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INTERNATIONAL TECHNOLOGY LAW ASSOCIATION

STARTUP LEGAL PLAYBOOK

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

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FOREWORD

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

Welcome all to the first 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?*

FOREWORD CONT'D

- **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?*

- **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 nine 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 Startups 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. As with any project of this type, the danger is always that the group will bite off too much, and falter for lack of commitment. Instead, we have been amazed and humbled by the response we have received. As of initial publication, we're able to provide detailed chapters for thirty-nine countries!

What's next? In future editions, we hope to expand the current roster by adding more countries, updates as various jurisdictions inevitably change their laws, and may also consider expanding the list of questions to add more detail 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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DISCLAIMER

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: 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.

LEGAL FOUNDATIONS CONT'D

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.

CORPORATE STRUCTURES, CONT'D

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.

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 550 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.

CORPORATE STRUCTURES, CONT'D

Corporation, CONT'D
(Sociedad Anónima or SA)

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.

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.

CORPORATE STRUCTURES, CONT'D

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.

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.

CORPORATE STRUCTURES, CONT'D

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 colours 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, 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 colour of a product or a single colour applied to it, cannot be registered as trademarks.

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 application is up to 20 tariff positions is ARS 7,072 (approximately USD 40 at the exchange rate at the time of writing). The filing of each additional tariff position will be charged ARS 50 (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 2023.

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.

For legal entities, the official fee for filing a patent application of up to 10 claims is ARS 12,600 (approximately USD 68 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 840 (approximately USD 4.50 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 6,300 (approximately USD 34 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 420 (approximately USD 2.25 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 2023.

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.

For legal entities, the official fee for filing a utility model application of up to 10 claims is ARS 6,300 (approximately USD 34 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 420 (approximately USD 2.25 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 3,150 (approximately USD 17 at the exchange rate at the time of writing) and the filing of each additional claim will be charged ARS 210 (approximately USD 1.12 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 2023.

INTELLECTUAL PROPERTY, CONT'D

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. A single 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 an industrial model or design application is ARS 5,355 (USD 28.60).

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. A single 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 an industrial model or design application is ARS 5,355 (USD 28.60).

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 855 to ARS 1710 (USD 4.50 to USD 9.15).

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 108 to ARS 400 (USD 0.58 to USD 2.14 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 140 (approximately USD 0.75 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 2023.

INTELLECTUAL PROPERTY, CONT'D

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).

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 6 to USD 444 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 444 to USD 500 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 500 to USD 555 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 16,700 at the exchange rate at the time of writing) in the case of minor violations; (ii) ARS 10,000,000 (USD 55,500 at the exchange rate at the time of writing) in the case of severe violations; and (iii) ARS 15,000,000 (USD 83,275 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

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, 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.

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

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?

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.

Consumer Protection

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 are scheduled to be held October 2023, to elect the president, representatives on the Congress and governors of most provinces. For this reason, from a consumer law perspective, there are no emerging trends or hot topics as for startups. Though the possibility of new related regulations in the future cannot be ruled out, it is safe to say that it is not part of the agenda now, mainly because it is an electoral year.

Data Protection Bill

Recently, the DPA published a bill to replace the DPL. If approved, the bill, which is mostly alligned with the provisions of the EU GDPR, will introduced 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. Although we expect the draft bill to be addressed and discussed by Congress during next year's ordinary sessions or by 2024 at the latest, we cannot ascertain that this will indeed happen considering that presidential elections are taking place in Argentina next year and that the draft bill has not been filed with Congress yet.

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 don't 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 partnerships is 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 (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, 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 acquiring 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 (which is valued at above the relevant monetary threshold);
- a direct interest in a national security business or in an entity that carries on a national security business; or
- a direct interest in an Australian media business.

AUSTRALIA

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:

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.

Trade marks

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? Trade marks 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 trade mark protection can be renewed indefinitely.

Costs? Registering a trade mark 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.

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 required 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.

INTELLECTUAL PROPERTY, CONT'D

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.

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 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 first made public or, if the work was not made public, 70 years after the work was made. Otherwise, generally speaking (but with a few limited exceptions such as for television and sound broadcasts), copyright subsists for 70 years after the author of the work has died. 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 under, 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. Small businesses with annual turnovers of $3 million or less may still be subject to the Privacy Act, such as those that are 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 any organisation or agency covered under 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 Australian 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 was the increase to the maximum penalty for serious or repeated interference 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'. Further reforms are being considered, including an amendment to the definition of 'personal information' to create alignment with the definition under the GDPR.

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 4 weeks of annual leave per year and shiftworkers may be entitled to up to 5 weeks of annual leave 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 1 to 4 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 the 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 has also been established 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 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 10.5% of an employee's earnings to avoid paying a charge (which is higher than the amount for superannuation contributions).

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. For example, in the state of Victoria, employees are entitled to LSL after seven years of continuous employment.

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 'unfair terms' contained 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's legitimate interests or in response to an insignificant breach of contract by the consumer.

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 Item 7). 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. These are is $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 Item 7), including the prohibition against 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 commercial electronic messages (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

An Australian company with more than 50 shareholders (including employee shareholders) will be subject to Chapter 6 of the Corporations Act, which includes limitations on the ability of any party to acquire more than 20% of a company unless through a permitted exception (such as making a takeover bid). Companies should monitor the number of shareholders they have if they want to avoid being subject to Australia's takeovers laws.

AUSTRIA

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 35,000. The shareholders have to pay in a minimum capital contribution of EUR 17,500.
- GmbHs can take the advantage to benefit from the so-called "founding privilege" (Gründungsprivileg). In this case, a reduced minimum contribution of at least EUR 10,000 is sufficient (of which only half need to be paid in in cash) at the time of incorporation of the company (GmbH "light"). After 10 years, the foundation privilege ends and the remaining capital has to be paid.

CORPORATE STRUCTURES, CONT'D

Corporations (Kapitalgesellschaften), CONT'D

ADVANTAGES

- Limited liability of the shareholders
- Managing directors are bound to the instructions of the shareholders

DISADVANTAGES

- Minimum share capital of EUR 35,000 (exception: founding privilege)
- The articles of association as well as any share transfer agreement have to be in the form of a notarial deed

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

- 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 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 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.

AUSTRIA

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 5 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.

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. The application of an Austrian trademark is very similar to the procedure before the EUIPO. 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.

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.

AUSTRIA

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 applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Austrian Patent Office, 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 Austrian patents for up to ten claims amount up to EUR 530.-. In addition fees of the legal and technical representative apply.

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.

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.

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.

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).

Trade Secrets

What is protected? Trade secrets as such are not recognized as an intellectual property asset. However, the Unfair Competition Act protects know-how and business information of commercial value that is kept secret. Thus, protection required 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

Since 25th May 2018 the GDPR applies. Since the Austrian legislator has barely made use of the opening clauses, the relevant Austrian specifics in the Austrian Data Protection and Telecommunication Act 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 years 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.
- Phone calls and electronic messages for advertising purposes 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). Due to restrictive legislation this exemption rarely applies.
- Marketing by postal mail service can be based on overriding legitimate interests and does not require 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 Austrian Data Protection Authority (DSB, Datenschutzbehörde) is the competent supervisory authority. It follows a rather data subject-friendly approach. Currently the DSB is handling a lot of complaints against European companies with respect to incriminated cookie settings filed by NOYB which is led by the Austrian data privacy activist Max Schrems. These proceedings are still pending (https://noyb.eu/en/noyb-files-422-formal-gdpr-complaints-nerve-wrecking-cookie-banners; see also https://noyb.eu/en/101-complaints-eu-us-transfers-filed).

AUSTRIA

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 agreements. The interests of employees are represented by the works council (Betriebsrat) and require its approval for specific measures (eg termination of the contract) 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.

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 a 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: 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 (e.g. organizing the election of a works council, recent raising of justifiable claims against the employer);
- 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 the Consumer Protection Act, Civil Code, Distance Selling Act, E-Commerce Act and as of January 2022 the Consumer Warranty Act. It applies 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; cf. question 8.

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. Further, 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

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 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;
- any other intransparent or grossly disadvantageous clause – the broad opening clause.

As to the consequences of using invalid clauses please refer to question 7.

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.

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.).

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 a minimum capital of €61,500 which has to be fully paid 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.

BELGIUM

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.

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 mitigating measures 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 allowing the investment to move forward.

BELGIUM

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

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

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? 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.

INTELLECTUAL PROPERTY, CONT'D

Patent, CONT'D

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? Application costs for designs amount €150 (exempt from tax). Fees are 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? Copyright owners have the exclusive right to exploit the 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 exclusive rights to use the work under a license.

Ownership of copyright on software in employment context? The basic principle here is that the employer is presumed to acquire the property rights to software, 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.

Trade Secrets

What is protected? A trade secret refers to know-how and business information that is valuable because 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 customer database, 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…

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.

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 – 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.

EMPLOYEES/CONTRACTORS, CONT'D

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, etc.).. 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.

Prohibited practices – Posting of workers

Posting of workers means the situation in which a worker who either habitually works in the territory of one or more countries other than Belgium or was recruited in a country other than Belgium is lent by his employer to a user in Belgium, who employs that worker and exercises over him any part of the employer's authority that normally belongs to the employer himself. The employment relationship between the foreign undertaking posting the worker elsewhere and the gainfully employed posted worker should already exist prior to the posting to Belgium and should be retained throughout the period of posting. Employers who post their workers to Belgium are obliged to respect - for the work performed there - the Belgian working conditions (including pay and employment conditions) which are laid down by legal and regulatory provisions (Royal Decrees) sanctioned under criminal law and by contractual provisions made compulsory by Royal Decree (i.e. collective labor agreements sanctioned under criminal law). These provisions concern in particular: working time, remuneration, public holidays, minimum length of paid annual leave, worker welfare, protective provisions for pregnant women, non-discrimination, temporary work, hiring out of workers.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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 – 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 political mandate.

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. 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.

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) 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).

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 address requests from Belgian and foreign customers to the relevant manager in another country.

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.

WHAT ELSE?, CONT'D

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.

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 quotaholder, which is limited to the value of the quotas subscribed by such quotaholder, 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 quotaholder'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 quotaholders.
- 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 quotaholders 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 be 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 succesful 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 is a 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 involver 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 n° 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.

Another important point, which is also worth mentioning 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 at the ANPD is recent, several court cases involving data protection matters have already been filed, particularly compensation processes. Brazilian courts have been active in enforcing the law.

BRAZIL

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 natural person 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 usually work outside the office, such as working from 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.

BRAZIL

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.

BULGARIA

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).
- **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.

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

BULGARIA

CORPORATE STRUCTURES, CONT'D

Partnerships, CONT'D

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.

ENTERING THE COUNTRY

Bulgaria does not have a foreign direct investments screening mechanism such as those notified by other EU member states under the EU's Foreign Direct Investment Regulation.

Also, there are no general national foreign investment control rules which restrict foreign investment in the country except for 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? 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 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.

BULGARIA

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.

BULGARIA

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

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. 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.

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 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

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 2021 this threshold ran from CAD$1.043 billion to CAD$1.565 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.

On November 17, 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, n August 15, 2021, Parliament was dissolved in advance of a Federal Election and Bill C-11 died on the order paper. The re-elected federal government is expected to introduce a new privacy law bill, which may be Bill C-11 as we have seen it thus far, or a significantly revised version.

Bill C-11 proposed 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-11. British Columbia and Alberta are currently reviewing in light of 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.

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).

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. 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.

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 criminal process.
- **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.

COLOMBIA

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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 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 constituted 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 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 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.

It is important to mention that 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 by-laws. 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 treatment as 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$1,003,500 (Approx USD$230) (2022), for those of first or single class. For each additional class there is a fee of approximately COP $501,500 (Approx. USD $114.00) (2022).

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 technical problem.

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 $100,000 (Approx. USD $20) (2022) Additionally, the Patentability Examination of a Patent of Invention application has a cost of COP $1,363,000 (Approx. USD$ 311) (2022).

In the case of utility model patents, the application costs approximately COP $78,000 (Approx. USD $17) (2022). The Patentability Examination of a Utility Model Patent application has a cost of COP $770.500 (Approx. USD $176) (2022).

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 procedure. 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 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 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 all the information required for the processing in a complete 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 disputed in 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.

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 2022 is COP$1.000.000 (approx. USD 250) 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 service to be binding, the consumer must accept them. Tacit or implied acceptance is not sufficient, there must be an express acceptance, although it can be expressed by a click. These terms must comply with the duty of information, as well as include the description of the product or 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 still applicable.

WHAT ELSE?

Regarding foreign investments: All of the foreign investment must be registered with the 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 2022 include: (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.

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, for specific 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 a limited 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 a general 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), 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. 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 shares (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 with 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** (Obrt), owner of which is one or more natural persons, fully and personal liable for all obligations with respect to the Sole proprietor ship.

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 the majority 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

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

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, depending on 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 publication fees 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 as follow:

- EUR 159,27 * official fee. These fees also cover maintenance for the first 2 years.
- EUR 0,66 ** official fee per each additional pages above 30.
- EUR 1,33 ** official fee per each additional claims 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 follow:

- EUR 100 * official fees filing and examination of a request for utility model including the first 2 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 following requirements: 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 (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 25th May 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.

DATA PROTECTION/PRIVACY, CONT'D

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.

EMPLOYEES/CONTRACTORS

General: Written employment agreement is a must. Agreements with indefinite term, definite term part-time and similar are normally negotiable and used. 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 and detailed and generally considered as relatively conservative in certain specific aspects, such as termination. The employer is generally free to determine the terms offered to a potential employee. These can be negotiated depending on the circumstances. 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 based on one of the following grounds:

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

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 requiring the approval from the competent court or public authority.

There are four different grounds for unilateral regular termination by the employer: (i) termination due to 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"); (ii) 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"); (iii) termination caused by employee's fault ("in case of breach of duties/obligations undertaken in the employment contract by the employee") as well as (iv) 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.

EMPLOYEES/CONTRACTORS, CONT'D

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;

CONSUMER PROTECTION, CONT'D

(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;

(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 a competent tax advice. 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 particular efficiency and investor focused approach). Some 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.

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 possibly 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 designs may 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 clauses in 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 compliance with 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.

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 of 1-3 months worth of salary, but with 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 and other 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 employment terminating). 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-compete may 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 health and 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 (including special rules on consumer protection).

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 of the 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 a branch (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.

WHAT ELSE?

Public Procurement

All public entities, including independent public enterprises, are obligated to adhere to the relevant rules on public procurement. The Public Procurement Act (Act No. 1564 of 15 December 2015) implements the Procurement Directive and regulates the conclusion of public contracts above certain thresholds. The thresholds can be found on the Danish Competition and Consumer Authority's webpage. [1]
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.

[1] https://www.kfst.dk/udbud/udbudsregler/taerskelvaerdier-2022-og-2023/

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.

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 entrepreneurship

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. The setup process for a sole proprietorship is straightforward and can be done with minimal costs. As to its requierements:

- No minimum capital is required
- The start-up notification 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 requierements:

- 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? In Finland, marks that are capable of being protected under the law include 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. In order for a mark to be eligible for trademark protection it must 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 mark, 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? Trademark applications can be filed either with (i) the PTO for national protection, (ii) the European Union Intellectual Property Office (EUIPO) for unitary protection in the EU or (iii) by designating Finland in the application for international registration under the Madrid System through the World Intellectual Property Organization (WIPO). The 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). The PTO then examines the trademark which usually takes some 1-2 months. After the trademark is approved, it will be registered and published in the official trademark journal. The possibility for third parties to oppose to the registration of a trademark begins in Finland after the registration of the mark and lasts for two months from the date of publication.

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 (if no oppositions are filed and successful)

Costs? The costs can vary depending on the number of classes of goods and services that the trademark is registered for. In Finland, the official fee for filing a trademark application for one class is EUR 225. Each additional class of goods and/or services will cost an additional EUR 100. The fees do not include possible legal representative fees.

FINLAND

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 procedure before these offices slightly differ.

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. This extension is called Supplementary Protection Certificate, SPC, and it has to be applied for separately with the PTO.

Costs? Application costs vary depending on with which authority the application is filed and the complexity of the invention. In Finland the application fee amounts to EUR 500 and the fee for each claim over 15 amounts to EUR 50. Later during the process, a publication fee and annual 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 Employment Inventions Act (FI: "Laki oikeudesta työntekijän tekemiin keksintöihin" 1967/656) and the Employee Inventions Decree. 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 compensation for the right to his/her invention that the employer may obtain either by operation of law or by virtue of agreement.

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? The utility model application is to 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? registration fee 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 appearance of 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. A design must be new and have individual character in order to obtain protection. If the design or an identical design is made available to the public prior to the registration, the design is not considered new and is devoid of registration. A grace period of 12-months constitutes an exception to this rule. The creator is allowed to test the product on the market before registration. The so-called grace period provision makes it possible, for instance, for the creator of a design to test his/her product on the market for up to 12 months before deciding whether to apply to register the design.

Where to apply? A design right application 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 requirement for registration is that the domain is not confusingly similar with any domain names or trademarks already registered (unless the domain name holder can present a good, acceptable reason for registering the said domain name). Also, the domain name cannot be confusingly similar with any domain names or trademarks already registered. It is the domain name applicant's responsibility to make sure that the domain name is lawful before registration. The Finnish relevant authority the Finnish Transport and Communications Agency (Traficom) does not conduct any examination prior to the registration.

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 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 is effective five years from registration. It may be renewed (against a renewal fee) for at most five years at a time.

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, protection requires 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? 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. 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.

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

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 (see section 8) 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

Yes. 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 generally intended for growth companies that 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.

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

FRANCE

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 judicialorder. 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) – (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

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.

All other companies are usually categorized as civil. Subject to certain exceptions, only commercial companies should carry on businesses.

The most common forms of French commercial companies are the following:

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 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 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 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.

CORPORATE STRUCTURES, CONT'D

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 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.

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 organise the relationship and the specific rights of the different shareholders;
- Of the companies with limited shareholder liability, the SAS provides the greatest flexibility as the shareholders may, to a large extent, freely organise the management and operations of the company;
- 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 elements such as the 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 open in the name of the company to be constituted, the amount of the initial contribution is wired 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 and 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.

Electronic signature is valid manner to sign the bylaws and other incorporation documents.

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 risk to the protection of public order, public security and national defense interests.

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 25% 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 jeopardise public order, public safety or national defense interests.

ENTERING THE COUNTRY, CONT'D

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 2021, 328 operations were subject to control of foreign investments in France (76 of which were finally not within the scope of the FDI regulation), compared with 275 in 2020 and 216 in 2019. In 2021, 124 operations were authorised by the Minister for the Economy and 67 were subject to conditions.

[1] The threshold was temporarily lowered, until 31 December 2023, to 10% for French companies whose shares are listed on a regulated market.

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.

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 are only made online on the https://procedures.inpi.fr/?/ platform. The 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 carriers out its own examination on the other hand. If there is no opposition from third parties or no objection from the INPI, the 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 authorisation 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 no objection from the INPI, the model is registered.

INTELLECTUAL PROPERTY, CONT'D

Intellectual property rights requiring no 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, 70 years after his 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) it must have actual or potential commercial value, and (iii) it 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 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 results 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 data 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 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.

DATA PROTECTION/PRIVACY, CONT'D

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 object to the receipt of prospecting messages in a simple and free way. With regard to e-mail, SMS and MMS, a distinction must be made between B2C and B2B relations. In the first case, the data subject's prior consent is required unless (1) commercial prospection concerns similar products or services provided by the same advertiser or (2) the prospection is not commercial by nature (example : charity). In such a case, it 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 object to the receipt of other prospecting messages. From March 1st 2023, commercial prospection by phone will only be allowed from Mondayto Friday, from 10 a.m. to 1 p.m. and from 2 p.m. to 8 p.m.

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 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.).

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.

EMPLOYEES/CONTRACTORS, CONT'D

Work Made in the Course of Employment:
The French Intellectual Property Code ("FIPC") sets out all the rules applicable to any creation made by employees. Several situations must be distinguished according to the type of creation, as detailed below:

Software
Copyright (economic rights) in software and its documentation are, unless otherwise stipulated by agreement, vested in the employer where the software was created in the performance of their duties or on the instructions of their employer.

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:
(i) 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;
(ii) 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;
(iii) 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 herunless 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 case the employer can claim ownership of all or a part of the invention. In this situation, the employee will be eligible for fair compensation.

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.

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 mind about the purchase made/service required, allowing him/her to free himself/herself from the concluded 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 new law, as from June 2023, professionals who offer consumers the possibility of subscribing to a contract electronically will have to provide an online cancellation facility 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 order.

Unfair terms: A consumer (or a consumer association) can ask a court to annul any term in a B2C contract that creates an 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.

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.

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, 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 cases, 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 the 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 are applied, their 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. 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 suppliers and large supermarket chains. The French Civil Code provides that any non-negotiable term, determined in advance by one of the parties and creating a significant imbalance in the rights and obligations stated in the contract is deemed not written. This rule only applies to standard-form contracts. 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 'imprevision' in French) refers to the situation in which a contract is imbalanced by 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.

GERMANY

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, an online formation of a German GmbH is possible. 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. 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 trade marks. 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 trade marks or rights to signs of third parties conflict with the registration. With publication in the Trademark Gazette, the three months 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 and can be prolongated for successive ten-years-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 up to EUR 590. In addition fees of the legal and technical representative apply.

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). 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 protectable? 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.

GERMANY

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 data 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 addressed. 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 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 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)

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 fixed 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.

EMPLOYEES/CONTRACTORS, CONT'D

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.

Fixed-term Employment Contracts: According to the Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz) fixed-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 fixed-term contracts; however, the longer the duration, the more difficult it usually is to establish reasonable cause. The successive use of fixed-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 fixed-term employment of scientific and artistic university staff and medical practitioners in further education.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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).

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 (eg 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 current 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 yet issued any written statements on the question of how working time must be recorded. In addition to electronic time recording, recording using a classic time clock or manual recording using time sheets are possible options. Ultimately, it is up to the legislator to specify the requirements for the working hours recording system in more detail.

EMPLOYEES/CONTRACTORS, CONT'D

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 employees. 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. An extraordinary dismissal requires a severe 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 2.4% of the gross salary;
- Nursing Care (Pflegeversicherung), total premium is 3.05% of the gross salary and 3.40% if the employee is childless and at least 23 years old;
- 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.

CONSUMER PROTECTION, CONT'D

Consumer protection associations, such as the German Consumer Centers (Verbraucherzentralen), are associations organized at the state level that are dedicated to consumer protection and provide advisory services on the basis of a government mandate. The Consumer Centers were granted special privileges by law compared with other associations. They have eg the right to provide extrajudicial legal services and can thus provide extrajudicial advice and representation to consumers alongside lawyers as part of their remit. Consumer Centers may have individual consumer claims assigned to them in order to claim them from the supplier and, if necessary, to sue for them. This enables Consumer Centers to bundle claims from individual consumers and assert them in the interest of consumer protection, all the way to the Federal Court of Justice. The Consumer Centers are also among the associations which 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.

If consumer protection associations succeed in proceedings, 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.

TERMS OF SERVICE

Yes. 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

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. Working visas may be issued for members of the board and administrators of companies in Greece, provided that the company employees -at a minimum- 25 people in Greece. Day-to-day management may be carried out, without additional visa requirements, by EU citizens. Additionally, the 25 employee limit to issue a working visa does not apply when the company is established as a Greek Branch or a subsidiary of a foreign entity.

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. HDPA has not issued, following the ECJ's "Schrems II" ruling, any decisions imposing fines related to international data transfers to date; however, it is highly probable that this will change within 2023.

GREECE

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.

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

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.

HONG KONG

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.

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, though there is an expectation that this will occur in the course of 2023. 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

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

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.

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.

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.**

HUNGARY

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.

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.

HUNGARY

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.

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.

INTELLECTUAL PROPERTY, CONT'D

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.

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.

INTELLECTUAL PROPERTY, CONT'D

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.

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.

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.

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.

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.

HUNGARY

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?

Yes, 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.

ICELAND

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.

ICELAND

INTELLECTUAL PROPERTY

The following IP rights can be registered:

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 33.900 (ISK 7.300 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 upcoming 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 67.800, for each additional claim ISK 4.400 is added. Further, annual fees range from ISK 11.600 to ISK 66.500, depending on how many years the patent has been valid. The official fees to validate a European Patent is ISK 32.700. In addition, translation cost and fees of a legal representation apply.

ICELAND

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

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 can not 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 18.200 for each five-year term, plus an additional fee of ISK 7.900 for each additional design in a joined application. The renewal fee for each design for each five-year period is ISK 23.000.

The following IP rights cannot be registered:

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.

ICELAND

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 trough 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.

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 avoiding 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.

EMPLOYEES/CONTRACTORS, CONT'D

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 also has to 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 works 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 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. The 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, by 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.

ICELAND

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 and is therefore a part of the European Economic Area and has in many areas of law implemented EU/EEA legislation.

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.

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.

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.

INTELLECTUAL PROPERTY, CONT'D

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.

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.

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.

Proposed New Law

The **Personal Data Protection Bill 2019**, was withdrawn by the government since it was considered to be too complicated and the Ministry of Electronics and Information Technology has just recently released a draft of the Digital Personal Data Protection Bill, 2022.

INDIA

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.

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.

INDIA

CONSUMER PROTECTION

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.

TERMS OF SERVICE

Any provision contrary to the law or against the public policy of India should not be included in online terms of service. Also, one sided or 'take it or leave it' kind of terms may be considered to be anti-competitive. Recently, the Delhi High Court rejected the appeals filed by large technology companies challenging investigation by the Competition Commission of India into their privacy policies being in violation of the Competition Act of India. Similarly, if there are one-sided, unfair and unreasonable clauses in the terms of use, then under the consumer protection laws, such clauses would be considered to be an unfair and thus unenforceable.

WHAT ELSE?

Tax Holidays

There are various incentives including tax holidays available to eligible start-ups. For example, an eligible start-up can get a 100% tax holiday for any 3 consecutive years out of the first 10 years of its its incorporation. Start-ups can also issue convertible notes to foreign investors, which other companies cannot. Similarly, for eligible start-ups fees for filing of trademarks and patents is reduced by almost 50% in some cases.

To be able to procure such benefits, a start-up must apply to the prescribed authorities to be recognized as an eligible start-up. To be eligible, broadly, a start-up needs to be incorporated before April 1, 2023, should not be a subsidiary of any foreign or Indian company, should not have a turnover of more than US$ 12.5M (approximately) and should be an innovative start-up or have a scalable business model with a high potential of employment generation or wealth creation.

Foreign Judgments

It is also pertinent for foreign entities to know that not all foreign judgments are automatically enforceable in India. For example, in order to enforce a U.S. court's judgment a fresh suit needs to be filed in India. However, India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and thus it is advisable to have an arbitration clause for resolution of disputes.

Stamp Paper/Stamp Duty

Another peculiar aspect of Indian law, is that in order to be admissible in evidence, contracts must be stamped on special stamp paper or the stamp duty needs to be paid online i.e. a prescribed amount of tax is to be paid for entering into each contract so that the contract is enforceable under Indian law. If the contract is not so stamped, then penalties apply and this may delay, for example, the procuring of any injunction in an Indian court.

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, partiularly 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 Bill ("Bill") was published in 2022 (this does not yet have the force of law, but is expected to become law this year). The FDI Screening Regulation sets out rules which will enable scrutiny of investment ventures pursued within the EU by undertakings from third countries (non-EU members), with a view to maintaining public order and security.

Under the Bill, 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.

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 effected. 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 Bill 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 Bill), 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

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: €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 renewals.

Where to register? Intellectual Property Office of Ireland (provides protection in Ireland only) or European Union Intellectual Property Office (EUIPO) for EU Trade Marks. If the goods or services will be marketed in other countries, a filing with the World Intellectual Property Organization (WIPO) under the Madrid Protocol will be required.

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 trade mark, 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: €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) or European Union Intellectual Property Office (EUIPO). It is not necessary to register a design, but it is highly advisable. Unregistered designs are protected only from unauthorised copying and they have shorter term of protection (up to 3 years versus up to 25).

Cost: €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. These Regulations give effect to EU Trade Secrets Directive (EU 2016/943) and provide for civil redress measures 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.

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. The nature of the relationship will be determined by reference to how it operates in practice. Several factors would be considered in analysing an individual's status.

EMPLOYEES/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.

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.

IRELAND

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.

ITALY

LEGAL FOUNDATIONS

Italy has a civil law system. The paramount legal source is, indeed, the law, 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 as, 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.

Besides there are many laws, legislative decrees or law decrees for different areas as, 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 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 Penal Code.

In the Italian system, contrary to common law systems, the case law is not binding for the courts, but typically the judges refer to judicial precedents in order to rule a case.

ITALY

CORPORATE STRUCTURES

In Italy there are specific rules only 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.

The legal notion of "innovative startup" is set out in article 25 of the Startups Decree. Innovative startups can provide the form of limited companies (including cooperatives), not listed.

The requirements for innovative startups are the following:

- They are newly established or have been incorporated for less than 5 years;
- They have their headquarters in Italy, or in another EU/EEA Member State provided that they have a production facility or a branch in Italy;
- They have annual turnover lower than euros 5 000,000.00;
- They do not distribute profits, neither they did in the past;
- The corporate purpose concerns mainly or exclusively the development, production and commercialisation of innovative products or services with a clear technological component;
- They are not the result of a company merger or split-up, or of a business or branch transfer;
- Finally, they meet at least one of the three following innovation-related indicators:
  - Research and development expenditure corresponds to at least 15% of the higher value between turnover and annual costs (as per the last statement accounts);
  - The total workforce includes at least 1/3 of PhDs, PhD students or researchers, or at least 2/3 of the 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 form of companies limited by shares:

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 person) are not personally liable for 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 a share capital 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 have the form of a notarial deed and it shall be filed to the Companies' House Register.

The rules for the 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 limitata semplificata - SRLS)

It is a form of "SRL" recently introduced by the government to encourage 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 an "SRLS" shall be not less than 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 have the form of a notarial deed and it shall be filed to the Companies' House Register.

Limited Partnership Company – (società in accomandita per azioni – SAPA)

This corporate model has never been widespread, except in a few sporadic cases where it was used as a "family safe".

It is a company in which two different groups of shareholders coexist:

- Limited partners (soci accomandanti), excluded from directorships and liable only to the extent of their contribution;
- General partners (soci accomandatari), directors by right, personally and fully liable for 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

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 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.

It should also be noted that, due to the Covid-19 pandemic, with Law Decree no. 23 of April 8, 2020, the Italian government has introduced very broad measures aimed at strengthening the monitoring of foreign investment in Italian companies as well as ensuring transparency in the capital market.

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 be involved 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.

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? Depending 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, 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 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-years-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).

ITALY

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? 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.

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.

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 (Codice della Proprietà Industriale). 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 25, 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 the 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.

ITALY

DATA PROTECTION/PRIVACY

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, on the basis of 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 to use 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.

Research. According to article 105 of the Italian Privacy Code, personal data processed for statistical or scientific research purposes may not be used to take 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.

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.

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:

- **Fixed-term contracts.** Accordingly to the Legislative Decree no. 81 of June 15, 2015, they can employ staff on fixed-term contracts for a maximum of 24 months per employee. However, within the aforementioned time frame, contracts may also be very short and can be renewed for an indefinite number of times (whereas general rules limit the number to four).
- **Salary.** Without prejudice to a minimum salary set down in the related CCNL, the parties may agree in complete autonomy the fixed and variable components of salary. Those components may be agreed, for example, on the basis of 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 (ICA) 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 pushing him to take a decision that he would not have taken otherwise.

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 threatening.

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 ICA can: evaluate and ascertain the unfair nature of contractual terms through an ex officio inquiry or following a complaint; or make an assessment under a specific request by a seller or supplier (the so-called "interpello").

After-sales guarantees (articles 128 - 135).
It is a legal guarantee, which means that it is always recognised to the consumer and consequently cannot be excluded or limited. Even in the event that the defect is attributable to the producer, it always concerns the existing relationship between the consumer and the seller. It shall last 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 comprises also the installation of the assets. Through this tool, the consumer is firstly entitled to the repair or replacement of the goods (so-called primary remedies) or, if this is not possible, to the reduction or termination of the contract (so-called secondary remedies). The additional warranty offered by the manufacturer or by the seller, the so-called conventional warranty, can be added to the legal guarantee.

ITALY

CONSUMER PROTECTION

Right of withdrawal (articles 52 – 59).
The right of withdrawal allows the consumer to change his mind about the purchase made, freeing himself from the contract concluded 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 to run:
- 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:

- Provides 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 in, the prices of the service inclusive tax and delivery costs – article 7 of the E-commerce Law).
- Meets 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).
- Provides 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 into 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 since incorporation.

The simplified registration process is balanced by two counterweights. First of all, the Companies' House carries out routine checks to make sure that innovative startup meets and maintains the above-mentioned requirements. Secondly, the 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 (once a year) that they fulfil the requirements set forth by the 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 not compliant with the rules for dummy companies);
- Access to a tailor-made labour regulation and to a flexible remuneration system (see answer no. 6);
- Special measures for VAT credits compensation;
- Access to a "Fail Fast" procedure in case of failure (innovative startups are exempted by standard bankruptcy procedures, composition with creditors, and compulsory administrative winding-up).

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

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STARTUP LEGAL PLAYBOOK

CORPORATE STRUCTURES

Latvian Commercial Law ("Komerclikums") provides the following forms of companies:

Capital Company

A capital company is a commercial company, the equity capital of which consists of the total sum of the nominal value of equity capital shares or stock. The company is a legal person/entity. Liability of the shareholders of capital companies is limited to the assets invested in the company.

A capital company is a limited liability company or a stock company.

Limited liability company (SIA, sabiedrība ar ierobežotu atbildību):

A limited liability company is a private company, the shares of which are not publicly tradable objects. It is the most popular form of companies in Latvia.

Its requirements:

- The minimum amount of equity capital of a limited liability company shall be EUR 2800.
- Generally, the Commercial Law does not determine the minimum and maximum number of shareholders and board members.
- The equity capital of the company may be less than the minimum amount EUR 2800 euro, if the company conforms to all of the following signs:
  - the founders of the company are natural persons, and there are not more than five of them;
  - the shareholders of the company are natural persons, and there are not more than five of them;
  - the board of the company consists of one or several members, and they all are shareholders of the company;
  - each shareholder of the company is a shareholder of only one such company, the equity capital of which is less than the equity capital 2'800 euro.
- A limited liability company must be registered with the Commercial Register. The company acquires the status of a legal entity only after registration in the Commercial Register.

Main differences of a limited liability company, compared to a stock company, is that the limited liability company has lower equity capital requirement and does not require mandatory supervisory council with a minimum of 3 members. Thus, limited liability companies are more attractive options for startups.

Stock company (akciju sabiedrība):

A stock company is a public company, the shares (stock) of which may be publicly tradable objects.

Its requirements:

- The equity capital of a stock company may not be less than EUR 35'000.
- The company shall be administered by meetings of stockholders, a supervisory council (institution which represents the interests of stockholders and oversees management board) and a board.
- The Commercial Law does not determine the minimum number of company stockholders. The minimum number of supervisory council members must be three, but if the stock of the company is in public turnover – the minimum number of council members shall be five. Maximal number of supervisory council members is 20. The board may consist of one or several members of the board. If the stocks of the company is in public turnover, the minimum number of members of the board must be three members.
- A stock company must be registered with the Commercial Register. The company acquires the status of a legal entity only after registration in the commercial register.

CORPORATE STRUCTURES,CONT'D

Sole proprietorship

Sole proprietorship (individuālais komersants) is a natural person who is registered as a merchant with the Commercial Register.

- A natural person who performs economic activities has a duty to apply himself or herself for entering in the Commercial Register as a sole proprietorship, if the annual turnover from economic activities performed by him or her exceeds EUR 284 600, the economic activities performed by him or her conforms to the activities of a commercial agent or activities of a broker, or the yearly turnover from economic activities exceeds EUR 28'500 and he or she simultaneously employs more than five employees.
- A natural person may apply himself or herself for entering in the Commercial Register as a sole proprietorship also in the absence of circumstances referred above.

Self-employed is also a common type of economic activity in Latvia. The difference between the self-employed and the sole proprietorship is that the self-employed must register only with the State Revenue Service (VID, Valsts ieņēmumu dienests) until they meet the criteria of the sole proprietorship.

Sole proprietorship and self-employed persons are liable with all their personal assets; therefore, this legal form of economic activity is not very popular for startups. Yet, it is often used by individual entrepreneurs who are not employing any employees.

Partnership

Partnership is general partnership and limited partnership.

- **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 entering in the Commercial Register.

Due to restricted liability limitations (members, except the limited partner in limited partnership are liable with their private assets) partnerships are not often used for the purposes of starting a startup.

LATVIA

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 foreign investment in accordance with applicable law - depending on the sector, country of origin of the investor and / or other requirements of applicable law. 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.

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.

LATVIA

INTELLECTUAL PROPERTY, CONT'D

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 utility models.

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 by annual 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 collective agreement.

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.

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 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 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 particular individual. In relation to e-mail commercial communication activities, exemption of similar products and services applies – if 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.

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 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 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).

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.

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.

LATVIA

CONSUMER PROTECTION

If the trader is aware of the consumer protection rules on the EU level, then there is little to worry about when it 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.

By the second half of 2023, Latvia will implement the Representative Actions Directive (Directive (EU) 2020/1828), which will allow 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 vehicles and 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 **digital service, digital content** or part of **goods with digital properties.** 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 venture capital 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.

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 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 2,500 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

Apart from the private limited liability company, the most 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 2,500. 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.
It is expected that in spring of 2023 a Unitary Patent system will start working in the European Union countries, including Lithuania. The system will make it possible to get patent protection in up to 25 EU Member States by submitting a single request to the European Patent Office. Unitary Patents will remove the need for complex and costly national validation procedures. Also, all post-grant administration will be handled centrally by the European Patent Office, further reducing costs and the administrative workload. The Unified Patent Court will deal with the infringement and validity of both Unitary Patents and European patents. More information on Unitary Patent and Unified Patent court is available here:
https://www.epo.org/applying/european/unitary.html

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.

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.

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

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.

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 propietorship 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, which represents a disadvantage. However, besides providing flexibility for shareholders, S.A.P.I.s provide alternatives for the appointment of statutory 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 before the 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 through out 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 rejection of 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 industrial designs have a validity term of five years counted from 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 original creation susceptible of being disclosed or 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 contained in documents, electronic or magnetic media, optical discs, microfilms, films, or other similar instruments. Likewise, the person who keeps the Trade Secret is allowed transmit it or authorize its use to a third party, such authorized user shall be under the obligation not to disclose the 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 protect the Trade Secrets that they contemplate, which shall specify the aspects that they include as confidential.

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 Personal Data in Possession of Individuals (the "Data Protection Law"), 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 personal data for a purpose that is not compatible or analogous to what is set forth in a privacy notice 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:** Data 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

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.

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.

MEXICO

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 is a 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

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

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

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.

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.

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.

Entrepreneurs, one-member limited liability company and direct and indirect budget users are released from the obligation to register the beneficial owner.

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

LEGAL FOUNDATIONS

Civil law is the legal tradition followed by the Netherlands. Hence, it relies on codified legislation which is mostly made by the central government in cooperation with the parliament (acts of parliament or wetgeving in formele zin). Legislative powers may be delegated to lower public authorities through 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 standpoint, 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. Also 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 investment, an nv tends to be a larger company. Thus, this is probably not the most attractive legal structure to a start-up company.

ENTERING THE COUNTRY

There is currently no practice regarding general foreign direct investment (FDI) reviewing in the Netherlands. Nonetheless, this is expected to change in early 2023 when the Investments, Mergers and Acquisitions Security Screening Bill (Wet veiligheidstoets investeringen, fusies en overnames (Vifo Act)) comes into effect.

The Vifo Act is based on Regulation (EU) 2019/452 establishing a framework for the screening of FDI within the European Union. The Act relates to investments and other acquisition activities in so-called 'targeted' companies. These targeted companies are either (i) critical providers and/or (ii) companies that possess sensitive technology, which are so vital to society that failure or interruption of their activities could potentially cause major social disruption. The Vifo Act contains a non-exhaustive list of categories of vital providers, which include providers in the field of transportation of heat, nuclear energy, air transport, ports and banking. It further provides that other categories of vital providers may be designated by future Order in Council(s) (AMvB).

The Vifo Act provides that its rule will have retroactive effect as of 8 September 2020. This entails that the rules of the Act may be applicable to transactions completed prior to the Act entering into force.

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.

Patents

What is protectable? Inventions in all fields of technology which are new, involve an inventive step and that are susceptible of industrial applications 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 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 the Netherlands Patent Office (Octrooicentrum Nederland). It is important to note that the Netherlands Patent Office will not conduct a substantive assessment of the application. Thus, there is no prior consideration whether the subject of application is an invention, whether it is new and inventive, and whether it is industrially applicable. Next to the Netherlands Patent Office, also registrations may be filed with the European Patent Office (EPO) or WIPO.

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

Costs? Application costs for a Dutch patent are EUR 80.- for a digital application (eOLF) and EUR 120.- for a written application. Additionally, a mandatory search into the state of the art costs EUR 100.- at national level or EUR 794.- at international level. Moreover, annual maintenance fees must be paid every year starting from the fourth year.

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. This provision is mandatory and it is not possible to agree otherwise on this matter. 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 is created.

INTELLECTUAL PROPERTY, CONT'D

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.

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.

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 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 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 conditions, they may not work for a competitor or 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 transfer of works made by contractual partners.
Registration with social security: Every employer must register employees with the Employee Insurance Agency (UWV), 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;
  - an 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 laid down 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 particular types of contracts and 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 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.

The consumer may exercise their right to rescind from a contract concluded at a distance or off-premises within 14 calendar days without giving any reasons. Further, the period within which the consumer may invoke his right of withdrawal is 14 calendar days. Moreover, it must be clear to the consumer that by placing an order in a web shop a payment obligation is entered into. 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 prolonged period.

TERMS OF SERVICE

Terms of services are solely enforceable if correctly declared applicable to the contract. First of all, general conditions must be made available in any event prior to the conclusion of the contract. Consumers must have agreed to the terms and should have had the possibility to read, print and store them upfront. It is also possible to file them at the Chamber of Commerce (Kamer van Koophandel or KvK) or the court registry.

The general conditions actually 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 be in compliance with the law which contains restrictions. This applies particularly to consumer contracts. Provisions that are on the so-called 'black list' are null and void. This means that these provisions do not apply. Provisions on the so-called 'grey list' can be annulled. This means that, depending on the circumstances of the case, these provisions do not apply.

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 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 the Netherlands.

Strict Dutch DPA: The Dutch DPA (Autoriteit Persoonsgegevens or AP) is quite strict on privacy-related issues. This follows from a recent case. According to the AP, a purely commercial interest cannot be qualified as a legitimate interest. This is a stricter standard than is used within Europe. The Council of State (Afdeling Bestuursrechtspraak van de Raad van State or ABRvS), the highest administrative court of the Netherlands, has not yet addressed the issue of whether purely commercial interests alone can qualify as a valid legitimate interest. Therefore, it is important to take this into account.

PANAMÁ

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

PANAMÁ

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.

PANAMÁ

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.

PANAMÁ

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.

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

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.

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.

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.

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. 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 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 can not 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.

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 (justica.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.

*Assuming electronic filing

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 (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

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.

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: (i) use national or religious symbols, or historic characters on a negative manner; (ii) appeals to the use of violence or any criminal activity; (iii) act against the dignity of the human being; (iv) contain any discrimination in relation to race, language, territory, religion or gender; (v) use the image or words of a third party without its permission; (vi) use obscene language; (vii) encourage any behavior against the environment protection; or (viii) 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

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 ICSID or to other similar 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 limit 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 an 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 an 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 question #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 with 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 20,000).

Types of contributions
Cash contributions are mandatory. In-kind contributions are allowed. Contributions of receivables are allowed (assimilated to in-kind contributions), except for the case in which the SA is established by public subscription. 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 by-laws, 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. In-kind contributions are allowed. Contributions of receivables are not allowed. 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 by-laws.

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 and consequently an SRL's by-laws 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

Non-EU foreign 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.

This specific regime applies to investments made by non-EU foreign investors* that fall under the below categories:

- foreign direct investments, defined as investments of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the undertaking concerned or the separate organizational unit of that undertaking, to which the funds are made available or will be made available in order to carry on an economic activity in Romania, and which allow the foreign investor to exercise control over the undertaking;
- new investments, defined as initial investments in tangible and intangible assets located in the same perimeter, 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).

An obligation to file an FDI notification (by a non-EU investor) before the 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 others**, 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).

As regards the EU investors, legislation is currently under preparation that could impact the EU investors, i.e., in the sense that they could also be required to notify similarly with non-EU foreign investors.

*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.

**Security of the citizen and of collectivities; border security; energy security; transport security; security of supply with vital resources systems; critical infrastructure security; security of information and communication systems; security of financial, tax, banking and insurance activities; security of production and circulation of weapons, ammunition, explosives, toxic substances; industrial security; protection against disasters; protection of agriculture and environment; and protection of privatization operations of state-owned companies or their management.

ROMANIA

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

INTELLECTUAL PROPERTY

The following IP can be registered:

Trademarks

What is protectable? Any signs (i.e., word/s, 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 geographical indication.

Where to apply? To obtain protection in Romania, trademarks must be filed with the (Romanian) State Office for Inventions and Trademarks ("SOIT"). 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 at https://fo.osim.ro:8443/sp-ui-tmefiling/wizard.htm?execution=e1s1 (information available in Romanian only). SOIT 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, 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 SOIT 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.

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 SOIT. 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 SOIT, 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 SOIT fees for a patent application amount up to approx. EUR 500. Additional SOIT 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.

INTELLECTUAL PROPERTY, CONT'D

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 SOIT.

Duration of protection? By contrast to patents, the validity of the utility model may not exceed 10 years from the filing date.

Costs? The SOIT 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 SOIT. 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 SOIT 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 SOIT 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.

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.

INTELLECTUAL PROPERTY, CONT'D

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 trade secret; implementing IT security measures, particularly access restriction; using confidentiality agreements with business partners and employees).

Duration of protection? Protection shall apply as long as appropriate measures to keep the information secret are in place and the information has commercial value.

DATA PROTECTION/PRIVACY

GDPR applies in Romania and the Romanian legislator made limited use of the opening clauses of the GDPR.

The following 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.

ROMANIA

EMPLOYEES/CONTRACTORS

General: The employment relationships in Romania follow a four-layer organization approach:

- labour legislation, amongst which Law no. 53/2003 (the „Romanian Labour Code") is the general regulation regarding 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 on an international scale, they could be applicable in Romania 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 falls under general employment requirements primarily regulated by the Romanian Labour Code and subsequently regulated by the secondary legislation (e.g., 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 a high protection set up by the legislator in favor of the employee.

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 commencement of the activity by the employee.

The law requires for the individual employment agreement to 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 a full-time schedule or for a part-time schedule. A full-time individual employment agreement corresponds to a schedule consisting of 8 working hours per day and 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 of a similar full time individual employment agreement.

Work for hire regime: In respect of patents, please refer to question #4 above (section **Patents**, 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: (a) 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; (b) 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 wage).

Termination: Romanian courts of law are very employee-oriented and implementing a termination is quite a complicated process. Employers may dismiss an employee only on grounds specifically permitted by law, which include gross or repeated misconduct, poor performance, medical incapacity and redundancy. Employers must give to the employees the statutory minimum notice where the dismissal is on grounds of redundancy, poor performance or medical incapacity, while employees must give notice of resignation in most circumstances. Any type of dismissal implies specific requirements and procedures to be followed in order to be valid, which may turn out to be burdensome for employers.

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 (i.e., www.anpc.gov.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 (e.g., https://anpc.ro/ce-este-sal/?ref=footer_3_5).

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 deliver easily, directly and permanently accessible to the recipients of the services/products a minimum set of information; 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 precise amount).

In addition, for contracts concluded by the providers with consumers, by 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 for the conclusion and execution of contracts, contract language, and whether the service provider stores the contracts and the conditions under which the contracts are accessible to the consumers.

The Government Ordinance no. 34/2010 regarding the consumers' rights under 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 offer information regarding the price in other currencies too, such has to 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 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 of 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

TERMS OF SERVICE

According to the Government Ordinance no. 34/2010 regarding the consumers' rights under distance contracts and Law no. 193/2000 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, in respect of the product's or service' 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, 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 court to deem an abusive clause null and void.

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 space may be owned, or it may be (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

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 duly ratification).

The principal source of law in Russia is legislation, which include 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 when the person is planning to run a small business, that does not require many people and large capitalization (e.g., when 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 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 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 interests" 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, simpler incorporation rules, easier financing methods and lesser formalities, in certain aspects, than JSCs.

Branches and Representative Offices

Nor Branche neither Representative Office is considered as a Russian legal entity, 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 be also accredited by the Federal Tax Service. However, representative offices of certain 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 the foreign company, reduces costs, and consequently leads to higher profits.

RUSSIA

ENTERING THE COUNTRY

Currently, there is 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.

Special provisions have been adopted that if the group value of assets of the target does not exceed RUB 2 billion or in case a financial organization is acquired, a post-closing notification may be submitted within 30 days instead of the pre-closing filing. These provisions are temporary. Currently it is established that they will be in force by the end of 2023.

FDI approval

The FDI clearance (national security review) applies to foreign investors, which acquire shares/assets/indirect control over the 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 analyse the transaction in detail if it is established that a Russian strategic company may be in its perimeter. Also, additional requirement may apply (pre-transaction UBO disclosure, post-transaction notification).

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

At the end of 2022 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):

- an independent appraisal report regarding the fair market value of assets to be sold prepared by a professional Russian independent appraiser is attached to the application stating the value of assets transferred;
- 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 with respect to the business to be purchased are established;
- a deferred payment condition is introduced, namely payment of the purchase price has to be made in instalments during 1-2 years, and (or) an obligation is undertaken to voluntarily transfer to the federal budget funds in the amount of at least 10% of the transaction/operation amount.

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;
- quarterly key performance indicators (KPI) have been established by the regulatory authorities;
- dividends can be paid on a quarterly basis provided that the company fulfils the set key performance indicators.

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 colour 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.

INTELLECTUAL PROPERTY, CONT'D

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.

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.

INTELLECTUAL PROPERTY, CONT'D

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 recognised, 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.

The following IP rights cannot be registered in Russia:

Trade Secrets

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.

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 Labour 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.

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 fulfil 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.

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.

DATA PROTECTION/PRIVACY, CONT'D

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.

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 will come 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.

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 defence 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 means.

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.

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.

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.).

EMPLOYEES/CONTRACTORS, CONT'D

Employment Relations, CONT'D

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.

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.

EMPLOYEES/CONTRACTORS, CONT'D

Contractual Relations, CONT'D

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. By default, a company (a client) 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 contractors 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 contractor.

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.

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. 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.

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).

The sale of medicinal products for medical use through online sales is carried out in accordance with the Rules for issuing permits for the online retail sale of medicinal products for medical use, the implementation of such trade and the delivery of these medicinal products to citizens, approved by Decree of the Government of the Russian Federation dated May 16, 2020 No. 697.

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).

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.

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.

CORPORATE STRUCTURES, CONT'D

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 authorities and 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 the 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

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

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 under the 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 16,470 (approx. EUR 140) for written applications and RSD 12,352.50 (approx. EUR 100) for applications submitted electronically for up to three classes. Graphs are additionally charged with a fee of RSD 3,300 (approx. EUR 28). The same fee applies for written applications and RSD 2,475 (approx. EUR 20) for applications submitted electronically for each additional class.

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 8,210 (approx. EUR 60) and RSD 800 (approx. EUR 7) for each additional claim. Maintenance fees go from RSD 11,510 (approx. EUR 100) up to RSD 98,760 (approx. EUR 840).

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 6,580 (approx. EUR 55), and RSD 4,940 (approx. EUR 40) for each additional industrial design. Maintenance fees go from RSD 6,580 (approx. EUR 60) to RSD 16,470 (approx. EUR 140).

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

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

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 (such as Ireland and all the EU member countries), the implementation of additional safeguards is not needed.

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, following the annulment of the EU-US Privacy Shield), 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 authorisation 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

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.

SERBIA

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

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.

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.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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.

SINGAPORE

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 8% (increased from 7%) with effect from 1 January 2023.

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.

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)**

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 euro.

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 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.) 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 formation 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.
- 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.

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, 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) may be subject to a pre-filing or prior authorization obligation.

*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. In addition, until 31 December 2024 this will also apply to direct foreign investments made by residents of other EU countries and of EFTA countries where the investments are in companies listed in Spain, or in unlisted companies if the value of the investment is above €500 million.

ENTERING THE COUNTRY, CONT'D

Strategic Sectors refer to foreign investments in specific industries such as critical physical or virtual infrastructures (including those concerning the energy, health, water, transport, communications, communications media, processing and data storage, aerospace, military, electoral and financial sectors), as well as lands and real estate needed for the use of such infrastructures; critical technology and dual-use items (including goods, software and technology, which can be used for both civil and military applications) as well as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace or military technologies, technologies used for energy storage, nanotechnologies and biotechnologies; 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; and the media (without further specification).

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 for an amount between 1 million euros and five (5) million euros may enjoy a fast-track authorization proceeding and foreign investments below one (1) million euros are deemed to be exempt from prior authorization obligation.

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 (SPTO)(ii) at regional level, with the European Union Intellectual Property Office (EUIPO) - 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. An application for a Spanish trademark registration can be filed online via the OEPM platform on 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.

INTELLECTUAL PROPERTY, CONT'D

Trademarks, CONT'D

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 applications fees for 2023 are available on https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_SIGNOS.pdf.

There is a European Union refund programme which issues vouchers up to EUR 1,000 that can be used to partly cover the fees for the application of trade maks (more info available at: https://euipo.europa.eu/ohimportal/en/online-services/sme-fund

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.

Patents, CONT'D

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 2023 are available on: https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_PATENTES.pdf

INTELLECTUAL PROPERTY, CONT'D

Patents, CONT'D

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.

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 2023 are available on https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_DISENOS.pdf.

There is a European Union refund programme which issues vouchers up to EUR 1,000 that can be used to partly cover the fees for the application of trade maks and designs (more info available at https://euipo.europa.eu/ohimportal/en/online-services/sme-fund).

INTELLECTUAL PROPERTY, CONT'D

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 2023 are available on https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_PATENTES.pdf).

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 2023 are available on https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Tasas/2023_TOPOGRAFIAS.pdf.

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 2023 are available on: https://www.culturaydeporte.gob.es/cultura/propiedadintelectual/gestion-colectiva/direcciones-y-tarifas.html.

INTELLECTUAL PROPERTY, CONT'D

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.

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).
- **Digital rights:** Spain is one of the first EU Members where the national data protection legislation is not only limited to the protection of 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.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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).

The business party 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, and the business party is exempted from paying social security contributions in favour of contractors, what represents a relevant economic advantage. However, it must be noted that Spanish labour law does not acknowledge the nature of a relationship based on the formal elements of the agreed contract, but on the factual circumstances which characterise the relationship itself. This implies that, even if two parties are bound by a contractor agreement, the relationship may be considered as an employment one if it displays elements which 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). The re-qualification as employment of a contractor agreement implies the recognition of a fraud under Spanish labour law and forces the services recipient to hire the contractor on an indefinite basis, as well as to pay the social security contributions accrued during the last 4 years. It may even be sanctioned with fines ranging from 10.000€ to 100.000€ depending on the severeness of the fraud.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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.

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 limitating 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).

*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.

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.
- 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.

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.

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.

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).

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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.

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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.

To 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 been discussed, and the regulation was proposed to enter into force the 1st of January 2023. However, the proposal has been delayed. The upcoming regulation will establish a screening procedure for investments in Swedish enterprises that conduct so-called **"protected activities"**. The scope of application will be significantly wider than the scope of the Protective Security Act. The regulation will extend to cover, for example, "essential services" (e.g. critical infrastructure), security-sensitive activities in accordance with the Protective Security Act, activities related to critical raw materials, metals and minerals, activities whose main purpose is the processing of sensitive personal data or location data, activities related to emerging technologies and other strategic protected technologies, and military equipment or technical support for military equipment. The proposed regulation will also introduce a different notification system, and the "screening authority" will, after an assessment, have the right to either authorise the transaction or decide that it cannot be completed.

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.

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 2000 with an additional fee of SEK 1000 for each additional class.

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INTELLECTUAL PROPERTY

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.

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, provided that 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 2500.

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.

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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 scope of the GDPR is extended to also apply to the processing of personal data in the course of an activity which falls outside the scope of European Union law and activities which fall within the scope of Chapter 2 Section V of the Treaty on the EU.
- The GDPR is subsidiary to any superior legislation such as the Swedish Freedom of the Press Act and the Fundamental Law on Freedom of Expression.
- 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 are 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) may impose fines on public authorities. For violations stated in Article 83(4) of the GDPR the maximum fine is SEK 5 million, and for violations stated in Articles 83(5) and 83(6) of the GDPR the maximum fine is SEK 10 million.

Apart from the Swedish Data Protection Act, there are various sectoral regulations that govern processing of personal data, including the Patient Data Act, the Camera Surveillance Act, the Credit Information Act, and the Whistleblowing Act. 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.

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.

EMPLOYEES/CONTRACTORS, CONT'D

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.

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 the last year modernized 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.

SWEDEN

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 clear and 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 conditions for 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.

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.

SWITZERLAND

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. As of 1 January 2023, 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 (February 2023), 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.

Companies limited by shares' governance 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 a capital corporation alternative to the company limited by shares and is 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.

Limited liability companies' governance 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

ITECHLAW® INTERNATIONAL TECHNOLOGY LAW ASSOCIATION
STARTUP LEGAL PLAYBOOK

ENTERING THE COUNTRY

At the time this article was written (February 2023), 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 draft of the upcoming Federal Foreign Investment Screening Act in May 2022. In a nutshell, this draft provides 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, shall be subject toSECO's prior authorisation. This concerns, for instance, Swiss companies active in the research and development or production of drugs or other medical devices or that operate or own telecommunications networks in Switzerland. The consultation period for stakeholders to comment on this draft ended in September 2022. The federal government has yet to share the results of the consultation process and publish the final copy of the new statute.

In the meantime, despite currently lacking 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.

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 protection for 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.

SWITZERLAND

INTELLECTUAL PROPERTY, CONT'D

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). As a consequence, 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 is set to enter 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 or overriding private or public interests.

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 safeguard personal data and, unless an exception applies, , maintain an inventory of their processing activities. They also have the possibility 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.. In the absence of such a 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.

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:

- The 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.
- The 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 from when starting its business in Switzerland. In addition, it should be highlighted here that the process of a company's incorporation in Switzerland is extremely simple and quick. The overall process only takes a couple of weeks from drafting of the founding documentation to the company's actual incorporation.

TAIWAN

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.

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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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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.

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

LEGAL FOUNDATIONS

Turkey follows the Continental European legal system. It thus relies on the written Constitution, international agreements ratified by the Parliament with a Law, written laws and statutes, and other legal codes such as regulations, circulars, notices etc. in the field of public, private and criminal law that are constantly updated.

Nevertheless, it is noted that the Courts of First Instance and the Regional Appeal Courts often take into consideration the High Court of Appeal's ("Yargıtay") and the Council of State's ("Danıştay") final decisions that became an ongoing practice and precedent in ongoing matters, thus it may be fair to say that the legal structure is also further developed by case law.

CORPORATE STRUCTURES

Turkish Commercial Law and Code of Obligations accept various corporate structures, the most preferred ones by start-ups being:

Corporations

Joint stock corporations

- Possible to establish with a single partner.
- Requires a minimum capital of 50.000 TL, and a minimum capitol of 100.000 TL for such corporations which are not open to public but which accept the registered capital system.
- Requires articles of association.
- Requires application and filing before Trade Chambers.
- The Partners are liable towards the Company with the amount of capital shares that they bring in or they undertake to bring in.
- The members of the Company's Executive Board are responsible of the Company's entire public debts regardless of their shares.

Advantages

- Limited liability of the Partners / Shareholders.
- Company's Executive Board members are bound to the instructions of the shareholders and responsible towards them and the Company.
- The Partners are liable only with the capital shares they bring in.

Disadvantages

- Legally applicable minimum share capital.
- The articles of association as well as any share transfer agreement have to be in the form of a notarial deed.
- More legal procedures to fulfill, more time consuming with yearly meetings, Trade Chamber filings etc.

TURKEY

CORPORATE STRUCTURES, CONT'D

Limited Liability Corporations

- Possible to establish with a single partner and with a maximum of 50 partners.
- Requires a minimum capital of 10.000 TL
- Requires articles of association.
- Requires application and filing before Trade Chambers.
- The Partners are liable towards the Company with the amount of capital shares that they bring in.
- The members of the Company's Executive Board are responsible of the Company's entire public debts regardless of their shares, whereas shareholders who are not member to the Executive Board are not responsible of public debts.

Advantages

- Limited liability of the Partners / Shareholders.
- Company's Executive Board members are bound to the instructions of the shareholders and responsible towards them and the Company.
- Simply shareholders hold no liability on the Company's public debts.

Disadvantages

- Legally applicable minimum share capital.
- The articles of association as well as any share transfer agreement have to be in the form of a notarial deed
- More legal procedures to fulfill, more time consuming with yearly meetings, Trade Chamber filings etc.

Single Proprietorships

- Possible to establish with a single real person.
- Requires a minimum capital from 1.000 to 5.000 TL, depending on the founder's plans. Unlike Corporations, single proprietorships do not foresee strict capital declarations, thus the founder has much more flexibility.
- The partner(s) are responsible of the Company's entire debts and obligations.

Advantages

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

Disadvantages

- Unlimited liability, no clear lines separating the Company and the person's capital and ownerships.

ENTERING THE COUNTRY

Turkey follows the Continental European legal system. It thus relies on the written Constitution, international agreements ratified by the Parliament with a Law, written laws and statutes, and other legal codes such as regulations, circulars, notices etc. in the field of public, private and criminal law that are constantly updated.

Nevertheless, it is noted that the Courts of First Instance and the Regional Appeal Courts often take into consideration the High Court of Appeal's ("Yargıtay") and the Council of State's ("Danıştay") final decisions that became an ongoing practice and precedent in ongoing matters, thus it may be fair to say that the legal structure is also further developed by case law.

TURKEY

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INTELLECTUAL PROPERTY

In Turkey, the IP Laws and Regulations are very similar, if not identical, to the Continental European System and Regulations on IPRs.

The following IP rights can be registered:

Trademarks

What is protectable? Any sign like words, including personal names, figures, colors, letters, numbers, sounds and the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings, and being represented on the register in a manner to determine the clear and precise subject matter of the protection 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 Turkish Patent and Trademark Office (TÜRKPATENT), or (ii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought.

The application of a national Turkish trademark should be filed via the online platform of TÜRKPATENT, hardcopy filing is not allowed. If the applicant is a foreign nationality real person or foreign company, the application should be filed through the intermediary of a representative who must be registered as a trademark agent at TÜRKPATENT and who is domiciled in Turkey. TÜRKPATENT formally examine the conformity of the application. In case there is a deficiency in the application, the applicant is given a period of two months to remedy the deficiency. If TÜRKPATENT decides that the application does not have any formal deficiencies, it examines the application in accordance with Article 5 of 6769 Industrial Property Law, regarding absolute grounds of refusal. As a result of the examination, if it is concluded that the application may not be registered for some or all of the goods or services in the scope of the application, the application is provisionally refused for those goods or services, subject to an appeal by the applicant.

An application, which has fulfilled the conditions of application and has not been refused, is published in the Official Trademark Bulletin pending opposition for 2 (two) months. Within this time period, third parties can oppose the trademark within the scope of Article 6 of 6769 Industrial Property Law. If the application is refused totally or partially in the first examination, the applicant may lodge an appeal to the TÜRKPATENT in 2 months time limit. In this case, the application should be re-examined regarding the appeal. If the appeal is found acceptable, the application will be published totally or partially in the Bulletin, this means that the application may be the subject of a further refusal following an opposition.

Duration of protection? If no oppositions are filed or if an opposition is rejected and decided in the applicant's favour and such decision become definite, the trademark application is granted registration and TÜRKPATENT send a notification to the applicant for requesting deposition of the official fee for issuance of the registration certificate. For completing the registration procedure, the applicant or his trademark attorney should deposit the official registration fee and submit to TÜRKPATENT the information concerning the payment within two months' time starting with the notification date of TÜRKPATENT's registration decision to the applicant. In case of failure, the application will lapse and its registration as result of this procedure will no longer be possible.

The registration remains valid for a ten-years from the date of application. It can be renewed every 10 years after that, with payment of applicable official fees.

Costs? Application costs (only official fees) for Turkish trademarks for one class of goods and services amount to EUR 38.- (EUR 38.- charged for the applicable second class, and EUR 44.- charged for the applicable third class and per each additional class after three classes). Registration fee for year 2023 amount to EUR 98.-. In addition of official fees, professional fees of the legal representatives will apply*.

*Do kindly note that, due to floating exchange rates in Turkey, it's not possible to provide a constantly applicable official fee in EURO currency. However, only to give an idea on the approximate budget; the official fees mentioned in the legal playbook, are converted and round-up to EURO currency respecting the daily rate of TCMB (Central Bank of Republic of Turkey) on the day the addition to this legal playbook is prepared. In this respect, it's required to confirm applicable official fees for the required work with the trademark agent .

INTELLECTUAL PROPERTY, CONT'D

Patents

What is protectable? The inventions in all fields of technology and innovation providing that the invention is new (first in the World), involves an inventive step (showing ingenuity and not obvious to someone of average skill who works in the field of the invention) and is susceptible to industry are patentable. The invention must also be a product, a composition, a machine, a process or an improvement on any of those. The discoveries, scientific theories and mathematical methods; mental acts, business activities or game related plans, rules and methods; computer programs; products with aesthetical creations, belles-lettres, artworks and treatise; presentation of the information are not considered as inventions, thus not patentable.

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. In order to obtain a patent in Turkey, TÜRKPATENT is the only authorized office, who carries out the procedures of national applications and applications requesting patent protection in the national phase within the scope of patent cooperation, and issues patent certificates within the scope of the current legislation. In addition, TÜRKPATENT serves as the "Admission Office" for regional and international applications to be made to Turkey. The registration procedures for regional and international applications slightly differ from national applications. The application of a Turkish patent should be filed via the online platform of TÜRKPATENT, hardcopy filing is not allowed. If the applicant is a foreign nationality real person or foreign company, the application should be filed through an intermediary of a representative who must be registered as a patent agent at TÜRPATENT and who is domiciled in Turkey.

Applications require description of the invention, technical features of the invention to be protected, technical drawing of the invention, summary of the invention. In patent registration applications, a formal examination takes place within two months following the application. A search request is made for innovation screening within twelve months at the latest after the application date and an official search report is received at the end of this process. If the search report is appropriate, the first examination request is made for the patentability assessment. If the research report is not appropriate, a statement of opinion can be made, and the first examination report is requested together with the opinion. If the examination report is appropriate, the document decision is made. If not, the patent specification can be amended, such option can be applied up to three times at the examination stage.

If the invention is not rejected during the examination stages, the patent is registered and a patent document is issued by depositing the official fee for issuance of the registration certificate.

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

Costs? Application costs for a Turkish patent amount EUR 8.- (EUR 15.- are charged per each and additional priority, if any). Search reports costs amount EUR 44.- and EUR 89.- (depending on the conditions of the applicant). Examination reports costs amount EUR 43.- and EUR 88.- (depending on the conditions of the applicant). The issuance of registration certificate (for year 2023) amount EUR 53.-In addition, professional fees of the legal and technical representatives will apply.*

Employee invention and inventor bonus? According to Article 113 of the Turkish Industrial Property Law; the employees, when made an in-service invention, are obliged to report the invention in written to the employer without delay. The employers have the right to demand full or partial rights on the in-service invention. The employees can demand a reasonable amount to be paid from the employer, regardless of the employer's full or partial claims on the in-service invention. The method and the amount of payment are determined according to the provisions of an agreement or a similar legal deal signed by the employer and the employee.

*Ibid.

INTELLECTUAL PROPERTY, CONT'D

Utility Model

What is protectable? Inventions which are new (first in the world), and which can be applied to the industry is protected by means of a utility model. The main difference from the patent is that utility models do not involve an inventive step, and are protected only for a limited period of ten years, non-renewable.

Where to apply? The application procedures for utility models are very similar, if not identical, to patent. Please see inserts on patent applications hereabove, for the same.

Duration of protection? Unlike patents, the term of protection for utility models is only 10 years, non-renewable.

Costs? Application costs for a Turkish utility model amount EUR 8.- (EUR 15.- are charged per each and additional priority, if any). Search reports costs amount EUR 44.- and EUR 89.- (depending on the conditions of the applicant). The issuance of registration certificate (for year 2023) amount EUR 53.-. In addition, professional fees of the legal and technical representatives will apply*.

*Ibid.

Designs

What is protectable? The designs (the appearance of all or a part of the product or the ornament on it resulting from features such as line, shape, form, color, material or surface texture) can only benefit from design protection provided that they are "new" and have a "distinctive feature". The design is considered as "new", if an identical design was not presented to the public anywhere in the World before the application or priority date of a "registered design" or before the date of an "unregistered design" being first presented to the public. The design is considered to have a "distinctive feature", if the general impression left by the design to be registered on the informed user is different from the general impression created on the user by any design presented to the public before the application or priority date of a "registered design" or before the date of an "unregistered design" being first presented to the public.

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 before each jurisdiction's intellectual property offices, minding the below mentioned exception.

In Turkey, a design application should be filed via the online platform of TÜRKPATENT, hardcopy filling is not allowed. If the applicant is a foreign nationality real person or foreign company, the application should be filed through an intermediary of a representative who must be registered as a trademark agent at TÜRPATENT and who is domiciled in Turkey.

An application can also be submitted through the Hague System, which may protect the design in multiple countries at the same time. The applicant, if not being the designer or if being one or some of the designers, should describe how the design application right has been obtained. An application, which has fulfilled the conditions of application and has not been refused, is registered and published in the Official Design Gazette. Within three months' time period, third parties can oppose against the design.

Duration of protection? If no opposition is filed within the three-month legal opposition period or if TÜRKPATENT's decision taken as a result of the opposition is "continuation of the registration" or "partial continuation", the design registration certificate is issued and sent to the applicant.
The term of protection for registered designs (if the designs are registered by applying to TÜRKPATENT) is 5 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.
On the other hand, the term of protection for unregistered designs (if the design is presented to the public for the first time in Turkey but not registered since) is three years staring from the date of being public, and cannot be renewed.

Costs? Application costs for one single design amount EUR 28.- plus an additional fee of EUR 11.- for each additional design included in same application, plus an additional publication fee of EUR 5.- for each visual of the design (for each 8 x 8 cm. dimension). In addition, professional fees of the legal representatives will apply*.

*Ibid.

INTELLECTUAL PROPERTY, CONT'D

Geographical Indications and Traditional Product Names

What is protectable? Geographical indication and designation of origin is an industrial property right describing a product originated from any region or attributable to any region due to its quality, reputation or other characteristics. The products that cannot be registered as designation of origin or geographical indication can be registered as traditional speciality guaranteed products speciality guaranteed if it can be proven that the product is on the traditional market for at least 30 years. Geographical indication and traditional product name registration does not represent the rights of a single manufacturer, but rather protects the rights of all those who produce and market in accordance with the conditions in the registration certificate.

Where to apply? Geographical indications and designations of origin registered in Turkey are valid only within the boundaries of Turkey. For protection in abroad, application should be made in each country in accordance with the laws of the country in question. In order to obtain a registration in Turkey, TÜRKPATENT is the only authorized office, who carries out the procedures of registration of a geographical indication and designation of origin. The applications are evaluated by TÜRKPATENT, and where deemed necessary, opinions from the specialist institutions are to be sought. The applications are published in the Official Bulletin pending an opposition period of three months. If no oppositions are filed or if an opposition has been decided in the applicant's favour and such decision has become definite, the application is granted with registration and TÜRKPATENT send a notification to the applicant for requesting deposition of the official fee for issuance of the registration certificate. For completing the registration procedure, the applicant or his trademark attorney should deposit the official registration fee and submit to TÜRKPATENT the information concerning the payment within two months' time starting with the notification date of TÜRKPATENT's registration decision to the applicant.

Duration of protection? The registration of the geographical indication does not take place on behalf of a certain period of time. Since there is no protection period, similar to the trademark protection, the geographical indications do not have the feature of renewing the protection period.

However, although the registration process takes place without a time limit, protection may be lifted in some matters. The abolition of the protection, i.e., the invalidation of the geographical indication, can be obtained by a Court decision. In addition, in case the audit procedures are carried out at a sufficient level, it may be decided to declare the geographical indication invalid.

Costs? Application costs for geographical indications amount EUR 7.-. The issuance of registration certificate (for year 2023) amount EUR 12.- In addition, professional fees of the legal representative will apply*.

*Ibid.

The following IP rights are not subject to registration:

Copyright

What is protectable? Turkey do not have a copyright registry; the copyrighted works and the rights upon them are created once the work is created and there is no need for registration or label. Nevertheless, we witness that in some cases, the work owners take measures to date/time stamp or notarize their work, to make sure that they have additional evidence in hand should their ownership is questioned.

Duration of protection? The period of protection is as long as the author lives and for 70 years after his death. If there is more than one author, the date of the last author's death is taken into consideration.

Exploitation of copyright protected work? Violation of copyright may result in civil and/or criminal legal action.

Trade Secrets

What is protectable? There is no dedicated "trade secrets law" in Turkey, but there is regulation and protection arising from Turkish Commercial Law's unfair trade articles, Banking Law, Electronic Communication Law as well as TRIPS that Turkey is a member to, since May 2014. In this respect, information that provide economic profit to real or legal person traders against their competitors, information that is kept as secret and that adequate protection and measures is taken by its owner in order to keep such information secret, is defined and considered as "trade secret".

Duration of protection? There is no applicable time limit to the protection of trade secrets, as long as appropriate measures are in place and said information has a commercial value.

DATA PROTECTION/PRIVACY

The Data Protection / Privacy regime is regulated in Turkey with the Data Protection Law of 2016, and it is overseen with the Turkish Personal Data Protection Authority ("Turkish DPA").

The Turkish DPA which is a public legal entity and has administrative and financial autonomy, has been established to carry out duties conferred on it under the Law No. 6698. The Authority is affiliated to the Minister assigned by the President of the Republic. The Turkish DPA has their headquarters in Ankara, and is composed of the Board and the Presidency. The decision-making body of the Turkish DPA is the Board. Indeed, the Turkish DPA not only reviews breach notifications and complaints, but also regulates, issues decisions and monetary sanctions that are applied according to the said Law no. 6698.

The Data Protection Law defines personal data as "any information relating to an identified or identifiable natural person." The Law does not make a differentiation for personal data belonging to the living or the deceased. In this respect, should the data of deceased persons be in question, their rightful heirs have capacity to act for preservation of their data and remembrance of their good name as their heritage.

Similar to the 1995 EU Data Protection Directive, the Data Protection Law covers "sensitive data" and provides special protection for this type of data. Accordingly, pursuant to Article 6, personal data concerning an individual's race, political opinions, philosophical beliefs, religion, religious sect or other beliefs, membership in an association or charity, health, and private life are considered sensitive data. Also, considering the latest developments in technology, it is legally accepted that biometric data and information as well as genetic data, whether they are related to use for health reasons or else (such as security) do not make any difference and that these data are also classified as "sensitive data", subject to the same legal regulations and restrictions for data collectors and processors.

The term "private life" is likely to encompass more than just sexual preferences, as is often the case in other data protection laws that follow the principles set forth in the 1995 EU Data Protection Directive. It is expected that the term "private life" might cover a broader area with the practical application of the Data Protection Law. This is because, in the Turkish culture, not only are sexual activities and preferences considered sensitive but also data on an individual's family life and marriage. In this respect, the scope of what constitutes "sensitive data" may be affected by the Turkish culture, and this may occur in practical applications and court decisions.

The Data Protection Law no.6698 provides for the creation of a registry called **"VERBIS"** wherein a data controller is required to be registered before establishing the data file. The registry is to be supervised by a commission or the Turkish DPA. The commission is in charge of the registry and is the administrative authority responsible for approving the processing of personal data after a preliminary examination of the process involved. The basic principle for this procedure is that data cannot be processed unless the preliminary examination is made. The processing cannot begin unless the commission renders its decision as to the legitimacy of the database and the data handling practices.

The Data Protection Law provides that the data controller must notify the registry or the commission before commencing any data processing operation. However, it also provides some exceptions to this requirement. Notification would not be necessary when the contemplated processing:

- Pertains to personal data that do not affect individuals' rights and freedoms;
- Pertains to personal data that are for the benefit of the public;
- Pertains to personal data that are already known publicly; or
- Is supervised by a data protection official.

DATA PROTECTION/PRIVACY, CONT'D

When first issued the registry, the DPA published detailed deadlines for entities' registration obligations before VERBIS and updated these deadlines due to country or worldwide developments at the time. The most remarkable criteria for the businesses is that the local data controllers who have more than 50 employees or whose annual financial balance is over TL 25 million, as well as private entity data controllers whether they are residing locally or abroad, had to fulfill their record obligations by December 31, 2019. Noting the COVID-19 pandemic and its effect on the businesses not only on local but also on global level, the DPA extended this deadline several times, the last one being until December 31, 2021. According to a very recent public announcement made through the DPA's official website on April 21, 2022, the DPA started to issue administrative sanctions against data controllers, who failed to abide by VERBIS registration and notification responsibilities.

Going back to the VERBIS record obligation; there are some exemptions to the registration obligations, which need to be addressed on a case-by-case basis. Examples of entities exempt from this obligation include professional groups such as notaries, lawyers, mediators etc. Also, the entities that do not meet the employee or annual financial balance numbers are also exempt; however, it is crucial for businesses to study and address the registration obligation, as their unique work sector (such as medical sector etc.) may push them under the registration obligation even when they do not qualify the criteria of employee numbers and/or annual financial balance numbers

Although Turkey is not a member to the European Union, thus is not directly bound by the GDPR; reminding that the GDPR applies to all Companies by whom EU citizens' personal data is gathered, processed and kept, we see start-ups as well as Companies having ties with foreign Companies (such as partnerships, or main-subsidiary company relations etc) to take measures and apply GDPR in Turkey as well, to be in line with other Companies that they exist in the same Group.

EMPLOYEES/CONTRACTORS

Any foreign entity engaging employees and contracts in Turkey need to become familiar with Turkish Labour Law, which is the most general and governing Law when it comes to employer – employee relations.

In Turkey, the work for hire regime exists, but it should be handled very carefully. In case an employee is hired for a certain work, the work product that they create during their employment belongs to the employer. However, there has been many conflicts in the past, where the employees argued that they created work in their own / free time, thus those cannot belong to the employers.

Due to these peculiarities, especially start-ups are proceeding and are well advised to proceed with detailed employment contracts, whether they hire an employee full-time or they engage them as contractor for a certain period of time and a certain work only.

The employees' rights are well protected in Turkey, against unlawful terminations. In case the employer cannot prove that the termination was rightful and lawful, the employer can be responsible of seniority and termination pay, as well as re-hiring of the employee in some cases.

TURKEY

CONSUMER PROTECTION

Yes, especially if they are to introduce goods/services to the Turkish consumers. Such introduction can be direct, through high street shops, as well as online via distance selling contracts.

There are various Laws and Regulations aiming to provide consumer protection; more general ones such as "Law on Protection of Consumers no.6502" or more focused ones such as "The Electronic Communications Law" and "Regulation of Consumer Rights within Electronic Communication Sector", "Regulation for the Processing and Protecting the Privacy of Personal Data in the Electronic Communication Sector" etc.

Focusing on regulation of electronic communications and online markets for start-ups, it is important to make room to the above-mentioned regulations, for foreign entities to make note before entering the Turkish market.

The Regulation on Consumer Rights in the Electronic Communications Sector sets forth the procedures and principles regarding the protection of the rights and benefits of consumers that use electronic communications services. Two provisions focus on the protection of consumers' personal information when they use these services. They provide for the right of subscribers (i.e., the consumers who use electronic communications services) to request or refuse that their personal data be published in public directories, and also emphasize the importance and necessity of obtaining the prior permission of the data owner before sharing the data with third parties or with any person who may benefit from the personal data. During the procedure of signing the subscription agreement for online services, the service provider must seek the consent of the subscribers to the publication of their personal data in the electronic and/or paper directories provided within said services. Failure to act in accordance may result with administrative fines, monetary sanctions as well as online access prevention.

In case of consumer protection conflicts, depending on the value of the conflicted good/service, the consumers can either apply to Information Technologies and Communication Authority ("BTK"), or the Consumer Protection Panels or to Specialized Consumer Protection Courts, seeking remedy.

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. Further, clauses must be in compliance with consumer protection laws. Should the terms of services do not respect or limit the below provisions, they will not be enforceable in Turkey and they will be deemed invalid from start:

- implied renewal of the contract;
- 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, without giving a no-penalty right of cancellation to the consumers;
- place of jurisdiction and applicable law other than at the place of consumer;
- any other grossly disadvantageous clause against the consumers.

WHAT ELSE?

The question is very broad, as there may be specific needs for any foreign entity choosing to provide goods/services in a particular or sensitive sector. Due to this peculiarity, here we can only address the only common issue that can bind all foreign entities, which is strict jurisdiction.

Turkish Courts may have a very strict approach when it comes to the protection of employees, consumers and data subjects, should the counterparty be either foreign and not entirely based in Turkey. For businesses, the risk of non-compliance in these fields of law is rather high.

UNITED ARAB EMIRATES

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.

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.

U.A.E.

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.

UNITED KINGDOM

LEGAL FOUNDATIONS

The United Kingdom is divided into three distinct 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 a 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 working together 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 profits earned 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 overseas company that carries on business in 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 Companies House 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 in land.

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 within the United Kingdom (England, Wales, Scotland and Northern Ireland). However, procedures for enforcement may differ in certain respects as 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

Trade Marks

Trade mark 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 trade mark 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.

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 trade mark are essentially the same as for EU trade marks.However, post-Brexit EU case law is not binding.

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.

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 services to data subjects in 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

Further Reforms? UK's Data Protection and Digital Information Bill (the Bill)

The Bill was laid before the UK Parliament in July 2022, but its passage through the UK's legislative process was paused in September 2022 to allow for further consideration following changes to the UK's governmental leadership. The Bill is expected to re-enter the legislative process in due course. As at February 2023 it remains stalled, and the following is simply a look at changes that may be on the horizon for UK businesses.

The UK Government 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. The reforms are designed to modify existing obligations within the current regime with an overall aim of reducing data protection compliance burdens on UK businesses, while seeking to retain the UK's adequacy status under the EU GDPR. Some of the most impactful proposals include:

- Remove the requirement for websites to display cookie banners to UK residents, and permit cookies and similar technologies to be placed on a user's device without explicit consent for a wider range of purposes.
- Require organisations to implement "privacy management programmes" tailored to the size of organisations and specific risks. It is expected that the privacy management programme will replace existing burdensome requirements such as designating a Data Protection Officer and conducting Data Privacy Impact Assessments.
- Introduce limited exceptions to the balancing test required when relying on 'legitimate interests' as a basis of processing, although the necessity element would remain.
- Modify the threshold to allow organisations to refuse to respond to a data subject access request, from "manifestly unfounded or excessive" requests to "vexatious or excessive" requests.
- Enable data exporters to act "pragmatically and proportionally" when using alternative data transfer mechanisms (such as the Standard Contractual Clauses).

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 to avoid 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 2022, the maximum compensation for unfair dismissal is £111,008.

EMPLOYEES/CONTRACTORS, CONT'D

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.

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 in force in the UK as retained EU law. They:

- apply to contract terms and consumer notices to ensure that such terms are fair, transparent and do not give a business an unfair advantage;
- blacklist and greylist certain contractual terms which are or have the potential to be unfair or prejudicial to consumers (see Section 8 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 relevant criteria, provided that the claim is made with the 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.

New 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.
- **Voluntary code of practice for app store operators and app developers:** In November 2022, 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.

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 online services such as privacy policy, 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 Section 7 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 must comply with specific regulatory requirements including mandatory notifications to Ofcom and provision of certain information for users.

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

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.

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 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.

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.

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.

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.

U.S.A

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.

In addition to unregistered copyrights and trademarks, the US also recognizes trade secrets as non-registered intellectual property:

Trade Secrets

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, but 48 states and a number of territories; of the two states that have not adopted the UTSA, North Carolina has its own trade secrets law, 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 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 sharing of to whom student information is shared with, to officials in charge of educating those students, unless parental notice has been given.

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.

DATA PROTECTION/PRIVACY, CONT'D

Federal Sectoral Laws, CONT'D

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.
- **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.

California

- **California Consumer Privacy Act:** 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.

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.
- **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.

DATA PROTECTION/PRIVACY, CONT'D

State Comprehensive and Sectoral Laws, CONT'D

Utah

- **Utah Consumer Privacy Act:** Generally modeled on the GDPR, the UCPA is a comprehensive data protection law that addresses the processing of personal data of Utah residents, but excludes certain personal data by role (e.g., employment or commercial context).

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).

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 certain 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, 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.

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. 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 publication 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.