPORATE STRUCTURES, CONT'D

Main differences between S.A. and S.L.

S.A.

- Capital divided into "Shares"
- Minimum capital stock of €60,000, at least 25% paid upon incorporation
- Shares are marketable securities. Debentures and other securities can be issued
- In principle shares may be freely transferred unless the bylaws provide otherwise, and provisions that render the shares practically nontransferable are null and void.
- A minimum number of shares may be required to attend the shareholders' meeting, which may not be greater than one thousandth of the share capital.
- Members of the board of directors: Minimum 3; maximum: no limit.

S.L.

- Capital divided into stock or "Participation Units"
- Minimum capital stock of €3,000*, fully paid in upon incorporation
- Shares are not marketable securities. Debentures and other securities can be issued.
- Stakes are generally not freely transferable. Pre-emptive acquisition rights in favor of the other stockholders or the company itself (unless otherwise provided in the Bylaws).
- The right to attend the shareholders' meeting cannot be restricted.
- Members of the board of directors: Minimum 3; maximum: 12 members.

*As an exception to the general rule of minimum capital of €3,000 that applies to limited liability companies, Law 18/2022 of September 28, 2022 enables to set up limited liability companies with a minimum share capital of €1 subject to certain conditions.

Both S.A.s and S.L.s are companies in which the **liability** of the shareholders or members is generally limited to the amount of capital contributed. A limited partnership (S. Com.) is a partnership in which there is at least one general partner and one or more limited partners, where general partners are personally jointly and severally liable for the debts of the partnership, and limited partners are only liable for the amount of capital. Liability is not limited in a general partnership (S.R.C.), where general partners are personally jointly and severally liable with the whole of their net worth for the debts of the partnership.

As **variations on the above corporate forms** of S.A. and S.L., we should highlight the following:

- the European public limited liability company (S.E.) as the possibility offered by EU legislation to create a single company capable of operating in the EU in accordance with a single set of rules,
- those newly or recently created S.A. or S.L. that legally qualify, and are recognized by the Spanish innovation public agency ENISA as, "emerging enterprises" (although subject to meeting a set of very restrictive requirements such as no dividends distributed; not listed on a regulated market; having principal place of business, registered office or a permanent establishment in Spain; minimum number of employees having an employment contract in Spain; or carrying out an innovative entrepreneurship project which has a scalable business model), which implies a more favorable tax regime for the Company, its investors and workers, as well as certain degree of flexibility in connection with ESOPs and with the ability to incur in losses reducing net worth to less than one-half of capital stock without triggering (until 3 years after the setting-up of the Company) the mandatory cause for dissolution;
- the professional limited liability services firm (S.L.P.) or professional corporation (S.A.P.) the purpose of which is the common pursuit of a professional association activity.

CORPORATE STRUCTURES, CONT'D

General observations regarding corporate structures in Spain:

- The shareholders (or their representatives) must appear before a notary in order to execute the public deed of incorporation of a S.A. or S.L.. Subsequently, the deed of formation must be registered at the Commercial Registry. Upon registration, the company acquires legal personality and legal capacity. The recently approved Law 11/2023, of May 9, allows founders to incorporate a company using standard bylaws telematically without the need to appear physically before the notary.
- There are special rules which could require an increase and/or reduction in capital stock. These rules provide that there must be a certain balance between the capital stock and the net worth of a corporation, whereby if losses are incurred reducing such net worth to less than one-half of capital stock, the corporation shall be under a mandatory cause for dissolution (article 363.1 of the Capital Companies Law), unless capital stock is sufficiently increased (or reduced) and provided that it is not necessary to request for insolvency pursuant to Insolvency Law.
- Sole shareholder companies (either S.A. or S.L.) are subject to a specific regime involving special reporting requirements and registration requirements.
- In addition to the forms of business enterprise created under Spanish law that constitute separate legal entities, a foreign investor may operate in Spain through a branch. It is not necessary to provide the branch with capital nor governing or management bodies other than a legal representative empowered by the head office.
- In addition to corporate entities and branches, a foreign investor set up shop in Spain through opening a representative office, which has no legal personality independent from the parent company.
- The new Royal Decree 5/2023, of June 28, foresees, among others, a new regime for mergers between Spanish companies and non-EU companies that may apply in the context of re-domestication of companies if carried out by merging the Spanish Company with a non-EU company.

ENTERING THE COUNTRY

As a **general rule** and until March 17, 2020 any foreign investor could invest freely in Spain without having to obtain any type of authorization or prior notification. The investor only needed to report the investment, once it was been made, within a maximum term of one month, to the Directorate-General for International Trade and Investments of the Secretary of State for Trade for statistical purposes, with the sole exception of (i) investments coming from tax havens, which were subject to a prior administrative notification; and (ii) foreign investments in activities directly related to national security, and real estate investments for diplomatic missions by non-European Union Member States, which required prior authorization by the Spanish Council of Ministers.

However, since March 18, 2020, by virtue of the Royal Decree-Law 8/2020 of 17 March and the Royal Decree-Law 34/2020 of 17 November, as amended by the Royal Decree 571/2023 of 4 July on foreign investments, foreign direct investments* affecting the Spanish public order, public security or public health or made in certain "Strategic Sectors" or made by foreign investors with "Subjective Conditions", where the investor comes to hold a stake equal to or greater than 10% of the share capital of a Spanish company or comes to effectively participate in the management or control of a Spanish company, or of a portion of the Spanish company (assets or branch of activity) are subject to a pre-filing or prior authorization obligation to be resolved by the Ministers Council of Spain. Exceptionally and until December 31, 2024, foreign direct investments made by European non-Spanish investors may also be subject to a pre-filing or prior authorization obligation when involving a listed company in Spain, or carried out on an unlisted company whose value exceeds 500 million euros.

*The direct investments affected are those made by residents from countries outside the European Union ("EU") and the European Free Trade Association ("EFTA"); or, by EU or EFTA investors which beneficial owners are residents of countries outside the EU and EFTA. Exceptionally and until December 31, 2024, European non-Spanish investors may also be subject to a pre-filing or prior authorization obligation when involving a listed company in Spain, or carried out on an unlisted company whose value exceeds 500 million euros.

ENTERING THE COUNTRY, CONT'D

Strategic Sectors refer to foreign investments in specific industries such as critical physical or virtualinfrastructures (including those concerning the energy, health, water, transport, communications, communications media, processing and data storage, aerospace, military, electoral and financial sectors and sensitive installations), as well as lands and real estate needed for the use of such infrastructures; critical technology and dual-use items, (including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace or military technologies, technologies used for energy storage, nanotechnologies and biotechnologies; key technologies for industrial leadership and enablement (including advanced materials and nanotechnology, photonics, microelectronics and nanoelectronics, life sciences technologies, advanced manufacturing systems and transformation, artificial intelligence, digital security and connectivity); technologies developed under programs and projects of particular interest to Spain; supply of essential commodities, in particular energy or those referred to raw materials and food safety; sectors with access to sensitive data, especially concerning the treatment and process of personal data, or capable to access to such information according to Spanish Organic Law on Protection of Personal Data and Guarantee of Digital Rights; the media (without further specification); and any other sectors whose liberalization to foreign direct investment is suspended by the government, when they may affect public security, public order and public health (currently none).

Foreign investors with **"Subjective Conditions"** include foreign investors directly or indirectly controlled by a third country government (including public agencies, the military or armed forces) defining control also as such term is defined under article 42 of the Spanish Commercial Code (i.e. sovereign wealth and certain pension funds and other institutional investors who are natural investors in infrastructures, energy or other long term-long return structures in Strategic Sectors); foreign investors that have made any investment or are involved in activities in sectors affecting national security, public policy and public health in another EU Member State (including activities that may be connected with the Strategic Sectors as defined above) or foreign investors party or involved as defendant in any on-going administrative or judicial proceeding in another EU Member State or in its country of origin or in a third country concerning unlawful or criminal activities.

Foreign investments are deemed to be exempt from prior authorization obligation where the turnover of the acquired companies does not exceed EUR 5,000,000 in the last accounting year for which the accounts have been closed, provided that their technologies have not been developed under programs and projects of particular interest to Spain. However, foreign direct investment will always be subject to authorization (i) when they occur in electronic communications operators in which certain conditions concur; or (ii) when they are operations relating to activities of research and exploitation of mineral deposits of strategic raw materials.

SPAIN

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any signs – in particular words, including personal names, designs, letters, numerals, colours, the shape of goods (including packaging of goods), or sounds provided such signs are distinctive, meaning they can distinguish the goods and/or services of one undertaking from those of its competitors. The mark shall not be generic, deceptive, descriptive, or contrary to public policy or accepted principles of morality.

Where to apply? Trademark applications for registration can be filed: (i) at national level, with the Spanish Patents and Trademarks Office (S PTO)(ii) at regional level, with the European Union Intellectual Property Office (E UIPO) - or the SPTO, as receiving office - for trademark protection throughout the entire European Union, or (iii) following the international application process set forth by the World Intellectual Property Organization (WIPO) depending on the countries under the Madrid System where protection is sought. An application for a Spanish trademark registration can be filed online via the OEPM platform at https://sede.oepm.gob.es/eSede/es/index.html (this process entails an application fee reduction). The SPTO only examines ex officio whether the trademark falls within absolute grounds for refusal (e.g., the trademark is generic, misleading, descriptive, or contrary to public policy) and publishes the application in the Official Industrial Property Gazette (BOPI) to provide the public with an opportunity to oppose the application. Once the trademark application has been published, the opposition period begins, consisting of a 2-month period during which third parties may submit observations or oppose the registration of the application. Relative grounds for refusal (namely, the existence of identical or similar earlier trademarks registered for identical or similar products or services, likely to be confused with the new trademark) are only examined where the owners of a prior marks file an opposition against the trademark application.

Duration of protection? The trademark registration remains valid for 10 years from the filing date. It can be renewed every 10 years after that for a fee. Nevertheless, the registration may be revoked if the trademark is not effectively used during an uninterrupted 5-year period, or if it becomes generic or deceptive in connection with the goods and/or services it covers.

Costs? Application fees for Spanish trademarks submitted in person are 150,45€ for the first class of goods or services (online through SPTO's website the fee is 127,88€) and 97,48€ for each additional class of goods or services (online through SPTO's website the fee is 82,84€). Full details on trademark application fees for 2024 are available on: https://www.oepm.es/es/tasas-y-precios-publicos/tasas-de-marcas-y-nombres-comerciales/

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions that are new, involve an inventive step and are capable of industrial application are patentable. Discoveries, scientific theories, mathematical methods, aesthetic creations, rules and methods of performing a mental act, playing a game or doing business are not deemed patentable. It is not possible to obtain a patent for inventions that are contrary to public policy, plant varieties, animal breeds, essentially biological processes for the production of plants or animals and the human body. Computer programs that solve a technical problem can be registered as patents, most software programs are nevertheless non-protectable in Spain because they do not have an industrial application and/or do not solve a "technical" problem.

Where to apply? Patent applications can be filed: (i) at national level, with the SPTO or the relevant regional registration systems for patent protection within Spain, (ii) at regional level, with the European Patent Office (EPO) – or the SPTO, as receiving office – to seek protection in the countries designated by the applicant under the European Patent Convention, although Spain is not a party to the Unitary Patent; or (iii) with the WIPO – or the SPTO or EPO, as receiving offices – depending on the countries under the Patent Cooperation Treaty (PCT) where protection is sought. The granting process before the mentioned offices slightly differ from each other. In particular, the PCT reduces the costs and simplifies the grant of a patent, by unifying the initial filing of applications and performance of search reports necessary to determine the novelty of the invention and the inventive step. However, protection of patents with the PCT procedure is granted by the relevant national or regional patent office during the respective national phase.

Duration of protection? The term of protection is a maximum of 20 years from the date on which the application is filed and must be maintained by annual fees. The supplementary protection certificate for pharmaceutical and phytosanitary products extends the patent protection by up to a maximum of 5 years for the time it took to obtain the relevant administrative authorization necessary to market the products covered by the patent at issue.

Costs? The application fee for Spanish patents is 102,39€ (online through SPTO's website the fee is 87,03€), while applicants qualifying as "small and medium-sized enterprises", individual entrepreneurs or public universities are entitled to a fee reduction. Full details on patent applications fees for 2024 are available on: https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_PATENTES.pdf

Employees' and service providers' rights to inventions? By operation of Spanish Patent Law, inventions made by the employee or service provider during the term of his/her employment or service relationship with the entrepreneur that are the result of a research activity explicitly or implicitly constituting the subject matter of his/her contract belong to the entrepreneur. The inventor shall not be entitled to additional remuneration for its development, except if his/her personal contribution to the invention and the importance of the same for the entrepreneur clearly exceeds the explicit or implicit content of his/her contract. Notwithstanding the above, when the employee makes an invention related to his/her professional activity carried out in favor of the company and its achievement has been predominantly influenced by knowledge acquired within the company or by using means provided by the employer, the latter shall be entitled to assume ownership of the invention or to reserve a right to use the same. When the employer assumes ownership of such invention or reserves a right to use the same, the employee shall be entitled to a fair economic compensation fixed taking into account the industrial and commercial importance of the invention as well as the value of the means or knowledge provided by the employer and the employee's own contributions. Said fair economic compensation may consist of a share in the profits obtained by the employer from the exploitation or assignment of its rights over said invention.

INTELLECTUAL PROPERTY, CONT'D

Industrial Designs

What is protectable? Aesthetic appearance of goods (e.g., the lines, contours, colors, shape, texture or materials of the product itself or its ornamentation) can be registered as an industrial design, if it is new and has individual character. However, thanks to the so-called "grace period", during the 12-month period preceding the filing date of the application or, if priority is claimed, the priority date, the disclosure of the design by its author or a related third party does not jeopardize the possibility of registration by its lawful owner.

Where to apply? Industrial design rights are only valid in the country or region where they are registered. The procedures through which designs may be protected are: (i) at national level, with the SPTO to seek protection within Spain, (ii) at regional level, with the EUIPO to seek protection within the European Union and (iii) at international level, with the WIPO depending on the contracting states of the Hague Agreement in which protection is sought.

Duration of protection? The industrial design registration remains valid for 5 years from the filing date. It can be renewed every 5 years after that, for a fee, up to a maximum of 25 years. Protection of an unregistered Community design is restricted to a period of 3 years from the date on which the design was first made available to the public within the European Union.

Costs? The application fee for Spanish industrial designs is 77,96€ (online through SPTO's website the fee is 66,27€). Full details on industrial design applications fees for 2024 are available on: https://www.oepm.es/es/tasas-y-precios-publicos/tasas-de-disenios/

Utility Models

What is protectable? Utility models protect inventions with a lower standard of inventiveness (e.g., giving an object a set-up or structure from which some use or practical advantage can be obtained). The device, instrument or tool protected by a utility model is characterized by its utility and practicality, and not for its aesthetics (as happens in industrial design). The scope of protection of a utility model is similar to that conferred by a patent.

Where to apply? See comments on patent applications above.

Duration of protection? The term of protection is a maximum of 10 years from the date on which the application is filed and must be maintained by annual fees.

Costs? The application fee for Spanish utility models is 102,39€ (online through SPTO's website the fee is 87,03€), while applicants qualifying as "small and medium-sized enterprises", individual entrepreneurs or public universities are entitled to a fee reduction. Full details on utility models applications fees for 2024 are available on: https://www.oepm.es/es/tasas-y-precios-publicos/tasas-de-invenciones/

Topographies of semiconductor products

What is protectable? The topography of a semiconductor product will be subject to protection to the extent that it is the result of the intellectual effort of its creator and is not an ordinary product in the semiconductor industry.

Where to apply? Applications can be filed with the SPTO, also electronically.

Duration of protection? The duration of protection is 10 years, starting from the end of the year in which it is first exploited in the world or the topography is registered.

Costs? The application fee for Spanish topographies of semiconductor products is 61,27€ (online through SPTO's website the fee is 52,09€). Full details on topographies of semiconductor product applications fees for 2024 are available on: https://www.oepm.es/es/tasas-y-precios-publicos/tasas-de-invenciones/

INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? All literary, artistic or scientific works expressed by any means or medium, tangible or intangible, now known or to be invented in the future, which are original, are protected by copyright (e.g., books, music compositions, audiovisual works, projects, plans, graphics, computer programs, databases). The Spanish Copyright Law also grants related rights to performers, phonogram producers, producers of audiovisual recordings and broadcasting organizations. Copyright protection is granted immediately with the creation of a work. Moral rights cannot be waived or assigned and they entitle the author to decide, inter alia, whether his/her work may be published.

Where to apply? No registration is required to obtain protection; however, applications for registration can be filed with the Copyright Registry to obtain stronger evidence vis-à-vis third parties.

Duration of protection? Copyright protection is granted for 70 years from the death of the author, where the author is a natural person. For authors deceased before December 7, 1987, copyright protection shall last 80 years from their death. If the author is a legal person, the term of protection is 70 years from January 1 of the year following that in which the work was lawfully published, or following the year of its creation, if the work has not been published.

Costs? The application fees for registration of copyrightable work for 2024 are available on: https://www.culturaydeporte.gob.es/cultura/propiedadintelectual/gestion-colectiva/direcciones-y-tarifas.html.

The following IP rights cannot be registered:

Trade Secrets

What is protected? The protection of trade secrets is regulated under the Spanish Trade Secrets Law 1/2019, of February 20. Information relating to any part of the business (including technological, scientific, industrial, commercial, organizational or financial areas) may constitute a trade secret, provided it meets the following three requirements: (i) it must be secret, namely it is not generally known to or readily accessible by persons belonging to the circles in which the type of information or knowledge at issue is normally used, (ii) it must have commercial value because it is secret and (iii) reasonable steps must be adopted by its holder to keep it secret.

Duration of protection? Trade secrets protection can last as long as the information actually remains a secret.

How to keep trade secrets secret? Some methods to protect trade secrets include having anyone you disclose your business information to sign a non-disclosure agreement, including confidentiality clauses in employment agreements as well as in contracts executed with third parties (e.g., manufacturers, suppliers, distributors), confidentiality warnings in e-mails, encrypting any valuable business information, using passwords to protect valuable business information, and storing valuable business information in a secure location.

Unlawful practices under the Spanish Trade Secrets Law? Obtaining a trade secret without the consent of its owner is considered unlawful when it is carried out by means of unauthorized access to, appropriation of, or copying of any medium which contains the trade secret (e.g., documents, materials, substances, electronic files) or from which the trade secret can be deduced; or any other conduct which is deemed to be contrary to fair commercial practices. Moreover, the use or disclosure of a trade secret is considered unlawful when, without the consent of the owner, is carried out by the person who has obtained the trade secret unlwafully or with a breach of a confidentiality agreement or any other obligation not to disclose the trade secret.

SPAIN

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DATA PROTECTION/PRIVACY

Since 25th May 2018 the General Data Protection Regulation **("GDPR")** applies. The Spanish legislator approved on 5th December 2018 the Organic Law 3/2018 on Personal Data Protection and guarantee of digital rights **("LOPD-gdd")**, which complements the GDPR and presents the following particularities:

- **Child's consent:** The age for child's consent in relation to the processing of their personal data has been lowered from 16 years to 14 years.
- **Data Protection Officer:** The LOPD-gdd includes a list of entities that in all cases shall appoint a data protection officer, regardless of them meeting the requirements set forth in article 37.1 GDPR, such as financial credit institutions, insurance companies or electricity and natural gas distributors.
- **Processing of deceased people's personal data:** All those related to a deceased person for family or de facto reasons or their heirs may request access to, and rectification or deletion of, their personal data, if necessary subject to the instructions of the deceased person and unless they have not been explicitly prevented from doing so.
- **Sanctioning regime:** The LOPD-gdd establishes more precise amount ranges for the administrative fines and their statute of limitations, namely: (i) minor infringements shall amount up to €40,000; (ii) serious infringements shall amount between €40,001 and €300,000; and (iii) very serious infringements shall be higher than €300,000 (and up to €20,000,000 or 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher).
- **Investigation through digital means:** The LOPD-gdd expressly allows the performance of investigative activities in the context of data protection infringement procedures through digital systems that, via video conferencing or a similar system, enable two-way simultaneous communication of both image and sound.
- **Warning proceeding:** Within the context of an investigation triggered by a potential infringement of the GDPR, prior to the imposition of a sanction, the AEPD is empowered to issue a warning and instruct the controller or processor to implement specific corrective measures, thereby addressing the potential non-compliance. The duration of this procedure is capped at a maximum of six months.
- **Digital rights:** Spain is one of the first EU Members where the national data protection legislation is not only limited to the protectionof personal data, but it also regulates a series of digital rights both in the personal and labor sphere of the data subjects. These include, among others, the right to be forgotten, the universal access to the Internet,the digital will, the right to digital disconnection or the right to privacy with respect to the use of video surveillance devices in the workplace.
- **Standardised complaint submission models:** The Spanish Data Protection Authority may introduce standardised complaint submission forms of mandatory use for all parties raising complaints, whether or not they are required to engage electronically with public administrations. These forms are published in the Official State Gazette ("Boletin Oficial del Estado") and on the Electronic Headquarters of the Spanish Data Protection Authority ("Sede Electrónica de la Agencia Española de Protección de Datos").
- **Consent cannot be the legal basis for the processing of employees' biometric data for clocking and attendance control:** Both biometric identification as well as biometric authentication processes are regarded as operations that entail the processing of special categories of personal data. This is the criteria adopted by the AEPD in its 2023 guidelines on Clocking and Attendance Control Processing Using Biometric Systems. For this processing to be lawful, in the context of recording working hours through biometric data, the express consent of the data subject cannot override the prohibition of processing special categories of data enshrined in article 9 GDPR. This is due to the inherent imbalance between the data subject and the data controller in such situations. The guidelines can be accessed here: https://www.aepd.es/guides/guidelines-clocking-and-attendance-control-processing-using-biometric-systems.pdf.

The Spanish Data Protection Authority (AEPD, Agencia Española de Protección de Datos) is the competent supervisory authority and has published a number of guidelines to help with the interpretation of the GDPR and the LOPD-gdd and can be accessed in the following link (some of these guidelines are only available in Spanish): https://www.aepd.es/es/guias-y-herramientas/guias

SPAIN

ARTIFICIAL INTELLIGENCE

National AI legal framework. There is no specific national regulatory regime for AI in Spain, yet. However, the general restrictions, particularly under copyright law and data privacy law, among others, apply. Also, the AEPD issued guidelines on GDPR compliance of processing activities that embed Artificial Intelligence which outline the conditions that these technologies shall meet to ensure and demonstrate compliance with the GDPR. These conditions include aspects such as the legal basis for the processing, information and transparency, rights, automated decisions, profiling, privacy impact assessment and assessment of the proportionality. The English version of the guide is available at the following link: www.aepd.es/documento/adecuacion-rgpd-ia-en.pdf.

Copyright and image right restrictions. National copyright and image right restrictions are particularly relevant for generative AI. This applies to both (i) the input data (especially web scraping) and (ii) the output of the specific AI application. The retrieval of data from the Internet into set of training data is considered exploiting the content in a way subject to Spanish Copyright Law as well as Spanish Organic Law 1/1982 on civil protection of the right to honor, personal and family privacy and self-image. Only two paths can make the training lawful: obtaining consent from the right holder or relying on a legal exception (e.g., relevant historical, scientific or cultural interest, parody). Depending on whether legal requirements are met under Spanish Copyright Law, the outputs created through the use of generative AI may be considered a new work or a transformation or reproduction of the inputs used by the generative AI within the framework of the exceptions under Spanish Copyright Law and/or Spanish Organic Law 1/1982. In the case of a derivative work, lawful use requires either the consent of the right holder or the existence of any of the aforementioned exceptions. For instance, when it comes to user-generated content and in order to guarantee freedom of expression, unauthorized use for the purposes of quotations, criticism, reviews, as well as use for the purposes of caricature, parody or pastiche, is permitted. On the other hand, the output of generative AI may infringe the rights of the author of the original work or of the person who holds such rights if the output is identical to or resembles an original source without having previously obtained proper consent from the right holder nor relying on a legal exception.

National AI Supervisory Agency. The Spanish Agency for the Supervision of Artificial Intelligence (AESIA) is a Spanish public body responsible for the supervision, advice, awareness and training aimed at public and private entities for the proper implementation of all national and European laws and regulations applicable in Spain regarding the appropriate use and development of artificial intelligence systems. On 22 August 2023, the Spanish Government approved the Statute of the AESIA, published on 2 September 2023.

EU AI Act. On 8 December 2023, the European institutions reached a historic political agreement on the regulation of AI. The final text is expected to be approved in early 2024 and will be directly applicable in all EU Member States within two years.

EMPLOYEES/CONTRACTORS

General: Employer and employee must conclude an employment contract, which stipulates their rights and obligations set forth by agreement between the parties, mandatory law and Collective Bargaining Agreements. Contracts may be subscribed on an indefinite or temporary basis, although the law stablishes that the general rule is to consider a contract as of an indefinite nature, and only allows temporary contracts to be subscribed when certain causes justify their adoption (two possible causes: temporary increase in production, or substitution of an indefinite employee who can't render services for a certain period of time).

EMPLOYEES/CONTRACTORS, CONT'D

With the 2022 labour reform by means of the Royal Decree Law 32/2021, as of 30 March 2022, the possibility of subscribing contracts for work and services disappears. However, it should be borne in mind that contracts for work and services signed prior to 31 December 2021 will remain in force in accordance with the regulations prior to the labour reform. Therefore, contractual relationships under this modality may continue to be in force for the maximum period allowed by the previous regulation. As a result, there may be contracts in this format that will continue to be extended over the next few years. For these contracts, most protective provisions of labour law do not apply, and the business party is exempted from paying social security contributions in favour of contractors, what represents a relevant economic advantage. For this reason, if it is proven that the contract for work and services is instead an employment one because it displays elements that indicate it has actually been functioning as such (dependence by the contractor party, commandment by the services recipient, ownership of the working means by the services recipient, among others), this can lead into the recognition of a fraud under Spanish labour law. The consequences for such fraud are the hiring on an indefinite basis, the payment of the social security contributions accrued during the last 4 years, as well as sanctions.

The interests of employees are represented by different representative bodies whose composition may vary significantly depending on the size of the workforce. The most prevalent one is the works council (Comité de Empresa), whose approval for adopting collective agreements affecting the general conditions of employees may be highly recommendable or even mandatory, depending on the size at stake.

No work for hire regime: Spanish labor law configures a subject-to-agreement work for hire regime between employers and employees. This implies that each agreement should contain a specific clause covering the attribution of rights related to works made by the contractual parties. Such clause should be as detailed as possible, as otherwise conflicts may arise between the parties with an uncertain result. In absence of specific agreement, a presumption operates considering that every right of exploitation on the work results is owned by the employer, which shall apply unless the worker can prove it was otherwise agreed. This regime only operates within the framework of labor relationships, in cases where no employment relationship is involved, this presumption would not apply.

Registration with social security: Every employer must register employees within a social security regime and insurance carrier. In this regard, each employer has to pay a certain monthly amount under the concept of contributions in favor of the employee's social benefits. This quantity may vary depending on the employee's remuneration.

Termination: As the general rule is to subscribe indefinite-length contracts, employees are very well protected. They can only be terminated under two types of circumstances:

- Disciplinary measures: after a breach of contract by the employee or infringement of legal obligations (i.e., fraudulent behaviour, disobedience, moral attacks, etc.).
- Objective reasons: following the concurrence of economic, technical, organisational or productive causes which enable the employer to reduce its workforce by dismissing one or several employees.

Any employee can challenge the conducted termination based on the fact that the causes alleged by the employer are not true or proportional to the measure adopted. After being challenged the dismissal may be considered fair, unfair or null. Unfairness takes place whenever the termination is considered to be unjustified and implies either reinstatement of the employment relationship or the payment of an extinction severance of 33 days of salary per year of employment, with a maximum of 24 monthly salaries, choice being subject to the willingness of the employer. On the other hand, nullity occurs whenever a judge considers a breach of fundamental rights or discrimination has taken place, and implies the reinstatement of the dismissed employee, with payment of all severance and social security contributions accrued between the date of dismissal and the reinstatement date.

In addition, certain groups of employees (e.g. works council members, pregnant employees, employees on parental leave or with recognized disability status) enjoy special termination protection, which implies that their dismissal may only be considered fair or null, but never unfair.

Finally, it must be noted that when a certain number of employees are dismissed at the same time for objective reasons the law prescribes a special procedure which forces the employer to negotiate the conditions of the dismissal (severance payments, additional benefits, social justice measures, etc.). It may end with an agreement or not, but in case of unilateral termination the workers and representatives can challenge the dismissals both individually and/or collectively, with risk of global nullity.

SPAIN

CONSUMER PROTECTION

The core provisions in Spain* for consumer protection are laid down in the Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws (**"TRLGDCU")** which regulates, among others, the basic rights of consumers and users, consumer and user associations, the power to impose consumer sanctions, judicial and extrajudicial proceedings for the protection of consumers and users, contracts concluded by consumers and businesses, guarantees and after-sales services, civil liability for defective goods or services and package travel regulations.

The TRLGDCU includes in Chapter II of Title II a catalogue of **clauses null and void** when contracting with consumers, such as those linking the contract to the company's wishes the will of the company or limiting consumers' rights (see section 8 below for the list of clauses considered null in all cases).

In the last couple of years, a series of amendments to the TRLGDCU entered into force, such as the inclusion of regulation with respect to **vulnerable consumers**, aiming to offer them special protection under this law, and the regime for the provision of digital goods,content and services, with special attention to the requirements for the conformity and the consequences for the lack of such conformity (e.g. consumers are entitled to request a lower price or terminate the contract based on the lack of conformity of the digital goods, content or services).

The TRLGDCU also regulates distance selling contracts, where consumers are granted the right to withdraw from any contract within 14 days without giving any reason, provided none of the exceptions thereby contained are met.

There are several consumer protection associations in Spain, among others, the Organization of Consumers and Users ("Organización de Consumidores y Usuarios", "OCU"). This organization is entitled to act on behalf of and represent the general interests of consumers, including the conduction of claims against:

Infringements of the provisions of the TRLGDCU may entail the imposition of fines of up to €1,000,000, except where the sanctions are imposed with respect to article 21 of Regulation (EU) 2017/2394**, the fine may be up to 4 % of the annual turnover of the entity in Spain or in the Member States concerned by the infringement. If this information is not available, fines may be imposed up to €2,000,000.

In addition, there are sector and product-specific consumer laws (e.g. financial sector). Notwithstanding the foregoing, Spanish consumer protection law is not only subject to a national level but also to certain regional level ones. Thus, there are some Autonomous Communities that present a series of particularities in specific areas (e.g. in Catalonia and in the Basque Country consumers have the right to receive the information for the purchase of goods not only in Spanish but also in Catalan and Basque, respectively).

As of the end of 2023, the Spanish Government is in the process of enacting a Royal Decree outlining a set of obligations for users of audiovisual platforms such as Instagram, TikTok, and YouTube, whose publications have a significant reach and potential impact on a substantial portion of the general public, provided the audiovisual communication service provider is based in Spain. These obligations include prohibiting content that infringes upon human dignity, promotes discrimination, or encourages behaviors that endanger safety. Regarding advertising practices targeting minors, the promotion of alcoholic beverages and the creation of content exploiting their inexperience or vulnerability is strictly prohibited. This includes restrictions on depicting minors in dangerous situations without valid justifications.

*Note: There are also certain regional regulations that should be taken into account, as mentioned at the end of this section.
**Note: Article 21 of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws regulate enforcement measures in coordinated actions against the trader responsible for the widespread infringement.

SPAIN

TERMS OF SERVICE

Applicable regulation: Online Terms of Service **("ToS")**, in addition to the general legislation on civil and commercial contracts, are subject to a wide variety of regulations, namely, among others:

- Distance sales regime: Act 7/1996 of 15 January 1996 ordering the Retail Trade.
- Advertising provisions: General Law 34/1988 of 11 November 1988 on Advertising.
- Standard contract terms: Law 7/1998 of 13 April 1998 on general terms and conditions of contracting.
- E-commerce and information society services: Law 34/2002 on e-commerce and information society services.
- Regulation 2022/2065 on a Single Market for Digital Services.
- Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services.
- Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data
- Intellectual and industrial property:Royal Legislative Decree 1/1996, of 12 April 1996, approving the revised text of the Intellectual Property Law, regularising, clarifying and harmonising the legal provisions in force in this area (see section 4).
- Data protection: GDPR and LOPD-gdd (see section 5 above).

The applicable legislation varies depending on the potential recipient of the ToS. Therefore, when the transaction takes place between business parties (B2B), there is more room for setting the content of the ToS than if it takes place between a business party and a consumer as the final recipient (B2C). In the latter case, attention shall also be paid to the specific regulation on consumers' protection (see section 7 above).

ToS shall in all cases include a mechanism for the recipients to express their consent (e.g. via check-box) and that the business party can keep track that this consent has actually been granted, otherwise the ToS would not be enforceable.

In B2C relations, online ToS shall include at least the following information:

- The business party's identity details.
- The special features of the product, the price, and the shipping expenses and, if applicable, the cost of using the distance communication technique if it is calculated on a basis other than the basic rate basis.
- The payment method, and form of delivery or types of fulfillment of orders.
- The period for which the offer remains valid and, if applicable, the minimum term of the contract.
- The existence of a right to withdraw or terminate the contract and, if applicable, the circumstances and conditions in which the company could supply a product of equivalent price and quality.
- The out-of-court dispute resolution procedure, if applicable, in which the company participates.
- Remainder of the existence of a legal guarantee depending on the type of goods or services.
- Information of the cases in which the business party shall take the costs of returning the goods.

Additionally, when the final recipient is a consumer, the following clauses are considered abusive and, thus, null and void:

- Linking the contract to the wishes of the business party
- Limitation of consumers' rights
- Lack of reciprocity between the parties
- Imposition of disproportionate guarantees on consumers
- Undue imposition of the burden of proof on consumers
- Disproportionate clauses in relation to the conclusion and performance of the contract
- Contravention of the rules of jurisdiction and applicable law.

In online relationships B2B2C (e.g. marketplaces intermediating between business parties and consumers), online intermediation services providers shall abide by the obligations set forth in Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation service and, therefore, include a series of provisions in its ToS with the business party client to the platform such as internal complaint-handling systems, information on ranking parameters and the effects of the TOS on the ownership and control of intellectual property rights of business users.

According to the Spanish Supreme Court, **an invoice is not considered an acceptable method to communicate changes in general conditions regarding price determination to consumers.** This is because the information provided on an invoice does not meet the minimum communication requirements for consumers, even if it adheres to the formal criteria outlined in Directive 2003/54/CE.

In the near future, Regulation (EU) 2022/2065 on a Single Market for Digital Services, which lays down harmonised rules on the provision of intermediary services in the internal market, shall apply to, among others, marketplaces and search engines.

WHAT ELSE?

Promotional contests: Spanish laws strictly regulate offering promotional activities (including competitions and prize draws) or services in which prizes are awarded. Because of this, businesses need to carefully consider and navigate these laws - a mixture of competition law, consumer protection law, intellectual property law, e-commerce and information society law, advertising law, personal data protection law, right to honor, personal and family privacy and one's own image – before offering any service that may consist of an opportunity for people to obtain valuable results depending on participants' skills (i.e., literary contests) or using any mechanism of random chance that does not objectively depend on any skills (i.e., prize draws or sweepstakes). Promotions subject to mechanisms of random chance are subject to the payment of a tax.

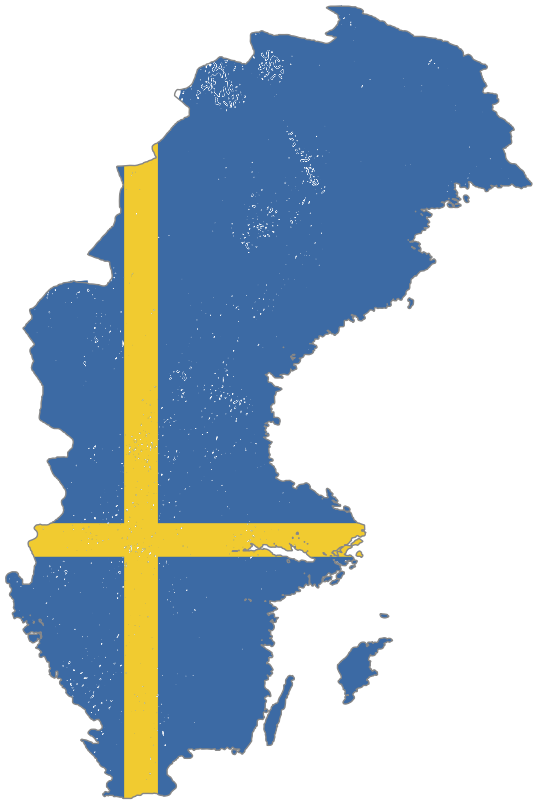
Cybersecurity: The Directive (EU) 2016/1148, concerning measures for a high common level of security of network and information systems across the Union **("NIS")** has been implemented into Spanish laws (Royal Decree-law 12/2018, of 7 September, concerning security of the networks and information systems, which has itself been developed by Royal Decree 43/2021). This legislation applies to (i) essential services operators and (ii) digital services providers (online marketplaces, online search engines and cloud computing services). This regulation only applies to a limited number of services however, when applicable, prior notification and compliance with a series of requirements regarding the security of the information shall be mandatory. On 14 December 2022, Directive (EU) 2022/2555 **("NIS 2")** was approved, which will enter into force and, consequently, repeal the NIS on 18 October 2024, although it has not been transposed in Spain yet. NIS 2 gives EU Members a period up to 17 October 2024 for such transposition, the resulting national regulation to be applicable from 18 October 2024. NIS 2 aims to reinforce security requirements and eliminate divergences amongst EU members to ensure an equivalent level of cybersecurity across all the European Union.

Digital Operational Resilience: Regulation (EU) 2022/2554 on digital operational resilience for the financial sector ("DORA") applies to all EU financial institutions, requiring them to ensure operational resilience. This entails effective management of operational risks, proactive measures against cyber threats, and the protection of customer data in compliance with data protection regulations. To this end, financial institutions must regularly conduct risk assessments, develop robust business continuity plans, and rigorously test their IT systems. In the event of non-compliance, financial institutions could face substantial fines, potentially reaching up to 10 million euros or 5% of their total annual turnover. Businesses will have to take up the task of adapting fully to these provisions, to be compliance ready by January 2025.

Electronic signature: As regards the regulation of electronic signature in Spain, Law 6/2020, of 11 of November, on several aspects of the electronic trust services, establishes specific regulations complementing the contents of Regulation (EU) 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (e-IDAS Regulation) in Spain. Additionally, there is a list of the Spanish electronic trust services providers published by the Spanish Ministry of Economic Affairs and Digital Transformation.

Location of public information servers: Spanish Law 40/2015 on the Legal Regime of the Public Sector establishes that information and communications systems for the collection, storage, processing and management of the electoral census, the municipal registers of inhabitants and other population registers, fiscal data related to own or assigned taxes and data on users of the national health system, as well as the corresponding processing of personal data, shall be located and provided within the territory of the European Union, with the exception of those that have been the subject of an adequacy decision of the European Commission or when so required for compliance with the international obligations assumed by Spain.

Markets in Crypto-Assets: The general entry into force of Regulation (EU) 2023/1114 on crypto-asset markets ("MiCA") is 30 December 2024. Notwithstanding, rules relating to issuance of asset-referenced tokens and e-money tokens will be applicable on 30 June 2024. Also, for entities that were providing crypto-asset services under domestic law in Spain before 30 December 2024, the Spanish Government notified the European Securities and Markets Authority ("ESMA") that it is bringing forward by six months, to put it in place in December 2025, the transitional period to require them to operate with licenses granted under the MiCA rules.



SWEDEN

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SWEDEN

LEGAL FOUNDATIONS

The Swedish legal system is a civil law system, which is demonstrated by the reliance on statutory law. However, the structure of the Swedish legal system differs somewhat from other civil law traditions in countries such as Germany and France. The Swedish legal system is more dependent on case law than many other civil law systems as the judgements of the Supreme Court of Sweden (Sw: Högsta domstolen) and the Supreme Administrative Court (Sw: Högsta förvaltningsdomstolen) fills out any gaps in the legislation and provide binding guidance on how the statutes should be interpreted. In addition, the Swedish civil code is not as comprehensive as, for example, the German one. As a result, the case law becomes of greater importance as to fill out the gaps of the civil code in a manner that is more like the common law system. This duality is what characterizes the **Nordic model** of jurisprudence, which is neither a fully civil law system nor a part of the Anglo-Saxon common law systems. Moreover, Sweden does not have any provincial regulations, all legislative power stems from the Swedish Parliament (Sw: Riksdagen) and all laws apply throughout the country.

The Swedish legal system is based on a written constitution which includes four fundamental laws; the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. These fundamental laws take precedence over all other law. Furthermore, written statutes are the supreme **sources of law** in Sweden, supplemented by preparatory works and precedents from the Supreme Court. As Sweden is a member state of the European Union that also means that Swedish law is subject to the legal acts of the European Union.

The **courts** in Sweden are divided into two independent systems. The general courts handle civil and criminal cases and consists of the Supreme Court, Courts of appeal (Sw: Hovrätt), and Districts courts (Sw: Tingsrätt). The administrative courts deal with cases relating to disputes between individuals and public authorities. These include the Supreme Administrative Court, the Administrative courts of appeal (Sw: Kammarrätt) and the Administrative courts (Sw: Förvaltningsrätt). There are also several special courts in Sweden, such as the Labour Court (Sw: Arbetsdomstolen) and the Patent and Market Court (Sw: Patent- och Marknadsdomstolen).

SWEDEN

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CORPORATE STRUCTURES

The most relevant corporate structures in Sweden are:

Limited company (Sw: Aktiebolag, AB)

Limited companies are the most common form of business association in Sweden and can be started by either one or more natural or legal persons. A limited company is a legal entity with its own rights and responsibilities that, consequently, can enter into agreements and debts in its own name. As the name suggests, the shareholders to a limited company are not personally liable for the obligations of the limited company.
In Sweden, there are two types of limited companies, private and public ones. Public limited companies may issue shares to the public and list its shares on a stock market. To set up a public limited company, the invested share capital shall amount to no less than SEK 500,000. A private limited company only requires an invested share capital to no less than SEK 25,000. A limited company is managed and represented by a board of directors, elected by the shareholders. The board of directors oversees the general matters of the company, makes the main business decisions, and appoints the managing director who is responsible for the day-to-day management of the company pursuant to guidelines and instructions issued by the board of directors. At least half of the members of the board of directors as well as the managing director shall be resident within the EEA. However, the Swedish Companies Registration Office (Sw: Bolagsverket) may grant exemptions from the requirements. If all members of the board of directors reside outside of Sweden, the company must have a representative in Sweden. Public limited companies need to have a minimum of three board members, whilst private limited companies only need to have one. Additionally, public limited companies shall appoint a managing director, which is optional for private ones.

When starting a limited company, a memorandum of association and articles of association must be drawn up and signed by the founders. Thereafter, not later than six months after drawing up the memorandum of association, an application for registration of the limited company must be submitted to the Swedish Companies Registration Office. Apart from founding and registering a limited company from scratch, it may also be an option to acquire an already existing limited "stored" company, set up solely in order to be sold as a finished solution. This is called "lagerbolag" in Swedish.

Trading partnership (Sw: Handelsbolag, HB)

A trading partnership is formed by an agreement between at least two natural or legal persons that stipulates that the parties will engage in business jointly in a partnership. A trading partnership is a legal entity. However, as opposed to limited companies, the partners are personally and jointly liable for the obligations of the business such as inter alia, debts and entered agreements through their private economy. The joint liability entails that each of the partners can be personally forced to pay the whole debt from a debtor. However, the partner who has paid may subsequently pursue the other partners for their share of the debt. To set up a trading partnership, the partners must agree to engage in business jointly in a partnership, and thereafter apply for the registration of the company at the Swedish Companies Registration Office. There are no requirements of invested capital. In the case of foreign partners in trading partnerships, a certified copy of their passport, or in case it is a legal entity, certificate of registration, must be submitted as a part of the application to the authority.

Limited partnership (Sw: Kommanditbolag, KB)

Limited partnerships are similar to the aforementioned trading partnerships, with the difference that at least one member must take on a general liability while at least one member only will have a limited liability. The limited liability means that one or more partners has reserved the right to not be held liable for more than the amount they have contributed to the partnership.

Sole trader (Sw: Enskild näringsverksamhet)

This corporate structure is basically a person who runs a business on his or her own. A sole trader does not constitute a legal entity in itself. In order to be registered as a sole trader, you must have a Swedish identity or a co-ordination number. There are no requirements of minimum capital to start the business. The sole trader is personally liable for all the contracts and debts of the company.

SWEDEN

ENTERING THE COUNTRY

Generally speaking, there are no major investment restrictions in Sweden. Nevertheless, there a few regulations to be aware of regarding certain specific sectors.

TTo begin with, the Swedish Protective Security Act sets out various obligations in relation to transactions that involves a Swedish entity operating in security-sensitive activities. If so, the seller is required to notify and receive an approval from a reviewing authority before the transaction is completed. The act is not just aimed towards activities related to military or police operations, but rather to all activities of importance for national security. This could, for instance, include energy and water supplies, vital infrastructure, transport, healthcare, and telecommunications. If the requirements are not met, the transaction in question may be held invalid.
In addition to the Protective Security Act, a new regime based on the EU FDI Regulation 2019/452 has now entered into force (SW: Lag (2023:560) om granskning av utländska direktinvesteringar, the "Swedish FDI Act"). The primary objective of the new Swedish FDI Act is to establish a screening mechanism for foreign direct investments in Sweden, enabling the authority Inspectorate of Strategic Products to either prohibit or impose conditions on transactions that may pose a threat to Sweden's national security, public order, or public safety. The scope of application will be significantly wider than the scope of the Protective Security Act, covering "Activites Worthy of Protection". Those activities can be divided into certain subcategories which are Vital Societal Functions Activities, Security-Sensitive Activities (also governed by the Swedish Protective Security Act), exploration, extraction, enrichment or sale of Critical Raw Materials, Metals, or Minerals, Sensitive Data of Location and Personal Data, War Materials, Dual-use Products, and Emerging Technologies and other Strategically Protected Technologies. If an investment concerns an Activity Worthy of Protection, the Swedish FDI-Act applies, and the ownership of the investor must, depending on certain thresholds, subsequently be thoroughly examined. If a threshold is exceeded due to an intended investment, the Inspectorate of Strategic Products must be notified by the investors. The Swedish FDI Act sets forth various requirements with regards to what the notification must contain. Non-compliance with the Swedish FDI Act may render in penalties of up to SEK 100 million.

Sweden is also subject to the EU competition law regime, implying that merger controls may need to be carried out before the transaction can be completed. For example, the Swedish Competition Authority(Sw: Konkurrensverket) must be notified when a merger between undertakings takes place and where certain thresholds are exceeded.

SWEDEN

INTELLECTUAL PROPERTY

The main protectable IP-rights in Sweden are the following:

Trademarks

What is protectable? A trademark may consist of any signs, including words, figures, letters, numerals, names, colours, sounds, and slogans, as long as they are of a distinctive character and may be clearly reproduced in the trademark database of the Swedish Patent and Registration Authority (Sw: Patent- och registreringsverket, PRV).

Where to apply? Trademark applications can be filed either to the PRV, the European Union Intellectual Property Office (EUIPO) or the World Intellectual Property Organization (WIPO) under the Madrid System, depending in which territories the trademark protection is sought. Applications for trademark protection in Sweden can be filed to PRV through their e-service. When PRV has received the application, they will check whether the criteria for the application are met and if so, it will become visible in the Swedish Trademark Database. PRV will thereafter examine the application and decide whether the trademark shall be registered or not. If the trademark is registered, the opposition period of three months starts. When the trademark is registered, it is published in the Swedish Trademark Gazette. Note that an exclusive right to a trademark may also be acquired without registration if the trademark is considered established on the market by being known to a significant portion of the relevant public.

Duration of protection? A trademark registration is valid for ten years and may subsequently be renewed.

Costs? The application cost for registration of a Swedish trademark through the e-service is SEK 2400 with an additional fee of SEK 1000 for each additional class.

Copyright

What is protectable? Copyright protects all literary and artistic works that fulfil the requirement of originality. Examples of works that can be protected are texts, computer programs, music, movies, visual art, photographs, architecture and applied art.

Where to apply? Copyright arises automatically when the work is created. No registration is required.

Duration of protection? Copyright protection applies during the whole lifetime of the creator and for another 70 years after his or her death.

Costs? There are no costs relating to copyright protection of a work.

SWEDEN

INTELLECTUAL PROPERTY

Patents

What is protectable? Patents may be granted for technological solutions to a technical problem. The invention must be new, differ essentially from what is known before the date of filing, and have industrial application.

Where to apply? There are today three ways to obtain a patent in Sweden, through the PRV, through the European Patent Office (EPO) or through the International Patent System (PCT). The application must always be submitted to a registry authority. Patent protection is granted on a country-by-country basis, which means that the applicant must actively register the patent in Sweden to obtain protection here. However, a new unitary system called Unified Patents and the Unified Patent Court (UPC) is on its way within the EU. The UPC system seeks to enable entities to obtain patent protection in the member states by submitting only one single application.

Duration of protection? A patent is valid until 20 years have passed since the patent application was filed. However, an annual fee must be paid to keep the patent in force.

Costs? The fee of filing an application for a national patent is SEK 3000, consisting of a registration fee of SEK 500 and a search fee of SEK 2500. Note that this does not include the annual fees which will also be added.

Designs

What is protectable? The appearance and shape of a product may be protected as a design, it differs from all previous known designs and has individual character. The function of a product or the underlying idea behind it cannot be protected.

Where to apply? In order to obtain design protection in Sweden, an application must be sent to the PRV. It is also possible to obtain a community design valid throughout the EU, by applying through the EUIPO. To protect a design in several parts of the world, an application for international registration may be filed to the WIPO.

Duration of protection? The registration of a design is valid for a period of five years from the date of application. However, it is possible to extend the registration for up to 25 years.

Costs? The cost of filing a national registration for a design through PRV:s e-service is SEK 2000.

Trade Secrets

What is protectable? The protection of trade secrets can be described as an alternative to the traditional intellectual property rights to protect important know-how and other information regarding a business. According to the Swedish Trade Secrets Act the term "trade secret" refers to, in short, information that concerns the business operational circumstances in a trader's business that is not generally known or readily available to individuals. Furthermore, it is required that the holder has taken reasonable measures to keep the information secret and that the disclosure of the information would likely cause competitive damages to the holder. To unlawfully disclose a trade secret is considered a crime in Sweden.

Where to apply? There is no application procedure for information to be regarded a trade secret.

Duration of protection? As long as the trade secret is kept a secret.

Costs? No costs.

SWEDEN

DATA PROTECTION/PRIVACY

Since Sweden is a part of the EU, the GDPR applies. However, the Swedish Data Protection Act supplements the GDPR and specifies several provisions that are more or less particular for Sweden, including:

- The GDPR is subsidiary to the Swedish Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Otherwise, the GDPR fully applies, but may be complemented by sectoral regulations in certain areas. Apart from the Swedish Data Protection Act, these sectoral regulations are, inter alia, the Patient Data Act, the Camera Surveillance Act, the Credit Information Act, and the Whistleblowing Act.The Swedish Data Protection Act imposes a specific obligation of confidentiality for Data Protection Officers. Several provisions in the GDPR do not apply to the processing of personal data for journalistic purposes.
- The age at which children can give their own consent to the processing of their personal data in relation to information society services is 13 years old.
- Certain rules that specify when the processing of special categories of personal data is allowed, for example when special categories of personal data may be processed by public authorities or within the health and medical system. The act also includes certain rules regarding when information on criminal convictions may be processed.
- The rules in the GDPR regarding the right to information and access to personal data may be limited in relation to information that the data controller is prohibited from disclosing according to Swedish law or a decision issued by a public authority (for example, concerning secrecy). The right to access is also limited in relation to personal data included in a text that has not yet been finalised when the request is made and in relation to personal notes.
- The Swedish Authority for Privacy Protection (Sw: Integritetsskyddsmyndigheten, IMY) can, apart from imposing fines on private entities, also impose fines on public authorities. For violationsreferred to in Article 83(4) of the GDPR, the maximum fine is SEK 5 million when imposed on public authorities, and for violations referred to in Articles 83(5) and 83(6) of the GDPR, the maximum fine is SEK 10 million when imposed on public authorities.

IMY is the competent Swedish supervisory authority, responsible for enforcing and overseeing compliance with the GDPR in Sweden. IMY has issued guidelines regarding various matters in relation to data protection in Sweden.

SWEDEN

ARTIFICIAL INTELLIGENCE

Sweden intends to be one of the leading nations within AI, and the Swedish government is actively engaged in the development and utilization of AI. A few years ago, the government issued a special AI Strategy Report, which sets out the overall direction of AI in Sweden in order to create a basis for future policy actions, with a focus on education, research, innovation, and infrastructure. Towards the end of 2023, the government also established the Swedish AI Commission consisting of experts from both academia, private sector, and public sector. Another organization worth mentioning in this regard is AI Sweden, a national center for applied AI research and innovation.

There are currently no specific regime governing AI in Sweden. However, since Sweden is a part of the EU, the upcoming AI Act will be fully applicable in Sweden when finally implemented.

Swedish legislation is in general technology-neutral, which entails that the general regulations within areas such as consumer protection, intellectual property, data protection, and product safety may also be applicable to AI applications. The same applies with regards to specific sectoral regulations within certain areas, such as healthcare, financial services, and transportation.

The following are some general considerations for a start-up to consider developing or using an AI application:

- IP protection of an AI Algorithm – First of all, the underlying code (object and source code) may be protected by copyright as a computer program. Besides copyright protection, it may also be possible to protect AI through a patent, if the AI application is part of a patentable technical solution. Furthermore, AI can be protected within the business as a trade secret, if the requirements in the Swedish Trade Secrets Act are duly fulfilled.
- IP created by employees - Except for copyright protected computer programs, the right to intellectual property created by an employee is not automatically transferred to the employer in Sweden. It is, thus, strongly recommended that the assignment of any IP created within the employment is regulated in the employment agreement.
- Right to use training data – If the AI is trained on any material protected by intellectual property rights, a license from the rightsholders may be required to use the material in a lawful manner. Such material can, e.g., be text, images, or code. If copyright protected material are used without the prior consent of the rightsholders, there is a risk that this will be considered an unlawful reproduction of the works. This is mostly relevant for generative AI, and there is yet no Swedish case law in the area of generative AI.
- Use of personal data – If any personal data is used within the AI application, e.g., as part of the training data, the GDPR will apply. This, in turn, means that the requirements of the GDPR must be complied with, including having a legal basis for conducting the processing and that the processing complies with the fundamental principles. Further, data subjects must be duly informed, and it must be safeguarded that the rights of the data subjects are fulfilled.

Liability for the output – It is important to clearly regulate the issue of liability in case the AI application, e.g., would generate any harmful or inaccurate content that affects the users. This can be regulated in, e.g., terms of service or customer contracts. It is worth mentioning in this regard that the EU AI Liability Directive is currently in the making, which will be implemented in Sweden in the future.

SWEDEN

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EMPLOYEES/CONTRACTORS

General – Two of the key features of Swedish employment law are the comprehensive rights of the employee's and the importance of collective bargaining agreements between the parties in the labour market. The most important regulations regarding employees in Sweden are the Employment Protection Act and the Co-Determination Act. If the terms in an employment agreement restricts the rights of the employee under the Employment Protection Act or the rights and obligations of the Co-Determination Act, the terms will be deemed invalid.

Collective Bargaining Agreements – the employment laws of Sweden are widely supplemented by so-called collective bargaining agreements, entered by an employer or an employer-representative organisation and an employee-representative organisation. The Co-Determination Act sets out the rules concerning this type of agreements and stipulates various negotiation and information requirements. Most of the large employers are bound by collective bargaining agreements, whilst smaller employers might not be.

The Employment Contract – There are no requirements for an employment contract to be entered into in writing. However, the employer must, inter alia, provide information regarding the important terms of employment within one month from the employee started working. Most of the employment contracts applies until further notice, but fixed term contracts may be concluded under specific circumstances. It is common that the first six months of the employment is a probation period which thereafter turns into an indefinite employment. Unlike many other countries, Sweden does not have a statutory minimum wage. However, the wages are normally regulated by the collective bargaining agreements.

Contractor Agreements – Instead of offering an employment, an employer may offer a contractor agreement. The Employment Protection Act does not apply to contractor agreements, and contractors are, subsequently, less protected that employees. However, in certain cases a contractor may be considered as an employee depending on the circumstances.

Foreign employees – the Swedish employment regulations is applicable to all employees who work permanently in Sweden. However, so-called "posted workers" that have been sent to Sweden by their employer for a limited period are only covered by certain provisions of the Swedish employment legislation. Non-EU workers must in most cases obtain a work permit from the Swedish Migrancy Agency to be allowed to work in Sweden. All companies with employees in Sweden must pay social security contributions, regardless of whether the employees are Swedish or foreign.

No "work for hire" regime – There is no general "work for hire" regime in Sweden. As a general rule, the employee retains the copyright for any works he or she has created. Thus, it is normally regulated in the employment agreements that any intellectual property rights generated within the employment, is transferred to the employer. However, the copyright to a computer program created by an employee as a part of his or her employment is automatically transferred to the employer. Regarding patents, the employer automatically acquires the right to utilise patentable inventions created by an employee. Nonetheless, the employee still has a right to reasonable compensation for the invention.

Termination of employment - Termination of an employment for an indefinite term will be effective after a certain notice period. The minimum notice period according to the Employment Protection Act is one month, but a longer notice period is often agreed on in the agreement. Furthermore, an employment may only be terminated because of objective reasons for dismissal. There are two acceptable causes for dismissal, namely reasons relating to the employee personally (requires that the employee has considerably misbehaved) or redundancy. In case of dismissal because of redundancy, employees shall generally be dismissed by order of time they have been employed (the so-called "last in, first out principle"). The above-described restrictions do not apply during a probation period.

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STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

The Swedish consumer protection legislation is relatively strict, including regulations such as the Swedish Consumer Sales Act, the Consumer Services Act, the Consumer Credit Act and the Distance and Off-Premises Contracts Act. One key feature of the consumer legislation is that it is mandatory. As a consequence, contract terms which, in comparison to the provisions in the consumer acts, are to the detriment of the consumer, are basically unenforceable against the consumer.

The Consumer Sales Act generally apply when a consumer buy products from an undertaking. One of the main provisions of the act is that all consumers enjoy a right to complaint(Sw: reklamationsrätt) regarding defects in the product that are discovered within three years after buying the product in question. Furthermore, the Consumer Sales Act stipulate consumer friendly rules concerning, inter alia, the burden of proof in relation to defects, the consumers rights when the delivery is delayed, and a right to cancel an order before it has been delivered. In the wake of the new EU directives regarding consumer protection, the Consumer Sales Act was during 2022modernized in order to strengthen consumer protection in relation to digital purchases.

The Consumer Services Act apply, as the name suggests, to contracts for the supply of services to consumers, and the Consumer Credit Act apply to credits which an undertaking offer to consumers. These regulations do also set out consumer-friendly rules as the Consumer Sales Act but in relation to these types of services.

The Distance and Off-Premises Contracts Act apply specifically when a company sells goods or services remotely, for example through web shops. Among other things, the act requires companies to provide certain information to the consumer before selling products or services. Furthermore, it provides the consumer the general right to withdraw his or her purchase within 14 days after receiving the "item".

The Swedish Consumer Agency
(Sw: Konsumentverket)
oversees compliance with Swedish consumer protection laws and issues guidelines regarding the application of the rules. In addition, there are also a National Board for Consumer Complaints (Sw: Allmänna reklamationsnämnden, ARN) in Sweden. The main task of ARN is to issue non-binding resolutions of disputes between consumers and undertakings. It is free of charge for a consumer to file a complaint to ARN.

TERMS OF SERVICE

Concerning Business-to-Business relations, the principle of freedom of contract prevails in Sweden and there are generally no restrictions with regards to terms of service. When it comes to Business-to-Consumer relations, on the other hand, there are various rules to be aware of. To begin with, the terms of service must be made available to the consumer, for example, on the website. The terms of service do not have to be in Swedish, but it may be preferable since they must be clearand understandable for the consumer. Furthermore, provisions within the terms of service will not be enforceable if they are considered unfair to the consumer. An example of what is considered as unfair is when terms are not in compliance with the aforementioned consumer protection legislation.

The Distance and Off-Premises Contracts Act stipulates several information requirements for actors within e-commerce. Amongst other things, the company in question must inform consumers about contact details, the main characteristics of the goods or services, the price of the goods or services (including taxes and delivery charges), the terms and conditionsfor payment (including payment methods), the consumers statutory right to complain, and information regarding the right to withdraw, before entering into the agreement with the consumer.

The company has the burden of proof that the consumer has received and accepted the terms of service. In other words, it is of importance to be able to demonstrate that the consumer has accepted the terms.

It may be worth mentioning that the EU Digital Services Act is now applied in Sweden, as of the 17 February 2024. The act applies to a number of intermediary service providers, such as online marketplaces, search engines, web-hosting services, cloud services, and social media services. For such service providers, they must, in addition to the minimum requirements according to EU consumer protection law, include information in their terms of service about what content users are not allowed to upload to the service and about the policies, procedures, etc., used for content moderation purposes within the service.

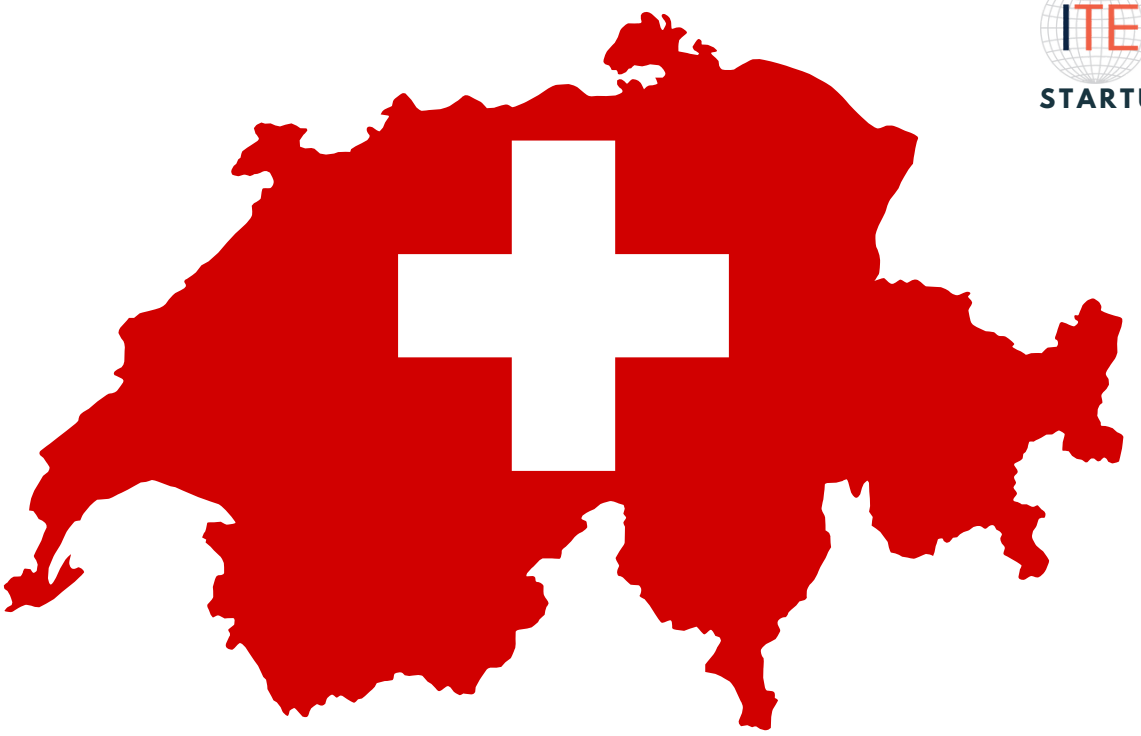
WHAT ELSE?

Incentive programs – incentive programs are a relatively common practice in Sweden when seeking to keep and attract key personnel within a company. An incentive program can, in brief, be described as providing future ownership in the company or monetary bonuses to employees. An example of an incentive program is so-called options, which in this case represents a right for an employee to acquire shares in the future at a set price. An option may be based on an agreement or based on a security, which includes, for example, warrants.

- Employee stock options – not a security in itself but a right to acquire a security (shares) in the future. Closely tied to the employment and there are normally restrictions in relation to transferring the options.
- Qualified employee stock options – not a security in itself but a right to acquire a security (shares) in the future. Designed for smaller companies and surrounded by various requirements.
- Warrant programs – a warrant is considered as a security that imposes a right, under certain circumstances, to acquire newly issued shares within a set period of time. Warrants are not as closely tied to the employment, and they are freely transferable.

Note that all of the aforementioned categories of options are taxed differently.

Funding through state entities – in Sweden, it is possible for smaller companies to apply for funding from the Swedish Innovation Agency (Sw: Vinnova). Vinnova may decide to provide funding for innovation projects that can benefit the society, for instance, climate-smart solutions. It should be noted that, in order to receive funding, the company has to have a branch or an establishment in Sweden and may only receive funding relating to the costs for the business here. Another way to find funding in Sweden is through Almi, which is a state-owned venture capital company that may provide loans to companies that have growth potential.



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LEGAL FOUNDATIONS

Switzerland follows a civil law system and relies on written laws and codes issued by its parliaments and governments. These statutes are then interpreted and applied by the courts whose case law constitutes an important source of law despite Switzerland's civil law tradition.

In addition, Switzerland is a federation, meaning the Swiss legal structure is divided into three levels: federal, cantonal and communal. Federal laws apply in Switzerland in its entirety while statutes enacted by the different 26 Swiss cantons only apply within their jurisdiction. Likewise, communal statutes are only applicable within a set municipality.

Over the course of its history, Switzerland centralised large parts of its laws at the federal level in an effort to harmonise its legislation, including most of its commercial laws, and avoid local discrepancies. Nowadays, the federal jurisdiction includes private law – which covers for instance contract law, tort law, labour law, corporate law, intellectual property law – and criminal law. In contrast, public law remains split between the federal and cantonal jurisdictions. Some public law fields are covered at the federal level (e.g. social security law, competition law) while some are at the cantonal level (e.g. construction law) and others are both (e.g. tax law).

CORPORATE STRUCTURES

Swiss law provides for the following company forms which are typical and commonly used for start-ups:

Company limited by shares

The most common form of entity found in Switzerland is the company limited by shares (Aktiengesellschaft; société anonyme; società anonima) which is a capital company usually identified under the acronym Ltd (AG; SA; SA). Its favoured position stems from the advantages it offers – including for small enterprises and start-ups – in terms of capital regulation and limited liability. Only the corporate assets are liable for the company's debts, excluding the shareholders' assets.

The company limited by shares requires at least one shareholder – who may either be an individual or a legal entity – and one director. All companies limited by shares must be represented by one person residing in Switzerland, be it a director or an individual granted with signatory powers. Regarding its capital, the company limited by shares must have a minimum share capital of CHF 100,000. However, merely 20% of the share capital (or a minimum flat amount of CHF 50,000) needs to be paid up at the time of incorporation. Companies limited by shares may constitute their share capital not only in CHF but also in a foreign currency. At the time this article was written (January 2024), the only authorised foreign currencies are GBP, EUR, USD and JPY. In addition, to be incorporated the companies limited by shares must be registered in the commercial register of the canton where it is domiciled.

The governance of companies limited by shares takes shape through articles of associations and additional by-laws. Shareholders may also conclude further agreements (e.g. shareholders agreements) to regulate other matters (e.g. election of directors, granting of extended rights of participation or information or share ownership and shares transfers).

CORPORATE STRUCTURES, CONT'D

Limited liability company

The Swiss limited liability company (Gesellschaft mit beschränkter Haftung; société à responsabilité limitée; società a garanzia limitata) – also referred to under the acronym LLC (GmbH; Sàrl; Sagl) – is an alternative capital corporation to the company limited by shares and a combination of the latter and a partnership. It is suited for small and medium enterprises (SMEs) and family businesses. The principal distinction between the company limited by shares and the limited liability company relates to the different obligations imposed on their associates. While companies limited by shares' shareholders have the sole legal obligation to pay up their shares, the more personal nature of limited liability companies subjects their quotaholders to further duties, including additional services and payments and non-competition clauses. Quotaholders, however, still benefit from limited liability as only the corporate assets are liable for the company's debts.

Otherwise, the requirements to establish a limited liability company are quite similar to the ones applicable to the company limited by shares, except notably that the limited liability company requires a lower capital of CHF 20,000.

The governance of limited liability companies follows their articles of associations, additional by-laws and other agreements passed between their quotaholders. The limited liability company's quotaholders are in principle responsible for the management of the company, unless it has been delegated.

Among their disadvantages, limited liability companies have less flexibility in managing their capital than companies limited by shares. In addition, limited liability companies constitute more transparent entities as their ownership must be disclosed to the commercial register along with the names, domiciles and number of quotas owned by each quotaholder; all this information being freely available to the public. In contrast, the ownership of a company limited by shares remains anonymous.

As for the choice between incorporation as a company limited by shares or a limited liability company, most Swiss start-ups tend to be incorporated as companies limited by shares as the corporate structure allows for more flexibility.

Other structures

While the above corporate structures are the most commonly used for start-ups in Switzerland, there are other types open to entrepreneurs under Swiss law. These include:

- sole proprietorship;
- general partnership;
- and limited partnership.

Sole proprietorships are suitable for companies whose business activities are closely linked to a single owner, namely an individual acting alone in their business.

General and limited partnerships are ideal for small businesses whose partners' personal interests are close to their business interests.

These corporate forms are ideal for small starting businesses as they do not require any start-up capital and are easier to establish than limited or limited liability companies. However, partnerships may be impeded in their entrepreneurial flexibility due to more comprehensive scrutiny rights recognised by all partners.

Furthermore, they present additional risk to their proprietors and partners as each and every one of them is liable for the company's debts. It is to be noted, however, that in contrast to general partnerships, limited partnerships allow splitting the liability forcorporate debts between two kinds of partners, i.e. general partners (usually the company's managers) and limited partners (usually the company's investors or creditors). General partners are liable on an unlimited basis for their assets, while limited partners are liable on a limited basis only. Due to these accrued risks, sole proprietorship and (general or limited) partnerships are only suitable to low-risk businesses with limited available start-up financing. As such, these corporate structures are overall unsuitable for start-ups. Rather, start-ups in Switzerland rarely opt for sole proprietorship and (general or limited) partnerships for their incorporation; capital companies (i.e. companies limited by shares and, to a lesser extent, limited liability companies) are to be preferred.

SWITZERLAND

ENTERING THE COUNTRY

At the time this article was written (January 2024), Switzerland does not have an encompassing foreign investment control regime. The federal parliament and government are however working to enact new regulations on the matter. As part of this process, the federal government published for comments a first draft of the upcoming Federal Foreign Investment Screening Act in May 2022. In a nutshell, this draft provided that acquisitions of Swiss companies by foreign state-owned companies or investors with ties to foreign governments should be subject to prior authorisation by the Federal State Secretariat for Economic Affairs (SECO). Likewise, acquisitions of Swiss companies acting in some limited economic sectors by foreign investors, without ties to foreign states, would be subject to SECO's prior authorisation.

Following widespread criticism of this first draft, the federal government decided to substantially revise the bill it had initially presented to make it more business- and investment- friendly. The second draft of the Federal Foreign Investment Screening Act was published in December 2023. The most significant change from the first version is the drastic reduction of the scope of application of the regulation: only investors controlled by a foreign state wishing to acquire a Swiss company active in some critical area (e.g. activities related to the supply of goods for military use, research and development of drugs and medical devices or the management of health, telecommunication and transport infrastructures) remain subject to prior authorisation by the SECO. Contrary to the first draft, acquisitions by foreign private investors without ties to foreign states are no longer subject to such authorisation. In addition, relevant to investments in Swiss start-ups, the revised draft provides for further exclusions for the acquisitions of small companies (e.g. the company has less than 50 full-time employees worldwide or has an annual worldwide turnover inferior to CHF 10 million on average over the two last financial years).

The revised draft has yet to be discussed by the federal parliament. In the meantime, despite the lack of a comprehensive legal framework for foreign investments, some sectorial regulations may still apply depending on the respective business, e.g. the Federal Banking Act, the Federal Act on Financial Institutions and the Federal Telecommunications Act. In addition, the Federal Law on the Acquisitions of Real Estate by Persons Abroad (commonly referred to as "Lex Koller") requires that acquisitions of real estate in Switzerland by persons abroad be subject to prior authorisation. This does however not apply to nationals of members states of the European Union, Iceland, Liechtenstein, Norway or the United Kingdom domiciled in Switzerland. Furthermore, no prior authorisation is needed for acquiring commercial premises serving a company's business activities.

SWITZERLAND

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STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademark

What is protectable? Any sign (i.e. such as words, letters, numerals, figurative representations, two or three-dimensional shapes, or combinations of such elements with each other or with colours) capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Where to apply? If trademark protection is sought in Switzerland, trademarks must be registered with the Swiss Federal Institute of Intellectual Property ("IPI"). The application procedure before the IPI is similar to the procedure before the European Union Intellectual Property Office ("EUIPO"). International protectionfor trademarks registered in Switzerland can be requested from the IPI according to the Madrid System.The application can be filed via an online platform on https://e-trademark.ige.ch/etrademark/index.jsf (available in German, French, and Italian).
The IPI reviews the application and registers the trademark immediately, provided that the requirements are met. The IPI publishes the new registration, which triggers a 3-month opposition period for any third parties. The trademark is registered once opposition(s), if any, is/are dismissed.

Duration of protection? Once validly registered, the trademark is protected for a 10-year period. Upon request, the protection period can be extended for another 10-year period.

Costs? Application costs for Swiss trademarks amount to CHF 550. Costs of an extension of the protection period amount to CHF 700. Fees of the legal advice to be charged additionally, if any.

Patents

What is protectable? In Switzerland, any invention is patentable provided that it is new and not obvious having regard to the state of the art and applicable to industry.

Where to apply? Patent protection is granted per country (i.e. the applicant must file a patent request in each country where patent protection is sought). To obtain a patent in Switzerland, an application can be filed with the IPI. The IPI reviews the application and then publishes the patent request in the Swiss protection titles register (called Swissreg). The patent is granted if opposition(s), if any, is/are ruled out. It should be noted that in Switzerland the patent is granted without any guarantee from the IPI (i.e. the IPI does not examine whether conditions are met before granting the patent). As a consequence, patents can be challenged by any third party in an opposition period of 9 months following the publication by the IPI. In addition, the patent holder is responsible for detecting any infringement against the patent and enforcing its patent if needed as neither the IPI nor any other Swiss authority monitors patent infringements.

Duration of protection? In any case, the maximal length of the protection period is 20 years from the application date. Protection is maintained upon payment of annual fees to the IPI.

Costs? Application costs amount to CHF 200 and examination costs amount to CHF 500. Fees of a legal advice to be charged additionally, if any. Annual fees are due as of the 4th year of protection. They amount to CHF 100 for the 4th year and increase each year gradually up to CHF 960 for the 20th year.

Designs

What is protectable? Under Swiss law, any unique new creative product or parts of products that is characterised by the arrangement of lines, surfaces, contours, or colours or by the materials used, either in two-dimensional or three-dimensional plans, can be protected.

Where to apply? To obtain protection of a design in Switzerland, an application can be filed with the IPI. The IPI immediately registers the design and publishes it in the Swiss protection titles register (called Swissreg). It should be noted that the design is registered without any guarantee from the IPI (i.e. the IPI does not examine whether conditions are met before the registration of the design). Consequently, the registration of the design can be challenged by any third party. In addition, the creator of the design is responsible for monitoring any infringement of the protection and enforcing the protection if needed as neither the IPI nor any other Swiss authority monitors design infringements.

Duration of protection? The minimal duration of protection is 5 years. The protection can be extended up to five times, each time for 5 years (i.e. maximal duration of protection is 25 years).

Costs? Application costs amount to CHF 200. Each extension costs an additional CHF 200. Fees of a legal advice to be charged additionally, if any.

INTELLECTUAL PROPERTY, CONT'D

Topographies of Semiconductor Products

What is protectable? Under Swiss law, any three-dimensional structures of semiconductor products, regardless of how they are attached or coded and provided that they are not obvious having regard to the state of the art, can be protected.

Where to apply? To obtain protection of a topography in Switzerland, an application can be filed with the IPI. The IPI registers the topography once the application is completed. It should be noted that the owner of the topography is responsible for monitoring any infringement of the protection and enforcing the protection if needed as neither the IPI nor any other Swiss authority monitors topography infringements.

Duration of protection? The duration of protection is 10 years.

Costs? Application costs amount to CHF 450. Fees of a legal advice to be charged additionally, if any.

The following IP rights cannot be registered:

Copyright

What is protectable? Literary and artistic intellectual creations from natural persons with individual character (including software) are considered as works protected by copyright, irrespective of their value or purpose.

How to protect? Copyright exists from the creation of the work.

How to exploit protected work? Copyright owners have the exclusive right to their own works and the right to recognition of their authorships.

Duration of protection? The duration of protection depends on the nature of the work: in the case of software, copyright expires 50 years after the death of its author; in the case of photographic depictions and depictions of three-dimensional objects produced by a process similar to that of photography, copyright expires 50 years after production; in the case of all other works, copyright expires 70 years after the death of the author.

Costs? Copyright is free.

Trade secrets

Is there any IP protection? Under Swiss law, trade secrets do not qualify as an intellectual property asset.

Is there any other protection? The Swiss Unfair Competition Act prohibits anyone who exploits or discloses manufacturing or business secrets of which he/she has improperly learned. To enforce this, it is recommended for companies to implement appropriate measures to keep trade secrets safe (i.e. internal regulations determining which information is considered a trade secret, who has access to this information and measures in place to secure such information). In addition, according to Swiss employment law for the duration of the employment relationship the employee must not exploit or reveal confidential information obtained while in the employer's service, such as manufacturing or trade secrets. The employee remains bound by such duty of confidentiality even after the end of the employment agreement to the extent required to safeguard the employer's legitimate interests. Furthermore, it is to be noted that the Swiss Criminal Code prohibits the breach of trade secrets on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

Duration of protection? Trade secret protection applies as long as the measures in place apply.

SWITZERLAND

DATA PROTECTION/PRIVACY

Swiss data protection laws include the Federal Act on Data Protection (FADP) and 26 canton-level regulations, one for each canton. Despite this high number of texts, only the FADP contains provisions relevant to processing of personal data by private entities, including companies. It is to be noted that the FADP has recently been revised to bring the Swiss data protection legal framework more closely in line with the GDPR of the European Union. The revised FADP (as well as the Federal Data Protection Ordinance [DPO] and the Federal Ordinance on Data Protection Certification [DPCO]) has entered into force on 1 September 2023. The explanations below are based on the revised FADP.

In a nutshell, the revised FADP reutilizes the GDPR's concepts of "data controller" and "data processor". While the data controller is the entity which determines the purposes and means of processing personal data, the data processor processes personal data on behalf of the former. Both data controllers and data processors must respect certain overarching principles through their processing of personal data. According to these principles, all personal data processing must be conducted in good faith, be proportional, be exact and accurate, be recognisable by the data subjects and be processed to achieve the sole purposes that were communicated to the data subjects at the time the personal data was collected. If a particular processing of personal data fails to meet those requirements, said personal data may still be lawfully processed where there is a lawful basis for processing, including the consent of the data subject, an overriding private interest, an overriding Swiss public interest or Swiss law.

In addition, data subjects benefit from different rights to enforce their privacy, e.g. right of access or right to be informed at the time the personal data was collected. Data controllers and data processors have corresponding duties to observe in their handling of personal data. For instance, they are required to inform data subjects in an appropriate manner when collecting personal data unless any exception applies, to safeguard personal data and, unless an exception applies, maintain an inventory of their processing activities (record of processing activities [ROPA]). They also have the possibility, but no obligation, to appoint an internal data privacy advisor.

Regarding international transfers of personal data, Switzerland follows a similar approach as the European Union: personal data may be transferred abroad to states that have been recognised as having legislation providing an adequate level of protection by a decision of the Swiss Federal Council. The list of such states can be found in Annex 1 to the DPO and is similar to the adequacy list kept by the European Commission, but there are differences (for example, Japan is currently not considered providing for adequate protection by the Swiss Federal Council). In the absence of an adequacy decision by the Swiss Federal Council, transfers are only lawful if an exception applies. In particular, there is a notable exception where transfers are accompanied by concluding EU Standard Contractual Clauses adapted to Swiss law requirements – which are additional agreements between data importers and exporters – and by conducting a transfer impact assessment resulting in a positive outcome. It is to be noted that Switzerland has been recognised by the European Commission as providing adequate protection pursuant to the GDPR; meaning that personal data may flow from EU member states and EEA contracting states to Switzerland.

While the GDPR certainly inspired the revised FADP's content, the latter is not a carbon copy of the former and slight differences subsist, e.g. the revised FADP does not impose mandatory terms in data processing agreements (DPAs) contrary to the GDPR, etc.

ARTIFICIAL INTELLIGENCE

Switzerland does not currently have a dedicated regulatory framework for AI and is approaching the challenges posed by AI using existing regulations on data protection, intellectual property and business and professional secrecy. The revised Federal Data Protection Act therefore remains the key regulation for AI. It plays an important role in setting standards for personal data in AI, emphasizing principles such as legality and data minimization.

It must further be noted that the forthcoming EU AI Act, with extraterritorial effects akin to the GDPR, will significantly impact Swiss companies engaged in AI activities. In fact, the EU AI Act will apply to all parties involved in AI, including those in Switzerland if their systems are intended for EU.

Finally, in November 2023, the Swiss Federal Council has instructed the Federal Department of the Environment, Transport, Energy and Communication to prepare an overview of possible regulatory approaches to AI that build on existing Swiss law and are compatible with the EU AI Act and the Council of Europe's AI Convention. This overview is expected to be available by the end of 2024. Based on this overview, the Swiss Federal Council intends to create the basis for concrete AI regulatory proposal in 2025.

SWITZERLAND

EMPLOYEES/CONTRACTORS

General considerations: A company may enter into an employment agreement with an individual. The employment agreement does not have to be in written form. Notwithstanding the form of the agreement, the employee shall be registered with Swiss social security. Some mandatory provisions may apply to employment agreements. They aim to provide employees with minimal working conditions. In addition, depending on the field of activity, collective labour agreements may also apply.

A company may also offer to any third party a contractor agreement. Mandatory employment law provisions do not apply to contractors, and they do not have to be registered with social security by the company. It is to be noted that a contractor agreement may be requalified as an employment agreement depending on the circumstances of the case. This requalification triggers the obligation for the company to (i) register the third party with Swiss social security and (ii) comply with Swiss employment law provisions. To mitigate this risk, the company shall, in particular, verify that the contractor remains in any case fully independent and autonomous from the company (i.e. no subordination relationship).

Work for hire regime in Switzerland: Under Swiss employment law, by default only the IP rights to inventions and software developed during employment in fulfilment of contractual obligations belong to the employer by law. Swiss employment law does not regulate the IP rights to inventions and software created prior to or during employmentoutside of contractual obligations or during leisure time nor ownership in any other IP rights. As a consequence, employers shall require employees to assign all of the others IP rights to them by way of a written employment agreement.

Registration with social security: Every employer must register its employees with social security and pay their shares of contributions. The amount of the contributions depends, among other things, on the employee's remuneration.

Termination: As a general consideration, Switzerland has a very liberal approach to terminations. Under Swiss law, two types of terminations can be listed: (i) ordinary termination (i.e. with respect to the applicable notice period) and (ii) immediate termination.

As for ordinary termination, it is to be noted that any party is free to terminate the employment agreement upon completion of the applicable notice period. There is no need to provide any reasons. However, any employee can challenge termination of their employment if such termination is abusive/wrongful. A termination is deemed abusive/wrongful if it is based, in particular, (i) on account of an attribute pertaining to the person of the employee, (ii) because the employee exercises a constitutional right, (iii) because it is given solely in order to prevent claims under the employment agreement from accruing to the employee, (iv) because the employee asserts claims under the employment agreement in good faith or (v) because the employee is performing Swiss compulsory military or civil defence service or any non-voluntary legal obligation.

As for immediate termination of employment, it is admissible if based on a good cause (i.e. any circumstance which renders the continuation ofemployment in good faith unconscionable for the party giving notice). It shall be noted that Swiss law is rather restrictive in this respect, resulting in the fact that employees are generally well protected against immediate termination. Maximal exposure in case of wrongful immediate termination is an indemnity equivalent to 12-month's salary (6 months maximum as indemnity and 6 months maximum as penalty). In such case, it shall be outlined that the termination, however wrongful, remains valid. As conditions for an immediate termination to be admissible are rather restrictive, an ordinary termination with immediate garden leave can serve as a valid alternative.

CONSUMER PROTECTION

Consumer protection law in Switzerland is relatively weak compared to the legislation in the European Union. As a non-EU member state and non-EEA contracting state, Switzerland is not bound by European requirements. There is often an "autonomous adaption" of EU law. In the field of consumer law, this happened mainly in the 1990s, but after that the existing consumer protection rules were no longer adapted to developments in the EU. Switzerland's approach to consumer protection is therefore rather fragmented. There is no overarching consumer protection framework, but some laws aim to protect consumers, either expressly or by implication. Generally, consumers are protected against misinformation, unfair contractual terms and product safety risks, for example when purchasing certain products (such as food, clothes, household appliances, furnishing, electricity, drugs, etc.) or certain services (such as financial services, telecommunication services, electricity, education, housing, transport, etc.). The relevant laws usually require that products and services shall be described in a transparent and accurate manner and that products shall be safe.

It can be stated that Switzerland has a significantly lower level of consumer protection compared to other countries, especially the European Union. In other words, Swiss consumer law is very liberal in comparison, even if Switzerland has partly autonomously implemented EU law. Consequently, the restrictions are very limited and do not go as far as in the European Union.

Information obligations: Some laws require that information about products and services shall not be misleading and allow consumers to understand and compare offers. For example, the Federal Act against Unfair Competition (UCA) generally (including B2B settings) prohibits false or misleading information, which may include failure to provide information that is required for consumers to make an informed decision. Moreover, detailed regulations on price indications exist in order to ensure that prices for products and services are clear, not misleading and comparable.

Unfair contract terms: Under the UCA, general terms and conditions in consumer contracts are null and void if they are unfair. However, there is little guidance in the law as to what makes a term "unfair" and unlike the European Union, Switzerland does not recognise any official list of clauses presumed to be unfair. Consequently, it is unlikely that, for example, a clause that allows a provider to update consumer contracts by providing for notice and a right to object would be considered unfair.

Restricted withdrawal rights: Swiss law does not grant a right to consumers to withdraw from distance and off-premises contracts. In practice, in some cases, rights of this kind are however granted voluntarily to consumers by providers and vendors (even if there is no legal obligation to do so).

Consumer credit: An important part of consumer protection legislation is the Consumer Credit Act, which aims to protect consumers against over-indebtedness. It regulates commercial consumer credit loans to private individuals. Under the Consumer Credit Act, for example, consumer credit contracts must be concluded in writing and contain minimum information, and borrowers have a mandatory right to withdraw from the contract and accelerate repayment. Moreover, lenders must conduct a credit assessment and cap interest to a maximum rate.

Product regulation: In addition to requirements in some laws, there are two main laws for products in Switzerland:

- Product Safety Act: Commercial manufacturers must ensure that products placed on the market do not pose relevant risks to the safety and health of users and third parties and that they comply with the applicable specific requirements or the state of the art.
- Product Liability Act: Manufacturers are liable for damages where a faulty product causes death or injury to a person or damage to property used for private purposes.

SWITZERLAND

TERMS OF SERVICE

Online terms of services must typically not exclude/include any specific terms. However, to be enforceable in Switzerland, online terms of service must be agreed by both parties. They shall be at the disposal oftarget consumers prior to any order, who must confirm that they have agreed to them within the buying process. In practice, this is usually put in place by a tick-box the customer is required to click on.

In Switzerland, online terms of service usually address the following topics: entry into force, duration, warranties, orders, deliveries/services, liabilities, applicable law, and place of jurisdiction. Please note that the applicable law and place of jurisdiction foreseen by Swiss law may in general not be deviated from in a contract with a consumer.

We highly recommend anyone who drafts (online) terms of service to be used in Switzerland/for Swiss based customers to consult a legal expert to conduct a review of their content.

In this regard and as a general consideration (BtoB and BtoC), the Federal Act against Unfair Competition (UCA) stipulates that any conduct or business practice that is misleading or which otherwise violates the principle of good faith in such a way that it influences the relationship between competitors or between suppliers and customers is unfair and unlawful.

In addition to this general requirement, and as regards terms of service in a BtoC relationship (either online or not) in particular, the UCA stipulates that a person acts unfairly if he/she uses unfair general terms and conditions, i.e. that provide for a considerable and unjustified imbalance between contractual rights and contractual obligations to the prejudice of consumers in a manner that is in breach of good faith. It is to be noted that, unlike the European Union, Switzerland does not recognise any official list of clauses presumed to be unfair.

Moreover, in the context of offering goods, works or services online, a person acts unfairly if he/she fails to provide clear and complete details of their identity and contact address (including email address), indicate the individual technical steps that lead to a contract being concluded, provide suitable technical means for identifying and correcting input errors before submitting the order or provide immediate online confirmation of the customer's order.

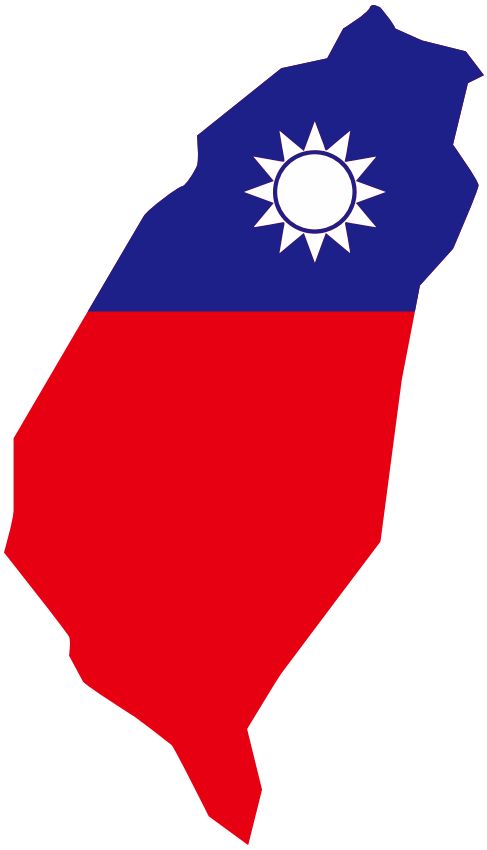
WHAT ELSE?

In addition to our comments on the above-mentioned topics, start-ups wishing to enter the Swiss market should be aware of the following:

Swiss corporate tax system: Switzerland is a federation. It follows that both the federal state as well as the cantons levy their own corporate taxes. At the federal level, companies domiciled in Switzerland are subject to a federal corporate income tax on their net profits, which is set at a flat rate of 8.5%. There is no federal corporate capital tax. In addition, each of the different cantons levy cantonal corporate income and capital taxes according to their respective laws and their own tax rates. Corporate income taxes are, however, not often relevant for start-ups as they tend to generate very little profits in their first years of business.

Public aids and financing: The Swiss federal state and the Swiss cantons established a broad spectrum of financing programs aimed at assisting start-ups in securing capital. For instance, the Swiss federal state promotes innovation in green technologies and usestechnology funds to issue loan guarantees to start-ups active in this field. Federal and cantonal states also set up Innosuisse, i.e. the Swiss innovation agency, among other institutions, to finance further projects and foster a suitable environment for innovation and development of start-ups within Switzerland.

Fast and efficient incorporation process: We have described above the different corporate bodies a start-up may choose to launch its business activities in Switzerland. In addition, it should be highlighted that process of incorporating a company in Switzerland is straightforward and rapid, as it only takes a couple of weeks from drafting of the founding documentation to the company's actual incorporation.



TAIWAN

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LEGAL FOUNDATIONS

General: The legal system in Taiwan is a civil law system. Statutory laws are fundamental, while court judgement may serve as persuasive authority depending on the level of the court.The laws can be basically classified into three categories: civil law, administrative law, and criminal law.

Civil law covers the legal relationships between individuals, for example, contracts, torts, warranty, liability, property, inheritance, among others. Contracts can be entered into freely. Where there are no written or orally expressed contract terms, the Civil Code regulates fundamental rights and obligations of the major contract types, such as sales, agency, employment, and hire of work, among others.

Administrative law covers the relationship between individuals and the state. The Administrative Procedure Act regulates the major principles and proceedings that administrative bodies must comply with.

Criminal Law covers criminal sanctions applied based on the principle that there is no punishment without law as well as the presumption of innocence.

Judicial System: The district courts, high courts, and the supreme courts handled civil litigation, criminal litigation, and administrative litigation in accordance with their jurisdiction and the nature of the cases. There is a specialized Intellectual Property and Commercial Court to handle intellectual property related litigation and complex commercial cases. Remedies available in a case include permanent injunctions.

The courts in Taiwan are considered to be generally neutral in deciding legal disputes between a foreigner and a local citizen.

CORPORATE STRUCTURES

There are many options for a start-up to start its business in Taiwan. The principal forms of business organizations are companies, branches, subsidiaries, or representative offices of foreign companies, partnerships, limited partnerships, and sole proprietorships. The definitions, features, and functions of these different forms of entity are very similar to those in the international practice.

Taiwan's Company Act allows capital investments in the form of cash, monetary credit, property, or technical know-how. If the company is formed as a close company, the equity capital to be contributed can be services provided (so-called "sweat equity"), however, sweat equity cannot exceed a certain percentage of total shares.

CORPORATE STRUCTURES, CONT'D

Typical corporate structures:

Companies

Under Taiwan's Company Act, four types of companies can be formed: unlimited company, unlimited company with limited liability shareholders, limited company, and company limited by shares. Unlimited companies and unlimited companies with limited liability shareholders are rarely used in practice; a company limited by shares and a limited company are the most common forms of business for foreign investors in Taiwan.

A company limited by shares shall have at least two shareholders. A single shareholder is allowed if the single shareholder is a legal person (under certain conditions). At least three directors and one supervisor are required. The directors and supervisor(s) are elected at a shareholders meeting. The promoters (initial shareholders) are not allowed to transfer their initial shares during the first year after the company is incorporated. Governance is regulated in the Company Act or the By-Laws, including matters such as the election of directors, management of the business, and others in connection with share ownership.

A limited company can be organized with at least one shareholder and one director but no more than three directors. Directors are elected from the shareholders. All directors can be foreign nationals residing outside of Taiwan. In contrast to a company limited by shares, the total capital of a limited company is not divided into shares. Each shareholder is liable for the amount equal to its capital contribution.Also, a limited company places restrictions on share transfers. For this reason, it is relatively easier for certain shareholders to control a limited company (or a close company limited by shares), than it is for those shareholders to control a general company limited by shares.

There are no minimum capital requirements, and share structures can be customized in many ways depending on the plans and needs of the company.

Partnerships

Partnerships can be created in the following forms:

- **Partnerships:** all partners share a common purpose and have unlimited liability; regulated under the Civil Code.
- **Limited Partnerships:** general partner(s) have unlimited liability while the remaining partners (the limited partners) have limited liability; regulated under the Limited Partnership Act.

Sole Proprietorship

A sole proprietorship is any single nature person engaged in business. The owner of a sole proprietorship is liable for all of the business's debts and liabilities. If the sole proprietorship's capital involves foreign investment, it must be reviewed and approved by the Investment Commission. A sole proprietorship is usually formed when the individual registers a name in connection with their business and is generally only to be used at a very early startup stage, or small business operation.

In sum, foreign investors usually decide on a preferred business vehicle in Taiwan based on their funding, business, and strategic needs.

TAIWAN

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STARTUP LEGAL PLAYBOOK

ENTERING THE COUNTRY

Taiwan generally imposes no restrictions on foreigners entering the Taiwan market, but a foreign investor (including investors from mainland China, Hong Kong, and Macau) needs to acquire **advance approval of the foreign investment** from the Investment Commission (IC) of the Ministry of Economic Affairs (MOEA). For example, if a foreign investor would like to acquire shares of a Taiwanese company or to establish an entity in Taiwan, an approval is required beforehand. Due to political and national security concerns, reviews of investment from mainland China is stricter than from other countries.

Restrictions on Foreign Shareholders
There are no general restrictions on foreign shareholders or acquisitions by foreign investors except for specific industries in which foreign investments are prohibited due to national security concerns, environmental protection, or other stipulated policy reasons. The prohibited sectors include, for example, water and gas supply and basic metal manufacturing, among others. There are also limits on foreign shareholders and control over the board of domestic companies in certain industries. Said restrictions may be updated from time to time. It is always prudent for a foreign investor to conduct compliance checks when planning its investments in Taiwan.

INTELLECTUAL PROPERTY

Taiwan is a member of WTO. Although Taiwan is not a party to major international treaties, the IP system and IP protection available in Taiwan is generally in line with international practice. Patents, trademarks, copyrights, and trade secrets are all available under Taiwan laws. Patents and trademarks need to be registered while copyrights and trade secrets do not.

Trademarks

What is protectable? Any sign that can be used to distinguish a company's goods and services from the goods and services of other companies in protectable. Words, designs, symbols, colors, three-dimensional shapes, motions, holograms, sounds, or any combination thereof, can be registered as a trademark.

Where to apply? Trademarks can be filed with Taiwan Intellectual Property Office (TIPO) for trademark protection within Taiwan. As Taiwan is not a signatory to the Madrid Agreement, it is not possible to extend an international registration to Taiwan. An application for trademark registration can also be filed with the TIPO through the Trademarks e-Filing system. Trademark examination will take approximately 6 to 8 months. After the trademark examination is completed and the application is approved, it will take another 1 to 2 months to obtain the registration certificate. Taiwan's Trademark Act adopts a post-registration opposition system, under which an opposition may be filed only within 3 months from the day following the date of publication of registration.

Duration of protection? The registration term is 10 years and can be repeatedly renewed for additional 10 year terms.

Priority claims? Applicants from WTO member countries can claim priority based on a trademark application filed in the previous 6 months in any WTO member country.

Nice Classification adopted? The Nice International Classification system has been adopted by Taiwan. Also, multiple-class applications can be filed in Taiwan.

INTELLECTUAL PROPERTY, CONT'D

Patents

Three types of patents are available in Taiwan: invention, utility model, and design patents. Taiwan is not a member of PCT.

Invention

What is protectable? An invention is eligible for patent protection if it is a technical creation that satisfies the requirements of novelty, inventive step and industrial utility.

Where to apply? Patent applications can be filed with TIPO. E-Filing service is available. Applicants from WTO member countries can claim priority based on the patent application having been filed in the previous 12 months in any WTO member country. A PCT application is not acceptable by TIPO, but any applicant from a WTO member who files a patent application in Taiwan may claim priority based on its PCT application.

Duration of protection? The term of an invention patent is 20 years from the filing date. Extensions are applicable for pharmaceutical, agrichemical or manufacturing processes, taking into account the time to obtain the regulatory approval.

Employee invention? Unless a contract provides otherwise, an employer owns the patent application right and patent right to its employees' inventions on works for hire, while the employee is entitled to ask for an appropriate bonus.

Utility Model

What is protectable? A utility model can only be a creation related to the shape or structure of an article or combination of articles. Manufacturing methods, processing methods, and chemical substances with concrete shape cannot be protected as a utility model.

Where to apply? TIPO, same as the invention patent applications.
Duration of protection? The term of a utility model patent is 10 years from the filing date.

Filing Strategy? Considering that TIPO only conducts a formal review without substantive examination of utility model applications, utility model patents generally can be obtained much sooner. An applicant may file invention and utility model patent applications for the same creation on the same date to enjoy continuous protection until both the invention and the utility model are granted – at that time the applicant needs to abandon either the invention or utility model patent because double patenting is not allowed.

Design

What is protectable? A design patent protects a creation made in respect of the shape, pattern, color, or any combination thereof, of an article as a whole or in part by visual appearance. Computer generated icons and graphic user interfaces (GUI) applied to an article can also be the subject of a design patent.

Where to apply? TIPO, same as the invention patent applications.

Duration of protection? The term of a design patent is 15 years from the filing date.

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INTELLECTUAL PROPERTY, CONT'D

Copyright

What is protectable? A creation that is within a literary, scientific, artistic, or other intellectual domain can be protected under Taiwan's Copyright Act, including:

- Oral and literary works
- Musical works
- Dramatic and choreographic works
- Artistic works
- Photographic works
- Pictorial and graphical works
- Audiovisual works
- Sound recordings
- Architectural works
- Computer programs

Copyright protection is granted immediately with the creation of a work. No registration is required.

Duration of protection? Copyrights are divided into moral rights and economic rights. Protection of moral rights is perpetual. Economic rights are for the lifetime of the creator and for 50 years after his or her death. However, economic rights in pseudonymous or anonymous works, works authored by a juristic person (e.g. a company or foundation), photographic and audiovisual works, sound recordings, and performances are for 50 years from the time of public release.

Trade Secrets

What is protectable? In Taiwan, the Trade Secret Act (TSA) is the main legislation governing the protection of trade secrets, including civil remedies and criminal sanctions related. Trade secrets can be any method, technology, process, formula, program, design, or other information, including technical information and commercial information that may be applied in the course of production, sales, or business operations. Trade secrets must have commercial value, must be kept confidential, and reasonable measures to maintain secrecy must be implemented.

If any trade secrets are involved in litigation, protective orders, non-public hearings, special rules of docketing and file review, and other mechanism to are available to prevent the trade secrets from being disclosed.

DATA PROTECTION/PRIVACY

In Taiwan, data protection is primarily governed by the Personal Data Protection Act (PDPA) which regulates the use, collection and processing personal information (PI). The collection of sensitive data, which includes a person's health records, genetic information, sexual history and criminal history, is subject to stricter restrictions.

The PDPA does not expressly cite any foreign legislation. However, the drafters of the PDPA did consider the provisions of EU Directive 95/46/EC (the Data Protection Directive, which was later replaced by GDPR), the OECD (Organization for Economic Cooperation and Development) Guidelines and APEC's (Asia-Pacific Economic Cooperation) privacy framework when drafting the PDPA.

Further, in response to the EU's enforcement of the GDPR, Taiwan's National Development Council, a policy and planning agency affiliated with the Executive Yuan, established the Personal Data Protection Office (the Office) in response to the implementation of the GDPR and to ensure coherent enforcement of the PDPA. The Office is mainly responsible for coordinating all matters relating to the GDPR. It has also initiated "adequacy talks" with the EU with a view to obtaining an adequacy decision regarding the GDPR requirements. In addition, the Office works to ensuring consistent compliance with and enforcement of the PDPA by all ministries.

A breach of the obligations imposed by the PDPA may result in liabilities, civil and criminal, as well as administrative penalties and orders. An administrative agency with proper jurisdiction over a breach can impose a cease-and desist order on the breaching entity that compels the breaching entity to immediately cease collecting, processing and using the relevant PI. The agency can also order the breaching entity to delete PI possessed by the breaching entity. Unlawfully collected PI can be confiscated or ordered to be destroyed. The agency may also publish the facts of a data breach and the name of the breaching entity and its representative. Administrative penalties may be a fine imposed on the breaching entity and its representative of between NT$20,000 and NT$500,000. A natural person responsible for the breach will also face criminal penalties including imprisonment for up to 5 years and a fine of up to NT$1 million depending on whether the person had requisite culpable intent.

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STARTUP LEGAL PLAYBOOK

ARTIFICIAL INTELLIGENCE

Taiwan is working on a specific regime for AI regulation. The government is drafting an act (i.e. AI Basic Act) to govern artificial intelligence (AI) and expects to have it ready for the legislature in 2024. The draft of this Act has two main objectives: (1) To define the role of AI in national policies and to create a development program that involves the central government, the industry, and the academia. The program will focus on fostering AI research and development, supporting industrial AI, building an AI technology application platform, and creating an AI industry ecosystem. (2) To develop AI in a responsible and ethical manner, considering its impact on public interests. The Act will establish appropriate standards and principles for AI development, aligned with the needs and expectations of the industry and the academia. The Act will also promote public awareness and trust in AI, and set up basic ethical guidelines for AI development. This draft act would cover the legal definition of AI, privacy protections, data governance, risk controls, and ethical principles related to AI. It would also contain provisions on the promotion of an AI industry and AI-application compliance and legality.

Taiwan has been investing in AI and is seeking to develop a world-leading AI on device solution and sound ecosystem that creates a niche market and become an important partner in the value chain of a global intelligent system. The government has pledged to invest in incentives to bring foreign investment to the island and support the advancement of new technology opportunities for Taiwan. As for the start-up scene in Taiwan, it is worth noting that AI is one of the key innovation drivers. There are numerous funding programs available for AI-based business models in Taiwan.

EMPLOYEES/CONTRACTORS

General: The primary law governing employment relationships in Taiwan is the Taiwan Labor Standards Act (LSA), which mandatorily regulates almost all employer–employee relationships and prevails regardless of governing law clause in the employment contracts. The LSA establishes the minimum requirements for the terms and conditions of employment that must be provided by an employer.

Work Made for Hire: Under Taiwan's Copyright Law, in the absence of an agreement, a creation made by an employee in the course of their employment belongs to the employer. To avoid unnecessary disputes, best practice in Taiwan is to ensure that employment agreements have clear arrangements on the ownership and assignment of intellectual properties.

Termination: An employment agreement can be terminated based on the employer and the employee's mutual consent. Without such a consent, an employer can only unilaterally terminate employment relationship under specific circumstances listed in the LSA. In other words, employment is Taiwan is, in general, not at will. A prior notice of termination and severance pay are almost always required. The related legal requirements as well as employer's obligation to report termination to the competent authorities are detailed in the LSA. It is crucial to seek legal advice before initiating employment termination to ensure the termination complies with the LSA and to avoid disputes.

TAIWAN

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

The primary law governing consumer protection in Taiwan is the Consumer Protection Act, which regulates the protection of consumers' health and safety, standard contracts, online transactions, administrative supervision, resolution of consumer disputes, among others.

For product liability, the CPA imposes strict liability on business operators that engage in the designing, producing, manufacturing goods or providing services regardless of the business operators' intention or negligence. Product liability for damages can only be reduced, not exempted, by the court. Class actions are available, though rare in practice, under the CPA.

TERMS OF SERVICE

Online terms of service can possibly be deemed as a type of standard contract. For different types of sales or service, the relevant competent authorities respectively announce the Mandatory Provisions to be included in and Prohibitory Provisions of Standard Contract. For example, standard contracts for online retail transactions are regulated such that an online business is prohibited from using a standard contract to alter the products or terminating the contract unilaterally. Compliance review of online terms before releasing the terms is necessary.

WHAT ELSE?

Taiwan is a vibrant playground for startups and is open to pioneers and innovators. With well-educated talent, high-quality supply chains, relatively low living expenses and liberal visa policies for foreign entrepreneurs and professionals, Taiwan is friendly to emerging technology and business models. For startups involving Fintech, a sandbox is available. IP protection and legal enforcement in Taiwan are orderly and effective.

TURKEY

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TURKEY

LEGAL FOUNDATIONS

The legal system in Turkiye operates under a civil law framework, which is influenced by the European legal tradition meaning that the laws are primarily codified and supported by judicial decisions as precedents. The main source of law is the constitution and pursuant to the Turkish Constitution the legislative authority is vested in the Grand National Assembly with the authority to establish and abolish laws. International agreements approved by the Grand National Assembly, codified laws, as well as supplementary legal codes such as regulations, circulars, and communiqués constitute the primary legal sources. Decisions of the High Court of Appeal, the Council of State and the Regional Courts of Appeal as precedents enrich the sources of law in Turkiye.

Turkiye has a unitary legal system, which means that, unlike some other countries (i.e. the United States), Turkiye does not have a federal framework with several tiers of government and jurisdictional layers. Rather, it has a unitary state structure, in which the central government is the core of all legislative, executive and judicial authority.

CORPORATE STRUCTURES

There are various corporate structures that companies, especially startups, can take into account. The type of business, ownership preferences, ease of incorporation, liability protection and tax implications are some of the variables that may influence the choice of the corporate structure when establishing a presence in Turkiye.

The corporate structures are regulated under the Turkish Commercial Code **("TCC")**. The most preferred capital company types are Joint Stock Companies **("JSC")** and Limited Liability Companies **("LLC")**. While the JSC is a more intricate structure appropriate for larger companies or those aiming for an IPO, LLC is a more common structure providing its shareholders with a straightforward business structure. Both company types can be established with only one shareholder, although LLCs have a maximum shareholder limit of 50, while JSCs have to go public when they exceed 500 shareholders.

Moreover, corporate veil principle applies to both JSCs and LLCs, therefore their shareholders' liability is limited to their respective capital contributions. However, it should also be noted that board members of both JSCs and LLCs and shareholders of LLCs may be held personally accountable for public debts or taxes that are not recouped from the company.

It should also be mentioned that it is possible for companies to change their corporate structures after incorporation, i.e. LLC to JSC and vice versa.

Below are the key features, advantages and disadvantages of JSCs and LLCs under Turkish legal system:

CORPORATE STRUCTURES, CONT'D

Joint stock corporations

Key Features

- Can be established for any economic purpose and subject that are not prohibited specifically by law,
- Has a fixed capital divided into shares, and shareholders' liability is limited to the capital they have subscribed,
- Has an articles of association registered with the trade registry where its headquarter is located,
- Can be established with a sole shareholder, both real and legal persons can be shareholders,
- Shareholders may freely transfer their shares to others without approval of the general assembly in principle,
- JSCs are the only type of company that can be subject to an IPO and whose shares can be traded on the stock exchange,
- The minimum capital amount required for establishment is TRY 250,000 (recently updated as to be effective as of 01.01.2024),
  - At least ¼ of the shares subscribed in cash must be paid before registration, while the remaining amount must be paid within 24 months following the registration of the company.
- Can issue registered and bearer share certificates to represent its shares, and can also issue bonds and similar debt instruments.

Advantages

- Shareholders may freely transfer their shares to others without a need for formal procedures,
- JSCs are the only type of company that can be subject to an IPO and whose shares can be traded on the stock exchange
- Shareholders' liability is limited only to the capital amount they have subscribed

Disadvantages

- Higher minimum capital requirement
- At least ¼ of the shares subscribed in cash must be paid before registration
- Subject to more formalities and legal procedures and higher corporate governance requirements

Limited Liability Corporations

Key Features

- Can be established for any economic purpose and subject that are not prohibited specifically by law,
- Has a fixed capital divided into shares, and shareholders' liability is limited to the capital they have subscribed. However, the shareholders are liable for public debts of the company that could not be collected from the company in proportion to their capital subscriptions,
- Has an articles of association registered with the trade registry where its headquarter is located,
- Can be established with a sole shareholder, both real and legal persons can be shareholders, however, the number of shareholders cannot exceed 50,
- Transfer of shares is subject to the approval of the general assembly,
- The minimum capital amount required for establishment is TRY 50,000 (recently updated as to be effective as of 01.01.2024),
  - No upfront payment is required for the shares subscribed in cash and the capital amount must be paid within 24 months following the registration of the company.
- Bearer shares cannot be issued,
- Cannot be offered publicly.

Advantages

- Lower minimum capital requirement,
- No initial capital payment is required,
- Capital amount can be paid within 24 months following the registration of the company.
- Has fewer legal procedures to fulfill annually

Disadvantages

- The number of shareholders cannot exceed 50,
- The shareholders can be held liable for public debts of the company that could not be collected from the company in proportion to their capital subscriptions,
- Transfer of shares is subject to the approval of the general assembly and formal procedures before a notary public
- Bearer shares cannot be issued and cannot be subject to IPOs

CORPORATE STRUCTURES, CONT'D

Besides the feasible corporate structures to establish for start-ups might consider when looking to start its business are described above, start-ups should also carefully consider the legal procedures for terminating their business activities in advance. If start-ups decide to permanently cease their commercial activities in Turkiye, then the liquidation procedure must be initiated as outlined in the TCC. During the winding-up process, the legal entity will maintain its existence albeit with the addition of the term "in liquidation" prefixed to its tradename. Nevertheless, the duties and powers of the board of managers or general assembly will be restricted throughout the liquidation. This limitation implies that, the companies will not engage in any further commercial activity unless required by compulsory situations with the sole purpose of creating a better valuation of the current assets. It is also essential to be aware of involuntary dissolution procedures through court order and technical bankruptcy situations. The voluntary liquidation process normally takes around 1 – 1,5 years.

ENTERING THE COUNTRY

The geographical position of Turkiye offers a notable benefit for investor aiming to spread their operations across Europe, the Middle East and CIS countries. Additionally, Turkiye's open foreign investment policy, ensures equitable treatment for both local and foreign investors, instils confidence among the foreign investors. Turkiye actively engages in signing bilateral and multilateral agreements, creating a favourable environment for economic collaboration by outlining standards of treatment for investors and their investments. Furthermore, Turkiye's membership to the Customs Union since 1996 and its Free Trade Agreements signed with 27 countries provide unique opportunities for foreign investors.

Turkiye also offers a wide range of investment incentives, which increases foreign investors' interest in the country. Investors can benefit from a variety of investment schemes, such as general, regional, large-scale, or strategic investment schemes, depending on the type and extent of their planned investments. Foreign investors can profit greatly from these schemes, which include exemptions from paying VAT and customs duties, tax reductions, social security premium supports, income tax withholding allowance, support for interest rates, land allocation and VAT refund.

Typically, subject to some exceptions, most regulations do not require any Turkish participation in the capital or management of a foreign capital company. This means that a company can be established entirely with foreign capital, enabling foreign investors to make direct investments in Turkiye. Significantly, they are subject to equal treatment as domestic investors. As such, the incentives also apply to their investment arrangements, offering more flexibility when the investment structure is properly designed. Although, in practice, for the company's day-to-day activities engaging with Turkish nationals are always recommended.

Foreign Direct Investment Law, is the main foreign investment legislation in Turkiye, which was further liberalised with recent amendments. Foreign ownership is essentially unrestricted, and anybody or any entity, regardless of nationality or citizenship, is free to invest in Turkiye without any authorization or permission needs. Regardless of their ownership structure or the percentage of foreign investor engagement, legal entities established with foreign capital are treated as domestic companies under Turkish Law.

Pursuant to the Foreign Direct Investment Law, foreign investors are only required to notify the General Directorate for Incentives Implementation and Foreign Capital under the Ministry of Industry and Technology about the investment type, the amount of capital invested, and the shareholding structure. Additionally, they have to provide the Ministry with an annual report on their investment activities, which includes capital increases, share transfers and payments relating to such. The Electronic Incentive Application and Foreign Investment System (E-TUYS) is the electronic platform used for such reporting process.

Lastly, it is important to note that there are some restrictions on foreign investment in industries such as mining, insurance, banking, radio and television broadcasting, civil aviation, and financial advising. The main focus of these restrictions revolve around the requirement to establish a local investment entity in Turkiye which is controlled by Turkish nationals.

TURKEY

INTELLECTUAL PROPERTY

The following IP rights can be registered:

Trademarks

What is protectable? Any signs like words, figures, colors, numbers, sounds and the shape of goods or their packaging that are capable of distinguishing the goods or services and being represented on the register in a manner to reflect the clear and precise subject matter of the protection granted to its owner may be protected as trademark. The main piece of legislation regulating and governing trademarks is the Industrial Property Code no. 6769. In principle, trademark rights are acquired through registration. However, there are a few exceptions to this principle. Accordingly, signs that have acquired distinctiveness due to prior use, well-known trademarks within the framework of Article 6bis of the Paris Convention enjoy trademark protection regardless of registration. Similarly, genuine right ownership to a non-registered trademark or to another sign used in the course of commerce is a recognized status under Turkish law. Additionally, non-registered trademarks may be protected under the Turkish Commercial Code no. 6102 against unauthorized use or confusing similarity.

Where to apply? Applications for trademark registrations can be filed either before (i) the Turkish Patent and Trademark Office ("TÜRKPATENT") or (ii) the World Intellectual Property Organization (WIPO) under the Madrid System. The application for a national trademark is filed via EPATS Electronic Application System platform through:
https://epats.turkpatent.gov.tr/run/TP/EDEVLET/giris

If the applicant of the trademark is a foreign real person or a foreign legal entity, the application should be filed by an authorized trademark attorney duly registered for representation before TÜRKPATENT. Trademark applications are subject to initial ex officio examination of TÜRKPATENT conducted based on absolute grounds of refusal. If the application passes the ex officio examination, it is published in the Official Trademark Bulletin. Third parties are entitled to file opposition against the published trademark application for two months starting from the publication date. Oppositions are examined by the Trademark Directorate at the first instance and may be appealed before the Re-examination and Evaluation Board. In conclusion of the opposition proceedings if any, the trademark application is registered upon payment of the relevant fees.

Duration of protection? The protection commences from the date of application and remains valid for 10 years with the option for renewal every 10 years subject to payment of associated official fees.

Costs? Application fee for each of the first and second classes costs approximately EUR 45. Application fee of approximately EUR 48 are charged per additional classes from the third additional class onwards. Registration fee is approximately EUR 106.

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? Inventions in all fields of technology satisfying the criteria of being novel, involving an inventive step and being capable of industrial application may be protected through patent. According to the Industrial Property Code no. 6769, "novelty" refers to inventions that are not included in the current state of art, and inventions are deemed to contain "inventive step" if the invention is not obvious to the expert of the relevant field given the current state of art, and inventions are "applicable to industry" if they could be produced or used in any field of industry including agriculture. The categories exempted from patent protection are enshrined under the Industrial Property Law no. 6769 including but not limited to computer programs. Patent rights are acquired through registration.

Where to apply? A patent registration can be obtained either through (i) national application before TÜRKPATENT or (ii) international application procedures per European Patent Convention 1973 or the Patent Cooperation Treaty 1970. Application for patent registration is filed via EPATS Electronic Application System through https://epats.turkpatent.gov.tr/run/TP/EDEVLET/giris. If the applicant of the patent is a foreign real person or a foreign legal entity, the application should be filed by an authorized patent attorney duly registered for representation before TÜRKPATENT. A complete package of patent application includes (i) description defining the subject matter of the invention, (ii) claims, (iii) pictures referred in the description or claims and (iv)abstract. Applications are examined through several stages including formality check, search request, preparation of search report, publication, examination request and preparation of the examination report. If all these phases result in granting the patent by TÜRKPATENT, the decision of granting the patent is published on the Official Patent Bulletin. Third parties are entitled to file opposition against the decision of granting the patent within six months commencing from the publication of the decision.

Duration of protection? The term of protection is in any case a maximum of 20 years from application date and may not be extended.

Costs? Application costs for national patent is approximately EUR 10 and cost for drafting the patent certificate issuance fee upon the decision of granting the patent is approximately EUR 59.Fee for patent renewal increases each year and ranges from approximately EUR 58 for the second year to approximately EUR 300 for the twentieth year.

Employee invention and inventor bonus? Inventions developed by employees are classified in two categories; (i) service inventions, which are inventions made by the employee in the course of its employment relationship either while performing the task that it has been assigned to or largely based on the experience and activity of the company for which the employee is working, (ii) free inventions, which are inventions that do not fall into the service invention category. In principle, free inventions belong to the employee subject to the employee's obligation to inform the employer and employee's obligation to make an offer to the employer under certain circumstances. On the other hand, employer can claim partial or total ownership of a service invention by notifying the employee in writing. If the employer claims total ownership, all rights to the invention pass to the employer on the notification of the employee. If the employer claims partial ownership, the rights to the invention partially pass to the employer on the notification of the employee, and the remaining part of the invention becomes a free invention as a rule. In both cases, the employee is entitled to reasonable compensation from the employer as inventor bonus in consideration of the employer's benefit in exploiting the subject invention.

INTELLECTUAL PROPERTY, CONT'D

Designs

What is protectable? Design refers to the outer appearance of a product or its ornamentation. Designs are granted protection provided that they are novel and have an individual character. A design is protected as a registered design if registered in accordance with the provisions of the Industrial Property Law no. 6769 and a design is protected as a non-registered design if it is presented to the public for the first time in Türkiye. If a design that is identical to the design for which protection is sought has not been presented to the public in any part of the world prior to the subject design, it is deemed "novel". If the overall impression that the design for which protection is sought leaves on informed consumer differs from any other design presented to the public prior to the subject design leaves, it is accepted to "have an individual character". Design owner is entitled to exercise its rights arising from the Industrial Property Law no.6769 against the designs that do not have an individual character comparing to its own design. The general structure of the Industrial Property Law no. 6769 makes a distinction between the registered and non-registered designs and confers a stronger layer of protection to the former.

Where to apply? Application for national design registrations are filed before TÜRKPATENT. As Türkiye is party to Hague System, intellectual design applications could be made through Hague System. Design applications are filed via EPATS Electronic Application System through: https://epats.turkpatent.gov.tr/run/TP/EDEVLET/giris. If the applicant of the design is a foreign real person or a foreign legal entity, the application should be filed by an authorized attorney duly registered for representation before TÜRKPATENT. The Office reviews the design application in terms of formal requirements and novelty criteria and decides on its publication in the Official Design Bulletin should the subject design passes the initial examination. Third parties may file opposition against the design registrations within three months starting from their publication. Depending on the result of the opposition proceedings, design is officially registered and then certificate of design registration may be issued.

Duration of protection? The term of protection is five years starting from the filing date and may be renewed five times for another five year-long period upon payment of the renewal fee. The maximum term of protection is 25 years.

Costs? Application fee costs approximately EUR 33. An additional fee of EUR 11 per additional design application is applicable. Renewal fee costs around EUR 104.

Utility Model

What is protectable? Utility models are granted for inventions which are novel and capable of industrial application. The essence of utility model protection is generally similar to patent protection, however, they differ from each other at certain points. For instance, inventive step required for patentability is not required for utility models. Utility models are acquired through registration.

Where to apply? The authority for registration of utility model is TÜRKPATENT. The application and registration procedure for patent are generally applicable for utility models although two procedures are not identical to each other. (Please refer to the above explanations with respect to application for patent to understand the general framework).

Duration of protection? In contrast to patents, the term of protection is valid only for 10 years and may not be extended.

Costs? Application fee for utility model is approximately EUR 10. Fee for drafting the utility model certificate issuance fee upon the decision of granting the utility model is approximately EUR 59. Fee for utility model renewal increases each year and ranges from approximately EUR 52 for the second year to approximately EUR 101 for the tenth year.

INTELLECTUAL PROPERTY, CONT'D

Domain Names

What is protectable? Names identifying the Internet protocol address used to determine the address of computers or Internet sites on the Internet are protected as domain names under Turkish law. Domain names are subject to registration.

Where to apply? Based on the recent amendments of Turkish law, management authority for ".tr" domain names is assigned to Information Technologies and Communication Authority. For managing the ".tr" domain names a platform named ".tr Network Information System" ("TRABIS") was established. The official website of TRABIS is https://www.trabis.gov.tr/ Allocation of Country Code Top Level Domain Names (ccTLD) is carried out with the "first come, first served" principle, without any documents and in the order of application time. In the past, it was required to have a trademark application / registration or registered trade name for registering ".tr" domain names. Application proceedings are conducted through intermediary entities authorized by Information Technologies and Communication Authority as listed at the following link: https://www.trabis.gov.tr/page/2. The dispute resolution for ".tr" domain names is managed by Dispute Resolution Service Providers authorized by and accredited to TRABIS. The legal grounds are aligned with ICANN's Uniform Domain Name Dispute Resolution Policy.

Duration of protection? The domain name is allocated for a minimum of one and a maximum of five years at a time. The use of the domain name for which the renewal process is not completed until the end of the allocation period is suspended for two months. Within this period, the domain name allocation process is renewed upon the application of the domain name owner. The allocation period after renewal cannot exceed five years.

The following IP rights are not subject to registration:

Copyright

What is protectable? Intellectual and artistic works bearing the characteristics and originality of the author being classified as a work of science and literature, musical work, fine arts or cinematographic work pursuant to the Law on Intellectual and Artistic Works no. 5846 are granted copyright protection. There are sub-titles within each category that provide more extensive lists of copyrightable works. Computer software and databases are also subject to copyright protection, provided that they are original pieces of work, which reflect the characteristics and originality of the author. Copyright protection is automatically acquired upon creation of the work meaning that there is no registration system that materially creates the right. However, there is a compulsory registration requirement for cinematographic works, musical works and computer games for the purposes of exploitation of rights and facilitation proof of ownership with no purpose of creating any rights. It is also possible to optionally register other types of works. The authority in charge of compulsory and optional registration of copyright is the General Directorate of Cinema and Copyrights under the auspices of the Ministry of Culture and Tourism.

Duration of protection? Copyright protection starts from the first communication of the work to the public and lasts for 70 years after the author's death.

Exploitation of copyright protected work? Copyright owners enjoy economic and moral rights to their copyrighted works. Economic rights vested in copyright owners are right of adaptation, right of reproduction, right of distribution, right of performance, right of communication the work to the public by devices enabling the transmission of signs, sounds and images. Moral rights vested in copyright owners are right to disclose the work to the public, right of attribution being named as the author, right to the integrity of the work enabling author to prohibit unauthorized modification of the work. The copyright owner may assign its economic rights to third parties. Such assignment agreement must be in written form and specifically list the assigned rights. Although there is no notarization requirement for satisfying the written form requirement form, it is recommended to legalize such agreements before a notary public. On the other hand, the copyright owner cannot assign or waive its moral rights to the work, but it can license the right to use the moral rights. If a work is created by an employee during the execution of its duties, the employer is the legal owner of the right to exercise the financial rights over such work although not the owner of the financial rights per se. Due to the strict regulation of copyrights in Türkiye, it is generally advisable to execute separate agreements to assign the economic rights once the work comes into existence.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protectable? Trade secrets are generally accepted as confidential commercial information that has a commercial value. Therefore, information, documents, models, database, codes, algorithms, know-how and other confidential knowledge with commercial value to its owner and protected with measures against disclosure could be protected as trade secret. While there is no specific piece of legislation particularly regulating trade secrets under Turkish law, trade secrets are recognized and conferred a certain level of protection. There is no specific regulation for trade secrets in Türkiye, therefore, trade secrets may be protected through means of general laws. Particularly, unfair competition rules under Turkish Commercial Code are applicable for protection of trade secrets especially against their unauthorized use and disclosure. Depending on the nature of unauthorized use (for example, the disclosure of confidential information by a former employee), there may be different legal grounds under which the owner can claim protection, including criminal, employment, and commercial law. As protection of trade secret is not extensively established by law, it is preferable to protect trade secrets through clear contractual terms to the extent business relationship of contracting parties allows. There is no official requirement for registration of trade secrets.

Duration of protection? Protection granted for trade secrets is not limited to a certain period of time. As long as appropriate measures are taken and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

Legislative Framework
The main source of rules for protection of personal data in Turkiye is the Law on the Protection of Personal Data numbered 6698 ("LPPD") which entered into force in 2016. LPPD is prepared based on EU Directive 95/46/EC on Data Protection, therefore it was a step towards harmonization with EU legislation on protection of personal data and it continues to be inspired by the provisions of the European General Data Protection Regulation ("GDPR") and the decisions of European data protection authorities. There is also a substantial case law being developed by the decisions of the Personal Data Protection Board ("Board") which is a body of the Personal Data Protection Authority ("Authority") that has the authority to oversee the regime in Turkiye.

Who Does It Apply to
The LPPD's provisions apply to data controllers that handle the processing and transfer of personal data, while placing shared liability and responsibility on both parties in situations when third-party data processors for processing and/or transfer of personal data for putting in place the necessary and adequate administrative and technical measures required to protect personal data and stop unlawful access to or processing of it.

It should also be noted that LPPD applies not only to data controllers in Turkiye, but also data controllers not residing in Turkiye who targets data subjects and process personal data of data subjects in Turkiye. Therefore, even if a company not residing in Turkiye provides goods or services to individuals in Turkiye LPPD shall apply.

Legal Grounds for Processing
Similar to the European legislation, pursuant to the LPPD, the personal data can be processed based on the following legal grounds; i) consent, ii) explicitly stipulated by law, iii) processing is mandatory for the protection of life or to prevent a physical injury in cases where the person cannot express consent or whose consent is legally invalid, iv) performance or establishment of a contract, v) required for data controller to fulfil its legal obligations, vi) the personal data was made public by the data subject, vii) processing is mandatory for establishment, exercise, or protection of certain rights,viii) legitimate interest of the data controller.

Categories of Personal Data
LPPD also divides personal data into two categories, being sensitive data (i.e. health, sex, race, ethnic data etc.) and general data. Personal data relating to race, ethnic origin, political opinions, philosophical beliefs, religion, sect or other beliefs, appearance and dress, membership of associations, foundations or trade unions, health, sexual life, criminal convictions and security measures, and biometric and genetic data are listed as sensitive personal data under the numerus clausus principle.

Processing of sensitive data requires a higher level of diligence as in most of the cases legal grounds for processing is very limited and consent of the data subject may constitute the only legal ground for processing. It should also be mentioned that sensitive personal data relating to health or sexual data can only be processed by persons under an obligation of confidentiality or by authorized institutions in the absence of data subject's consent.

DATA PROTECTION/PRIVACY, CONT'D

Qualities of Consent
With regards to the qualities of consent in relation to data processing activities that is sought under the Turkish data protection law is that consent must be explicit and related to a specified issue, declared by free will and by being fully informed beforehand. Therefore, blank consent methods or opt-out methods or implied consent are not accepted data processing practices under the Turkish legislation.

Transfer and International Transfer of Personal Data
Transfer of personal data and especially data transfer abroad have been a longstanding bottleneck in Turkiye's personal data practice. Pursuant to LPPD, the personal data may be transferred to third parties if the data subject's consent is obtained or if legal grounds listed under LPPD are present. It is stated under the LPPD that the destination foreign country where the data will be transferred to must have "sufficient protection" in place to be able to conduct data transfer abroad based on legal grounds other than explicit consent. Pursuant to LPPD the Authority is mandated to determine and publish a list of safe countries for which consent of data subjects will not be required for data transfers. However, as the Authority announced to prepare the list based on reciprocity, no foreign country has been announced to be on such list as of today, creating the bottleneck that personal data can only be transferred abroad with the consent of data subjects. There are other methods of transferring data without consents, such as executing a commitment and obtaining a permit from the Board, or submitting Binding Corporate Rules for multinational group companies etc. In practice, it is highly anticipated that measures will be taken to mitigate the impact of such bottleneck in international data transfers in Turkiye. Article 9 of the LPPD which is pertaining to the international transfer of personal data is planned and announced to be amended in the near future as part of the proposed amendments to the LPPD that the Board has communicated with public in order to further harmonize the personal data legislation in Turkiye with the European legislation and practices. With such amendments the practitioners expect and hope that the bottleneck in international data transfer practices will be resolved and consent will not be the only proper instrument for transferring data abroad any longer.

Data Controllers' Registry (VERBIS) Obligation
Data Controllers residing in Turkiye are obliged to register with VERBIS under certain conditions, and data controllers residing abroad must also register with VERBIS if they process personal data of data subjects in Turkiye even if they do not have a presence in Turkiye. For this purpose, the controllers are obliged to prepare data inventory and data retention policy and then get an account at VERBIS and fill in the VERBIS questionnaire. The data inventory is something very similar to Article 30 of the GDPR and VERBIS questionnaire is a very detailed list of questions regarding the same. Foreign data controllers are obliged to appoint a contact person who must be either a Turkish legal or real person.

Registration obligation of foreign data controllers to VERBIS is regulated with the Regulation on Data Controllers' Registry which was published on 31.12.2017 in the Official Gazette. According to this Regulation, before registering with VERBİS, all data controllers located abroad need to appoint a data controller representative. In other words, if a foreign data controller targets Turkish data subjects in Turkiye and act as data controller in Turkiye, they must be registered with VERBIS and appoint a data controller representative. The representative must be either a Turkish legal entity or real person having Turkish citizenship. The representative must have the authority to represent the data controller at least for the following matters; i) to receive or accept the notifications or correspondence sent by the Authority on behalf of the data controller, ii) to forward the requests made by the Authority to the data controller and to forward the data controller's answers to the Authority, iii) to receive the applications of data subjects on behalf of the data controller and forward the applications of data subjects to the data controller, iv) to forward the answer of the data controller to the data and v) to do the necessary work regarding VERBIS on behalf of the data controller.

Planned Amendments in Near Future
The Board has drafted suggested amendments to the legislation that include revisions to specific controversial provisions. The relevant institutions and organizations have received these suggestions for review. Article 6 (which regulates the legal grounds for processing sensitive personal data) and Article 9 (which controls the transfer of personal data overseas) are the articles that are intended to be amended. The upcoming amendments will increase the legal grounds for processing sensitive personal data, but they have not yet been put into effect. However, it's crucial to note that the legal justifications are still limited compared the GDPR's data processing requirements, notwithstanding these improvements. With amendments to the Article 9 of the LPPD which is pertaining to the international transfer of personal data the practitioners expect and hope that the bottleneck in international data transfer practices will be resolved and consent will not be the only proper instrument for transferring data abroad any longer.

ARTIFICIAL INTELLIGENCE

There have not been any laws enacted or comprehensive judgements rendered on Artificial Intelligence in Turkiye, therefore there is no specific regime for AI regulation yet and there is no planned implementation of a national regime for AI as of yet. That being said, Turkiye is expected to follow EU legislations for this matter as well.

Turkish Civil Code regulates both natural and legal persons. According to the Code, every individual has the capacity to exercise rights, and all persons are equal in terms of their rights and obligations within the legal system. The Code also regulates the capacity to act, and, accordingly, a person who has the capacity to act can acquire rights and incur debts through their actions. On the other hand, legal entities are subject to all rights and obligations other than those that are inherently related to human beings. Legal entities acquire the capacity to act by having the necessary organs. As for artificial intelligence, it is under debate as to which of these two personality types it falls under or whether it should be considered as a separate type.

Although there have not been any laws enacted or comprehensive judgements rendered on Artificial Intelligence in Turkiye yet, Turkish doctrine considers it possible for artificial intelligence to be considered as a legal person or an "enslaved person" as in Roman law and to be regulated within this scope whereas some argue that Artificial Intelligence should be considered a legal person.

Also the general rules for data protection and copyright law shall apply for AI specific cases. As for copyright matters the general rule appears to be that an AI programme cannot have rights to the works it creates and that only human creativity can be protected within the framework of copyright protection. The basis of the problems discussed in Turkiye regarding the inventorship of artificial intelligence lies in the determination of the legal status of the AI and the introduction of special legal regulations and gaining precedence on this issue. As for data protection aspect, AI based applications must provide clear and transparent information about their data processing activities to the data subject and must ensure necessary steps to protect data subjects' personal data in order to be in conformity with the LPPD in Turkiye. Moreover, the data protection authorities are expected to audit such AI system to ensure they operate in conformity with the legislation.

On a last note, the Article 11 of the LPPD, data subjects are granted a right to object to occurrence of a result to the detriment of the person by analyzing the personal data processed exclusively through automated systems. Therefore, if the results produced through autonomous decision making system are to the detriment of the data subject, the data subject shall have a right to object to it. In addition, the Board has issued recommendations on personal data protection in the field of artificial intelligence. Accordingly, products and services should be designed to ensure that individuals are not subjected to a decision that will affect them based on automated processing without taking into account their views exclusively. To sum up, the individual's right to object should be taken into account in automated decision making processes related to AI technologies.

EMPLOYEES/CONTRACTORS

Under Turkish law, a person working based on a dependency principle would qualify as an employee, and the counterparty undertaking to pay salary or wage shall qualify as an employer.

Any salaries and other benefits paid to employees should be reflected to the payroll, and the employers are obliged to pay social security contributions on behalf of the employees to the Turkish Social Security Institution ("SSI"), as well as any related taxes. However, these payments cannot be made unless through a Turkish establishment (or branch/representation office) based in here.

Self-employment (e.g. as a contractor or freelancer) is unregulated under Turkish law. In this regard, there is not a specific set of rules providing the conditions of being a contractor serving a company. Therefore, there is always a risk that any contractors may be deemed an employee by Turkish labour courts.

Employment Contracts
Save for some certain type of employment contracts, Turkish law does not require a written contract to be executed between the parties and only requires employers to provide a basic document setting out the employment conditions to the employee. However, it is recommended to execute written contracts for evidential purposes.

Different types of employment contracts under the Turkish Labour Act ("TLA") are as follows:
- Indefinite terms and fixed-term contracts.
- Full-time - part-time contracts.
- Temporary contracts.
- On-call, team contracts.
- Remote working contracts.

Below is some further information on indefinite terms and fixed-term contracts and remote working contracts as these are most common types for foreign entities:

Fixed term and Indefinite Term Contracts: Under the TLA, the main type of employment contract is indefinite term contract. There must be an objective reason such as i) existence of a fixed-term work by its nature, ii) presence of a specific work to be completed, or iii) emergence of a certain event, in order to conclude a fixed-term employment contract, otherwise it will be construed as an indefinite term contract from the commencement of the employment relationship. Existence of objective reasons are also sought in renewal of fixed term contracts; otherwise, successive fixed term contracts are not allowed. Fixed term contracts must be executed in writing.

Remote Working Contracts: Remote working contracts must be executed in writing, and they must include the i) definition, method, term and place of work, ii) salary and payment, iii) work tools, equipment and protection obligation concerning them, iv) communication between the employer and the employee, and v) special and general conditions of employment.

Probationary Period: The maximum duration of probation is 2 months, and it must be agreed explicitly in the employment contract to apply. During this time, either party can terminate the employment relationship without notice, compensation and without any reasonable ground for termination.

Minimum Terms and Conditions of Employment

Maximum Working Day and Overtime
The maximum working day is 11 hours, and maximum working week cannot exceed 45 hours. If the employee works more than 45 hours per week, salary for each hour of overtime worked should be compensated at 1.5 times the employee's normal hourly rate (i.e. applying a 1-1.5 ratio). In any case, employees cannot work for more than 11 hours in any day inclusive of overtime.

According to the TLA, the parties can agree under the employment contract that overtime work up to 270 hours per year is included in salary. This is also general practice in Turkiye.

EMPLOYEES/CONTRACTORS, CONT'D

Annual Paid Leave
The employees will be granted paid annual holiday if they have worked for at least one year as follows:

Length of Service & Holiday Entitlement
1-5 Years (Inclusive) = 14 Working Days
5-15 Years (Includive) = 20 Working Days
15+ Years = 26 Working Days

Parties can extend holiday periods under the employment contract.

Different Types of Leave
Different types of leave provided under TLA are as follows:

- Maternity leave,
- Paternity leave,
- Adoption leave,
- Parental leave,
- Sick leave,
- Marriage Leave,
- Bereavement leave.

Termination

Termination Procedure
The TLA provides protection to employees in particular cases ("job security provisions"). If an employee has been working for at least 6 months at a workplace having 30 or more employees based on an indefinite employment contract, the employer can only terminate the employment contract by relying on a valid reason or just ground. According to the Court of Cassation precedents, foreign affiliates of global companies are considered in determining the total number of employees in these workplaces.

Valid reasons can be related to the capability or behaviour of an employee, or the requirements of the enterprise, workplace or the work.

Termination Indemnities
Before terminating the employment agreement relying on poor performance or misbehaviours, the employee must be informed of his/her poor performance or misbehaviours and the employee's written defense must be taken. The employer should clearly explain the reasons for the termination in the termination letter. The termination letter should be signed by representative(s) of the employer who are authorized to terminate employment contracts and also it must be counter-signed by the employee.

In brief, termination indemnities are as follows:

Notice Periods & Notice Payment: In principle, employees must be granted a notice period before the termination. However, Turkish law permits employers to terminate the contracts by making a payment in lieu of notice. In this respect, the TLA sets out the minimum notice periods to be given by both employers and employees as follows:

Length of Service & Notice Period
Less than 6 Months = 2 Weeks
6 to 18 Months = 4 Weeks
18 to 36 Months = 6 Weeks
Over 36 Months = 8 Weeks

Severance Payment: Except for the employee's resignation or the employer's termination of the employment contract for just cause, employees working based on permanent employment contracts and over one year's service are entitled to receive a severance payment on the termination of their employment.

The severance pay is calculated by multiplying the years of service by one month's average total remuneration (i.e. salary and benefits such as bonus). However, severance pay will be capped at ₺35,058.58 (subject to adjustments) per year of service (rates applicable between 1 January 2024 and 30 June 2024). Severance payment for a partial year is calculated on a pro rata basis.

Outstanding Holiday Pay: Employees are entitled to receive a sum equal to any accrued holiday which remains outstanding as at the termination date. This is calculated on the basis of 1/365th of annual salary per day of accrued holiday.

Work for Hire
Turkish law does not have a specific rule on "work for hire". However, it regulates temporary employees. Temporary employees are defined as employees who are employed by an authorized private employment agency to work temporarily for a hirer, and the employees allocated to another workplace within the same group companies. Employment of these employees is subject to certain time restrictions depending on the occasion.

EMPLOYEES/CONTRACTORS, CONT'D

Temporary employees can be hired through an authorized private employment agency with regard to certain occasions such as:

- Provision of housekeeping services,
- Works falling outside those performed as part of the daily routine and performed intermittently,
- Works that need to be urgently performed for the sake of occupational health and safety or in cases of force majeure significantly affecting the manufacturing,
- In cases where the average capacity of good manufacturing and service provision of the undertaking increases to an unprecedented degree necessitating the establishment of a temporary employment relationship,
- In cases where the amount of the work increases periodically excluding seasonal work,
- In cases where an employee's employment contract is suspended during maternity leave, part-time work followed by maternity leave and military service, only for the period of suspension.

CONSUMER PROTECTION

In Turkiye, the central piece of legislation regarding consumer protection is the Law on the Protection of Consumers numbered 6502 **("CPL")** the purpose of which is to protect health, safety and economic interests of consumers, to compensate their damages, to raise awareness of consumers and to encourage consumers to take initiatives to protect their interests. Additional primary legislation that must be adhered to includes the Regulation on Distance Selling Contracts and Electronic Commerce Law.

Key highlights and obligations to take note of in light of the consumer protection legislation include the following;

- Contracts and information presented to consumers must be in at least twelve point font size, in a clear, simple and understandable manner.
- The provisions stipulated in the consumer contract established between the parties cannot be changed to the detriment of the consumer during the term of the contract.
- Unfair terms in contracts concluded with consumers are null and void.
- The sale of goods displayed in a shop window, on a shelf, in electronic media or in any other clearly visible place cannot be avoided unless a statement that the goods are not for sale is included. Similarly, providers may not refrain from providing services without a justifiable reason.
- Contracts established by using remote communication tools up to and including the moment of the conclusion of the contract between the parties within the framework of a system established for the distance marketing of goods or services, without the simultaneous physical presence of the seller or provider and the consumer are distance selling contracts. Purchases made on social media and text messages can be considered within the scope of distance contracts.
- The consumer must be informed in writing or by means of a permanent data storage device before the conclusion of the contract (making any payment) on certain matters regarding the distance contract.
- If there is no specific promised delivery time for purchases made over the internet or telephone, the seller must send the goods within thirty days at the latest. If the goods are not sent within this period, the consumer has the right to terminate the contract and receive all payments back with legal interest within fourteen days.
- The seller is responsible for loss and damage until the delivery of the goods to the consumer. If the consumer has requested the goods to be sent by a carrier other than the carrier determined by the seller, the seller is not responsible for any loss or damage that may occur from the delivery of the goods to the relevant carrier.

CONSUMER PROTECTION, CONT'D

Additionally the legislation with regards to consumer direct marketing should be paid attention to. Under Turkish law the commercial messages are regulated by the Regulation on Commercial Communication and Commercial Electronic Messages ("Regulation") and the Law on Regulation of Electronic Commerce ("Law"). According to the Regulation, sending commercial electronical messages is conditional on consent to be taken from the receiver of the message. Moreover, there is an online system in place that must be considered, called IYS (Message Management System) working under supervision of the Ministry of Trade with which message senders and message recipients are registered and consent are being managed. Pursuant to the Regulation, real or legal persons who provide commercial communication tools such as calls, messages, e-mails, etc. are referred to as service providers, and service providers are required to register themselves with IYS and upload the consents they obtained to IYS. On a last note, a sole opt-out approach or pre-selected tick box approach would not be accepted as consent and if according to the Regulation the recipient is not a merchant / tradesman the commercial electronical message that was sent without consent would constitute a violation of the Regulation and the Law.

TERMS OF SERVICE

Under Turkish Law, texts such as terms of service and general terms and conditions are the contractual provisions that the drafter prepares and presents to the other party in advance, alone, in order to be used in a large number of similar contracts in the future. However, general terms of service, i.e. contracts drafted by one of the parties and presented for signature without giving the other party the chance to make any amendments or negotiate the provisions, are valid only and legally binding in the presence of certain conditions, as in they are only valid and binding if both parties are willing to execute the agreement and the other party is not obliged to sign the agreement against his/her will. Moreover, pursuant to the consumer protection legislation, in the cases where the consumer cannot influence the content of the agreement due to the contact being prepared in advance and included as a standard contract, it is considered that such agreement was not negotiated with the consumer. Therefore, provisions of such agreements may be deemed unfair terms. Also, the consumer protection regulations must be adhered to. Terms of service should not provide lesser protection than the legislation and must not bring about disadvantages to the consumer.

Moreover, the other party must be informed in detail and separately of the provisions of the agreement. Another issue regarding the enforceability of terms of services presents itself in the burden of proof. They are only considered a prelude to evidence and must be proven with other instruments such as log records, e-mail correspondences, documents evidencing the service is procured etc.

In addition, pursuant to the legislation, in respect of some provisions the agreement must be prepared in writing to be valid and binding, for example, the provisions regarding the choice of jurisdiction and the application of the laws of another country will not be valid and binding unless made and signed in writing.

On the other hand, provisions of the data protection legislation should also be considered. It must be noted that consent of data subjects cannot be collected through the acceptance of terms of service. Moreover, the Personal Data Protection Board concluded that it is not possible to condition the service on consent of data subjects and that consent cannot be asserted by data controllers as a prerequisite for the performance of a service.

WHAT ELSE?

Compliance with the competition legislation in Turkey is of the essence for foreign investors, as digital platforms especially are being closely monitored by the authorities in Turkiye. Competition legislation in Turkey includes regulations that are in parallel with EU competition directives, and it should be mentioned that competition legislation provisions should be adhered to when entering into contractual relationships with distributors, partnerships or when acquiring business in Turkiye etc.

Additionally, Law numbered 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed through Such Publications ("Law") should be paid attention to. The purpose of this Law is to regulate the obligations and responsibilities of content providers, hosting providers, access providers and collective use providers, and the principles and procedures for combatting certain crimes committed on the internet through content, hosting and access providers. In general terms, a decision to block access to the relevant content or publication can be taken if the content causes the following situations; violation of personal rights, violation of the right to privacy, violation of the right to be forgotten on the internet, violation of laws and if it is deemed necessary for the protection of the right to life and the security of property, national security and public order. One of the highlights from the Law is regarding the obligation to appoint a representative for social network providers. Accordingly, a foreign-based social network provider with more than one million daily access is obliged to appoint at least one real or legal person as its representative in Turkey. The representative is obliged to fulfill the notification requirements sent by public authorities and to respond to applications to be made by persons within the scope of the Law and to ensure other obligations under the Law are fulfilled by the social network provider. With this regulation, it is aimed to ensure that social network providers based abroad implement the decisions to remove content and/or block access and respond effectively to requests regarding the violation of privacy and personal rights. Heavy administrative fines are foreseen under the Law for the violation of such obligations.

UGANDA

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LEGAL FOUNDATIONS

Uganda has a common law system. Historically, Uganda was colonized by the British and is a member of the Commonwealth. The 1995 Constitution of the Republic of Uganda is the supreme law of the land. It recognizes laws enacted by Parliament, International Treaties, and Customs/ Culture of the people of Uganda under Objective XXIV and Article 37.

The Judicature Act Cap. 13 recognizes, adopts, and preserves the right to observe or enforce existing customs that are not repugnant to Natural Justice, Equity, and good conscience. This means that the indigenous customs of the people of Uganda are enforceable under Customary Law.

The main sources of law in Uganda are Acts of Parliament, Case Law, ratified International Treaties, Equity, Customary Law and Natural Justice.

CORPORATE STRUCTURES

There are different corporate structures that a start-up may consider in Uganda. Below we endeavor to summarize these structures and detail the pros and cons of each structure:

Company

A company is a separate legal entity separate and distinct from its members. There are two (2) types of companies under Uganda's laws; private and public companies.

Types of Companies:
A public company is a company in which the transfer of shares is unlimited, and which has at least seven shareholders at the time of incorporation while a private company is a company where the transfer of shares and other securities is limited. The number of members in a private company is limited to one hundred, excluding those who are employed by the company or have been employed by the company in the past. Additionally, a private company prohibits any invitation to the public to subscribe for any shares or debentures in the company.

A Public Company usually invites the public to buy shares. However, in Uganda, the Securities Exchange Rules of 2021 require companies to meet certain conditions before they can be listed on the stock exchange. These conditions include: being a limited company with a minimum authorised share capital of **50,000** currency points, having net assets of **100,000** currency points before offering shares to the public, publishing audited financial statements for at least 5 years that comply with International Accounting Standards, and ensuring that none of the Directors have been declared bankrupt, among other requirements. The Mandate to implement these Rules is vested in the Uganda Securities Exchange Commission with oversight of the Capital Markets Authority.

CORPORATE STRUCTURES, CONT'D

In Uganda, a company can be either limited or unlimited depending on the liability of its members or shareholders. Private companies can be formed as either companies limited by shares or companies limited by guarantee. A company limited by guarantee is one where each member agrees to contribute to the company's assets if it is being wound up during their membership or within one year after they cease to be a member. Such a company is considered a non-profit making entity. On the other hand, a company limited by shares is a company wherein the members take up shares and are liable to the extent of their unpaid shares in the company. A company that is limited by shares is typically regarded as a for-profit organization.

A technology start-up (hereinafter referred to as "tech-startup") would consider incorporating a private company limited by shares on the basis that the intention is to generate profits in the long run.

In this case, the corporate structure would include the shareholders who appoint the Directors. The Directors are then authorized and mandated to appoint appropriate Management staff to oversee the day-to-day operations of the Company and report to the Board of Directors who exercise oversight.

Foreign Company:
A tech-start up may consider registering a branch in Uganda. This is considered a foreign company since its place of incorporation is outside Uganda. The registration process requires submission of certified incorporation documents and additional forms required under Uganda's Companies Act.

The pros of operating under the Company structure:

- A company is at law a separate person from its members or shareholders and Directors. This allows the owners of the tech-startup to competitively operate in the market.
- A company gives the business a legal identity. The tech start-up will be able to trade and obtain licenses in its name.
- A company can own and transfer property as a recognized legal person. The tech startup company will be able to own assets in its name.
- A company can sue and defend cases in its name as a legal person.
- A company can continue to exist long after its initial members and directors have expanded to other markets.
- The company can access credit from a financial institution in its name. The Tech startup will be able to access finances from financial institutions to run its operations.
- The company can access different opportunities such as tenders, some of which are usually limited to companies.
- A company creates different employment opportunities, a company requires skilled personnel to run its operations.

The cons of operating a company
A company must meet several legal and regulatory compliance requirements. To comply, the company should fulfill the following obligations: file tax returns with the Uganda Revenue Authority, file returns with the Uganda Registration Services Bureau, adhere to the Personal Data Protection Laws set by the Personal Data Protection Office, comply with the anti-money laundering laws set by the Financial Intelligence Authority, remit the employees' monthly contribution to the National Social Security fund, and meet other requirements from various institutions.

CORPORATE STRUCTURES, CONT'D

Partnerships:

A tech start-up may consider establishing a Partnership in Uganda. This may be a general partnership or a limited liability partnership. A general partnership is a relationship that subsists between or among persons, not exceeding twenty in number, who carry on a business in common with a view to making profits. A Limited Liability Partnership has a maximum of twenty partners. The partnership must have one or more general partners who will be responsible for all the debts and obligations of the partnership. Along with the general partners, there must be one or more limited liability partners who will contribute a specified amount of capital to the partnership and will not be liable for the debts or obligations of the partnership beyond the amount of capital they have contributed.

A Partnership is a recognized entity under the laws of Uganda though it does not have a separate legal identity and the partners are liable for the acts and omissions of the partnership.

The pros of operating a partnership

- The Partnership structure allows for collaborative establishment of a Firm or entity with minimal costs.
- A Partnership can obtain some key licenses in its name.
- A Partnership can operate an account with any Financial Institution and transact.
- A Partnership can apply for tenders and other business opportunities therefore there is still access to some business opportunities that are open for partnerships.

The cons of operating a partnership

- The Partnership cannot own and transfer property in its own name. Instead, the property is held by the partners in their personal capacity.
- A Partnership cannot sue or defend a suit in its name. Therefore, a matter against the Partnership is against the individual owners.
- The Partners in such an arrangement are personally liable for the debts, acts and omissions of the Partnership.
- Partnerships cannot list on the stock exchange.

Sole Proprietorship

This is the last consideration since Sole Proprietorships are registered as business names, though they are recognized in Uganda.

The pros of operating a sole proprietorship

- The business does not have a separate legal personality.
- The business can apply for a trade license in its name.
- The Business can apply for tenders and other business opportunities that are available for sole proprietorships.

The cons of operating a sole proprietorship

- The business is not a separate legal entity from its owners and the owners of the business are personally liable for the debts.
- The business cannot own property. The property would be owned by the owners of the property.
- The business cannot sue or defend a lawsuit. The owners of the business have the capacity to sue and defend a lawsuit.

Government efforts to promote investment in Uganda

The Government of Uganda promotes investment (Financial Direct Investment) in Uganda through the Uganda Investment Authority (UIA). The Government has put in place strategies to create a conducive environment for investment and these include; stable electricity, piped water, good transport infrastructure, and internet connectivity, incentives such as tax holidays, identification of priority sectors for investment, regional integration, and participation in investment promotion campaigns.

The tax holidays apply to companies and not any other legal business vehicle as discussed above. Therefore, it may be most prudent to consider the Company structure.

Registration or incorporation of a company in Uganda is now done at the Uganda Registration Services Bureau through the Online Business Registration System (OBRS).

UGANDA

ENTERING THE COUNTRY

A technology startup in Uganda needs to be aware of the investment climate, laws, and policies. The Ugandan investment climate is primarily governed by several laws and compliance requirements such as company incorporation, investment licensing, tax registration, immigration licensing such as work permits, trade licensing, registration with the National Information Technology Authority, registration with the National Environment Management Authority among others. The Ugandan market economy is predominantly youthful and an ideal investment destination for Technology startups. Below are the foreign investment rules or restrictions that an intending Investor needs to be mindful of.

Legal Framework
Foreign investment in Uganda is governed by a number of laws but primarily by the Investment Code Act (ICA) of 2019 which establishes the Uganda Investment Authority (UIA) and the Free Zones Act, 2014. The ICA requires a company intending to participate in or operate any investment activity in Uganda to be registered and apply for an investment license. The Act also stipulates that for one to qualify as a Foreign Investor, they must meet the Minimum Capital Requirement (MCR) which is capped at USD 250,000 (United States Dollars Two Hundred Fifty Thousand).

Once an investor has satisfied the MCR, such investor shall apply to the Uganda Investment Authority (UIA) for registration. The UIA shall upon proof and verification that the Investor meets the prerequisite requirements, issue an Investment Certificate within 48 hours. The requirements for registration of a foreign investor are; the company certificate of incorporation, business plan, environmental impact assessment certificate issued by the National Environmental Management Authority (NEMA), the projected number of employees, and a license granted by the business sector in which the investor intends to operate. In the case of a technology start up a certificate of compliance issued by the Uganda National Information Technology Authority (NITA – U).

Foreign Investors in Uganda are also eligible for incentives such as tax incentives and a grantee of incentives receives a certificate of the incentive granted. The Uganda Free Zones Authority established by the Free Zones Act, 2014 regulates free trade zones, offering tax advantages to Investors. Free zones have attracted significant capital investments in recent years.

For one a foreign investor to qualify for incentives, they must show; that the investor meets the MCR for investment, the investment exports a minimum of 80% of the goods produced, that the investor directly employs a minimum of 60% of Ugandan citizens, 70% of the raw materials used in production are sourced locally, and that the investor introduces advanced technology or upgrades indigenous technology in Uganda.

The Investment Code Act in Uganda imposes obligations on intending foreign investors. Foreign investors are obligated to; observe and adhere to the laws of Uganda, implement the proposals in accordance with the business plan submitted, properly keep financial and accounting records of the investment, keep data relating to operations and register with the tax administration and file timely returns even in case of entitlement to tax exemptions.

UGANDA

INTELLECTUAL PROPERTY

Intellectual property rights in Uganda are administered by different laws protecting the rights of authors. The law protects Copyright and Related rights, trademarks, trade secrets, industrial designs, patent/ utility models, and geographical indications. Uganda has an agenda to promote utilization of the intellectual property system, prescribed in the National Intellectual Property Policy, 2019 and provide protection for her authors, writers, performers, artists, programmers and other copyright holders. In January 2022, Uganda acceded to four Copyright Treaties: the Berne Convention for the Protection of Literary and Artistic Works (1886), The WIPO Copyright Treaty (WCT) (1996), The WIPO Performances and Phonograms Treaty (WPPT) (1996), and the Beijing Treaty on Audiovisual Performances (2012). Accession to these four Treaties follows an earlier ratification in respect to The Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled.

Copyright and Neighbouring rights; literary, scientific and artistic intellectual works are protected by the Copy right and Neighbouring Rights Act, 2006. The law protects the expressions of ideas of literal works.
An Author of works has several rights among which include reproduction rights, performing rights, adaptation rights, translation rights, assignment or licensing rights and moral rights, that is the right to be named as the author of the literal works.

Some of the protected works include but are not limited to articles, books, pamphlets, lectures, addresses, sermons, dramatic, dramatic-musical and musical works; audio-visual works and sound recording, including cinematographic works; choreographic works and pantomimes; computer programmes and electronic data and accompanying materials; works of drawing, painting, photography, architecture, lithography and tapestry; works of applied art, whether handicraft or produced on industrial scale, works of all types of designing; illustrations, sketches and three dimensional works; derivative work which by selection and arrangement of its content, constitute original work; databases, derivative works and works of a similar nature.

Duration of copyright protection; The law protects both economic and moral rights of an author in relation to protectable works. Economic rights are protected during the life of the author and fifty years after the death of the author. Economic rights of the author where the work is of joint authorship, are protected during the life of the last surviving author and fifty years after the death of the last surviving author.

Where the economic rights in a work are owned by a corporation or other body, the term of protection is fifty years from the date of the first publication of the work.

Where the work is published anonymously or under a pseudonym, the economic rights of the author are protected for a term of fifty years from the date of its first publication; but where before the expiration of the fifty years the identity of the author is known or is no longer in doubt the economic right is protected during the lifetime of the author and fifty years after the death of that author. In the case of audio-visual work, sound recording or broadcast, the economic rights of the author are protected until the expiration of fifty years commencing from the date of making the work or from the date the work is made available to the public with the consent of the author.

In the case of a computer program, the author's economic rights are protected for fifty years from the date the program is made available to the public.

In the case of photographic work, the economic rights of the author are protected for fifty years from the date of making the work.

The moral rights of an author exist in perpetuity whether the economic rights are still protected or not and that moral right is enforceable by the author or after death his or her successors.

INTELLECTUAL PROPERTY, CONT'D

Commissioned works; where a person creates works in the course of employment by another person; or on commission by another person or body; then in the absence of a contract to the contrary, the copyright in respect of that work vests in the employer or the person or body.

Where a person creates work under the direction or control of the Government or a prescribed international body, unless agreed otherwise, the copyright in respect of the works vests in the Government or the international body.

It is noteworthy that the right only vests where the works are created within the stipulated schedule of work of an employee. The moral rights in the works made at all times remain with the actual author of the work.

Registration; Although not mandatory, copyrightable works can be registered with the Uganda Registration Services Bureau (URSB).

Trademarks; Trademarks in Uganda are protected by the Trademarks Act, 2010 (TMA).

A trademark is defined as a distinctive sign that identifies certain goods or services produced or provided by an individual or a company from those of other enterprises. A Trademark may consist of any word, symbol, design, slogan, logo, sound, smell, colour, label, name, signature, letter, numeral or any combination of them and should be capable of being represented graphically.

The Trademark must be distinctive, non-descriptive and not likely to cause confusion. The Trademark owner has the exclusive rights to prevent others from using the same or confusingly similar mark.

Registration; Registration of a Trademark is mandatory with the Uganda Registration Services Bureau (URSB) at a cost of UGX 375,000 for a local company and USD 650 for a foreign company. However, these fees only apply where there is no opposition to registration of the mark or any alterations to the mark.

Distinctiveness; to register a Trademark to distinguish goods or services, the mark, symbol, or sign must be capable of distinguishing the goods with which the owner of the trademark is or may be connected, in the course of trade, from goods in the case of which no connection subsists.

Duration; the protection in the registration of trademarks is for a period of seven years and is renewable every ten years upon payment of a prescribed fee.

Principle of concurrent use; the law forbids the registration of identical or resembling trademarks. Concurrent use is when a similar mark is applied for similar goods or non-similar goods. The applicant must demonstrate either that he has been using the mark in good faith or that he was unaware of the prior registered trademark to establish honest concurrent use. Additionally, it is the applicant's responsibility to demonstrate that relevant customers connect their mark to their good or service.

The **TMA** vests power in a Registrar of trademarks or Court to permit the registration by more than one owner in the case of honest concurrent use.

Industrial Designs: An industrial design is defined as the ornamental or aesthetic aspect of a useful article (product). The design may consist of three-dimensional features, such as the shape or surface of an article, or two – dimensional features, such as patterns, lines or color.

An industrial design in simple terms is the appearance of a product, it's what makes a product attractive and appealing to a consumer's eye. Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewelry, and from electronic devices to textiles. Industrial designs may also apply to graphic symbols and graphical user interfaces (GUI)

Industrial design rights are granted for Five (5) years renewable for two more consecutive five-year term. Industrial design protection does not protect the technical features of the product.

For a design to be protected, it must be:
Novel- there is no identical design available to the public before the date of filing, or application for registration.
Original- must be independently created by designer, and not a copy or imitation of existing designs.

Industrial Designs Application Procedure
The applicant fills an application form, files a drawing or other graphical representation of the product, a description identifying features that constitute the design and receipt of payment of applicable fees.

Costs: For a local company the cost for registration is UGX 170,000 while a foreign compny pays USD 370.

INTELLECTUAL PROPERTY, CONT'D

Patents and Utility Models

Patents: A patent is an exclusive right granted by the Government for an invention. Protected inventions can range from simple things like a safety pin to sophisticated items like processing machines.

An invention that is Novel, Inventive and is industrially applicable may be granted using a Patent.

Duration of protection: 20 years. For the patent to remain in force the patent holder is required to pay an annual maintenance fee.

Requirements for protection.
Novelty – The invention/innovation should not be disclosed in any publication anywhere.
Inventive step - The new product or process should not be obvious to a person skilled in the art.
Industrial Application - The invention can be made or used in some kind of industry.

Rights of a Utility Model/Patent Holder; Decide who may or may not exploit the protected invention. Permit/ license the use of the invention on mutually agreed terms or sell the invention outright.

Utility Models:
A Utility Model is an exclusive right granted by the Government for an innovation/invention, which is either a product or process that offers a new technical solution to a problem. A product or process that is new and is useful can be protected using this system. Their term of protection is 10 years. Registration for a utility model is simple and fast and gives the holder the right to exclude others from exploiting the protected innovation/invention.

Utility Models provide protection for incremental improvements to products and processes, and it is very relevant for SMEs. For Example: Printing- roller cleaning system, fruit sorting machine, simple bottle cleaning machine etc.

Costs; Local Company – UGX 340,000 and Foreign Company – USD 450

Trade Secrets: Trade secrets in Uganda are governed by the Trade Secrets Protection Act, 2009. A trade secret is information including but not limited to a formula, pattern, compilation, program, method, technique, or process, or information contained or embodied in a product, device or mechanism which;

- is, or may be used in a trade or business;
- is not generally known in that trade or business;
- has economic value from not being generally known; and
- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Trade Secrets Act protects information lawfully within a holder's control from being disclosed to or acquired, or used by others without his or her consent, in a manner contrary to honest commercial practice.

The information being protected must;

- be a secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- have commercial value;

Dispute Resolution; Intellectual Property disputes in Uganda are raised to URSB (a Registrar) as a Quasi-Judicial body and can later proceed to Court. Uganda has a Commercial Court which is a specialised Court to handle Intellectual Property disputes.

UGANDA

DATA PROTECTION/PRIVACY

Data Protection and Privacy in Uganda is majorly governed by the Data Protection and Privacy Act, 2019 ("the Act") and Data Protection and Privacy Regulations, 2021 which operationalize provisions in Act. The Act protects the privacy of individuals and of personal data by regulating the collection and processing of personal information.

It is worth noting that Uganda adopted the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) in 2014. However, this convention has not been ratified, and therefore, it has no force of law.

The Act outlines seven (7) primary principles of data protection and privacy. These principles include being accountable to data subjects, legal and fair collection of data, retaining personal data for the authorized period, ensuring quality, transparency and participation of the data subject in the collection and processing of data, and observing the security of the data.

The National Information Technology Authority Act establishes the Authority along with a Data Protection Office and an institutional Data Protection Officer. The primary responsibility of the Authority is to ensure that data controllers, processors, and collectors comply with the principles outlined in the Act. The Data Protection Office is responsible for enforcing the Act, while the designated Data Protection Officer in each institution or company is in charge of ensuring compliance with the Act.

A technology startup would have the following obligations as a data collector, controller or processor;

Register with the data protection office in compliance with the law and annually renew registration. To register, a company must pay Ushs. 100,000 to Uganda Revenue Authority and fill out a form which is available online.

Establish a privacy governance structure: Establish and maintain a comprehensive data protection compliance program which should include:

Designating a Data Protection Officer (DPO) as guided by the Data Protection and Privacy Regulations. Publish the contact details of the DPO as part of the privacy notice/policy/statement. Developing an internal-facing Data Protection Policy.

Establishing reporting lines and regular communication between the Data Protection Officer, internal and external stakeholders.

Ensure personal data is processed lawfully: A data controller must have a lawful basis for collecting and processing personal data. Processing is lawful if one of the following applies:

Developing and implementing personal data policies on retention and data security breach response and management. This will enable the data controller to immediately notify the Personal Data Protection Office whenever data security breaches occur.

Data in Uganda is legally collected in the following ways; consent of the data subject, where the collection, processing is authorized or required by law or where data collection and processing is necessary for performance of public duty, performance of a contract, security purposes, prevention, detection, investigation or prosecution of an offence or breach of law and for medical purposes.

The law further prohibits the collection and processing of special information such as religious or philosophical beliefs, political opinions, sexual life, financial information.

Dispute Resolution: Disputes related to Data Protection and Privacy laws are handled initially by the Data Protection Office. In Uganda, data protection and privacy disputes are heard by a specialized court (High Court Civil Division).

UGANDA

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ARTIFICIAL INTELLIGENCE

There is no specific national law or regulation for AI in Uganda today. However, the general restrictions on Data Protection, Contractual and Tortious Liability may apply.

Data Protection: AI technologies require vast amounts of data to predict patterns and automate systems. This endless need for data may lead to the collection, processing and collection of vast amounts of data. This clearly brings AI start-ups which collect, process and control data in Uganda under the ambits of the Data Protection and Privacy Act 2019 (DPPA). Some of the legal obligations that arise under the DPPA, include among others;

- Registration with the Personal Data Protection Office
- Renewal of registration.
- Developing a complaint handling system.
- Submitting annual compliance reports.

Contractual and Tortious Liability; AI involves machines taking on tasks ordinarily done by humans. It's no doubt that humans can be held liable for their actions. However, can machines be held liable for their actions? Under Ugandan law, machines are not legal persons and cannot, therefore, sue or be sued. AI machines/systems ought to be products/services which are fit for purpose. Where an AI tool or system causes loss or damage to a consumer, the developer or controller of such an AI tool or system could be liable if they fail to show that reasonable care was applied while creating the tool or system. Therefore, startups which develop, control, sell and use AI related tools or services must exercise reasonable care to prevent loss or damage to consumers in order to avoid liability which may be attributed to them.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) Recommendations on the Ethics of Artificial Intelligence, adopted by Uganda in November 2021, which have never been ratified and therefore have no force of law also set standards on AI and as such are worth considering in order to ascertain which regulatory steps Uganda may consider ensuring that the design, development and application of AI is done in an ethical manner.

EMPLOYEES/CONTRACTORS

The primary legislation governing employment in Uganda is the Employment Act, 2006. It sets out the basic rights and obligations of both employers and employees. The other important Employment Legislation are; Worker's compensation Act Cap 225, Occupational Health and Safety Act 2006, Labour (Dispute and Arbitration) Act, Labour Unions Act 2006, National Social Security Fund Act Cap 222 as amended, Employment Regulations SI 219-1, Employment (Employment of Children) Regulations.

Employment contracts: The Employment Act, 2006 provides for the parameters of an Employment Contract and states that the Contract can either be written or oral. It is advisable to have written employment contracts in place, including details such as job descriptions, terms and conditions of employment, compensation, working hours, any applicable benefits or allowances, duration of employment and owner of commissioned works. The minimum age for hiring employees in Uganda is 16 years, and the law further provides for guidelines on how to handle employment of young persons.

Termination of employees: There are restrictions on the termination of employees in Uganda. Employers must follow the proper disciplinary procedures. According to current legal jurisprudence in Uganda, an employer can terminate an employment contract for a reason or no reason at all and where notice is not given, payment in lieu of notice suffices. Unfair termination can lead to legal consequences, so it is essential to comply with legal requirements.

Termination of employment notice periods: The Employment Act specifies the minimum notice period for termination of an Employment Contract based on the duration of employment. For example, an employee who has been with an employer for over six months must receive a minimum notice period of one month.

EMPLOYEES/CONTRACTORS, CONT'D

Severance pay: If an employee has been employed for more than one year, they are entitled to severance pay upon termination. The amount varies based on the employee's length of service and can range from a few weeks' salary to several months and is negotiable between employer and employee.

Statutory benefits: Employers are required to provide certain benefits to employees, including annual leave, sick leave, maternity leave, paternity leave, and public holidays. It is crucial to be aware of and comply with these statutory requirements.

Tax and social security obligations: Employers must deduct and remit income tax and social security contributions from an employee's salary. It is essential to understand the relevant tax and social security laws to ensure compliance.

Work permits: Foreign entities engaging employees or contractors in Uganda may need to obtain work permits for non-Ugandan employees, depending on the nature and duration of their work. It is advisable to consult with relevant immigration authorities to ensure compliance.

Dispute Resolution: At first instance, Uganda's Labour disputes are refered to a Labour Officer who has power to adjudicate, and/or refer the case to the Industrial Court, which is a specialised Court that handles Labour related disputes. Where there are any arrangements for settlement by conciliation or arbitration in a trade or industry, between a labour union one or more employers or between one or more labour unions and one or more employers' organisations, a Labour Officer must ensure that the parties follow the procedures for settling the dispute as laid out in the conciliation or arbitration agreement, which apply to the dispute.

Workers Compensation: An employer is liable to pay compensation for personal injury by accident arising out of and in the course of a worker's employment. The employer shall not be liable in respect of an injury which does not either; result in permanent incapacity; or incapacitate the worker for at least three consecutive days from earning full wages where he or she is employed.

Is there a work for hire regime in Uganda?
Work for hire covers the legal ownership of copyrighted material. When a business contracts an individual to create something valuable, and they give up the right to own the creation.

In Uganda, there is no specific statutory provision for a work for hire regime like in some other jurisdictions. The concept of work for hire typically involves an employer or client commissioning work from an independent contractor or employee, with the employer/client obtaining full ownership of the work.

Under Ugandan copyright law, the general principle is that the creator of a work is the original owner of the copyright. However, there are exceptions where the copyright ownership may be determined differently, such as in cases of employment. In the absence of a specific work for hire provision, the ownership of copyright in works created by employees or contractors in Uganda is typically governed by contract or agreement. Employers can establish ownership of the copyright through properly drafted employment contracts or agreements that assign ownership of works created within the scope of employment to the employer.

Foreign entities engaging employees or contractors in Uganda need to have clear contractual agreements that address the ownership and assignment of copyright in any works created during the period of engagement. This helps establish the intended ownership rights and can avoid potential disputes over copyright ownership in the future. Consulting with legal experts in Uganda to ensure compliance with copyright laws and drafting appropriate agreements is recommended.

UGANDA

CONSUMER PROTECTION

Currently, Uganda does not have a comprehensive legal regime on consumer protection that guarantees consumer rights and obligations. Generally, there is fragmentation in the legal and policy framework on aspects related to promotion of fair competition and consumer protection. A number of sub-sectors such as; financial services, communication, health, trade, and professional services have some laws that govern some aspects of competition; but these are absent in most sectors.

The Government of Uganda through the Ministry of Trade adopted a National Competition Policy which aims at addressing the fragmentation and gaps within the different sectors.

The Policy is guided by principles among which are; Creating equal opportunities for participation in trade, provision of an enabling environment for private sector growth, development through fair competition, and Consumer Protection, among others.

Uganda is a member state of the East African Community (EAC) and the Common Market for East and Southern Africa (COMESA). The East African Legislative Assembly enacted an East African Community Competition Act in 2006 and its Regulations in 2009. COMESA also enacted the Competition Rules and Regulations in 2004 to govern operations and conduct within the common market on competition-related matters. The Competition policies and regulations at these regional economic blocs apply to all Member State's economic activities and sectors having cross border effects.

The Information and Technology sub-sector is regulated by the National Information Technology Authority established under the National Information Technology Authority Act, 2009. Among other functions, the Authority is mandated to set standards in the sector, arbitrate disputes arising between suppliers of information technology and consumers and to protect and promote the interests of consumers or users of information technology services or solutions.

The Electronic Signatures Act, 2011, Electronic Transactions Act, 2011, and Computer Misuse Act, 2011 aim to protect critical national information infrastructure, encourage safe online business, and increase the country's competitiveness to attract foreign investment. The laws have provisions that regulate the unauthorized use or interception of computer services and disclosure of access code or private information, electronic fraud, cyber harassment, cyber stalking, and invasion of privacy.

In general, the information and technology industry, along with the telecommunications sector, has some provisions in place to protect consumers. However, these provisions do not guarantee that consumers will receive compensation or redress at the company level. If a consumer has a complaint, they must go through a court procedure to seek resolution. Additionally, the laws do not establish clear consumer rights or awareness mechanisms.

Dispute Resolution; Uganda has a specialized Court (Commercial Court) were disputes of a commercial nature arising out of uncompetitive practices by merchants or manufacturers are raised.

UGANDA

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TERMS OF SERVICE

Online transactions in Uganda are governed by the Electronic Transactions Act and the different regulations set by the National Information Technology Authority.

Online Terms of Service requirements: Service providers are required to provide detailed information regarding the product or service, their identity and contact details in their terms of service. The providers are also required to include timelines and options to allow consumers to check and correct their order and withdraw from the transaction before placing the order.

Where the requirements are not respected, consumers can cancel the transaction within 14 days. Following a cancellation, a consumer is obliged to return the goods or to stop using the service, and a seller is obliged to reimburse the consumer. Consumers may also complain to the competent regulator, NITA-U, where a service provider does not comply with these obligations. A consumer is also entitled to cancel a transaction after the receipt of the goods or the services within seven days, without the need to state any reason. In case of a cancellation, a consumer can only be charged for the direct costs of the return of the goods. The seller is ordered to reimburse the consumer within 30 days when a payment has already been made.

Finally, sellers/ service providers are required to deliver goods within 30 days following an order. Where a delivery cannot be made within 30 days, a consumer is entitled to cancel the transaction.

Territorial application
The Electronic Transactions Act indicates that it applies to any person, irrespective of the person's nationality or citizenship, or whether the person is inside or outside Uganda.

WHAT ELSE?

Persons intending to do business in Uganda must register for taxes with the Uganda Revenue Authority. The tax administration system is primarily online to ensure efficiency and effectiveness in tax collection. Tax residents are taxed on their worldwide income while non-tax residents are only taxed on incomes sourced from Uganda.

Uganda's tax regime is categorized into direct and indirect taxes. The direct taxes include Withholding Tax, Pay As Your Earn, Corporate tax while indirect taxes include Value Added Tax (VAT), Excise Duty (for an entity dealing in excisable goods/ services), Stamp duty and Customs duty (import and export levies).

The taxes applicable to a startup in Uganda include Income Tax, Value Added Tax, Excise duty (on specific goods and services), Digital Service Tax.

The Income tax regime levies taxes on Corporations, Partnerships, Trusts, Retirement Funds and Individuals. Corporations are generally taxed at a rate of 30% and individuals are taxed at progressive rates ranging from 0% to 40% on their income depending on the tax bracket within which one falls.

The Income Tax regime also imposes a withholding tax on individuals and corporations, which is withheld at source at the time of payment. This tax is imposed on payments, such as employment income, payments on dividends and interests, royalties, professional fees etc derived by the resident and non-resident persons. The withholding tax rates range between 0% to 20% depending on the nature of the supplies and residence of the payee.

Value Added Tax is charged on supplies at a standard rate of 18% except for goods and services categorised as exempt or zero- rated. Digital Services Tax is applicable to any non-resident person providing digital services in Uganda at 5%.

Employers are obligated to deduct 5% from the employee's salary for the National Social Security Fund (NSSF) and contribute an additional 10% towards the same. It is important to note that this obligation applies to all employers, regardless of the number of employees they have. They are also required to deduct Local Services Tax (LST) from the employee's salary.

WHAT ELSE?, CONT'D

Government Agenda to promote technovation and development

The Government of Uganda has a number of interventions to promote innovation, investment and technology development among which include;

National Development Plan III; Innovation, Technology Development and Transfer Project is a central programme out of the eighteen NDPIII national level programmes aiming to enhance innovation and technology development. To achieve this the Government of Uganda has adopted a **National ICT policy** and increased funding at an average of 20% which accounts for over UGX 500 billion per year for the last 6 years.

The Science, Technology and Innovation Policy (STIP) Reviews in line with the NDP III by UNCTAD aim to contribute to the development of national capacities in this field in order that national science, technology and innovation plans and programmes make an effective contribution to development strategies. The Government has heavily invested in

Uganda's Vision 2040; The Government has made commitments to accelerate national digital transformation and create opportunities for youth employment through innovations initiatives by 2040.

E – Government; The Government of Uganda has committed to having all its operations executed electronically/ turn to an e- Government. All major Government operations are now electronically executed. This has necessitated increase of broadband/ internet hence the **National Broadband Policy** to emphasize the role of broadband internet in the socio-economic transformation process and digitisation in every sector as a way of conducting business with the use of high-speed, reliable (robust), and universal internet connectivity, creating opportunities for the Youth and ease of Foreign Investment.

The Uganda Communications Commission (UCC) regulates the information technology sector through monitoring, inspecting, licensing and supervising the players. UCC is in charge of ensuring that the E-Government strategy is implemented by providing oversight to the other Government bodies like the National Information Technology Authority – Uganda (NITA – U). NITA- U houses the National Backbone Infrastructure Project (NBI/ EGI) aimed at ensuring connectivity to Government Ministries and Departments throughout the Country.

It is worth noting that Bank of Uganda is a regulator and key player in the financial technology space, has formulated the National e- payment strategy aimed at digital financial growth and promoting infrastructure development and interopability through the National switch.

UKRAINE

CONTRIBUTORS

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UKRAINE

LEGAL FOUNDATIONS

The legal system of Ukraine is based on civil law, characterised by codified laws, including the Constitution, statutes, and regulations in public and private law:

- **Public law** governs relationships between individuals and the state, addressing various matters such as trade licence requirements, the conscription of citizens to the army, etc;
- **Private law** covers relationships between private individuals and entities or other individuals, addressing matters such as contracts, employment, e-commerce, family matters, etc.

Concerning its jurisdictional structure, Ukraine functions as a unitary state, and its administrative-territorial arrangement comprises the subsequent levels:

National Level:

- **The Constitution of Ukraine** holds the highest legal force among the normative legal acts in Ukraine;
- **Ratified international treaties** become an integral part of Ukrainian law and generally supersede national legislation;
- **Laws** are adopted by the Ukrainian Parliament (Verkhovna Rada) in the form of a single law (e.g., the Law on the Media) or codes that include a full range of norms (e.g., the Civil Code of Ukraine, the Tax Code of Ukraine);
- **Regulatory acts of the President of Ukraine, the Government, and the Parliament**, as well as those of **other public authorities** with nationwide applicability, typically clarify the provisions of the above-mentioned legal acts and detail the mechanism of their implementation.

At the local level, legal parameters can be defined within specific localities by regional administrations and local self-government bodies.

Although court precedent is not officially recognised as an official source of law, an exception is made for decisions by the European Court of Human Rights, which Ukrainian courts are obliged to treat as a source of law. Moreover, rulings by the Supreme Court regarding the interpretation of specific legal provisions can be binding on Ukraine's public authorities and should be considered by the courts of lower instances.

UKRAINE

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STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

The main options available to start-ups looking to establish a corporate presence in Ukraine are: (1) limited liability company (LLC); (2) joint stock company (JSC); and (3) representative office (branch).

In practice, the most effective solutions for start-ups in almost all cases are a limited liability company (LLC), or to work without a corporate presence as a private entrepreneur (PE; aka 'FOP'). The latter option is commonly chosen as a starting point for solo founders with a small team and turnover. If the start-up has several founders, is aimed at engagement of investor, and has valuable IP assets, an LLC is the most preferable choice.

	LLC	**PE**
Legal identity	Legal entity	Individual with specific entrepreneur status
Registration	Mandatory in the state registry	
Fees	Free of charge	
Timing	One business day (BD) on filing documents	
Where to apply?	State registrars, including public and private notaries	
Online registration	Formally available but not common; normally via a registrar	Yes
Ownership	One or several (unlimited number) of participants	Individual
Charter capital	Required (no minimum capitalisation requirement)	N/A
Constituent documents	Articles of association	N/A
Management	general meeting of participants, executive body (a sole director or a management board), other governing bodies (e.g., supervisory board (possible but not common))	Individually by PE
Engagement of people	Employees, contractors (PEs), or gig-contractors (under special regime for IT industry called Diia City)	Employees or other contractors (PEs)
Eligibility for Diia City ***Diia City regime is a special tax and legal regime of the IT industry**	Yes (subject to eligibility requirements)	No
Liability	Shareholders (participants) are liable for the company's debts and liabilities only to the value of their contributions to the charter capital	Acts on his/her own behalf and is fully liable for his/her obligations
Sale of business/engagement of a new co-owner	Sale of shares (participatory interest in the company) or assets	Only sale of assets (employees, IP, tangible assets)
Close of business	May involve a lengthy liquidation process	Relatively easy liquidation

UKRAINE

CORPORATE STRUCTURES, CONT'D

Businesses in other industries sometimes act through a representative office (branch) in Ukraine to carry out activities on behalf of the foreign legal entity. A representative office is not a legal entity under Ukrainian law.

The representative office is a less common business structure for tech businesses in Ukraine than an LLC, often characterised by vague regulations in the law and a lack of clear guidelines regarding status, permitted operations and other regulatory aspects. Moreover, a representative office cannot become a member of Diia City.

ENTERING THE COUNTRY

Under Ukrainian law, any value injected by foreign investors into an investment target to generate profit or to achieve social goals is considered a foreign investment. Foreign investors in Ukraine generally enjoy the same treatment as domestic investors, with some exceptions. Depending on the business sector, specific rules may apply (e.g. the fintech sector might require licensing in Ukraine, while defence companies could be subject to distinct export control and internal regulations). It is essential to assess these on a case-by-case basis. Ukraine, in general, offers an advantageous environment for foreign investments.

INTELLECTUAL PROPERTY

Trade secrets

What is protectable? Legal protection can be granted to technical, organisational, commercial and other information that is confidential and of commercial value.

How to protect? Companies must implement suitable non-disclosure measures to safeguard information, including marking data as trade secrets.

Duration of protection: Extends as long as adequate measures are implemented, and the information retains commercial value, thereby invoking trade secret protection.

Copyright and related rights

What is protectable? Any work of authorship, including musical, literary and audio-visual works, as well as and database or software, is protected by copyright. Copyright protection does not apply to ideas, theories, principles, methods, procedures, processes, systems, conceptions and discoveries.

How to protect? Copyright protection arises automatically from the moment the work is created in a fixed form. No registration, filing or other formalities are necessary in Ukraine.

Duration of protection: Protection lasts for the life of the author plus 70 years.

Trademarks

What is protectable? Any work of authorship, including musical, literary and audio-visual works, as well as and database or software, is protected by copyright. Copyright protection does not apply to ideas, theories, principles, methods, procedures, processes, systems, conceptions and discoveries.

How to protect? Copyright protection arises automatically from the moment the work is created in a fixed form. No registration, filing or other formalities are necessary in Ukraine.

Duration of protection: Protection lasts for the life of the author plus 70 years.

UKRAINE

INTELLECTUAL PROPERTY, CONT'D

Patents (inventions and utility models)

What is protectable? Inventions and utility models can be legally protected in Ukraine if they do not contradict the public order, the principles of humanity and morality, and are patentable. The following inventions or utility models are patentable:

- products such as devices, substances, strains and cell cultures of a plant or an animal;
- processes (methods), as well as new applications of known products or processes.

How to protect? Inventions and utility models generally enjoy legal protection in Ukraine if registered. To be granted patent protection, an invention must meet the requirements of: (i) novelty; (ii) industrial applicability; and (iii) non-obviousness. A utility model must meet only the first two requirements. The Ukrainian patent application undergoes a substantive examination. In practice, it may take an average of three to five years from filing to grant a patent in Ukraine.

Duration of protection: Patent protection begins on the day the grant of the patent is published, and it lasts 20 years from the application filing date for inventions and ten years from the application filing date for utility models.

Industrial designs

What is protectable? Industrial or craft product or parts of one can be protected as a design.

How to protect? An industrial design can obtain legal protection as a registered industrial design or an unregistered industrial design if it is made public under a special procedure.

Duration of protection: The term of non-registered protection is three years, for registered industrial design is five years and can be renewed five times for subsequent five-year periods by paying a renewal fee. The maximum term of protection is therefore 25 years.

DATA PROTECTION/PRIVACY

In Ukraine, the main legal act that governs processing (collection, use, storage, etc.) of personal data is the Law of Ukraine on Personal Data Protection No 2297-VI dated 1 June 2010 (link, "PDP Law").

The PDP Law regulates personal data processing, which is broadly defined as any action or a combination of actions with personal data, including collection, storage, usage, transfer etc. It applies to all personal data processed in Ukraine irrespective of whether it is processed by a foreign or a Ukrainian entity, as well to data transfers from Ukraine.

Registration/notification/authorisation: Grounds for processing personal data in Ukraine are similar to those in the EU, including legitimate interest and contract execution, with data subject consent being the most common. Specific processing rules may apply in certain sectors, such as the banking and medical industries.

In Ukraine, there are two distinct categories of data: sensitive data and high-risk data (comprising all sensitive data along with information such as an individual's travel routes, genetic data, etc.). Data controllers and processors processing high-risk data, however, must notify the Ukrainian Parliament Commissioner for Human Rights (data protection authority) within 30 days of the commencement of processing this data.

Main obligations and processing requirements: Data controllers must comply with the following obligations:

- Personal data must be processed openly and transparently.
- The means of personal data processing must correspond to the purpose of the processing.
- Personal data must be protected from accidental loss, destruction, or unauthorised processing and access.

DATA PROTECTION/PRIVACY, CONT'D

Data subject rights: The PDP Law grants data subjects a broad scope of rights, including the right to:

- Submit an objection to the processing of their personal data.
- Access their own personal data.
- Define certain restrictions and reservations regarding any element of their data's processing.
- Submit a justified request to rectify or delete personal data by any data controller or processor, if the data is processed illegally or is inaccurate in any respect.
- Obtain information on the terms of third party access to their personal data, including information about third parties to whom their personal data are transferred.
- Revoke consent to data processing.

Processing by third parties: Access to personal data (and thus, further processing) by a third party can only be granted under the terms of the consent by the personal data subject and only provided that such third party agrees to comply with the PDP Law and is in fact capable of ensuring such compliance.

Transfers out of the country: Under a general rule, personal data may be transferred to countries that provide an adequate level of personal data protection.
It is assumed that the following countries provide such level of protection:

- European Economic Area (EEA) member states.
- Countries ratifying the Strasbourg Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data 1981 (Strasbourg Data Processing Convention).

Beyond these countries, cross-border personal data transfers are possible if one of the following conditions is satisfied:

- The data subject grants express consent to the transfer.
- The data controller and the data subject need to enter into or perform an agreement for the benefit of the data subject.
- The data transfer is necessary to protect the vital interests of the data subject.
- The data transfer is necessary to protect the public interest or pursue legal remedies.
- The data controller has provided relevant guarantees to protect the data subject's privacy.

Intragroup cross-border transfers of personal data between different legal entities belonging to the same corporate group are subject to the foregoing rules.

Martial law: During martial law in Ukraine (in effect from 24 February 2022, to 13 May 2024, with the possibility of further extension), the transfer of personal data to foreign entities for the provision of medical care or rehabilitation assistance using telemedicine may be carried out with the protection of personal data in accordance with the legislation of the country in which the right to practice medicine is granted (except for citizens of the Russian Federation and the Republic of Belarus).

Data Protection Officer: The processing of high-risk data requires the prior appointment of a data protection officer. There are no requirements regarding qualifications or skills of this person, and the PDP Law contains only several functions which are to be performed by the officer. Thus, the function of a data protection officer may be combined with any other function. In practice, this is often performed by in-house lawyers.

Security: All participants of data processing relationships, including data controllers and data processors, must ensure that certain personal data is protected from accidental loss, destruction, unauthorised processing and access.

The PDP Law also sets out certain requirements on use of personal data by the data controller's employees, including the use of data only in light of and to the extent provided by their professional duties, a prohibition on the disclosure of any personal data (except for cases provided by law), etc. Those data controllers that process high-risk data must appoint a data protection officer.

Breach notification: The PDP Law does not require the notification of personal data security breaches, but data subjects should be informed about any amendment, deletion, or destruction of their personal data within ten business days. The data subject's consent to data processing may include an additional notification obligation, to be verified on a case-by-case basis.

UKRAINE

ARTIFICIAL INTELLIGENCE

Currently, there is no legislation regulating artificial intelligence issues in Ukraine. However, the Ministry of Digital Transformation is working on the legal regulation of AI. A roadmap for legislative regulation of artificial intelligence in Ukraine has been developed. It will be implemented in two stages by at least 2027.

EMPLOYEES/CONTRACTORS

In Ukraine, IT companies commonly engage professional personnel (software developers) as either independent contractors or in rare cases as employees. If the company is a resident of Diia City, it has the option to engage people as gig-specialists.

Employees

Description: Engagement under employment agreement (contract)

Payment

- **Renumeration:** As agreed under the employment agreement, but in any event at least the minimum statutory wage (as of 1 January 2024, approx. 190 USD per month).
- **Extra Payment:** For work at weekends, nightwork, overtime, during the public holiday, etc
- **Mandatory allowances:** For medical (sick) leave, maternity leave or other types of leave provided by law
- **Discretionary bonuses:** As agreed under the employment agreement
- **Medical/Health Insurance benefits:** The employer makes payments of unified social contributions (USC) for the employee, which also include a payment for state medical/health insurance. Private medical/health insurance is not mandatory.
- **Pension:** In Ukraine, the pension age is 60 for both women and men. The employer pays regular USC payments for the employee of 22% of the gross salary subject to certain caps, which also includes a payment for the state pension allowance. Private pension provision is not mandatory.

Advantages: Safe in terms of legal risks

Pitfalls:

- High costs (tax driven)
- Outdated, rigid and very employee-protective labour law regime

Grounds for termination

- Mutual agreement;
- Employee's decision;
- Staff redundancy;
- An employee's systematic breaching of their duties;
- Failure of probation period or insufficient qualifications;
- Recruitment by the army or mobilisation;
- Single material breach of job duties;
- An employee's unjustified absence from the workplace for more than three consecutive hours during one day;
- In certain other cases.

EMPLOYEES/CONTRACTORS, CONT'D

Independent contractors

Description: Engagement as formally independent from the company service providers under services agreements

Payment
Independent contractors are legally considered to be third-party independent service providers. The law does not set specific rules for independent contractors regarding pay and benefits, and the parties are able to agree this in the services agreement.

Advantages:
- Cost effective (in terms of taxation)
- Flexibility of contractual terms

Pitfalls: Grey zone in terms of taxes, risk of requalification into employment relations and associated liability

Grounds for termination: As agreed under the agreement

Gig-contractors

Description: Mix combining the features of the independent contractor agreement with certain "employment-like" social benefits and protections

Payment
- **Renumeration:** As agreed under the gig-contract (no minimum level requirements)
- **Extra Payment:** As agreed under the gig-contract
- **Mandatory allowances:** For medical (sick) leave, maternity leave or other types of leave if agreed in the gig-contract
- **Discretionary bonuses:** As agreed under the gig-contract
- **Medical/Health Insurance benefits:** Same as for employees
- **Pension:** Same as for employees

Advantages: Combines the benefits of both options, including the absence of legal risks of requalification, cost effectiveness, and flexibility

Pitfalls: Only available to the residents of Diia City

Grounds for termination
- Mutual agreement;
- End of fixed term;
- Loss of Diia City resident status;
- Gig-contractor`s decision;
- Company's initiative;
- Other grounds under gig-contract.

No work for hire in Ukraine: Personal non-proprietary IP rights are owned by the employee/gig-contractor/independent contractor who creates the respective object (moral rights are non-transferrable).

Proprietary IP rights created by a gig-contractor are owned by the company unless otherwise provided in the contract. Proprietary IP rights to other IP object created by employee/independent contractor are owned jointly by the company and employee/independent contractor unless otherwise provided in the agreement.

UKRAINE

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

CONSUMER PROTECTION

Legislation framework: Consumer protection in Ukraine is regulated in the Civil Code, Law No. 675-VIII On E-commerce and Law No. 1023-XII On Consumer Rights Protection (which will be replaced after martial law). These laws regulate relations between consumers of goods, works and services (individuals only) and business entities, regardless of ownership, that produce and sell goods or food products, perform work or provide services throughout Ukraine.

Consumer rights: Under Ukrainian legislation, consumers are entitled to:

- proper quality of products and their operation during the warranty period,
- demand a proportional reduction in the price; free elimination of defects in the goods within a reasonable time; reimbursement of the costs of eliminating defects in the goods (in the case of defective goods);
- exchange goods within 14 days from the date of purchase;
- safe products, e.g. the manufacturer must indicate the shelf life and conditions of use;
- information about the product: the label must contain the name of the product, date and place of production, expiration date, etc.;
- information about seller and supplier, e.g., email address and online store address in the case of e-commerce.

Liability: Potential issues and non-compliance, in particular when accompanied by safety incidents, will most commonly lead to remedial measures such as corrective actions, where market withdrawal or a product recall is reserved for the cases where the products have already been launched on the market and purchased by consumers. Additionally, non-compliance with the consumer protection requirements may trigger penalties for the seller/performer/manufacturer. Repeated violation or non-compliance with a remedial order from the consumer protection authority or a court may trigger additional monetary penalties. In addition, if any damages are caused to consumers by incompliance, such damages are subject to reimbursement via court hearings.

TERMS OF SERVICE

Terms of services become enforceable only if consumers read, understand and explicitly agree to the terms (e.g., via direct ordering). If the Terms of Service contain references to other documents, the consumer should have unimpeded access to them. Further, clauses must be in compliance with consumer protection laws regulating the entering into agreements and Terms of Service with consumers.

WHAT ELSE?

Martial law: Since 24 February 2022, Ukraine has been under martial law since Russia's illegal and unprovoked invasion. This means that a number of restrictions and specific regulations are in place, including working day schedule (generally, no public holidays until the end of martial law), prohibition on males eligible for military service leaving the country (with some exemptions), additional exemptions regarding the storage of state data abroad, etc.

Reservation of conscripts: This is a special procedure which allows employees from the public and private sector to be reserved from conscription to the army, subject to certain eligibility criteria, for up to six months with the possibility of further renewal.

Diia City regime: Diia City is a special legal and tax regime for eligible tech companies that offers exclusive legal, employment, and tax rules for companies registered as its residents (link).

WHAT ELSE?, CONT'D

Benefits for Diia City residents:

- Low tax rates: 5% personal income tax (vs. 18% for all other sectors), social security fee (22% of the minimum wage (approx. 41 USD) vs. 22% from certain statutory number), 1.5% military tax; corporate tax -9% exit capital tax or 18% income tax;
- Guarantees for its residents: the stability of taxation terms, presumption of the legality of the resident's activity, etc. for at least 25 years;
- GIG contracts: a new contractual model for Diia City residents engaging IT personnel that combines the features of a classic employment agreement and a civil law service agreement;
- Additional guarantees for IT companies regarding the protection of intellectual property rights; etc.

NBU restrictions: due to martial law, the National Bank of Ukraine (the "NBU") issued some restrictions, including:

- cash withdrawals in Ukraine from individual client accounts are limited to UAH 100,000 or equivalent amount in a foreign currency per day, except if, among others, such withdrawal is to pay salaries or social benefits (applicable only to UAH);
- cash withdrawals outside Ukraine from clients' accounts in UAH and in foreign currencies are restricted to UAH 12,500 (or equivalent in a foreign currency) per week;
- banks are also generally prohibited from making cross-border currency payments on behalf of their clients, with numerous exceptions, including payments under import operations for goods and certain types of services, work and IP objects; certain payments abroad for an individual's own purposes (education, medical bills, etc.); payments for mobilisation and defence purposes;
- a prohibition on the transfer to Ukrainian individuals of any funds initiated with the use of electronic payment instruments which are operating in the Russian Federation or the Republic of Belarus; and other restrictions.

Dividend payment restrictions: The NBU has prohibited the repatriation of dividends outside Ukraine during martial law.

UNITED ARAB EMIRATES

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LEGAL FOUNDATIONS

Overview of the UAE Legal System

The UAE is a federation of seven Emirates including Abu Dhabi (capital), Dubai, Sharjah, Ajman, Fujairah, Umm Al Quwain and Ras Al Khaimah.

Each individual Emirate is a hereditary absolute monarchy with its own political and legal system but, at the Federal level, the UAE operates within a constitutional framework.

Legislative jurisdiction is allocated between the Governments of the individual Emirates and the Federal Government by Part Seven of the Constitution of the UAE.

The Constitution sets out the division of legislative authority between the Federal Government (based in Abu Dhabi) and the individual Emirates in Articles 120–122. Under Article 120 of Constitution, the Federal Government has exclusive legislative and executive jurisdiction in certain matters. The local law of each Emirate applies save where considered inconsistent with the Federal Laws.

Civil Law Jurisdiction

The UAE is a civil law jurisdiction with statutory codes governing most areas of substantive law, such as civil, commercial, civil procedures and penal.

In practice, the UAE has modelled much of its legal system on statutes and institutions used in other Arab countries, particularly Egypt. However, in recent years, there has been an increasing reliance on Western models, especially with respect to legislation within the various free zones and legislation governing technology matters and privatisation.

Federal Law No. 5 of 1985 (the **"Civil Code"**) and Federal Law No. 50 of 2022 (the **"Commercial Code"**) are mainly based on the laws of Egypt and other Arab countries that are, in turn, based on Napoleonic (French) law. Article 7 of the Constitution provides that Islamic Shari'ah shall be the main source of legislation. However, in practice civil and commercial matters are determined based on the codified provisions of the Civil Code and Commercial Code.

Financial Free Zones: ADGM and DIFC

Further, the Dubai International Finance Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM") have been established as financial free zones with a separate civil and commercial laws and court system from the onshore UAE territory. The legal system of the DIFC and ADGM are largely based on English common law.

Please note that this advice is only in relation to mainland/onshore UAE laws and excludes the laws of applicable to financial free zones such as ADGM and DIFC.

U.A.E.

CORPORATE STRUCTURES

Forms of Companies

Federal Decree-Law No. 32 of 2021 on Commercial Companies Law ("CCL") provides the following forms of companies:

Corporations

Limited Liability Company(LLC)

- LLCs are the most common form of business set up in UAE.
- An LLC is a company whose number of shareholders is at least two and does not exceed fifty. Any partner thereof shall be liable only to the extent of his capital contribution.
- Any single natural or legal person may incorporate and own an LLC. The capital owner of the company shall be liable for the obligations of the company only to the extent of the capital set out in its Memorandum of Association.
- The CCL does not require a minimum amount for limited liabilities companies.

Public Joint Stock Companies (PJSC)

- A PJSC is a company formed by five or more persons whose capital is divided into negotiable shares of equal value.
- The founders shall subscribe for part of such shares, while the rest shall be offered to the public through a Public Offering. A shareholder shall be liable only to the extent of his capital contribution to the company.
- The minimum issued capital of a public joint stock company shall be at least AED 30,000,000.
- A PJSC must be registered with the Securities and Commodities Authority.

Private Joint Stock Companies

- A PrJSC is a company where the number of the shareholders is at least two.
- The capital of the company shall be divided into shares with the same nominal value, to be paid in full without offering any shares for public offering.
- A shareholder in the company shall be liable only to the extent of their share in the company's capital.
- The issued capital of the company shall not be less than AED 5,000,000 and shall be paid in full.
- A PrJSC must be registered with the Ministry of Economy.

Partnerships

General Partnership

- A General Partnership is a company which consists of two or more partners who are natural persons and are jointly and severally liable to the extent of all their property for the liabilities of the company.
- A general partner shall have the capacity of a trader. Such partner shall be deemed to conduct the business in person in the name of the company.
- When a General Partnership becomes bankrupt, all the partners thereof shall also become bankrupt by operation of law.

Limited Partnership

- A Limited Partnership is a company which consists of one or more General Partners who are jointly and severally liable for the obligations of the company and act in the capacity of a trader, in addition to one or more Limited Partners who are held liable for the obligations of the company only to the extent of their respective capital contributions, and do not act in the capacity of a trader.

U.A.E.

ENTERING THE COUNTRY

Foreign Ownership of Companies

Recently, the UAE introduced Federal Decree by Law No. 32 of 2021 on commercial companies **("CCL")** allowing foreigners to own 100% of companies incorporated in the UAE depending on the activities to be carried out by the companies. Given the UAE is under a federal regime, the CCL state that each emirate issue a list of activities permitting 100% foreign ownership, such list is issued by the main regulator for each emirates (i.e. Department of Economic Development).

Additionally, the CCL also states that there are certain strategic activities that still require the presence of a UAE shareholder, these strategic activities are:

- Security, Defense and Military-Type Activities; Banks, Exchange Bureau, Finance Institutions and Insurance Activities;
- Currency Printing;
- Telecommunications;
- Hajj and Umrah Services:
- Holy Quran Recitation Centers; and
- Services related to Fisheries. (This activity requires 100% UAE nationals shareholders) .

Please note, although the CCL allows 100% foreign ownership, and the lists issued by the Departments of Economic Development from each emirate include most of the activities, some authorities still require a local shareholder at a certain percentage such as the Department of Health in Abu Dhabi and the Ministry of Health and Prevention. However, they may grant 100% foreign ownership on a case by case basis up to the discretion of such authority.

Foreign Ownership of Real Estate

Ownership of real estate is mainly regulated at the level of each Emirate. Broadly, foreigners are not permitted to own real estate property in the UAE except as provided by law. We have considered below the laws in the Emirate of Dubai and the Emirate of Abu Dhabi, which are the main foreign investment hubs.

- The Dubai Real Estate Registration Law No.7 of 2006 (the **"Dubai Registration Law"**) allows UAE and GCC nationals, and companies wholly owned by them, as well as public joint stock companies, to own real estate rights anywhere within the Emirate of Dubai. Non-GCC nationals (including entities in which non-GCC nationals' own shares directly or indirectly, save for public joint stock companies within the meaning of the Dubai Registration Law) are deemed foreign persons and can only own property on a freehold or leasehold basis in specific areas that are designated for foreign ownership by the Ruler of Dubai (the **"Designated Areas"**).

- The Abu Dhabi Property Law No. (19) of 2005 (as amended) **("AD Property Ownership Law")** allows UAE nationals and companies owned by them, as well as public joint stock companies in which the shareholding of non-UAE nationals does not exceed 49%, to own real estate rights anywhere in the emirate of Abu Dhabi. The right to own property extends as well to any person named in a resolution issued by the President or Chairman of the Executive Council. Non-UAE nationals and entities wholly or partially owned by them (except for public joint stock companies in which the shareholding of non-UAE nationals does not exceed 49%) can own real estate rights in specific areas within the Emirate of Abu Dhabi and which are designated by a decision issued by the Executive Council (the **"Investment Zones"**). Investment Zones include Al Raha Beach; Reem Island; Saadiyat Island; Lulu Island; Yas Island; Al Reef; Seih Al Sedira; Masdar City; Al Maryah Island (also known as Abu Dhabi Global Market), specific plots designated to Abu Dhabi Ports Company, and Nurai Island.

INTELLECTUAL PROPERTY

Trademarks
(Federal Decree-Law No. 36 of 2021 on Trademarks)

What is protected? Any distinctive form of names, words, signatures, letters, Symbols, numbers, addresses, seals, Drawings, Pictures, Engravings, packaging, graphic elements, forms, colour or colours or a combination thereof, a sign or a group of signs, including three-dimensional marks, Hologram Marks, or any other mark used or intended to be used to distinguish the goods or services of a facility from the goods or services of other facilities, or to indicate the performance of a service, or to conduct monitoring or examination of goods or services. A distinctive sound or smell may be considered as a Trademark.

Duration of Protection: The period of protection resulting from the registration of Trademark is ten (10) years from the date of filing the application. Trademarks are renewable for similar durations.

Where to apply? The Ministry of Economy ("Ministry") is the competent authority to register trademarks in the UAE. To register a trademark, an application can be submitted the Ministry's website. Registration documents include:

- Trademark logo
- A copy of the commercial license (if the applicant is a UAE Company)
- Power of Attorney
- Priority document, if any

Costs: AED 6,500 (official fees paid to the Ministry)

Please note that the UAE has joined Madrid on December 28, 2021, and it is now possible to designate the UAE in International Trademark Applications.

In addition to the Federal Trademarks Law mentioned above, it is to be noted that the Dubai International Financial Center ("DIFC") (Financial free zone) has its own Intellectual Property Law No, 4 of 2019. Accordingly, within the DIFC the applicable law is the DIFC law. However, there is no separate registration that should be done within the DIFC and the registration with the Ministry of Economy would cover DIFC.

Copyrights
(Federal Decree-Law No. 38 of 2021 on Copyrights and Neighbouring Rights)

What is protected? Original works in the areas of literature, arts or science, whatever its description, form of expression, significance or purpose. The Copyright Law has provided a list of works that are covered by the law, the list is not exhaustive.

Duration of Protection: The duration of protection depends on the type of work subject to protection. The general rule is that the work is protected for the life time of the author and 50 years after his death. However, this differs if the work was an applied art, or it was a collective work and others. The law has provided full list of duration of protection based on the type of work.

Where to apply? The Ministry of Economy is the competent authority to register copyright protected works in the UAE. Registration is not mandatory or required to affect the protection. However, it can be beneficial as a proof of ownership in enforcement.

Costs: AED 50 per application for natural persons AED 200 per application for legal persons (official fees paid to the Ministry)

Please note that the UAE has joined Madrid on December 28, 2021, and it is now possible to designate the UAE in International Trademark Applications.

In addition to the Federal Trademarks Law mentioned above, it is to be noted that the Dubai International Financial Center ("DIFC") (Financial free zone) has its own Intellectual Property Law No, 4 of 2019. Accordingly, within the DIFC the applicable law is the DIFC law. However, there is no separate registration that should be done within the DIFC and the registration with the Ministry of Economy would cover DIFC.

INTELLECTUAL PROPERTY, CONT'D

Patents, Utility Models, Undisclosed Information, and Industrial Designs

(Federal Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights ("Industrial Property Law") and its implementing regulation – Resolution No. 6 of 2022)

What is protected? Intellectual property rights which include patents, industrial designs, undisclosed information (trade secrets), utility certificates and integrated circuits.

Where to apply? The International Centre for Patent Registration (ICPR) under Ministry of Economy is the competent authority to register patents and utility models in the UAE. To register patent, utility models and industrial designs, you can submit an online application via the Ministry's website. You have to be registered with the Ministry to submit the application.

Patents and Utility Models

A patent can be granted for any invention which is novel, inventive, industrially applicable and in compliance with the Shariah law. A patent can be granted either from a new application or from an amendment, improvement or addition to an invention for which a patent was previously granted if it meets the conditions stipulated in the Industrial Property Law. The Industrial Property Law allows inventors and applicants to file a patent application within 12 months of the first disclosure. As a grace period of 12 months is provided, an application submitted within this grace period will still meet the novelty criteria. For example, if an inventor's own publication is cited as prior art in the examination of a priority filing, it will have no effect on the novelty requirement for the corresponding UAE application provided the publication occurred within 12 months of filing the priority application.

Utility models require lesser thresholds of inventiveness (compared to patents) but are subject to the same novelty requirement and subject matter exclusions. Additionally, utility models must be industrially applicable. Applicants can also file a utility model application within 12 months from the first disclosure (i.e., the novelty of the application will be preserved). A utility model application can be converted to into a patent application and vice versa, within the scope of the original application, while the application is being examined by the UAE Ministry. The original application will be considered as withdrawn at the time of transfer.

The Industrial Property Law sets out exclusions from patentability which include:

- Plant and animal species, and biological methods for production of animals and plants, excluding microbiological methods and their products resulting from such processes or research on plant or animal species;
- Diagnostic methods, therapeutic and surgical operations needed for humans and animals;
- Scientific and mathematical principles, discoveries and methods;
- Guidelines, rules or methods followed to conduct business, perform mental activities or play games.
- Computer programs/software
- Natural materials from the environment (those substances that are purified or isolated from the natural environment); and
- Inventions that may lead to violation of public order or morals, or harmful to the health and life of humans and the environment.

Duration of Protection: Patents are protected for twenty (20) years (subject to the payment of annuity fees), and utility models (or certificates) are valid for ten (10) years (subject to the payment of annuity fees) starting from the date of submission of the application, or from the international filing date (in case the application filed in the UAE is a national phase application from a PCT application).

Costs: The official fees for filling a new patent or utility model application are approximately AED 1,000 for individuals, and AED 2,000 for companies (official fees paid to the Ministry). All official fees and costs for phases after filing phase (such as Examination, Publication and Grant phases), are payable on a case-by-case basis. Annuity fees are payable for a period of 20 years. Presently there are no official fees to be paid to the Ministry for the annuities.

INTELLECTUAL PROPERTY, CONT'D

Patents, Utility Models, Undisclosed Information, and Industrial Designs, CONT'D

(Federal Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights ("Industrial Property Law") and its implementing regulation – Resolution No. 6 of 2022)

Industrial Designs

Industrial design protects a two-dimensional or three-dimensional aesthetic aspect of an article that gives a special appearance to a product. An industrial design is considered new only when the same has not been disclosed to the public, prior to the filing date of the application, whether by publication, use, or any other method. The Industrial Property Law allows designers and applicants to file an industrial design application within 12 months of the first disclosure i.e., an industrial design shall not be deemed disclosed to the public if such disclosure is made within 12 months prior to the filing date of the application. Industrial design applications are not examined substantively in the UAE.

Duration of Protection: Industrial designs are protected for twenty (20) years (subject to the payment of annuity fees), starting from the date of submission of the application.

Costs: The official fees for filling a new application cost approximately AED 1,000 for individuals, and AED 2,000 for companies (official fees paid to the Ministry). Annuity fees are payable for a period of 20 years. Presently there are no official fees to be paid to the Ministry for the annuities.

Integrated Circuits

The Industrial Property Law recently introduced the protection of layout designs of integrated circuits in the UAE. A requirement for the protection of layout designs is that layout designs must be "original". A layout design shall be deemed 'original' if the combination of its elements and interconnections is original in itself, even if the elements of which it consists of are commonplace among professionals of the relevant industrial art. It is important to note that any ideas, methods, technical systems, or encoded information, that an integrated circuit layout design may include, shall not be subject to protection.

Duration of Protection: The term of protection for integrated circuit layout designs is 10 years from the filing date of the application, or the date of its first commercial exploitation in the UAE or abroad, whichever is earlier.

Costs: The registration process and fees are due to be issued by the Ministry as no authority or registrar has been put in place at this time.

Trade Secrets

(Undisclosed/Confidential Information)

The Industrial Property Law provides protection for trade secrets if it meets the conditions stipulated in the Law. The three main conditions, which need to be met for information to be considered a trade secret are:

- the information must not be generally known or readily accessible to individuals within the circles that generally deal with the information in question.
- the information must have commercial value because it is a secret; and
- the information has been subject to reasonable steps by the individual(s) lawfully in control thereof to keep it a secret.

Duration of Protection: As long as they are confidential, trade secrets are protected.

Costs: There are no costs. Trade secrets are usually protected by wat of contractual/ non- disclosure agreements.

There are other UAE laws which address the protection of trade secrets and penalties in case of disclosure of trade secrets, as follows:

- the Commercial Companies Law;
- the Civil Code;
- the Law on the Issuance of the Crimes and Penalties Law;
- the Law concerning the Regulation and Protection of Industrial Property Rights; and
- the Law on Regulation of Labour Relations.

DATA PROTECTION/PRIVACY

The UAE has issued a comprehensive federal data protection legislation (Federal Decree-Law No. 45 of 2021 on the Protection of Personal Data ("UAE DPL") which came into force from 02 January 2022. The Executive Regulations of the New Law are expected to be issued sometime in 2023.

Broadly, the UAE DPL sets out (i) the obligations of data controllers and processors when processing personal data of data subjects; (ii) the requirements of notification when there is breach of personal data; (iii) the restrictions to international data transfers; and (iv) the rights of data subjects.

Applicability of the UAE DPL
The UAE DPL applies to any data subjects who reside or have a place of business in the UAE as well as controllers and/or processors based outside the UAE processing data of UAE data subjects. Any entity that will be collecting and processing data from data subjects residing in the UAE in order to ensure performance of the contracts with them will need to comply with the provisions of the UAE DPL.

The provisions of the UAE DPL do not apply to government data, health personal data as well as banking and credit personal data that is subject to legislation regulating the protection and processing thereof. For the purposes of this advice, we have assumed that the target entities will not be collecting nor processing such types of data.

However, note the UAE DPL is presently in transition phase and controllers and processors have 6 months from the time of issuance of Executive Regulations to comply with the UAE DPL. The Cabinet may also extend this period.

UAE Data Office
The Data Office was established under a separate statute (Federal Decree-Law No. 44 of 2021) which was issued contemporaneously with the UAE DPL. The Data Office aims to ensure the fullest protection of Personal Data and is responsible for a range of tasks which include:

- preparing legislation and policies relating to data protection;
- proposing and approving mechanisms for data subject complaints and compensation;
- proposing standards for the monitoring of the data protection legislation;
- issuing guidance for the full implementation of data protection legislation.
- imposing administrative penalties.

Legal Basis for Data Processing
Under the UAE DPL, it is prohibited to process personal data without the consent (as defined in the UAE DPL) of the data subject except:

- if the processing is necessary to protect the public interest.
- if the processing is for personal data that has become available and known to the public by an act of the data subject.
- if the processing is necessary to initiate or defend against any actions to claim rights or legal proceedings or related to judicial or security procedures.
- if the processing is necessary for the purposes of occupational or preventive medicine, for assessment of the working capacity of an employee, medical diagnosis, provision of health or social care, treatment or health insurance services, or management of health or social care systems and services, in accordance with the legislation in force in the UAE.
- if the processing is necessary to protect public health, including the protection from communicable diseases and epidemics, or for the purposes of ensuring the safety and quality of health care, medicines, drugs and medical devices, in accordance with the legislation in force in the UAE.
- if the processing is necessary for archival purposes or for scientific, historical and statistical studies, in accordance with the legislation in force in the UAE.
- if the processing is necessary to protect the interests of the data subject.
- if the processing is necessary for the controller or data subject to fulfil his/her obligations and exercise his/her legally established rights in the field of employment, social security or laws on social protection, to the extent permitted by those laws.
- if the processing is necessary to perform a contract to which the data subject is a party or to take, at the request of the data subject, procedures for concluding, amending or terminating a contract.
- if the processing is necessary to fulfil obligations imposed by other laws of the UAE on controllers.

Therefore, entities must either obtain the data subject's consent for collecting and processing its data or must rely on one of the above legal basis to process this data without consent.

Other Legislation Relating to Data Protection and Privacy
Data protection and privacy is also governed by other laws of general application such as the UAE Constitution, the UAE Penal Code, the Cybercrimes Law (Federal Decree Law No. 35 of 2021) as well as sector-specific laws including the Telecommunications Law (Federal Law No. 3 of 2003), the Health Data Law (Federal Law No. 2 of 2019), and the regulations and standards issued by the Central Bank of the UAE.

EMPLOYEES/CONTRACTORS

General: The new UAE Labour Law, Federal Decree-Law No. 33 of 2021 **("Labour Law")** came into effect on 2 February 2022 with the aim to address changes in the work environment, align UAE labour relations with international best practices, and recognise the need for atypical and/ or flexible working structures. The Executive Regulations to the Labour Law, Cabinet Resolution No. 1 of 2022 **("Executive Regulation")** were released on 3 February 2022.

A summary of the key aspects in the new labour regime is as follows:

- New alternative flexible and atypical employment arrangements such as – Part-time work, Temporary work, Flexible work and Remote working arrangements (either from inside or outside the country) have been recognized.
- 12 different types of work permits have been recognized to reflect the various types of sponsorship and employment arrangements that are both currently in place, and that are due to be introduced.
- All employees are now required to enter into fixed term employment contracts. On expiry of the term, the employment contract can be renewed or extended for similar or shorter periods (on multiple occasions).
- In certain circumstances, the Ministry of Human Resources and Emiratisation may not permit certain individuals to obtain a work permit (colloquially known as a 'labour ban') where they resign from their employment either (i) during their probation period or (ii) for an 'illegal reason' (although certain categories of employees may be exempted from the labour ban)
- The Labour Law provides protection for employees from discrimination in the workplace and specifically, prohibits discrimination on the grounds of race, colour, sex, religion, national origin, social origin and disability that would impair equal opportunities for an employee or prejudice an employee from gaining employment and continuing such employment. Whilst maternity and/or pregnancy are not listed as a protected characteristic, employers are prohibited from terminating an employee (or threatening to terminate an employee) due to the fact she is pregnant or on maternity leave. Additionally, the Labour Law provides that there should be equal pay for men and women for the same work.
- Protection for employees against bullying and sexual harassment in the workplace has been introduced.

Work for hire regime: The UAE allows for a work for hire regime. This means that the ownership of any work done by the employee in the name of the employer and using resources provided by the employer, would lie with the employer. No explicit contractual provision transferring/assigning the right must be made.

Registration with social security: All private companies, that employ eligible UAE or other GCC nationals must be registered with the applicable authority for the provision of social security in the form of pension. Companies in Abu Dhabi must be registered with the Abu Dhabi Pension Fund and companies in all the other Emirates must be registered with General Pension & Social Security Authority **("GPSSA")**. After registration of the company, all the eligible UAE Nationals and GCC nationals employed in that company must also be registered with the authority. The contributions by private companies are as follows:

- Companies registered with the Abu Dhabi Pension Fund-
  - 5% of their monthly salary by the employee
  - 15% of the monthly salary of the employee by the employer
- Companies registered with the GPSSA-
- 5% of their monthly salary by the employee
- 12.5% of the monthly salary of the employee by the employer

Termination:

- Despite the use of the term "fixed", the Labour Law provides that fixed term contracts can be terminated on notice during the course of the term for a "legitimate reason", provided that the period of written notice under the contract of employment is provided (minimum of 30 days', maximum 90 days). The term "legitimate reason" is not defined, but historically it has been interpreted to mean any reason attributable to the employee (e.g. poor performance, misconduct).
- The Labour Law recognizes termination is cases where the employee abuses their position for profit or personal gain or commences work for another employer without complying with the applicable rules and procedures.
- In case an employer is found guilty of unlawful termination, the Labour Courts may oblige an employer to pay compensation of up to three months' total remuneration (basic salary and allowances), in addition to all other contractual and statutory entitlements.
- A minimum notice period of 14 days for employers wishing to terminate an employee whilst on probation has been introduced. The maximum period of probation is six months.
- Termination with notice for reasons other than those related to an employee's performance or conduct is now permitted. Most notably, the concept of redundancy is now expressly recognised as a valid reason for termination if the employer is bankrupt or insolvent, or there are any economic or exceptional reasons.

U.A.E.

CONSUMER PROTECTION

The UAE Government has implemented the Federal Law No. 15 of 2020 on Consumer Protection **("Consumer Protection Law")**. Much of the Consumer Protection Law is to be supplemented by implementing regulations, which were due to be issued in May 2021, but have not yet been published. Until these implementing regulations are released, Consumer Protection Regulations under Federal Regulation No. 12 of 2007 (the **"Regulations"**) under the old law will apply.

The Consumer Protection Law aims to protect all consumer rights, including the right to a standard quality of goods and services and the right to obtain them at the declared price. Under the Consumer Protection Law, the supplier must guarantee the quality of the good or service. It further seeks to preserve the health and safety of the consumer when using the goods or receiving the service. The law protects the data of the consumers and prohibits suppliers from using it for marketing.

The Consumer Protection Law covers all goods and services sold or provided by suppliers, advertisers and commercial agents across the UAE's mainland and free zones. It also covers goods sold through eCommerce platforms registered in the UAE. However, the law does not apply to eCommerce activities that are carried out between customers in the UAE and eCommerce businesses registered outside the UAE.

It should be noted that Consumer Protection Law provides prescribes that any information, advertising and contracts (including invoices) related to consumers must be in either in the Arabic language alone or in bilingual format (the Arabic being alongside another language).

TERMS OF SERVICE

Clauses must be in compliance i.e. the Consumer Protection Law (as defined above) and e-commerce providers in the UAE must register their details with Ministry of Economy and their consumer related documentation should be in Arabic along with being in any other language.

WHAT ELSE?

Corporate Tax

On 9 December 2022, UAE introduced the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the "Corporate Tax Law") pursuant to which businesses will become subject to UAE Corporate Tax from the beginning of their first financial year that starts on or after 1st June 2023.

Corporate tax is a form of direct tax levied on the net income or profit of corporations and other entities from their business. This tax will apply to:

- all businesses and individuals conducting business activities under a commercial licence in the UAE
- free zone businesses (The UAE Corporate Tax regime will continue to honour the Corporate Tax incentives currently being offered to free zone businesses that comply with all regulatory requirements and that do not conduct business set up in the UAE's mainland.)
- Foreign entities and individuals only if they conduct a trade or business in the UAE in an ongoing or regular manner
- Banking operations
- Businesses engaged in real estate management, construction, development, agency and brokerage activities.

Additionally, Corporate Tax will not apply to:

- an individual earnings salary and other employment income, whether received from the public or the private sector
- interest and other income earned by an individual from bank deposits or saving schemes
- a foreign investor's income earned from dividends, capital gains, interest, royalties and other investment returns
- investment in real estate by individuals in their personal capacity
- dividends, capital gains and other income earned by individuals from owning shares or other securities in their personal capacity.

As per Ministry of Finance, Corporate Tax rates are:

- 0 % for taxable income up to AED 375,000
- 9 % for taxable income above AED 375,000 and
- a different tax rate (not yet specified) for large multinationals that meet specific criteria set with reference to 'Pillar two' of the OECD Base Erosion and Profit Shifting Project.

The Federal Tax Authority will be responsible for the administration, collection and enforcement of the CT. The Federal Tax Authority will soon provide more references and guides about corporate tax and information on how to register and file returns on its website.

WHAT ELSE?, CONT'D

Income Tax

The UAE does not impose income tax on individuals, investors or corporates, with the exception of oil companies and branches of foreign banks.

Emiratisation

The UAE has set a minimum Emiratisation rate of 2% annually for the private sector. The aim is that by 2026 the private sector workforce will be at least 10% UAE national.

It must be noted that these limits only apply to those companies that fall under the Ministry of Human Resources and Emiratisation ("MOHRE") remit and employ 50 skilled employees or more.

The current Emiratisation quotas are:
- 2% for commercial entities where the entity has over 50 employees;
- 4% for banks; and
- 5% for insurance companies

MOHRE will categorise employers as follows:

Category 1

Details
In order to fall under this category, establishments needs to achieve at least one of the below objectives:
- increase their Emiratisation rates annually at a rate not less than 3%;
- hiring at least 500 UAE nationals per year;
- being a start-up company owned by a young UAE national; or
- being a qualifying training and employment centre.

Incentives
- Discounts on service fees related to MOHRE work permits- fees will not exceed AED 250 per permit for the first two years. The employment of UAE and GCC nationals will be exempt from these fees.
- A pension rebate for those UAE nationals hired under this scheme for a period of 5 years from the commencement of employment.
- Up to AED 8,000 per month salary contribution for each UAE national hired under the scheme.

Category 2

Details
Establishments meeting the Emiratisation target of 2 % annually.

Incentives
Discounts on service fees related to MOHRE work permits- fees will not exceed AED 1,200 per permit for the first two years. The employment of UAE and GCC nationals will be exempt from these fees

Category 3

Details
Establishments that do not meet the Emiratisation target.

Penalty
A fine AED 6,000 per month per quota positon not filled by a UAE national. So for example if the employer is a commercial entity with 100 employees and does not employ any UAE nationals then the fine will be AED 6,000 x 2 positions per month = AED 144,000 per annum.

Private sector companies will need to ensure that they are meeting the Emiratisation targets or alternatively have made provision in their accounts for the imposition of penalties.

Golden Visa for Investors
The UAE grants long-term residence visas, for durations that extend from 5 to 10 years, to investors, entrepreneurs, and talented individuals.

Free Zones
The UAE has more than 40 free zones that allow tax exemptions and 100% ownership for foreign investors.

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LEGAL FOUNDATIONS

The United Kingdom is divided into threedistinct legal jurisdictions: England and Wales, Scotland and Northern Ireland.

England and Wales have a common law system. Scotland has its own independent and, in parts, clearly different judicial system with its own jurisdiction. The law of Scotland is not a pure common law system, but a mixed system. Northern Ireland has its own common law system and jurisdiction. It is similar to that in England and Wales, and partially derives from the same sources, but there are important differences in some areas of law-making and procedure. It is uncommon to use either Scottish or Northern Irish governing laws or jurisdictions in a commercial transaction; even if one of the companies is incorporated in one of these jurisdictions, the parties will generally choose the law of England and Wales, with exclusive jurisdiction of the English courts.

The main sources of United Kingdom domestic law are Acts of Parliament, case law, retained EU law which has been assimilated into domestic law post-Brexit, and international treaties and conventions (most notably, the European Convention on Human Rights).

CORPORATE STRUCTURES

The following are the most common business structures in the UK:

Sole Trader

An individual runs his or her own business and is self-employed.

Any UK taxpayer (over the age of 16) can register with the UK tax authorities (His Majesty's Revenue and Customs, **HMRC**) and conduct business as a sole trader.

Advantages

- Minimal set up and administration.
- Registration at the UK's corporate register (Companies House) is not required although the business owner should notify HMRC.
- The individual can keep all the business's profits after paying tax on them.

Disadvantages

- This type of business is not deemed to be a legal entity in its own right; the owner of the business has unlimited liability for all debts and legal actions.

CORPORATE STRUCTURES, CONT'D

Private Limited Company

A private limited company has separate legal personality from its shareholders. This is the most popular business structure for a start-up enterprise in the UK. Information regarding filing history and current appointments is publicly available on the Companies House register.

A limited company requires the following:

- At least one director over the age of 16 (does not need to be a UK national);
- A registered office in the UK;
- A company name that complies with UK Government regulations: Set up a private limited company: Choose a company name - GOV.UK (www.gov.uk, and is not already in use;
- At least one share issued at the time of incorporation;
- Corporate governance:
  - a standard form memorandum of association;
  - articles of association: most companies start with Model Articles (available from the UK Governement website Model articles of association for limited companies - GOV.UK (www.gov.uk and amend them to suit the needs of the business as the company develops;
  - shareholders may enter into additional agreements to further regulate corporate management issues and cover issues that are not set out in the articles of association (for example, protection for minority shareholders, pre-emption rights and dispute resolution mechanisms).

Advantages

- Limited liability for shareholders.
- Minimal incorporation and operating costs.
- Administratively easy to issue new shares in funding rounds.

Disadvantages

- Administration: keeping up to date with filings at Companies House and HMRC.

Public Limited Company (PLC):

This type of company is also a legal entity in its own right and legally separate from those who own it. The shares of a PLC can, however, be traded publicly. The operating costs of running a PLC are considerably higher than private companies and this structure is generally suited to larger enterprises.

A PLC has the same requirements as a private limited company, plus the following:

- At least two directors over the age of 16 (do not need to be UK nationals);
- A minimum of £50,000 of issued shares;
- shareholders may not enter into a separate shareholders' agreement to supplement the PLC's articles of association.

Advantages

- Limited liability.
- Easier to raise finance via public market.

Disadvantages

- Administration: keeping up to date with filings at Companies House and HMRC.
- High minimum liquidity requirements.
- Public transparency and market accountability if shares listed

CORPORATE STRUCTURES, CONT'D

Partnerships

These are most commonly established by professional services organisations (such as law, investment or accounting firms) whereas companies tend to be used for trading businesses. There are several varieties of structure, as follows.

General partnership: Two or more people workingtogether under the same business name. Partnerships must be registered with HMRC, but not with Companies House. Each partner has unlimited liability.

Limited partnership (LP): An entity registered at Companies House, consisting of two or more partners, who can be individuals or corporate entities. The partners can be located outside the UK, but the partnership must have its principal place of business in the UK.

The LP itself is not taxable. Members are taxed individually both on profitsearned by the LP and gains on the sale of the LP's assets.

Limited Liability Partnership (LLP): Operates similarly to a limited partnership, with the added security of limited legal liability for its members.

Advantages

- Liability of members is limited.
- Organisational flexibility: bound by a private Members' Agreement, not articles of assocation.
- Minimal incorporation and operating costs.

Disadvantages

- Administration: keeping up to date with filings at Companies House and HMRC.
- Membership structure is unattractive to investors.

ENTERING THE COUNTRY

Registration of particulars

An overseascompany that carries on businessin the UK may need to register with Companies House as a 'UK establishment' if it has a physical place of business or branch in the UK. This also involves providing documents such as copies of accounts. When registering an overseas company, the UK company names rules must be complied with. Subsequent to registration, certain changes must be notified to CompaniesHouse if they occur.

An overseas company that has registered a UK establishment must display its name and country of incorporation at UK locations where it carries on business or accepts service of documents. Its company name must also appear on company documents, including order forms and websites, and certain documents (including order forms and websites) must also state particulars such as the company number and other details about the company.

Economic Crime (Transparency and Enforcement) Act 2022

This is relevant to any overseas entity that owns, or wishes to own, land in the UK. The Act sets up a register of overseas entities, which includes information about their beneficial owners, and contains provisions designed to compel overseas entities to register with Companies House if they currently own, or wish to own, land in the UK. It is designed to provide more information for law enforcement to help them to track down those using UK property as a money laundering vehicle. There are strictly imposed sanctions for non-compliance, including restrictions on registering or disposing of title inland.

ENTERING THE COUNTRY, CONT'D

Scrutiny of transactions involving risks to national security
The National Security & Investment Act 2021 provides for government scrutiny and potential intervention in acquisitions of UK rights, assets (both physical and intangible) or entities, if such acquisitions could harm UK national security.

This includes a requirement to notify acquisitions of UK entities that undertake prescribed activities in any of 17 specified commercial fields, including for example AI, advanced robotics, communications, computer hardware, cryptographic authentication and space technologies among others. Completing a notifiable acquisition without government approval renders the transaction void and may result in civil or criminal penalties for the purchaser.

The legislation allows the government to impose conditions on a transaction and to block or reverse transactions entirely. Anything completed before 12 November 2020 is exempt.It is worth noting that relevant entities and assets include those merely having a connection to the UK, such as carrying on UK activities or being used in connection with UK activities, and relevant acquisitions of IP rights may include the grant of licences.

INTELLECTUAL PROPERTY

The following intellectual property rights are registrable in the UK: patents, trade marks, designs. There is no system of utility model protection.

A single UK registration covers all territories withinthe United Kingdom(England, Wales, Scotlandand Northern Ireland). However, procedures for enforcementmay differ incertain respectsas between, respectively, (1) England and Wales, (2) Scotland, and (3) Northern Ireland.

In addition to registrable rights, the following unregistered rights are protectable under English law, as applied throughout the UK: unregistered trade mark rights (passing off), design rights, confidential information/trade secrets, copyright, and database right.

Patents

Patent protection in the UK lasts 20 years from filing, provided that the patent is periodically renewed. The UK is a member of the European Patent Convention (which means that UK national patents and EP(UK) patents are both options), but not a member of the European Unified Patent Court/Unitary Patent system.Unlike the EPC system, there is no UK national patent opposition procedure, although validity may be challenged post-grant either as a standalone action or in defence to infringement proceedings.

Obtaining a patent in the UK is likely to cost several thousand pounds, most of which comprises fees for specialist advice from a patent attorney. The process typically takes several years to complete, depending on complexity.

If the invention has been disclosed anywhere in the world prior to filing the application, this will invalidate any resulting UK patent. There is no grace period in the UK.

The UKIPO takes a relatively strict approach to the patentability of software-based inventions, but such patents should not be ruled out.

The owner or exclusive licensee of a UK patent may elect to reduce UK corporation tax on profits derived from exploiting the invention, through the ‘Patent Box’ scheme (subject to qualifying under various applicable criteria).

INTELLECTUAL PROPERTY, CONT'D

Trademarks

Trademark registration is relatively cost-effective and quick in the UK. It is highly advisable, since reliance on passing off requires evidence of substantial goodwill built up through UK trading activity and is more difficult to prove.

The registry (UKIPO) charges a filing fee of GBP £170 for a single class, plus £50 for each additional class. It is often advisable to have a trademark lawyer/attorney assist, which will involve additional fees. Examination is typically completed within a few weeks, following which the application is published. Third parties have two months following publication in which to oppose the application (extendable by one month if they file a notice of intended opposition within the initial two months). Once registered, renewal is required every 10 years, for a small fee. The UK is a member of the Madrid system for international registration.

Non-UK trademark representatives are no longer effective for UK 'comparable marks' that were issued from EUTM registrations when the UK left the EU. Owners should appoint UK representatives.

The UKIPO does not reject applications on grounds of prior similar marks on the UK or IR(UK) register. However, a search is carried out during examination, and the UKIPO will report prior similar marks. It will then notify those third parties, unless the applicant withdraws or makes changes to goods/services so as to remove the similarities.

The rules for what is protectable as a registered trademark are essentially the same as for EU trademarks. However, post-Brexit EU case law is not binding, and laws may diverge in the future.

There are no image rights as such in the UK. However, the law of passing off may provide protection where a well-known person has a record of exploiting their image commercially.

Design Rights

The UK offers registered and unregistered protection for designs. Registered designs follow essentially the same requirements as EU design registrations, and last for 25 years. UKIPO application fees are low, but specialist advice should be sought from patent attorneys which will involve additional cost. Registration is potentially advantageous, since infringement does not require copying from the claimant's design. Since novelty is a requirement for registered design protection, disclosure of the design may invalidate a subsequent registration, subject to a grace period.

Unregistered designs law in the UK, which is separate from copyright law, is currently rather messy, with several overlapping forms of protection. These currently comprise:

- UK unregistered design right, which lasts for 15 years from making the design, subject to a maximum of 10 years from first marketing of corresponding products anywhere in the world;
- Supplementary unregistered design right / Continuing unregistered design right' (depending on whether the design was first published before or after Brexit) which lasts for three years from publication of the design and is equivalent to EU unregistered design right;

The UK-specific right does not protect surface decoration, and protection is limited to designs/designers qualifying territorially, by reference to the UK or to certain other designated territories.

A first disclosure of a design outside the UK may negate protection in the UK. Professional advice should be taken prior to first disclosing a design.

Unregistered designs are only effective against copying, and not against inadvertent similarity of designs.

The UK government is considering changes to unregistered designs law, which are likely to simplify the options.

INTELLECTUAL PROPERTY, CONT'D

Breach of Confidence/Trade Secrets

Breach of confidence is useful where other IP rights may not apply – for example, in relation to algorithms, business ideas and financial data. English law protects confidential information against unauthorised disclosure and misuse, provided that it was disclosed in circumstances whereby it was obviously meant to be kept confidential. There may be limits on available actions where information is used by ex-employees, depending on the significance of the information.

The UK implemented the EU Trade Secrets Directive. However, the effect of this was mainly seen in relation to remedies, since the UK already extensively protected trade secrets.The UK's position may not be fully aligned with that in the EU.

It is advisable to implement a non-disclosure agreement when engaging in preliminary discussions with potential collaborators. These clarify what is protected in the circumstances, and the agreed scope of use, and provide contractual remedies on top of the general law of breach of confidence.NDAs need to be drafted with care.

Copyright

There is no system of registration of copyright in the UK. Copyright arises automatically. UK statutory provisions confine copyright works to certain limited categories – so, for example, software is protected as a 'literary work'. This categorisation requirement can be problematic for 3D industrial (non-artistic) designs, which is likely to be the subject of future English case law in light of the broader EU test for protectability under copyright.

The UK is one of a few countries recognising copyright for computer-generated works. In such cases, copyright is owned by the person who made the necessary arrangements for the creation of the work.

For most categories, copyright lasts for 70 years after the life of the author.

IP Audits

The UKIPO 'Audits Plus' scheme provides part-funding towards SMEs' costs of an IP audit, performed by an IP professional of the SME's choosing, up to a prescribed budget.

Database Right

Databases may be protected by copyright where the selection or arrangement of data is sufficiently original. Separately, a standalone 'database right' automatically protects a database if there has been a substantial investment in obtaining, verifying or presenting the data. This is derived from the EU Database Directive. For databases created since 01 January 2021, however, only UK citizens, residents and businesses are eligible for UK database right. Similarly, EU database right is no longer available to UK database makers for post-Brexit databases. It may therefore be necessary to establish different regional entities if comprehensive database right protection is required.

Database right is infringed by unauthorised extraction or reutilisation of data.

Enforcement of IP rights in the UK

The UK courts are among the most sophisticated worldwide in terms of dealing with complex IP disputes. Whilst the UK offers a dedicated IP court for SME IP disputes, no IP litigation in the UK is 'low cost'. It is also more difficult and far more costly to obtain an interim injunction compared to other European territories. An alternative, cost-effective option for patent validity disputes is the UKIPO Opinion service.

Advice should be taken before asserting UK patents, design rights or registered trade marks, even informally, since unjustified threats are actionable by anyone aggrieved, unless kept within permitted lawful confines. This may also affect online takedown notices.

Following 'Brexit', the UK has maintained a one-sided exhaustion of rights regime for the whole of the EEA and UK. Therefore, legitimate products first placed on the market in the EEA can still be imported into the UK without UK right holder permission. In contrast, imports of legitimate goods from the UK may now infringe rights in the EEA.

DATA PROTECTION/PRIVACY

UK GDPR

Following Brexit, the GDPR is referred to in the UK as the **EU GDPR**. The UK General Data Protection Regulation **(UK GDPR)** sits alongside the Data Protection Act 2018 **(DPA)** and incorporates the EU GDPR into national legislation. It is broadly similar to the EU GDPR but allows the UK government the flexibility to review and amend its provisions.

The EU GDPR continues to have extra-territorial effect. The EU GDPR may continue to apply to UK controllers or processors who (i) have an establishment in the EU, or (ii) offer goods or servicesto data subjectsin the EU, or who monitor their behaviour as far as their behaviour takes place within the EU. Such organisations are likely to be subject to dual data protection regulatory regimes under the UK GDPR and the EU GDPR.

If an organisation satisfies limb (ii) of the above test, but does not have an establishment within the EEA, the EU GDPR may require that it appoints a representative in the EEA. This representative may be an individual, organisation or company located in an EU or EEA state where some of the individuals whose personal data is being processed are located. Likewise, companies outside the UK that provide goods/services to the UK or monitor people there may need to appoint a representative in the UK.

This means that EU companies may need a UK representative, UK companies may need an EU representative, and companies outside both UK and EU may need both. Practically speaking, whether a representative is required will be a question of fact. The European Data Protection Board (EDPB)'s guidelines on GDPR territorial scope provides helpful pointers on whether a company would be considered as 'offering goods and services' to EU citizens.

Separate regulations govern the sending of electronic mail for direct marketing purposes, as well as the use of cookies, and are similar to the EU regime.

EU Adequacy Decision and Data Transfers

The EU/EEA and UK have recognised each other's data protection standards as 'adequate'. Subject to local laws in some EU jurisdictions which may be more stringent than the EU GDPR, personal data may move freely between the EU/EEA and UK, and vice versa.

The UK regulator, the Information Commiisoners Office (ICO), has approved UK-specific transfer tools (either an International Data Transfer Agreement or a UK Addendum to the EU Standard Contractual Clauses) to govern transfers of UK personal data to Third Countries, i.e. any country outside the EEA, Switzerland, Gibraltar, Iceland, Liechtenstein and Norway. As at 2023, these transfer tools are new and relatively untested. The ICO has published extensive guidance on how to use them: International data transfer agreement and guidance | ICO

DATA PROTECTION/PRIVACY, CONT'D

The UK Data Protection and Digital Information (No.2) Bill (the Bill)

On 8 March 2023, the UK Department for Science, Information and Technology (DSIT) published the Bill. It is the second version of a bill designed to reform the UK data protection regime (the first was proposed in July 2022). If enacted, it will make important changes to the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

By proposing the Bill, DSIT hopes to provide clear and consistent rules for the treatment of personal data to support new data-driven technologies and help give UK businesses an internationally competitive edge. DSIT hopes that the Bill will reduce costs and burdens for British businesses and charities, remove barriers to international trade and cut the number of repetitive data collection pop-ups online. Some of the most impactful proposals include:

- Clarify what data may be considered "personal data" and likely restricting the definition.
- Modify the threshold to allow organisations to refuse to respond to, or impose a charge for, a data subject access request, from "manifestly unfounded or excessive" requests (under the UK GDPR) to "vexatious or excessive" requests.
- Clarify that "legitimate interests" can be used as a lawful basis for direct marketing and remove the balancing test for some important public interest matters.
- Replace the requirement to have a Data Protection Officer with the more limited requirement to have a "Senior Responsible Individual" in place for high-risk processing;
- Replace "Data Protection Impact Assessments" by leaner and less prescriptive "Assessments of High-Risk Processing".
- Allow cookies to be used without consent for the purposes of web analytics and to install automatic software updates. Furthermore, non-commercial organisations (e.g. charities and political parties) will be able to rely on "soft opt-in" for direct marketing purposes, if they have obtained contact details from an individual expressing interest.
- Implement a new approach to the test for adequacy when transferring personal data outside the UK; the requirement for an "adequacy decision" will be changed to an "approved transfer", the new test being whether the standard of protection in the receiving jurisdiction is not materially lower than the UK regime.
- The Information Commissioner's Office will become the Information Commission, a corporate body with wider powers.
- Introduce a framework for the provision of registered digital verification services in the UK.

Whilst the Bill's overall aim is to reduce data protection compliance burdens on UK businesses, the UK is mindful of the need to retain its adequate status under the EU GDPR. The EU conducts a review of adequacy with the UK every four years; the next adequacy decision is due on 27 June 2025.

ARTIFICIAL INTELLIGENCE

As yet there is no specific AI legislation in the United Kingdom. The government published a White Paper on AI regulation in March 2023. This indicated that the government did not propose to create an AI regulator, and instead set out framework principles to be coordinated consistently across sectors.A consultation followed, and further government proposals are awaited. The Competition and Markets Authority has separately issued proposed competition and consumer principles in respect of large language models and the like, which it is expected to update in March 2024. Guidance from the courts is awaited concerning the extent to which training of foundation models based on copyright works amounts to infringement of such copyright. In Thaler (Appellant) v Comptroller-General of Patents, Designs and Trade Marks (Respondent) 2023 UKSC 49, the Supreme Court determined that an inventor within the meaning of the UK's patents legislation must be a natural person and cannot be an AI system, and secondly that the owner of a machine that generates an invention is not thereby per se entitled to apply for a corresponding patent, aside from any other ground on which entitlement may arise.

UNITED KINGDOM

EMPLOYEES/CONTRACTORS

General: Employment laws provide certain employment rights, such as the right to the National Minimum Wage, to a statutory minimum level of paid holiday, minimum length of rest breaks, Statutory Sick Pay, Statutory Maternity Pay (as well as Paternity Pay, Adoption Pay and Shared Parental Pay) and protection against unlawful deductions from wages. You cannot agree to contract out of these statutory rights.

A written statement of terms of employment: Employers may be liable for a fine of between two and four weeks' pay if employees are not given a statement (before employment commences) setting out their terms of employment (typically contained in an employment contract). There is no similar requirement in respect of a contractor, but it is advisable to put an agreement in place toavoid ambiguity.

Entitlement to notice: After one month's service, employees are entitled to receive notice from their employer of the termination of their employment. The minimum right is to one week's notice, increasing by one week for each complete year of service, up to a maximum of 12 weeks' notice. In practice, companies frequently offer longer notice periods, particularly to more senior employees.

Termination of employment: An employee may only be dismissed for one of five prescribed reasons, including redundancy, capability and misconduct. In addition, employers must follow a fair procedure when dismissing an employee. Failure to follow a fair procedure, or terminating employment for a reason other than one of the reasons permitted by law, could lead to a claim for unfair dismissal (provided an employee has at least 2 years' service). As of April 2023, the maximum compensation for unfair dismissal is £124,997.

Protection from discrimination: Employees have the right not to be discriminated against because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation. Compensation in respect of a successful discrimination claim is uncapped.

Intellectual property: As a general rule, the employer will own the copyright, patent rights, and unregistered and registrable designs, in work undertaken by employees in the course of their employment. Conversely, intellectual property in work created by consultants will vest in the consultant by default. It is therefore important to include a specific assignment of intellectual property rights in consultancy agreements.

Confidentiality: During employment, employees are bound by an implied duty of fidelity and good faith, which includes a duty not to disclose the employer's confidential information. Following termination this is limited to trade secrets. This is why it is important to include express confidentiality provisions (particularly covering the period following the termination of employment).

The same duties and limitations are not necessarily implied in relation to consultants, although there may be protection under the general principles of breach of confidence. It is advisable to have robust, express confidentiality obligations which cover consultants' activities both during and following their engagement.

Restrictive covenants: The implied duty of fidelity doesn't apply following the termination of employment. Therefore, an employer may wish to include express contractual restrictive covenants with a view to restricting some of the employee's activities following the termination of employment.

The basic position is that all contractual restraints on a former employee's freedom to work are void and unenforceable unless they can be shown to be no wider than reasonably necessary to protect the employer's legitimate business interests. It is therefore important that restrictive covenants are drafted carefully. Further, an employer who has acted in breach of contract will be unable to enforce a restrictive covenant against an employee.

It may be attractive to place restrictive covenants on a consultant after the termination of their engagement, but restrictions of this kind can suggest that the client has control over the activities of the consultant, which may point towards an employment relationship. It is therefore important to weigh up the commercial importance of such restrictions against the risk of the consultant being found to be an employee.

EMPLOYEES/CONTRACTORS, CONT'D

Self-employed or employee? Engaging someone who is self-employed (as opposed to an employee) may be a commercially attractive option for both parties. However, the fact that an arrangement is documented in this way will not be conclusive as a matter of employment law.

Determining whether someone is self-employed or an employee is complex, involving analysis of several factors, and the reality of the relationship will be key. To make matters even more complicated, there is a third status which is that of 'worker'. Given the complexity of the topic, worker status has not been considered as part of this note.

The self-employed/employee question is a critical one to answer correctly (for both parties) principally because a) some core legal protections only apply to employees, such as the right not to be unfairly dismissed; b) only employees receive benefits such as paid holiday, sick pay and pension contributions and c) the tax treatment of an employee will be different to that of a contractor. There are other reasons too, but these points are usually the key considerations.

CONSUMER PROTECTION

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Consumer Protection from Unfair Trading Regulations (2008) and the Consumer Rights Act 2015, implement most of the provisions of the Consumer Rights Directive (2011/83/EU), so EU consumer protection principles remain effectively in force in the UK. They:

- apply to contract terms and consumer notices to ensure that such terms are fair, transparent and do not give a businessanunfair advantage;
- blacklist and greylist certain contractual terms which are or have the potential to be unfair or prejudicial to consumers (see the section on Terms of Service below); the Competition and Markets Authority (CMA) has produced a useful guide to unfair contract terms: Unfair contract terms explained (publishing.service.gov.uk);
- do not apply to pricing/value of goods and services; the consumer should decide on the adequacy of the price compared to what is being supplied;
- give consumers a 14-day 'cooling off period' for most distance contracts and off-premises (usually online) contracts, enabling a consumer to cancel for any reason and get their money back;
- apply to the sale of digital content i.e. downloadable apps, software, games, e-books and music, so that the digital content must match the description, be fit for purpose, and meet quality standards just like physical goods; entitle consumers to refunds and repairs at no expense for purchases that do not meet the relevantcriteria, provided that the claim is made withthe retailer within the specified time-frame.

Consumer Protection Agencies
The primary agencies responsible for consumer protection law are the Competition and Markets Authority **(CMA)** and the Trading Standards Service **(TSS)**. The CMA and TSS share enforcement powers with the following notable sector-specific regulators: the Office of Communications **(Ofcom)**, the Financial Conduct Authority **(FCA)** and the Office of Gas and Electricity Markets **(Ofgem)**.

Consumers may also bring direct action to enforce consumer rights and protections through the courts. A consumer must bring a claim within six years after the breach of contract.

CONSUMER PROTECTION

Other Legislation and Codes of Practice
Below is a non-comprehensive list of selected UK consumer protection requirements and guidelines in the tech sector, which may be relevant to products offered to UK consumers:

- **Code of Practice for Consumer Internet of Things (IoT) Security (2018):** This sets out practical steps for IoT manufacturers and other industry stakeholders to improve the security of consumer IoT products and associated services. There are thirteen guidelines, designed to help protect consumers' privacy and safety. This Code of Practice applies to consumer IoT products that are connected to the internet and/or home network and associated services, including for example: smart cameras, TVs, and speakers and wearable health trackers.
- **Product Security and Telecommunications Infrastructure Act 2022 (PSTIA):** This Act allows regulations to be introduced to require mandatory security requirements, to make consumer connectable products more secure against cyber attacks. These regulations, when introduced, will impose transparency requirements for security features of such products. The compliance obligations will fall on manufacturers, importers and distributors of all connectable products, who will need to comply with the new security requirements. The Product Security and Telecommunications Infrastructure Act 2022 (Commencement No 2) Regulations 2023 (SI 2023/469) were issued in April 2023 and bring the new regulatory regime into effect from 29 April 2024. The Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023 (SI/2023/1007) come into force on the same date and set out the security requirements.
- **Voluntary code of practice for app store operators and app developers:** In November 2022 (updated Oct 2023), the government published a new voluntary code of practice to boost security and privacy requirements on all apps and app stores available in the UK. The government is collaborating with international partners to develop international support for the code and will explore the possibility of creating an international standard for apps and app stores.

Advertising and Marketing
These are governed by UK legislation in respect of both B2C and B2B marketing, as well as codes of practice enforced by the Advertising Standards Authority, regulating such matters as misleading advertising, direct marketing, transparency of charges, and inappropriate content, as well as rules governing advertising in specific categories such as health and beauty, gambling, financial, food and alcohol for example. The codes also apply to advertising within web pages and social media. Prize promotions are separately regulated.

At the end of 2022, the CMA published new guidance for social media platforms, brands, and content creators, to encourage transparency in regard to paid-for endorsements and other content.

Draft legislation (**Digital Markets, Competition and Consumer Bill)** initiated in 2023 would replace the Consumer Protection from Unfair Trading Regulations with largely similar provisions but with various conceptual reforms and updates. This includes for example proposals to address 'subscription traps'.

The **Online Safety Act 2023** imposes obligations on the largest online platforms in relation to harmful and illegal content.Among other things, this includes regulation of fraudulent paid user-to-user advertising on search platforms, with a draft code of conduct on fraudulent advertising expected in 2025.

TERMS OF SERVICE

Information Requirements and Recommendations
All providers of online services should make the following information available to the users of their service (prominently displayed on the company website):

- The full name of the company. A company's website must include the following information: registered name, number and geographical address (including registered office if different from trading address);
- A means of communication with the company, including an e-mail address, or an electronic enquiry template;
- A list of policies that will apply to a user of the onlineservices such as privacypolicy, acceptable use policy, cookies policy.

Contract

- Terms of service are generally enforceable in the UK whether as "click-wrap" or "browse-wrap". Click-wrap is preferable for contractual certainty as the user is automatically bound by these terms.
- The online terms should be displayed or be accessible to users by means of a prominent hyperlink on the website or the app.
- The user must be made aware that they are bound by the terms before completing any purchase.
- It is useful to include acceptance language in the introduction to the terms. Even if this is not effective to create a contract in itself, it may encourage users to comply with the terms.

Consumer Contracts

- UK consumer protection law gives consumers rights and remedies which generally cannot be contracted out of. Any consumer contracts must be drafted so that they reflect the principles of fairness and transparency set out in the Consumer Rights Act 2015, otherwise the terms will be unenforceable and their use may in itself be a breach of consumer protection law. See above for further details on unfair contract terms.
- The following terms are considered to be 'blacklisted', automatically unfair and their inclusion may render a contract invalid:
  - attempted exclusion or restriction of liability for death or personal injury caused by negligence; and
  - attempts to exclude the implied terms as to (i) the quality of goods or digital content; or (ii) delivery of services with reasonable skill and care.

WHAT ELSE?

Video-sharing platform services in the UK were previously obliged to comply with a VSP notification regime comprising specific regulatory requirements, including mandatory notifications to Ofcom and provision of certain information for users. This has been superseded by new provisions under the Online Safety Act 2023. Services that began before 10 January 2024 are regulated also under the pre-existing VSP regime during a transitional period.

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UNITED STATES OF AMERICA

LEGAL FOUNDATIONS

The United States Constitution and its amendments are the supreme law of the US, and set out the powers of federal and state governments. Each US state also has its own constitution. Based on the delegation of powers in the US Constitution, there are federal and state laws, as well as, within states, local laws at multiple levels (county, city/town, etc.). Each of those levels generally has courts and/or judicial or administrative bodies. Federal bills must be passed by both houses of Congress (the House of Representatives and the Senate) and must be signed by the President in order to become law.Each state has its own legislative structures (most are bicameral, with the exception of Nebraska) for the passage of laws, which are only applicable within that state. The United States also has a number of territories (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands and American Samoa, which are permanently inhabited), which are generally also subject to federal law, as well as the local laws of the applicable territory.

Most commercial activity is governed by a combination of federal and state law, since while business operations that are solely within a state would generally be subject to only that state's laws, the authority to "Regulate Commerce…among the several States" was granted to Congress in the US Constitution, so business operations that cross state lines or take place in more than one state would also be subject to applicable federal law.

As a general matter, federal law preempts state and local law in the event of a conflict in areas where there is federal authority. Overall, the US is a common law jurisdiction at all levels, but Louisiana and Puerto Rico both have retained civil law for certain matters.

CORPORATE STRUCTURES

Determining the most appropriate business legal entity for a particular start-up depends on several factors, including the type of business, the number of owners, management control, and concerns over taxation and liability issues. The most common entities in the United States are sole proprietorships, partnerships, limited liability companies and corporations. Each entity may be a suitable legal structure for a start-up depending on the overall objectives of the budding business. With very limited exceptions (such as a national bank or national banking association), business entities are formed and chartered under state or territorial laws.

A business entity does not necessarily need to be formed in the state or territory in which it does business, but, depending on the specifics of the entity's operations, it may need to register to do business in the states or territories in which it operates.

CORPORATE STRUCTURES, CONT'D

In response to the rising concerns of illicit financial activities, the Corporate Transparency Act (CTA) was passed, and became effective on January 1, 2024. To increase the transparency of legal entities, this legislation requires that most legal entities (there are limited exceptions for certain types of entities, and for certain industries where reporting requirements are already in place) disclose the who formed the entity and beneficial ownership information via a report to the U.S. Department of Treasury's Financial crimes Enforcement Network (FinCen). A beneficial owner for CTA disclosure purposes is anyone who directly or indirectly exercise substantial control over the company or controls at least twenty-five (25%) of ownership interests.

The typical structures for US entities include:

Sole Proprietorships

Sole proprietorships are the simplest structure as it only involves a single owner in the business. There is very little paperwork aside from registering a name in connection with the business and obtaining a tax identification number. However, the business assets and liabilities of a sole proprietor are not separate from their personal assets and liabilities. The sole proprietor could be held personally liable for the debts and obligations of the business. This type of structure is not uncommon at a very early startup or idea stage, or for minimal liability risk business ventures, but is generally not recommended due to the liability issues.

Partnership

Partnerships are owned by two or more partners (who may or may not be natural persons), and are formed by entering into partnership agreements and, in the case of limited partnerships and limited liability partnerships, registering with the state or territory in which they do business. Partnerships are treated as pass-through entities for tax purposes, so the profits and losses of the business are allocated to the partners' personal income.

There are three common types of partnerships:

General Partnership – All partners share equal rights and responsibilities in connection with the management of the business and the split of profits. However, all partners also are equally and personally liable for all liabilities and obligations of the general partnership.

Limited Partnership – Typically only the partners identified as the general partners have unlimited liability. The other partners, or the limited partners, have limited liability, meaning their personal assets typically cannot be used to satisfy business debts and obligations. Generally, the amount of a limited partner's liability is limited to their investment in the limited partnership.

Limited Liability Partnership – All partners have limited liability, but most states restrict this type of partnership for use by service professionals, such as doctors, lawyers, accountants, architects, etc.

Partnerships, in particular limited partnerships, are most often used for special situations versus operating entities, like film projects and investment funds.

Corporations

Corporations are generally considered the standard type of business entity, offering a relatively standard structure and protection to its owners from personal liability. A corporation can be taxed, sued and held legally liable for its debts and obligations. Unlike sole proprietorships and partnerships, corporations are generally tax entities in and of themselves (a so-called "C Corp," which is the default under Internal Revenue Service (IRS) rules and is named for the subsection of the Internal Revenue Code under which it is taxed), and generally pay income tax based on their revenues. Double taxation occurs when shareholders (i.e., the owners) receive income from the corporation in the form of dividends and report such income on their personal tax returns. It is also possible for certain corporations to elect to be taxed as partnerships (a so-called "S Corp"), but there are limits to the availability of this option in terms of the nature (natural persons who are US citizens or residents) and number (limited to 100) of shareholders.

Corporations are generally created with a state filing of a certificate or articles of incorporation, and then involve the adoption of bylaws and often a shareholders' agreement, which detail the ownership rights of the shareholders and the framework by which the corporation will be governed. State laws generally specify at least some of the structure, including a board of directors and certain officers of the corporation.

Corporations are generally ideal for businesses that are further along in their growth, looking to raise large amounts of capital from multiple investors as it can raise funds through the sale of its ownership shares (i.e., stock), and is generally preferred by venture capital and private equity.

CORPORATE STRUCTURES, CONT'D

Limited Liability Company

A limited liability company (LLC) is a hybrid entity that takes advantage of the benefits of both the corporation and partnership business structures. Like corporations, an LLC is a distinct legal entity that is separate from the owners and individuals that manage it. An LLC separates the business assets and liabilities of the company from the personal assets and liabilities of the owners, insulating the owners from being personally liable for the debts and obligations of the company. Additionally, an LLC can enjoy the tax benefits of a partnership in that profits and losses of the business get passed through to the personal income of the owners without facing corporate taxes, and without the limitations of an S Corp; an LLC can also opt to be taxed as a corporation.

The creation of an LLC requires a state filing of articles of organization and the execution of an operating agreement, which outlines the rights of each owner with respect to the management and ownership of the LLC. LLCs offer significant flexibility, since they are essentially governed by contract (the operating agreement), and the structure can be easily adjusted to allow for different management, profit and loss, and preference structures.

LLC's can be a good choice for businesses that want to have the protections of a corporation, but may want to offer the tax benefits of a partnership or have complex or international ownership structures.

ENTERING THE COUNTRY

The US has regulations with respect to foreign investment in certain industries. Those are generally covered under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (which updated prior law and regulation) and subject to review by the Committee on Foreign Investment in the United States (CFIUS).The general focus is on businesses and industries that relate to critical industries and national security risk, including access to and transfer of sensitive technology, intellectual property, and personal data, as well as certain types of real estate and critical infrastructure.

It is also worth noting that the US has complex immigration requirements, so if the intent is to reside in the US to operate the business, a visa that allows those business activities would likely be required.

Other Structures

Benefit Corporations: Benefit corporations (sometimes called “B Corps”) are entities that exist under certain state laws, and are designed include in their mission the interests of multiple stakeholders other than just shareholders, including employees, the community, and the environment. The need for benefit corporations arose from the challenges of traditional corporate structure that focused on maximizing shareholder returns, and resulted in caselaw that penalized companies and the leadership for addressing social and environmental issues that may reduce shareholder profits. Benefit corporations were designed to allow businesses to include in their mission purposes beyond the benefit to shareholders/corporate profit. In general, benefit corporations are mission-oriented (or include mission-driven purpose), and try to address transparency and stakeholder accountability, while also generating shareholder profits.

Low-Profit Limited Liability Companies: Low-Profit Limited Liability Companies (referred to as an "L3C") are similar to B Corps in that they are a hybrid entity that combines the financial benefits of a traditional for-profit entity with the social benefits of a nonprofit and are provided for under the laws of only a few states. L3C's are designed to receive most of its funding from charitable foundations through program-related investments (PRI). In order to receive a PRI, an L3C must satisfy three requirements imposed by the Internal Revenue Service: (i) it significantly furthers the accomplishment of one or more charitable or education purposes within the meaning of the Internal Revenue Code, (ii) it does not have as a significant purpose the production of income or appreciation of property, and (iii) it does not have as a purpose the accomplishment of one or more political or legislative purposes.

Trusts: In some instances, trusts can be used in the formation or holding of business ventures.This is often done for succession and tax planning purposes, as well as in the context of certain foreign investments, but is sometimes also used to ensure that the operation of the business is in line with certain purposes, similar to benefit corporations (sometimes in the form of an employee benefit trust). The use of trusts is generally more complicated that the other structures, and can have significant tax and legal consequences.

U.S.A

INTELLECTUAL PROPERTY

US law generally recognizes the following types of intellectual property as registrable:

Copyright

What is protectable? The US Copyright Act protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. The rights of the author exist at the time the work is created and fixed in tangible form, and registration is not required; however, registration with the US Copyright Office can provide presumptive evidence of ownership, and also provides certain statutory rights from the time of registration, as well as the right to sue for infringement, which are not available absent registration.

Where to apply? Copyright applications are filed with the US Copyright Office.

Duration of protection? For works created after January 1, 19778, the term of copyright is the life of the author plus 70 years; for joint works copyright lasts until 70 years after the death of the last surviving co-author. For works made for hire (see Question 6) and anonymous or pseudonymous works, the term of copyright is the shorter of 95 years from publication or 120 years after creation.

Costs? The current (2023) basic copyright registration fee per work is $45 for an online single application (single author, one work, not for hire), and $65 for all other works filed online; for paper filings, the cost is $125 per work. Additional fees may apply for other services, and a complete and up-to-date list of fees can be found on the US Copyright Office Website.

Patents

What is protectable? A utility patent protects a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereto;" a design patent protects a "any new, original, and ornamental design for an article of manufacture;" and a plant patent protects a "distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state," that is invented or discovered and asexually reproduced. To be potentially patentable, an invention must be new (also called "novel"), useful, and non-obvious to a person of ordinary skill in the art.

Where to apply? Patent applications, including so-called provisional patent applications (a lower-cost and faster initial filing that doesn't require formal patent claims, nor an oath or declaration that can hold the filing date, but that only is effective for 12 months) must be filed with the United States Patent and Trademark Office (USPTO).

Duration of protection? For patent applications filed on or after June 8, 1995, the term of protection for patents (other than design patents) is 20 years from the date of application; design patents filed on or after May 13, 2015 have a term of 15 years from the date of grant.

Costs? The filing fees for patents depend on the type of patent, the number of independent claims in the patent application, and the size of the entity applying for the patent. The USPTO has reduced fees for small entities and micro entities, and the application and filing fees can be as low as $44 for a design patent application by a micro entity, but are generally a few hundred dollars for most patent applications. Maintaining a patent also requires paying regular maintenance fees.

INTELLECTUAL PROPERTY

Trademarks

What is protectable? A trademark (or service mark) is any word, phrase, symbol, design or combination that identifies the source of the particular goods or services, and is used to distinguish that source of goods or services from other sources or similar goods or services. Common law trademarks, established by use in commerce of the particular mark, are also recognized in the US, but registration provides significantly greater protection and potential remedies for infringement.

Where to apply? Trademarks can be filed with the United States Patent and Trademark Office, and a majority of US states also allow state trademark registrations by filing with offices in the particular states; the scope of protection granted by a state trademark registration is limited to that specific state, so state trademark filings are not common. The United States is a party to the Madrid Protocol, so filings through World Intellectual Property Organization (WIPO) under the Madrid System are recognized.

Duration of protection? Once a trademark is registered, filings are required to maintain the registration and confirm ongoing use in commerce between the fifth and sixth years after registration, between the ninth and tenth years, and every ten years thereafter. The duration of state registrations varies by state.

Costs? Application costs for US federal trademarks submitted online is either $250 or $350 per class of goods or services, depending on the type of application filed. The costs of state trademark applications vary by state.

The US also generally recognizes trade secrets, at both the federal and state levels, though trade secrets are not subject to registration.

Trade Secrets

The US also generally recognizes trade secrets, at both the federal and state levels, though trade secrets are not subject to registration.

What is protectable? Trade secrets generally protect confidential business information the commercial value or competitive advantage of which is derived from its confidentiality. In order to be protectable as a trade secret, the information must not be generally known to the public, and must have been subject to reasonable measures to maintain its secrecy, including imposing non-disclosure obligations (either by law or contract) on parties to whom the information is disclosed.

How are trade secrets protected? Trade secrets are protected under both federal and state laws, through a combination of statutory and common law protections. The federal Defend Trade Secrets Act of 2016 allows the owner of a trade secret to sue for misappropriation in federal court. The Uniform Law Commission developed the Uniform Trade Secrets Act (UTSA), which has been adopted, at times with modifications, by 49 states and a number of territories; and New York relies on common law trade secret protection.

Duration of protection? Trade secret protection can last indefinitely, for so long as the information remains secret.

DATA PROTECTION/PRIVACY

The US does not have a comprehensive federal data protection or privacy law, so privacy is addressed through a patchwork of hundreds of federal, state and local laws and ordinances, and new laws are being enacted regularly. As a general matter, federal privacy laws will pre-empt inconsistent state laws unless the federal law includes an exemption (often with the federal law setting a floor, but allowing higher state standards).

No federal law comprehensively addresses data breach notification (some of the sectoral laws do have requirements), but all 50 states and some of the territories have data breach notification laws with respect to certain categories of personal data.

A number of states, beginning with California in 2018, have passed comprehensive privacy acts that address the protection of the personal data of their residents. While the California laws are somewhat unique in structure and requirements, the other state laws are more similar to the EU's General Data Protection Regulation (GDPR).

These laws are generally enforced by either various federal agencies, the attorney general of the state in question, or in California, by the new California Privacy Protection Agency, though with respect to a number of federal laws, there are a number of agencies – including the Federal Trade Commission, Department of Commerce, Department of Health and Human Services – Office of Civil Rights, and others.

The following outlines some of the key or indicative federal and state laws, but is not comprehensive given the hundreds of laws, rules and regulations that have been enacted.

Federal Sectoral Laws

Children

- **Children's Online Privacy Protection Act (COPPA):** Addresses websites and online services that target children. Requires clear notice of the data collected. If the child is under 13 years of age, the law requires parental consent to collect their personal information.

Education

- **Family Educational Rights and Privacy Act (FERPA):** Applies to all education institutions that receive federal funding. FERPA ensures privacy protections for students and their education records. Including academic, disciplinary, and financial records. Student health records are subject to FERPA, unless the school does not receive federal funding. If the school does not receive federal funding, the student's health record may be subject to HIPAA.
- **Every Student Succeeds Act (ESSA):** Limits the disclosure of student personal information.

Financial Data

- **Gramm-Leach-Bliley-Act (GLBA):** Regulates the collection, use and protection of personally identifiable financial information provided by a consumer.
- **Fair Credit Reporting Act (FCRA):** Protects use of personal information by private businesses and requires accurate data in consumer reports.
- **The Fair and Accurate Credit Transactions Act (FACTA):** Regulates how businesses providing credit scores interact with consumers.

Healthcare

- **Health Insurance Portability and Accountability Act (HIPAA):** Created to protect individual's health information, and its regulations include specific and proscriptive requirements relating to the use and protection of patient. Applies to health plans, healthcare clearinghouses and healthcare providers.
- **Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH):** Strengthened HIPAA and includes new requirements regarding data minimization, increased penalties for violations, notice of breach and electronic health records.
- **Confidentiality of Substance Use Disorder Patient Records Rule:** Provides privacy protections for individuals seeking care for alcohol and substance abuse.
- **Genetic Information Nondiscrimination Act of 2008 (GINA):** Protects information related to genetic testing and prohibits employers from discriminating against an individual due to their genetic health information. Healthcare providers are prevented from implementing higher premiums or denying coverage based on genetic health information.

Marketing and Telecommunications

- **Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM):** Regulates how commercial emails are marketed to consumers, including opt-out requirements.
- **Telephone Consumer Protection Act (TCPA):** Regulates the use of telephone, fax, text message or robocalls for marketing purposes. This law allows for class action and statutory damages for violation, and has led to many multi-million dollar judgements and settlements.

DATA PROTECTION/PRIVACY, CONT'D

Federal Sectoral Laws, CONT'D

Marketing and Telecommunications, CONT'D

- **Telecommunications Act of 1996:** Restricts access, use and disclosure of customer proprietary network information, which is information collected by telecommunications carriers related to subscribers.
- **Telemarketing Sales Rule (TSR):** Places a prohibition on telemarketers and issues guidelines of how telemarketing can be conducted.
  - **National Do Not Call Registry (DNC):** Falls under TSR, telemarketers must access the DNC registry before placing a telemarketing call. Telemarketers must also update their call lists every 31 days.
- **Video Privacy Protection Act of 1988 (VPPA):** Allows consenting users to share viewing information within social media accounts. Consent is valid for two years.

Consumer Protection

- **Federal Trade Commission Act (FTC Act):** While not specifically a privacy or data protection law, the FTC Act's prohibition against "unfair or deceptive acts or practices in or affecting commerce" (described in more detail under Question 7 below) is used regularly by the Federal Trade Commission to address privacy and security issues with respect to the processing of consumer personal data.

State Comprehensive and Sectoral Laws

As noted above, many states and localities have filled the vacuum from a lack of comprehensive federal privacy and data protection law. As of completion of this summary, thirteen states have comprehensive privacy laws, and below are some (but by no means all) of the key state laws (some comprehensive, some sectoral) that may impact businesses operating in the US:

California

- **California Consumer Privacy Act (CCPA):** Implements comprehensive privacy and data protection requirements, including notice, protection, processor (service provider) requirements and individual rights for California residents, but differs from the GDPR (and other comprehensive US state privacy laws) in a number of key ways, including allowing the opt-out to transfer of personal information to certain third parties and treating those transfers as a "sale" of personal data.
- **California Privacy Rights Act (CPRA):** Amends the CCPA and expands consumer rights, including providing new categories of sensitive personal information. The CPRA created the California Privacy Protection Agency, the first dedicated US privacy regulator, and expanded the opting out of "sale" of personal information to expressly address the "sharing" of personal information for behavioral advertising.
- **Delete Act:** Supplements California's existing data broker registration law, and creates a single request system for individuals to request that all data brokers delete the individual's personal information that each maintains.

Colorado

- **Colorado Privacy Rights Act:** Generally modeled on the GDPR, the CPRA is a comprehensive privacy law that addresses the processing of personal data of Colorado residents, but excludes certain personal data by role (e.g., employment or commercial context).

Connecticut

- **Connecticut Data Privacy Act:** Generally modeled on the GDPR, the CDPA is a comprehensive privacy law that addresses the processing of personal data of Connecticut residents, but excludes certain personal data by role (e.g., employment or commercial context).

Illinois

- **Biometric Information Privacy Act (BIPA):** Addresses the use, collection, disclosure, and retention of biometric information. The law allows for class action and statutory damages, and violations have resulted in many multi-million dollar judgements and settlements.

New York

- **Automated Employment Decision Tools:** New York City has adopted a law that prohibits employers from using artificial intelligence for recruiting, hiring, or promoting employees without conducting an audit for bias (also see AI below).
- **New York Stop Hacks and Improve Electronic Data Security Act (NY SHIELD ACT):** Amends New York's Information Security Breach and Notification Act. The SHEILD Act is a security law, that requires companies to develop, implement and maintain reasonable security measures to protect private information.

Virginia

- Virginia Consumer Data Protection Act: Generally modeled on the GDPR, the VCDPA was the second comprehensive privacy law passed on the US, and addresses the processing of personal data of Virginia residents, but excludes certain personal data by role (e.g., employment or commercial context).

ARTIFICIAL INTELLIGENCE

There is currently no national regulatory regime for AI in the US, but there are numerous federal and state initiatives and potential legislation under consideration, and a number of states and localities do have AI-related laws.

Law and Regulation
On October 23, 2023, President Biden issued an "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," which, although it does not apply directly to businesses, directs various US government departments and agencies to evaluate AI technology and implement policies and procedures regarding adoption and use of AI, and imposes deadlines for agencies to act. In particular, the Executive Order directs the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST) to establish guidelines, standards and best practices for AI safety and security. The Executive Order also directs agencies with enforcement authority to enforce existing consumer protection laws and principles to protect against fraud, unintended bias, discrimination, violations of privacy, and other potential harms driven by use of AI.

In addition, the Federal Trade Commission is studying issues surrounding AI, and is investigating several large data companies and their recent investments and partnerships involving generative AI companies and cloud service providers, in part to assess whether these investments and partnerships could serve to undermine fair competition. Existing consumer protection and similar laws and regulations, like the FTC Act (see above) likely could be enforced against companies that use AI inappropriately on the basis that such use results in unfair competition or unfair and deceptive acts or practices affecting commerce.

At the state and local level, there are a number of laws regulating certain aspects of AI, some of which are included as part the comprehensive privacy laws in those states. The following describes a few of the state and city laws and ordinances, but is not comprehensive, and new legislation is under consideration across the country.

In California, the CPRA provides consumers with the right to opt out from the use of automated decision-making technologies to process their personal information, and the California Privacy Protection Agency (CPPA) issued a first draft of its proposed Automated Decisionmaking Technology Regulations in November 2023, and those regulations, in some form, are likely to come into effect. Similarly, though differing in specifics, the Colorado Privacy Act, Connecticut Privacy Act and Virginia Consumer Data Privacy Act, among others, provide individuals with certain rights to opt out of the use of their personal data for automated decision-making. Under some of the laws, as processing for automated decisions is deemed to present a heightened risk of harm to individuals, the controller may be required to conduct a data protection assessment with respect to these types of processing activities.

New York City's Automated Employment Decision Tools (AEDT) law, regulating the use of AI in hiring, has attracted national attention, and has influenced the proposal of similar bills in a number of states and localities. The law prohibits employers and employment agencies from using automated employment decision tools without conducting an audit for bias, and requires that candidates residing in the city be notified about the use of AI in decisions concerning hiring and promotion.

Authorship/Creation of Intellectual Property
The US Copyright Office and USPTO have taken the positions, respectively, that AI cannot be listed as an author of a copyright nor an inventor of a patent. As of the preparation of this summary, case law in the area has affirmed the offices' positions that a sufficient degree of human input is required for creative works and inventions to be protectable under applicable law.

EMPLOYEES/CONTRACTORS

Many employment issues, standards and requirements are governed by federal, state and local laws and regulations. For example, on the federal level, the Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector. Each jurisdiction additionally has its own state and local employment and labor laws and regulations, which can vary significantly by state and even by locality within states. Employment and labor requirements, laws and regulations on the federal, state and local levels change for a variety of reasons, and this overview does not address all applicable laws, regulations, requirements or circumstances and is not intended to constitute legal advice. It is recommended to consult with counsel regarding any questions.

Termination: Employment relationships may be designated as "at will" in most jurisdictions. This means that the employee may terminate his/her/their employment with the employer at any time and for any reason simply by notifying the employer. Likewise, the employer may terminate the employee at any time, for any legal reason, with or without cause or advance notice. However, some jurisdictions may have restrictions, exemptions or circumstances where employment "at will" is limited or cannot apply. Employers should consult with counsel and include in their offer letters, employment agreements, employee handbooks or other written documents when employees are (or are not) considered to be “at will” where appropriate or as required by applicable law.

Employee/Independent Contractor: Important legal distinctions (such as tax implications) and responsibilities may arise when classifying an individual as an "employee" or an "independent contractor". Each jurisdiction may rely on a set of applicable factors and tests to determine whether an individual should be classified as an "employee" or an "independent contractor". Misclassification of a worker can result in consequences under both federal and state laws. It is important to note that on January 10, 2024, the U.S. Department of Labor published a final rule, effective March 11, 2024, that revises the Department's guidance on how to analyze who is an employee or independent contractor under the FLSA. This final rule rescinds the Independent Contractor Status Under the Fair Labor Standards Act Rule, that was published on January 7, 2021.

Ownership of Work Product: As a general matter the works created by employees in the course of employment are owned by the employer. The Copyright Act provides that a copyrightable work created in the course of employment is a "work made for hire" for the employer, and that the employer (and not necessarily the employee-creator of the work) is deemed to be the author. With respect to independent contractors, works are generally deemed owned by the contractor rather than the person who engages the contractor, so it is necessary in the agreement with the contractor to specify ownership of copyrightable works if the intent is other than the contractor owning the work; note that not all copyrightable works can be “works made for hire” under the Copyright Act (which defines which works not made by employees can be works made for hire), and that deeming a contractor’s works “works made for hire” may result in unintended employment consequences under certain state laws, so caution should be exercised.. With respect to inventions and patents, the law is more complicated and nuanced, and including invention assignment and cooperation requirements even for employees who are involved in activities that could result in patentable inventions.

Taxes: Employers are generally responsible for withholding certain federal and state income taxes, as well as social security and Medicare taxes, from employees and remitting those payments to the IRS. With respect to independent contractors, there may also be withholding requirements with respect to payments if specific tax documentation is not provided by the contractor.

CONSUMER PROTECTION

Consumer protection in the US is addressed by federal, state, territorial and local laws and regulations, and each jurisdiction tends to have its own consumer protection framework and enforcement authority. This ranges from the Federal Trade Commission to municipal departments of consumer affairs or protection. The specifics differ by jurisdiction, but they generally address "unfair or deceptive acts or practices in or affecting commerce" (Section 5 of the Federal Trade Commission Act (FTC Act), and many of the laws allow enforcement by multiple authorities (various agencies and attorneys general).

The FTC Act allows the Federal Trade Commission (FTC) to investigate and initiate an enforcement action, under either administrative or judicial processes, if there is reason to believe that the FTC Act, or another law enforced by the FTC, has been violated. The FTC also periodically issues written guidance on practices that it views as appropriate or potentially deceptive or unfair. Under state consumer protection laws, sometimes called "baby FTC acts", the state authorities have similar powers of enforcement with respect to residents of their state for violation of their consumer production laws.

In addition to the FTC Act and some of the federal laws noted above under Question 5, some of the other consumer protection-related laws include:

- **Consumer Product Safety Act:** A federal law that creates safety standards for consumer products, prohibits the sale of certain hazardous goods, and establishes recall requirements for unsafe products.
- **California Consumer Legal Remedies Act:** A consumer protection law that prohibits unfair or deceptive practices, and provides for damages and injunctive relief to consumers for violations. Similar laws exist in most states.
- **New York General Business Law:** The New York General Business Law contains a number of provisions relating to consumer protection, including prohibiting unfair or deceptive trade practices and false advertising, and providing certain requirements for consumer contracts.

These laws may include certain disclosure and contractual requirements or limits on certain activities (such as automatic renewal), depending on the nature of the commercial activity, and also address advertising and marketing practices, including the types of statements that can be made about products and services, and the use of both celebrity and individual product endorsements (e.g., paid or compensated (such as with free product) reviews).

There are also multiple consumer protection organizations and groups, such as the of Better Business Bureaus and BBB National Programs, Inc., that both educate and monitor consumer protection, which may include making referrals to regulatory and enforcement authorities.

TERMS OF SERVICE

In general, while so-called "click-wrap" terms of service – which involve the individual taking at least one active step to accept the terms – are considered enforceable in the US, "browse-wrap" terms of service – where the terms are posted on the site but no affirmative action is taken to acknowledge or accept them - are often not enforceable or their enforceability is limited to specific terms that the individual should have expected or where there was specific notice provided.

In addition, key terms with respect to consumer protection, liability, and enforcement – such as binding arbitration – have been found by some courts to be unenforceable even in clicked-through terms if the terms were buried in the terms of service, not clearly and conspicuously stated, or otherwise difficult for the individual to have been aware of.

WHAT ELSE?

Limited Liability for Online Intermediaries

Section 230 of the Communications Decency Act of 1996 (CDA) of 1996 provides certain legal and liability protections for internet service providers and online platforms with respect to the content posted by third parties. While Section 230 is currently being challenged from multiple directions – including (at time of preparation of this summary) pending cases in front of the Supreme Court – it remains in effect.

Under Section 230, online platforms and internet service providers are not considered the publisher or speaker of third party (user-generated) content that is transmitted on or though their services, which means that they cannot generally be held liable for the substance of that content, granting them broad immunity from liability for that content. In addition, those platforms and providers are allowed to moderate or filter content without that creating liability, which enables platforms to enforce acceptable use and content policies that remove objectionable content (such as defamation, hate speech and false or misleading information) or content that otherwise violates their terms of service.