



Warwick Legal Network

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**HOW TO INCORPORATE  
A LIMITED LIABILITY COMPANY IN...**

**A PRACTICAL HANDBOOK**

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This practical guide provides a general overview into the main legal and administrative aspects regarding the incorporation of a limited liability company in different countries worldwide.

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## **“HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN...”**

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## CHAPTER 1

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN ARGENTINA

#### **(A) Who can set up a company in Argentina?**

Capital and Partners – A “Sociedad de Responsabilidad Limitada” (or “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.

#### **(B) How to set up a company in Argentina?**

There is no reciprocity requirement for the foreign investor, that is, they must not demonstrate that an Argentine can freely establish an LLC in the investor's country.

#### **(C) How is the capital integrated?**

The capital must be fully subscribed upon incorporation, denominated in Argentine currency, and divided into partnership quotas. A quarter (25%) of the capital must be paid up by the partners at the time the SRL is formed, 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 issues of quotas.

#### **(D) How is the administration and representation?**

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.

#### **(E) Partners' Meetings: what are they like?**

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. If one partner holds the majority vote, the vote of another partner will be necessary for the partners' meeting to be considered valid.

**(F) Who exercises the supervision and auditing of the SRL?**

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.

**(G) 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.

**(H) Cost of incorporation**

The cost of setting up an SRL in Argentina is US \$ 2,000 in expenses, fees, taxes, notary and tax permits, and the term for the supposed start-up is between 15 and 30 days.

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## CHAPTER 2

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN AUSTRIA

#### **(A) How to set up a company with limited liability in Austria**

Basically every legal entity or natural person (foreign or domestic) is allowed to incorporate a limited liability company ("Gesellschaft mit beschränkter Haftung" - GmbH) in Austria, as far as there are no legal or factual barriers in the way. So in short it basically can be said, that every legal entity or natural person who has a lawful resident or seat within the EEA (including Switzerland, Iceland, Norway and the United Kingdom) is allowed to incorporate a company with limited liability in Austria. For natural persons or legal entity who have their seat outside of the EEA, it can be said that the incorporation process usually takes longer.

#### **(B) How to set up a company with limited liability (GmbH) in Austria**

At least one shareholder (natural or legal entity) is needed to form a GmbH in Austria by establishing the articles of association in the form of a notarial deed before a notary public. In case the shareholders are not present in person, their representatives have to have a notarized power of attorney including an apostille de La Haye.

The articles of association at least must contain:

- + name and corporate seat of the company;
- + objects of the company;
- + the amount of the share capital;
- + the initial contribution of each shareholder.

#### **(C) Documents needed**

With respect to the shareholders and its representatives:

- a) if the shareholder is a natural person (i) a passport accepted in Austria and not expired (ii) a visa if necessary for the entry/stay in Austria
- b) if the shareholder is a legal entity (i) an actual, notarized and apostilled excerpt of the company register of the state of seat translated into German by a court appointed interpreter (ii) if there should be no equivalent to a company register in the state of seat (i.e. some states in the USA) (iii) a notarized and court appointed

translation of a proof of the financial status including a list of the representatives including their representation power

- c) the legal representatives of the shareholder needs (i) proof of identity accepted in Austria (i.e. most valid passports) (ii) a notarized and apostilled special power of attorney proving his representation power to act on behalf of the entity or natural person and providing him the authority to incorporate a GmbH in Austria on the name of the represented shareholder

#### **(D) Incorporation**

The registration of the GmbH in the Commercial Register (*Firmenbuch*) constitutes the legal existence of the company. Once the GmbH-company has been established, it is possible that a shareholder transfers her/his share to the other shareholder, who then is the only shareholder of the GmbH. In such cases, the first shareholder often acts as a trustee of the other shareholder.

A founder or a shareholder can be an individual or a legal person, an Austrian or a foreign citizen or entity.

In the articles of association the founders determine the share capital of the company which may not be less than EUR 35.000,00. At least half of the stated share capital must be contributed in cash before registration in the commercial register. The rest may be paid later or at any time immediately upon request of the managing director(s). The contribution of every shareholder determines his interest in the company. The minimum contribution of a shareholder is EUR 70,00.

Contributions in kind are also possible, but at least half of the stated share capital has to be contributed in cash. After a formation audit a certified auditor describes the value of every contribution in kind. Assts, as opposed to cash contributions must be paid in full.

#### **(E) Obligatory Bodies**

The managing board is one of the two obligatory bodies of a GmbH and consists of one or more managing directors appointed by the shareholders. The managing directors act for and represent the GmbH, e. g. by concluding contracts, preparing annual reports and financial statements etc. The shareholders themselves may take on the functions of managers, but it is also possible to hire third parties. The appointment of managers can be revoked by the shareholders. Furthermore the managing board, is bound by the decisions of the shareholders.

The second obligatory body is the shareholders meeting, which is the main decision-making body of the company. It appoints the managing directors and the supervisory body, decides on changes of the articles of association and on the distribution of profits, approves the annual report and releases the managing directors and the supervisory board from their liability.

In general a supervisory board may be established if the shareholders wish to do so. In some cases a supervisory board must be appointed, e. g. the GmbH has more than 50 shareholders and the share capital exceeds EUR 70.000,00 or the company has more than 300 employees or runs a specific business.

#### **(F) Dissolution**

According to Austrian Law a GmbH will be dissolved, inter alia,

- + after the passing of the time period for which it was established;
- + by shareholders resolution in form of a notarial deed;
- + by the decision of an administrative authority or the commercial court.

#### **(G) Timing and approximating costs for incorporation**

The time is mostly depending on the procurement of all necessary documents in the necessary form. Also it depends on how many of those documents have to be translated into German. In general it can be said that as soon all documents where handed over to the court, incorporation usually is accomplished approximately within 2 to 3 weeks, if the court does not demand any additional information. Lastly for the incorporation of a company certain taxes and stamp fees are due with the notary and legal costs range between EUR 3.000,00 and EUR 5.500,00 also depending on complexity of the particular circumstances and the amount of persons involved.

Reference contact in Austria

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## CHAPTER 3

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN BELGIUM

#### **(A) Who can set up a private company in Belgium?**

In principle, any person, no matter the nationality or residency can be a shareholder of a private company in Belgium. Shareholders can be natural persons or legal entities.

#### **(B) How to set up a private company in Belgium?**

The private company is defined under Belgian law as a private limited company in which the shareholders' liability is in principle limited to their contribution to the company. The private company can only be established by a notarial deed, under the penalty of nullity.

#### **(C) Which documents are needed for the incorporation of a private company?**

##### *STEP 1: Financial plan*

The financial plan is a plan in which the shareholders justify the amount of the initial capital considering the intended activity of the company over a period of at least two years. This document is kept by the notary. The financial plan must contain at least the following elements:

- an overview of all the sources of financing;
- the opening balance sheet;
- the projected balance sheet at 12 and 24 months;
- the income and expenditure budget for at least two years;
- a description of the hypotheses used in estimating turnover and profitability;
- If you are assisted by an external advisor, you must also include the name of this advisor in your financial plan.

##### Contribution

Since 2019, it is no longer mandatory for a private company to have a minimal share capital of EUR 18.600,00. The requirement of the minimum share capital is now absorbed by the requirement of **sufficient initial capital**. Directors have a limited liability, but if the company goes bankrupt in the first three years after incorporation,

the initial capital can be declared insufficient, and the founders can still be held personally liable for the debts of the company.

*STEP 2: Bank certificate*

A bank certificate issued by the financial institution which acknowledges that the amount of capital has been deposited into a blocked current account in the company's name will be required.

*STEP 3: Drawing up, registering, and publishing the deed of incorporation*

The deed of incorporation contains three parts, namely the memorandum of association, the articles of association and the final and transitional provisions. The memorandum of association must be drawn up in a notarial deed before a notary public. For the act to be drawn up and executed the financial plan will be needed as well as the bank certificate for a contribution in cash and the report from a company auditor and the special report from the founder(s) for the contribution in kind. The articles of association contain the identity of the founders, the name and purpose of the company, the rules governing the general meeting and all other rules applicable to the company.

The memorandum of association must then be **registered** in one of the registration offices of the FPS Finance. This must be done by the notary within 15 days. The **publication** of the incorporation of the company is done by the notary who deposits an extract of the deed of incorporation with the registrar of the company court of the company's registered office and this within 15 days of signing the final notarial deed. The registrar ensures the publication of the extract of the deed of incorporation in the annexes to the Belgian Official Gazette within 15 days of the deposit and enters the identification details of the company into the Crossroads Bank for Enterprises (CBE) upon which the CBE will assign a company number to the company.

*STEP 4: Setting up a register of shareholders*

A register of shareholders must be created in the private company. This must include the total number of issued shares, the identification of the shareholders and their number, the payments made in full and the transfers of the shares with date. The shareholders' register also includes the membership rights.

**(D) Further required actions?**

- Opening a bank account;
- Activation of the VAT number;
- Inscription with a registered enterprise counter which is the central contact point for start-ups and established companies to complete their administrative formalities;
- Customs identification number if the company is considering trading with countries outside the EU;
- Affiliation with a social security fund for the self-employed within three months;
- Necessary insurances/licenses;
- UBO-registration.

#### **(E) Incorporation timing and costs?**

The cost of forming a private company in Belgium should be estimated in the range between EUR 1.500,00 and EUR 3.000,00. The incorporation process in Belgium takes approximately one week if all the documents have been submitted correctly, and if all requirements for the incorporation are met.

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#### Reference contact in Belgium

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## CHAPTER 4

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN PEOPLE'S REPUBLIC OF CHINA

#### **(A) Who can set up a foreign-invested limited liability company in PRC?**

In principle, any foreign investor (company or individual) can incorporate a foreign-invested limited liability company in PRC.

#### **(B) What business for a foreign-invested limited liability company can be permitted in PRC?**

These are some certain limited industries that foreign investors should follow special management measures for access, and it is stipulated by the Special Administrative Measures (Negative List) for the Access of Foreign Investment ("Negative List") and the Negative list is updated annually<sup>1</sup>.

Negative List uniformly set forth the ownership requirements, requirements for senior executives, and other special administrative measures for the access of foreign investment. Fields not on the Negative List shall be administered under the principle of equal treatment to both domestic and foreign investment.

#### **(C) How to set up a foreign-invested limited liability company in PRC**

A foreign-invested limited liability company shall be established by filing in the administrative authority named the Administration for Market Regulation. The shareholders (or their authorized representative) shall have an office (or a Virtual Registered Office), as the registered address first and then submit required relevant documents to the Administration for Market Regulation where the office (or the Virtual Registered Office) is located for the incorporation in PRC.

Normally, any company is required to have an existing office before its registration i.e., a lease agreement must be executed in advance to establishment. However, a lot of companies - especially the start-up companies - may not wish to expense an office cost from the beginning, plus it takes considerable amount of time to locate a suitable venue. Therefore, it can choose to adopt Virtual Registered Office, which allows it to register the company first without having a physical space. The cost of virtual office differs in different cities.

#### **(D) Which documents are needed?**

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<sup>1</sup> The latest version is the Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020) and you can find more details in annex.

Once the registered address is ascertained, the government requires proper executed documents by the investors. If the investor is a foreign entity, the documents of this foreign entity/individual needs to be notarized and legalized in advance to submit to the Chinese authorities. The notarization of the required documents shall be done by the local notary office and the legalization of the required documents shall be done by the Chinese Embassy in the country where the shareholder is located.

1. The shareholder(s):

a) if the shareholder is a natural person, it is required to provide:

- i. copy of the passport;
- ii. original notarized and legalized document of the passport.

b) if the shareholder is a company, it is required to provide:

- i. copy of the business license (i.e., certificate of incorporation);
- ii. original notarized and legalized document of the business license (i.e., certificate of incorporation);
- iii. original notarized and legalized document of POA (authorizing a particular person to sign the documents for the incorporation of the company in PRC);
- iv. shareholder structure traced back to the natural person level (disclose any individual shareholder who holds more than (or equal to) 20% shares);
- v. copy of the passport and contact information (email address and telephone number) of the actual controller.

2. The legal representative, director(s), supervisor(s), general manager, and financial officer:

a) the legal representative, director(s) and supervisor(s) of the Company shall be a natural person, it is required to provide:

- i. copy of the passport;
- ii. original notarized and legalized document of the passport;
- iii. contact information (email address and telephone number);
- iv. original appointment letters of general manager and financial officer.

b) the general manager and financial officer of the Company shall be a natural person, it is required to provide:

- i. copy of the passport;
- ii. contact information (email address and telephone number);
- iii. original appointment letters of general manager and financial officer.

3. The Company to be incorporated:

a) the Company is required to provide:

- i. original Articles of Association;
- ii. original office lease agreement;
- iii. original company registration application form;
- iv. original resolution of shareholder(s) for the incorporation.

#### **(E) Further information needed for the preparation of the incorporating documents**

1. Company Name: In practice, 3 - 10 desired company names are submitted for approval and the company name must be in Chinese. The English name could be registered but serves as a translation purpose only. Please note that this is a crucial step of the procedure as once the name is approved, it would be locked up for a period of time.
2. Business Scope: In PRC, A business scope must be selected when making the registration and the operation of the Company shall not exceed the selected business scope.
3. Registered Capital: The registered capital is subscribed, and the company does not need to pay at the time of registration, and the contribution deadline can be agreed in the Articles of Association by the shareholder(s).
4. Application of other required License: When the company registration is finished, the Business License, the chops of company will be provided by the related government. Please be noted, in China, for certain business, you may need to apply for other Licenses separately.

#### **(F) Incorporation timing and costs**

The procedure above will take nearly 1 month starting from the first submission of the documents to the Administration for Market Regulation. The cost shall be estimated in the range of EUR 4,000-EUR 7,000 according to the specific industry and the number of the shareholders.

Reference Contact in PRC

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## **Annex: Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020)**

Order of the National Development and Reform Commission of the People's Republic of China and the Ministry of Commerce of the People's Republic of China (No. 32)

Notes:

I. The Special Administrative Measures (Negative List) for the Access of Foreign Investment (hereinafter referred to as the "Negative List") uniformly set forth the ownership requirements, requirements for senior executives, and other special administrative measures for the access of foreign investment. Fields not on the Negative List shall be administered under the principle of equal treatment to both domestic and foreign investment.

II. The Negative List includes the transitional periods for access restrictions to be canceled or relaxed in certain fields, at the expiry of which such restrictions shall be canceled or relaxed as scheduled.

III. An overseas investor may not engage in investment or operation as an individual industrial and commercial household, proprietorship investor, or member of a specialized farmers' cooperative.

IV. Where an overseas investor proposes to invest in a field on the Negative List without complying with the provisions of the Negative List, the relevant department shall, in the process of performing its duties in accordance with the law, decline to handle any matter concerning licensing and enterprise registration, among others, and any matter concerning confirmation, if the confirmation of a fixed investment project is involved. For investment in a field subject to ownership requirements, no foreign-funded partnership enterprise may be established.

V. Upon examination and submission for approval to the State Council by the relevant department of the State Council, a specific foreign investment may be exempt from the provisions on the relevant field of the Negative List.

VI. Where a domestic company, enterprise, or natural person acquires by merger any domestic company having affiliation thereto through a company legally established or controlled overseas by the domestic company, enterprise, or natural person, the provisions on foreign investment, overseas investment, and foreign exchange administration, among others, shall apply.

VII. Measures relating to administrative approval, qualifications, and national security, among others, in culture, finance, and other fields shall, if not on the Negative List, be governed by the provisions currently in force.

VIII. The Mainland and Hong Kong Closer Economic Partnership Arrangement and its supplementary agreements, the Mainland and Macao Closer Economic Partnership Arrangement and its supplementary agreements, the Cross-Straits Economic Cooperation Framework Agreement and its supplementary agreements, and the international treaties and agreements entered into or acceded to by China shall apply, if they have established more favorable provisions on the access treatment of overseas investors. If a pilot free trade zone or any other special economic zone provides any more favorable opening measures for qualified investors, the relevant provisions shall apply.

IX. The Negative List shall be subject to interpretation by the National Development and Reform Commission and the Ministry of Commerce in conjunction with relevant departments.

## **Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020)**

SN	Special Administrative Measures
<b>I. Agriculture, forestry, animal husbandry, and fishing</b>	
1	The Chinese party shall have a stake of not less than 34%, in the case of selection and cultivation of new wheat varieties or production of seeds, or a controlling stake, in the case of selection and cultivation of new corn varieties or production of seeds.
2	Investment in the research, development, and raising or cultivation of any valuable or fine variety which is rare and peculiar to China or the production of relevant propagation materials (including fine genes in planting, animal husbandry, or aquaculture) shall be prohibited.
3	Investment in the selection and cultivation of a genetically modified variety of any crop, breeding stock, or brood stock or the production of genetically modified seeds (offspring) of it shall be prohibited.
4	Investment in the harvesting of aquatic products in the territorial waters or inland waters of China shall be prohibited.
<b>II. Mining</b>	
5	Investment in the exploration, mining, or beneficiating of rare earth, radioactive minerals, and tungsten shall be prohibited.
<b>III. Manufacturing</b>	
6	For printing of publications, the Chinese party shall have a controlling stake.
7	Investment in the application of steaming, frying, roasting, calcining, or other processing technology for prepared Chinese medicinal herb slices or the manufacturing of patented traditional Chinese medicine based on a classified formula shall be prohibited.
8	For the manufacturing of complete automobiles other than special-purpose vehicles, new energy vehicles, and commercial vehicles, the Chinese party shall have a stake of not less than 50%, and the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China. (In 2022, the restriction on foreign stake for the manufacturing of passenger vehicles and the restriction that the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China will be canceled)

9	Manufacturing of satellite television broadcast ground receiving facilities and critical components.
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#### **IV. Electric power, heat, gas, and water generation and supply**

10	For the building or operation of a nuclear electric power plant, the Chinese party shall have a controlling stake.
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#### **V. Wholesale trade and retail trade**

11	Investment in the wholesale or retail trade in leaf tobacco, cigarettes, redried tobacco, or any other tobacco products shall be prohibited.
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#### **VI. Transportation, warehousing, and postal service**

12	The Chinese party shall have a controlling stake in a domestic water transportation company.
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13	The Chinese party shall have a controlling stake in a public air transportation company, in which the investment of a foreign investor and its affiliate(s) shall not exceed 25% and whose legal representative shall be a Chinese citizen. The legal representative of a general aviation company shall be a Chinese citizen, general aviation companies for agriculture, forestry, or fishing shall be restricted to equity joint ventures, and the Chinese party shall have a controlling stake in a general aviation company for any other field.
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14	For the building or operation of a civil airport, the Chinese party shall have a relatively controlling stake. A foreign party shall not participate in the construction and operation of an air traffic control tower.
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15	Investment in a post company or domestic express mail delivery services shall be prohibited.
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#### **VII. Information transmission, software, and information technology service**

16	Telecommunications carriers: limited to the opening of telecommunications services in the commitments made by China upon WTO accession. The foreign stake in a value-added telecommunications service may not exceed 50% (except e-commerce, domestic conferencing, store-and-forward, and call center services), and the Chinese party shall have a controlling stake in basic telecommunications.
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17	Investment in Internet news information services, Internet publication services, Internet video and audio program services, Internet cultural business (except music), and
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	Internet social networking services (save the part of such services already opening up in the commitments of China made upon WTO accession) shall be prohibited.
<b>VIII. Leasing and commercial services</b>	
18	Investment in Chinese legal affairs (except the provision of information on the implications of China's legal environment) shall be prohibited, and a foreign investor may not be a partner in a domestic law firm.
19	Market survey shall be restricted to equity joint ventures, and for broadcast media rating services, the Chinese party shall have a controlling stake.
20	Investment in social survey shall be prohibited.
<b>IX. Scientific research and technical services</b>	
21	Investment in the development and application of human stem cells and genetic diagnosis and therapy shall be prohibited.
22	Investment in research institutions of humanistic and social sciences shall be prohibited.
23	Investment in geodetic surveying, hydrographic surveying and mapping, aerial photography for surveying and mapping, ground movement measurement, and administrative region boundary surveying and mapping; the preparation of relief maps, political maps of the world, national political maps, political maps at or below the provincial level, classroom national maps, classroom regional maps, true-3D image maps, and navigation electronic maps; and regional geological mapping, minerals and geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disaster, remote sensing geology, and other surveying shall be prohibited (a mining right holder that conducts work to the extent of its mining right shall be exempt from the special administrative measure).
<b>X. Education</b>	
24	A preschool, a regular senior secondary school, or a higher education institution shall be restricted to Chinese-foreign contractual joint venture, under the control of the Chinese party (the principal or the chief executive shall be a Chinese citizen, and the council, board of directors, or joint management committee shall consist of members from the Chinese party accounting for not less than one half of the total number of members).

25	Investment in a compulsory educational institution or a religious educational institution shall be prohibited.
<b>XI. Human health and social work activities</b>	
26	Medical institutions shall be restricted to equity joint ventures.
<b>XII. Culture, sports, and entertainment</b>	
27	Investment in news organizations (including without limitation news agencies) shall be prohibited.
28	Investment in the editing, publishing, and production of books, newspapers, periodicals, audiovisual recordings, and electronic publications shall be prohibited.
29	Investment in radio stations, television stations, radio and television channels (frequencies), and radio and television transmission coverage networks (transmitting stations, relay stations, radio and television satellites, satellite uplink stations, satellite receiving and relay stations, microwave stations, monitoring stations, and cable radio and television transmission coverage networks) shall be prohibited, and engaging in radio and television video-on-demand services or installation services for ground receiving facilities for television broadcasting by satellite shall be prohibited.
30	Investment in a radio and television program making or operation (including import business) company shall be prohibited.
31	Investment in a motion picture production company, distribution company, theater company, or motion picture import business shall be prohibited.
32	Investment in a cultural relics auction company, a cultural relics store, or a state-owned cultural relics museum shall be prohibited.
33	Investment in a performing arts group shall be prohibited.

## CHAPTER 5

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN CZECH REPUBLIC

#### **(A) Who can set up a company in Czech Republic?**

Any foreign investors (companies or individuals) may incorporate a company in Czech Republic. If the foreign investor or the person who controls the foreign investor does not reside in a member state of European Union, the foreign investment may be exceptionally subject to approval or verification by the Ministry of Industry and Trade of Czech Republic.

#### **(B) How to set up a company in Czech Republic?**

The limited liability company is set up by a deed of incorporation. The deed of incorporation has to be formalized by a notary public.

#### **(C) Which documents are needed?**

1. With respect to the shareholder(s) and its representative(s):
  - a) If the shareholder(s) is a company, a current excerpt of the shareholder(s) from the companies' register; the excerpt from the companies' register shall explicitly include the name and the registered office of the company and the names of the persons who can act on behalf of the company together with the information whether they can act independently or jointly;
  - b) if the company is set up by means of a power of attorney, a power of attorney for set up of the company.
2. With respect to the company to be incorporated (the "Company"):
  - a) if the director(s) of the Company is a company, a current excerpt of the director(s) from the companies' register;
  - b) current excerpt from the criminal records register of the (i.) director(s) of the Company and (ii.) member(s) of the supervisory board of the Company (if applicable). If the director(s) of the Company is a company, excerpt of the company and of each member of the governing body of the company from the criminal records register is required.
  - c) consents with registration into the Commercial Register signed by the (i.) director(s) of the Company and (ii.) member(s) of supervisory board of the Company (if applicable);
  - d) consent of the owner of the building in which the registered office of the Company is located;
  - e) confirmation on the payment of the registered capital of the Company;
  - f) power of attorney for registration of the Company into the Commercial Register.

Signature(s) on documents under Section 1 b) and Section 2 c), d), e) and f) must be notarized. If any document is issued or signed in a foreign country, an apostille or legalization is needed (depending on the country where the document is issued or signed).

#### **(D) Further information needed for the preparation of the incorporating documents**

1. Company name;

2. business scope;
3. full address where the Company will have its registered office in Czech Republic;
4. information about shareholders of the Company, namely: (i.) company name, (ii.) registered office and (iii.) registration number;
5. amount of the contribution of the shareholder(s) into the registered capital of the Company; minimum capital requirement in case of a limited liability company is CZK 1 for a share;
6. identification of a bank with which the registered capital of the Company will be deposited; the bank must be registered in Czech Republic. If the registered capital does not exceed CZK 20 000, the registered capital does not have to be deposited onto a bank account and can be deposited for example onto an escrow account kept by a notary public or a notary.
7. members of the governing body of the Company, namely whether the Company will have a sole director or several directors; in case of several directors, the way of acting (independently or jointly) should also be specified;
8. members of the supervisory board, if the shareholder(s) decide to establish it (supervisory board is not obligatory for a limited liability company);
9. ultimate beneficial owner(s) of the Company.

#### **(E) Incorporation timing and costs**

Once all the documents and information are collected, an appointment with the notary can be organized in few days. Once the Company is set up by the notary, the shareholders shall pay out the registered capital and the Company shall apply for business licenses with the Trade Licensing Office; it takes approx. two weeks to issue the licenses. Once these steps are accomplished, the company can be registered into the Commercial Register within a few days.

The costs partially depend on the amount of the registered capital. If the company has a minimum registered capital, fee for the incorporation of a company including notary's and court's fees and other administrative fees can amount in a range between EUR 1.500 and 3.000.



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## CHAPTER 6

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN DELAWARE (U.S.)

#### **1. Who can set up a limited liability company (LLC) in Delaware?**

An LLC may be formed by any person or other legal entity (e.g., corporations, partnerships, trusts, or foreign business entities).

**Side Note: Anonymity of Ownership.** The owners of Delaware LLCs are called “members.” An LLC may be formed by an agent who is not a member (e.g., a lawyer) on behalf of the members. This will generally allow the members of the LLC to remain anonymous; however, we expect regulations in the United States next year that require the private disclosure of the ultimate beneficial owners of the LLC to the Financial Crimes Enforcement Network. An ultimate beneficial owner is a natural person who, directly or indirectly, owns 25 percent or more of the LLC. The purpose of these expected regulations is to police money laundering.

#### **2. How to set up a limited liability company in Delaware?**

To form an LLC in Delaware, the organizer must file a Certificate of Formation with the Secretary of State of the State of Delaware. The Secretary of State maintains a simple form Certificate of Formation on its website. The filing can now also be submitted online. See <https://corp.delaware.gov/> for more details.

There are no minimum capital contribution requirements.

**Side Note: Pre-Filing Considerations.** Before filing for the LLC, it is necessary that the members determine (a) what to name the LLC and (b) who will serve as the registered agent.

As for determining the name of the LLC, the Secretary of State website has a searchable database of business entities that have already been filed. It is best to confirm that the proposed name does not conflict with any existing LLC or other business entity.

As for the registered agent, Delaware requires the company maintain an address in the state where the LLC will receive the service of lawsuits. This can be the physical address of the LLC if in Delaware. If there is no physical address in Delaware, the LLC must hire a registered agent. A registered agent is a service provider who will receive any lawsuits filed against the LLC for a yearly fee.

#### **3. Which documents are needed for the formation of a limited liability company?**

Only the Certificate of Formation is required to form the LLC.

**Side Note: LLC Agreements.** The Certificate of Formation only provides minimal information about the governance of the LLC. Often, members of an LLC need to also determine how the LLC will be taxed, how profits and losses will be allocated among members, who has authority to bind the LLC, and how the LLC will be managed, among other things. To memorialize these agreements, the members typically enter into a Limited Liability Company Agreement (also known as an Operating Agreement). The Operating Agreement is not a public document, and it is the most important document with respect to operating the LLC.

**4. Further required actions.**

In addition to the Operating Agreement, most banks will require that the LLC have an Employer Identification Number assigned to it. This is a number assigned by the Internal Revenue Service for tax purposes.

**5. Formation timing and costs.**

The Delaware Secretary of State charges a filing fee of US \$90.00. The LLC is considered "formed" upon acceptance of the filing by the Secretary of State. It may take several weeks to receive evidence of filing, however, unless the LLC elects to expedite the filing. This is an additional US \$50 cost, but it typically results in acceptance of the filing within 24-hours and the receipt of evidence within a week. A lawyer may be able to obtain the evidence of acceptance on shorter notice.

The fees for registered agent vary between US \$100-\$450 per year.

In addition to the foregoing, Delaware charges a \$300 franchise tax, which is due every year on June 1.

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## CHAPTER 7

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN DENMARK

#### **1. Who can set up a company in Denmark?**

There are no general restrictions on foreigners setting up a company in Denmark.

#### **2. How to set up a company in England?**

A company is incorporated by submitting an application to the Danish Business Authority together with a registration fee (currently DKK670). The application should be accompanied by the documents listed under 3. below.

The application is normally submitted online.

The process is done without the involvement of a notary so there is no requirement to be physically present in Denmark to set up your company.

#### **3. Which documents are needed?**

The application to incorporate a company should be accompanied by the following documents:

- Minutes of the founders.
- Articles of association.

For compliance purposes, we would normally request confirmed copies of the shareholders' and directors' passports.

Should the company have more than one shareholder, we recommend that you put in place tailor-made articles of association and a shareholders agreement regulating the internal relationship of the shareholders.

#### **4. Further information needed for the preparation of the incorporating documents**

In order to incorporate the company, we would need information about:

- Company name.
- Business objective.
- Full address where the company will have its registered office. We can supply a registered office for the company in Copenhagen.
- Share capital. We need to know the nominal value of each share. Please note that the minimum paid in share capital must be at least 25% of the share capital subject to a minimum of DKK40.000 paid in capital.
- Details of each shareholder to include number of shares taken.
- Details of each director. Note that the minimum number is one. There is no general requirement to have a supervisory board/controlling body.
- Accounting reference date.
- Details of authorized signatories.
- Details of people with significant control (real owners).

The company is not automatically registered for taxes and a separate application would have to be made to the tax authority.

## **5. Incorporation timing and costs**

The time required for the incorporation process depends on the supply of information listed under 4 above. Once we have the information needed and you have paid in the minimum share capital required to our client account, the company is typically formed online within 48 hours.

Our fees for incorporating a company starts from DKK4.000 excluding VAT and registration fee.

Our corporate support (registered office) starts from DKK10.000 plus VAT annually.

Should you subsequently need tailor-made articles of association or a shareholders agreement, you should expect additional fees of minimum DKK15.000 depending on the complexity.

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## CHAPTER 8

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN ENGLAND

#### **1. Who can set up a company in England?**

There are no general restrictions on foreigners setting up a company in England. When reference is made to England in this article, this also covers Wales.

#### **2. How to set up a company in England?**

A company is incorporated by submitting an application to the Registrar of Companies at the Companies Registry together with the registration fee. The application should be accompanied by the documents listed under 3. below.

The application can be submitted by paper or online.

The process is done without the requirement to involve a notary so there is no need to be physically present in England to set up your company.

#### **3. Which documents are needed?**

The application to incorporate a company (form IN01) should be accompanied by the following documents:

- Memorandum of association
- Articles of association (unless the Model Articles are adopted in their entirety)
- Application for a trading certificate (for public limited companies).

For compliance purposes, we would normally request confirmed copies of the shareholders' and directors' passports. There are generally no need for visas unless you plan to visit or stay in the UK.

Should the company have more than one shareholder (sometimes referred to as members), we recommend that you put in place tailor-made articles of association and a shareholders agreement regulating the internal relationship of the shareholders.

#### **4. Further information needed for the preparation of the incorporating documents**

In order to incorporate the company, we would need information about:

- Company name.
- Business objective.
- Full address (in England or Wales) where the company will have its registered office. We can supply a registered office for the company in London
- Share capital. We need to know the nominal value of each share. Please note there is no minimum share capital requirements.
- Details of each shareholder to include number of shares taken.
- Details of each director. Note that the minimum number is one. There is no general requirement to have a supervisory board/controlling body.
- Details of company secretary. The company secretary deals with annual compliance but there is no legal requirement to have one, though we recommend it for our overseas clients.
- Accounting reference date.

- Details of people with significant control (real owners).

The company is not automatically registered for taxes and VAT and a separate application would have to be made to the tax authority, HMRC once the company starts trading.

## **5. Incorporation timing and costs**

The time required for the incorporation process depends on the supply of information listed under 4 above. Once we have the information needed, the company can be formed online within 48 hours unless you opt for same day registration at an additional cost.

Our fee for incorporating a company is £395 excluding VAT.

Our corporate support (registered office and company secretary) starts at £700 plus VAT annually.

Should you subsequently need tailor-made articles of association or a shareholders agreement, you should expect additional fees of minimum £1,500 to £2,000 depending on the complexity.

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## CHAPTER 9

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN GERMANY

#### **(A) Who can establish a GmbH?**

A German GmbH can be formed by German or foreign citizens or companies as shareholders. It can have one or more shareholders.

The GmbH has at least one managing director; only a German or foreign natural person may act as managing director.

#### **(B) How is a GmbH formed in Germany?**

The formation of a GmbH in Germany is done by notarization of the formation deed by a German notary. For this purpose, all founding shareholders must be present or represented. In the case of representation, a written, signature-certified power of attorney for the formation of the company is required, which must be available when the company is entered in the commercial register at the latest.

The application for registration in the Commercial Register must be submitted by all managing directors of the company. Their signatures must be certified but may be certified by a foreign notary; the application for registration must be submitted to the Commercial Register through a German notary.

#### **(C) Which documents are required?**

1) For the formation of the GmbH:

- If the founding shareholders are natural persons: Valid passport or identity card.
- If the founding shareholders are legal entities: Valid passport or identity card and proof of representation of the legal entity's representative (for resident and domestic companies: Current extract from the Commercial Register, otherwise usually notarial certificate of representation).
- For authorized representatives: Valid identity card or passport for the representative, signature-certified power of attorney and, in the case of representation of a legal entity, proof of representation for the grantor of the power of attorney (see above).

2) For the directors: valid passport or identity card.

#### **(D) Information required for preparation of incorporation documents.**

- Name of the company;
- Scope of the company;
- Business address of the company in Germany;
- Amount of the share capital (minimum: € 25,000.00);
- if the capital contribution is not to be made in cash but by contribution in kind: Designation of the object of the contribution and its value;
- Name, date of birth and address or company name, business address and commercial register number of the founding shareholders;
- Amount of the share capital assumed by each founding shareholder (minimum: € 1.00);

- Name, date of birth and full address of the managing director(s);
- If applicable, self-disclosure in accordance with German money laundering regulations if this cannot be obtained from the transparency register.

#### **(E) Duration of registration and costs**

The duration of the formation process and the formation of the company depends on how quickly the aforementioned documents and information are provided. After the incorporation deed has been notarized, the company needs to set up a bank account into which the share capital must be paid. Only then the managing director may register the company in the Commercial Register. The registration of the company in the Commercial Register usually takes place about one week after the Commercial Register receives the application for registration.

The notary and commercial register fees for the formation and registration of the company depend mainly on the amount of the company's share capital. For a company with a share capital of € 25,000.00, they amount to at least approx. € 700.00 for the notary and € 150.00 for the commercial register. In particular, when establishing a GmbH with more than one shareholder or a company that is to be adapted to the special needs of its founders, it is advisable to seek legal assistance prior to entrusting a notary with notarization. The costs start at approx. € 1.000.00 and can be higher depending on the complexity.

#### **(F) Concluding remarks**

Notarization of the formation of a company in a foreign language is generally possible.

Certain business activities may only be carried out in Germany after the corresponding permits have been obtained. These permits must generally be obtained before the company is entered in the Commercial Register.

It is possible for the company to commence business activities before the company is entered in the Commercial Register, but this may result in personal liability for the persons acting on behalf of the company.

#### Contact persons in Germany

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## CHAPTER 10

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN HUNGARY

#### **(A) Who can set up a limited liability company in Hungary?**

In principle, any person, no matter the nationality or residency can be a shareholder of a limited liability company (in Hungarian: "korlátolt felelősségű társaság", abbreviated and hereinafter: "Kft.") in Hungary. Shareholders can be natural persons or legal entities. Should there be a person who has no domicile address or registered seat in Hungary, then it / he / she must have a Hungarian delivery agent nominated during the company registration procedure.

#### **(B) How to set up a limited liability company in Hungary**

The Kft. is defined under Hungarian law as a private limited company in which the shareholders' liability is in principle limited to their contribution to the company. The private company can either be established by a private deed countersigned by a Hungarian attorney-at-law or established by a notarial deed. In Hungary, notaries have more expensive and not flexible solutions, thus, we suggest entrusting and empowering a Hungarian attorney-at-law with these. It is now also possible to sign during a video-identification procedure and in this way no Apostille or foreign notarial authentication is needed to the corporate documents, so there is not even a must to come to Hungary to swiftly establish a company with the help of the services of the Hungarian attorney-at-law and the law office.

#### **(C) Which documents are needed for the incorporation of limited liability company**

1) Articles of Association (or should it be a single-member limited liability company: Deed of Foundation  
Firstly, to draft the Articles of Association (Deed of Foundation), it must be decided, which procedure the Client chooses (see below A.) and B.) versions). The Articles of Association (Deed of Foundation) contains primarily the name, registered seat (branches if any) and scope of activities of the company (based on NACE Rev.2. numbers), the identity of the shareholder(s), managing director(s), general manager(s) – if chosen, permanent auditor – if chosen, supervisory board – if chosen, duration of the operation of the company, initial capital of the company, capital contributions of the shareholders, obligatory supplementary payments if prescribed, the ratio of the business shares between the shareholders and their number of votes on the members' meeting, obligatory rules and restrictions on the transfer and division of business shares, rules on the distribution of profits, basic rules of the members' meeting and whether the company publishes its notices on its website or in the Hungarian Company Gazette.

##### A) Simplified procedure of the registration of a limited liability company

The court will register the company in a simplified procedure within 1 working day reckoned from the tax number-registration (so technically, within ca. 2-8 working days if there is no suspension because of the registration of tax number) if the Articles of Association (Deed of Foundation) of the company is based on the sample disclosed by the Hungarian Ministry of Justice (so it is not possible to have any changes on the text).

##### B) Normal procedure of the registration of a limited liability company

The court will register the company in a normal procedure within 15 working days reckoned from the tax number-registration if the Articles of Association (Deed of Foundation) of the company is based on the free decision of the parties, in line with the requirements of the Hungarian Civil Code. In this way it can be also

possible to choose EUR (or other foreign currency) for the accounting of the Hungarian Company and not HUF and to set up further company organs other than it is prescribed in the Hungarian Ministry of Justice Sample.

2) Contribution – Bank certificate

The requirement of the minimum share capital in the case of Hungarian limited liability companies (Kft.-s) is HUF 3,000,000 (currently ca. EUR 8,600). A bank certificate issued by the financial institution which acknowledges that the amount of capital has been deposited into a blocked current account in the company's name will be required. Or the Managing Director may declare the payment of the contributions in the petty cash in front of the Hungarian attorney-at-law or notary public.

3) Certifying the obligatory data that will be registered in the Companies' Registry

In case natural person Managing Directors, Shareholders, Supervisory Board Members: sending previously the copy of their passport or ID card, the data of their domicile address, tax numbers and the birth name of their mother (and then, at signature, presenting the original personal document).

Should the shareholder(s) be not Hungarian company(ies), then its / their authorized (notarial authentication and Apostille if needed based on bilateral treaties with Hungary) foreign company registry extract should not be older than 3 months and in its Hungarian official translation. The declaration on the ultimate beneficial owner with the above personal data and ID documents would also be necessary.

4) Power of attorney and other necessary Managing Director's documents (declaration of acceptance, declaration on not standing under prohibition, declaration on the duration of his mandate, power of delivery agent (should the managing director not have a Hungarian domicile address), declaration on tax number, declaration on the lawful use of the registered seat).

Further information:

- there are these two ways of the legal relationship of the management: it has to be also decided that the managing director will be in employment relationship or in a company law mandate relationship during his mandate;

- in case of single member limited liability companies, should the managing director and the single member be the same natural person, then the managing director cannot be in an employment relationship, only in a mandate relationship with the company.

5) Specimen of Signature – the Hungarian attorney-at-law can also make Specimens of Signatures if he / she drafts and countersigns the Articles of Association (Deed of Foundation) or any of its Amendment and the Specimen of Signature composes the Annex to the request for the registration of the company. If it is an Annex, then there will be a link to its digital PDF version in the Hungarian Official Companies Register, which the Hungarian Authorities accept as original (so called "one-window" procedures).

6) Should there be a permanent auditor elected, the declaration of acceptance and declaration on the duration of the mandate of both the auditor company and the auditor personally in charge.

7) Should there be supervisory board elected, then their declaration of acceptance and their declaration on the duration of their mandate and power of delivery agent, should one member have foreign domicile address.

8) Register of members: Managing directors shall maintain a register on the members of the company. The following shall be indicated in the register of members (shareholders): a) the name, domicile address or registered seat and the capital contribution of each member; b) in connection with jointly owned business shares, the name and domicile address or registered seat of the owners and their joint representative, and the

amount of their capital contribution; c) the amount of initial capital; d) the provisions of the Article of Association (Deed of Foundation) on any supplementary capital contributions and auxiliary services, as well as on the restriction or prohibition of the transfer of business shares.

9) VAT declaration to the Hungarian Tax- and Customs Office (if the company requires EU VAT number and would like to be subject to VAT or would like to be exempted from VAT – a consultation with a Hungarian accountant in the knowledge of the purpose of the company might be necessary).

#### **(D) Further required actions**

- Opening a bank account and paying the initial capital. (It is possible to pay only a part of it, but this must be laid down in the Articles of Association.)
- Creating a certified email address (so called electronical delivery address).
- In addition to the above, however these will not be filed to the Hungarian Company Court, it is possible to prepare Shareholders' Agreements (if needed) or employment contracts and the relating employment documentation (should the managing director be in an employment relationship with the company and not in a mandate relationship).
- It is also required to obtain the necessary licenses for the scope of activities if needed.
- It is required to have an accountant and file the announcement data sheet to the Tax- and Customs Office and pay the yearly fee towards the competent Chamber of Commerce and Industry.

#### **(E) Incorporation timing and costs**

The incorporation procedure in Hungary is electronical and quite fast, see the above Section (C). For the incorporation of a Hungarian limited liability the Hungarian Authorities do not require duties, it is free of charge. Only the costs of the legal representative (attorney-at-law or notary public) can occur. Attorney-at-law fees can amount in a range between net EUR 800 to 2.500, depending on which procedure the Client chooses ("simplified" or "normal") and the complexity of the case and the company's structure. This does not contain the costs incurring during the registration procedure e.g., fee of the e-procedure, fee of the land registry sheet control (regarding the registered seat), fee of the translation of the company registry extracts of the members if any corporate entity member, fee of the fulfilment of delivery agency by a law office, etc.

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## HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN INDIA

The foreign company can set up a corporate entity such as a Limited Liability Company and a non-corporate entity such as a Liaison Office, Branch Office or Project Office in India. The decision regarding the final structure is based on commercial and taxation considerations.

### 1. Setting up a Corporate Entity

#### a) Limited Liability Company (LLC)

A foreign company can set up a wholly-owned subsidiary or joint venture company in India to carry out its activities. Such a company shall be treated as an Indian resident despite having foreign shareholding. Minimum two members are required for a private limited company, and seven members for a public limited company.

#### b) Limited liability partnership (LLP)

LLP is a new form of business structure in India. It combines the independent legal status & perpetual succession nature of a company, with the organizational flexibility of a partnership firm. At least two partners are required to form an LLP and they have limited liability in the business.

The comparison between the different category of corporate entities are explained below:

S.no	Particular	Private Limited	Public Limited	Limited Partnership
1	Financial Year	April-March	April-March	
2	Accounting	Mandatory	Mandatory	
3	Minimum Capital	Not Required	Not Required	
4	Statutory Audit	Mandatory	In case annual turnover is INR 4 million or capital contribution is INR 2.5 million.	
5	Foreign Investment	Mandatory to report	Mandatory to report	
6	Allotment of Shares / Capital	Mandatory to report	Mandatory to report	
7	Registered Office	Mandatory	Mandatory	
8	Resident Director	One	Not Required	
9	Directors / Partners	Two Directors	Three Directors	Two Designated Partners
10	Members	Two Members	Seven Members	Two Designated Partners
11	Currency	INR		INR
12	Shareholder / Partner's Meeting	Mandatory		Not Mandatory
13	Director Meeting	Mandatory		Not Mandatory

14	Constitutional Documents	Memorandum and Article of Association	Partnership Deed
15	Income Tax Rate	17.16% (Manufacturing) 25.17% (Other domestic)	34.32%
16	Listing on Stock Exchange	Not Applicable	Applicable Not Applicable

Establishing a limited company gives a strong presence and functional flexibility to foreign companies in India. The compliance obligation for foreign investment and operations is higher for a public company. On the other hand, LLP provides for more flexibility as it is required to file lesser paperwork than a limited company while still availing benefits and features of the former.

## 2. Setting up a non-corporate Entity

### a) Liaison office

A liaison or a representative office can be opened in India subject to the approval of the Reserve Bank of India and the Ministry of Corporate Affairs. A liaison office can represent group companies in India, promoting import/export in India, promoting technical/financial collaborations on the parent company or group's behalf and Coordinating communications between parent/group companies and Indian companies.

A liaison office, however, cannot raise funds within India and has to manage its expenses via inward remittances received from the head office through normal banking channels. It is a suitable corporate entity to primarily oversee networking, create visibility about a company, and chart out future business opportunities in India.

### b) Branch Office

A foreign company can conduct their business in India through its branch office that can be opened after obtaining specific approval from the Reserve Bank of India. A branch office can undertake the activities such as import & export of goods, rendering professional or consultancy services, carrying out research work in an area in which its parent company is engaged, promoting technical/financial collaborations on behalf of the parent company/ overseas group company, representing parent/group companies in India and acting as buying/selling agent in India, providing IT services and developing software in India and providing technical support for products supplied by parent company/group. The expenses of a branch office are to be managed by either remittance from abroad or income generated in India.

### c) Project office

A foreign company engaged by an Indian company to execute a project in India may set up a project office without obtaining approval from the Reserve Bank of India subject to prescribed reporting compliances.

A project office is prohibited from undertaking any activity other than the activity relating to and incidental to the execution of the project. The expenses are to be managed either by remittances received from abroad through normal banking channels or through income generated in India.

The comparison between the different category of non-corporate entities are explained below:

S.no	Particular	Liaison Office	Branch Office	Project Office
1	Financial Year	April-March	April-March	
2	Accounting	Not Mandatory	Mandatory	
3	Annual Certificate	File an Annual Activity Certificate	File an Annual Activity Certificate	
4	Approval	Prior Approval of Reserve Bank of India	Prior Approval of Reserve Bank of India	
5	Activities	Limited activities are allowed	Limited activities are allowed	
6	Registered Office	Mandatory	Mandatory	
7	Limitation of Liability	Unlimited	Unlimited	
8	Income Tax Rate	NIL	41.6%	

### 3. Conclusion

Choosing the right business entity would depend on the goals, prospects and aims of business in India along with the tax and commercial considerations. While unincorporated entities would provide for quicker registration and commencement of operations, they would also be limited in their scope of activities. The incorporated entities would provide greater operational flexibility but would come with relatively more compliance obligations.

## CHAPTER 12

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN ITALY

#### **(A) Who can set up a company in Italy?**

In principle, foreign investors (companies or individuals) may incorporate a company in Italy subject to the condition of reciprocity (i.e., when a similar right is granted to Italians in their country of origin).

#### **(B) How to set up a company in Italy?**

The deed of incorporation of a limited liability company is in Italy a notarial act, therefore it must be formalized by a notary public. The shareholders (or their respective representatives or attorneys) shall be present in front of the notary for the incorporation deed. In case of attorneys, a notarized power of attorney (with legalization or apostille as applicable) is needed.

#### **(C) Which documents are needed?**

1. With respect to the shareholder(s) and its representative(s):

- a) If the shareholder (or the shareholders) is a natural person, (i) copy of the passport, (ii) of the visa (when requested) of the shareholder;
- b) If the shareholder (or the shareholders) is a company, (i) excerpt of the companies' register (the notary may request a notarized, apostilled, or legalized copy), (ii) articles of incorporation and by-laws, of the shareholder; please note that the excerpt of the companies' register shall explicitly include and list the powers granted to the legal representative(s)/director(s) of the shareholder(s) (this with the aim for the notary to verify that that person is duly empowered to represent the shareholders in the incorporation activities);
- c) if the legal representative (or the legal representatives) of the shareholder is a natural person, (i) copy of the passport, (ii) of the visa (when requested) of the legal representative of the shareholder;
- d) if the legal representative (or the legal representatives) of the shareholder is a company, (i) excerpt of the companies' register (the notary may request a notarized, apostilled, or legalized copy), (ii) articles of incorporation and by-laws, of the legal representative of the shareholder;
- e) an Italian fiscal code of the shareholder (or of the shareholders); to obtain an Italian fiscal code, a translated (and apostilled/legalized as the case may be) company registry excerpt shall be made available to the tax agency together with a specific request form.

2. with respect to the company to be incorporated (the "Company") and its director(s):

- a) if the legal representative(s)/director(s) of the Company will be a natural person, (i) copy of his/her passport, and (ii) of his/her visa (if requested);
- b) if the legal representative(s)/director(s) of the Company will be a company, (i) excerpt of the companies' register, (ii) articles of incorporation and by-laws (the notary may request a notarized, apostilled, or legalized copy);

- c) the Italian fiscal code of the representative(s)/director(s) of the Company; in order to obtain an Italian fiscal code, a specific request form together with a copy of the passport/identity document shall be made available to the tax agency;
- d) if the Company will be incorporated by means of a power of attorney, a notarized, apostilled, or legalized power of attorney (depending on the country where the power of attorney is issued);
- e) deposit of the company capital.

**(D) Further information needed for the preparation of the incorporating documents**

1. company name;
2. business scope;
3. full address (in Italy) where the Company will have its registered office;
4. amount of the share capital; currently there are no minimum capital requirements, however in case the company capital will be below EUR 10.000,00 certain specific rules will apply.
5. composition of the governing body, namely (i) sole director, (ii) several directors, (iii) board of directors;
6. composition of the controlling body (if applicable), namely (i) sole auditor, (ii) audit company, (iii) board of statutory auditors;
7. VAT number;
8. PEC (certified email).

**(E) Incorporation timing and costs**

The time required for the incorporation process very much depends on the collection of the above mentioned documents and information. Once all the documents and information are collected an appointment at the notary's can be organized in few days. The Company will be then operational upon registration by the notary in the company register (from 1 to 5 days).

For the incorporation of a company certain taxes and stamp duties are due which together with the notary's fees can amount in a range between EUR 2.500 and 5.000.

Reference contact in Italy

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## CHAPTER 13

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN LUXEMBOURG

#### **(A) Set up of a private limited liability company in Luxembourg**

Any individual and legal entity may act as founder or shareholder to incorporate a private limited liability company in Luxembourg (**SARL**). There are no nationality or residency requirements for shareholders from a corporate perspective.

#### **(B) Incorporation process**

An SARL in Luxembourg is set up *via* the passing of a notarial deed of incorporation before a public notary residing in Luxembourg. Prior to the incorporation meeting, assuming the incorporation will be done in cash, the share capital amount (i.e., at least €12,000) must be deposited on the Luxembourg bank account of the new company.

The most time-consuming aspect of the process is normally the setting up of the bank account (e.g., clearing the AML / KYC process of the bank). Once the account has been created and the incorporation capital has been wired to the account, a so-called “blocking certificate” must be provided by the bank to the Luxembourg notary confirming that this amount is held on the bank account for purposes of the incorporation.

An SARL can also be incorporated by means of a contribution in kind. The value of such contribution in kind must be confirmed in a certificate by the contributing founder or shareholder for the Luxembourg public notary. No external audit report is required in this case.

The incorporation meeting then takes place in the presence of a Luxembourg notary public (to which the shareholders can be present or represented via a power of attorney). Once the incorporation has taken place, the notary will issue a so-called “deblocking certificate” which will allow the share capital amount to be released.

Subsequently, the incorporation deed including the articles of incorporation of the new SARL will have to be filed with the Luxembourg Register of Commerce and Companies (**RCS**) within one month and published (in full) in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*) (**RESA**).

#### **(C) Documents required for incorporation**

With regard to the founder(s) or shareholders and its representative(s):

- if the sole shareholder or shareholders is/are an individual: (i) valid copy of the passport, (ii) valid copy of the identity card;
- if the sole shareholder or shareholders is/are a legal entity: (i) valid up to date copy of the articles of association of the shareholder, (ii) a copy of the up to date shareholder's register (the notary may request a certified or legalized copy), and (iii) an excerpt of the companies' register (the notary may request a certified or legalized copy);

- if the legal representative(s) of the shareholder is an individual: (i) a valid copy of their passport, (ii) valid copy of the identity card of the legal representative of the shareholder; and
- if the legal representative(s) of the shareholder is a company, the notary may request: (i) an excerpt of the companies' register (the notary may request a certified or legalised copy), and/ or (ii) the articles of association of the legal representative of the shareholder.

With regard to the manager(s) of the company, an SARL can be managed by a sole manager or by a board of managers:

- if the sole manager or a manager of the Company is a natural person(s): (i) a valid copy of the passport, (ii) valid copy of the identity card; and
- if the sole manager or a manager of the company will be another company, it will need to be represented by a natural person: (i) a valid copy of the passport, (ii) proof that the person is duly empowered to represent the company who will act as sole manager or manager.

Declaration(s) of beneficial ownership must also be provided to the notary by any person or entity which will ultimately hold or control 25% or more of the shareholding in the company upon its incorporation.

#### **(D) Information to be provided for incorporation**

- Choice of the name of the company (a verification of the availability of the name in the RCS is ordinarily requested);
- Choice of the corporate object of the company;
- Determination of the address of the registered office of the company;
- Determination of the amount of the share capital (i.e., €12,000 is the minimum legal requirement);
- Choice and composition of the governing body: i.e., sole manager or board of managers; and
- Choice of statutory auditor (if applicable).

#### **(E) Time frame and costs**

Subject to the bank account having been setup (if incorporating in cash) and the necessary documents and information described above being made available, the average time required to pass the incorporation deed before the notary would be approx. 1 week.

Once the incorporation has taken place, it usually takes 2-3 weeks for the incorporation deed (including the articles of incorporation) to be published with the RESA and for the unique Luxembourg trade registry number of the company to be issued.

From the moment the incorporation deed is passed the company is fully operational and may validly enter into contracts notwithstanding the fact that the company's trade registry number may only be issued a couple of weeks later.

Outside of the legal fees involved in the setup, setting up an SARL entails certain costs, including: (i) a minimum share capital of €12,000, and (ii) the fee of the notary (usually approx. €1,200).

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## CHAPTER 14

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN MALAYSIA

There are two types of limited liability companies in Malaysia, namely a private limited and a public limited company which are required to be registered with the Companies Commission of Malaysia (“CCM”) for incorporation.

#### **(A) Private Limited Company**

A private company limited by shares, i.e., a private limited company (known in the Malaysian language as *Sendirian Berhad* or *Sdn Bhd*) is the most common type of business entity incorporated in Malaysia.

Foreigners are only allowed to incorporate a private limited company in Malaysia and no other types of business entities. They can register a private limited company with 100% foreign ownership in industries including but not limited to medical healthcare, education, legal services, accounting, and taxation services following liberalization of the 45 services sub-sectors by the Malaysian Government since 2009. For consultancy and advisory business, having a minimum paid-up capital of RM500,000.00 is required whereas for import, export, restaurant, or trading business a paid-up capital of RM1,000,000.00 is needed.

#### **REQUIREMENTS OF INCORPORATION OF A PRIVATE LIMITED COMPANY**

- (a) at least one director who is at least 18 years old and ordinarily resides in Malaysia by having a principal place of residence in Malaysia (a Resident Director); and
- (b) one promoter and minimum one member (shareholder) who must either be a natural person or corporate body, Malaysian or foreigner.

The director can also act as the sole shareholder in the company.

#### **(B) Procedure**

Incorporation information/documents that are required:

- (a) The proposed company name
- (b) The status of a private or public company
- (c) The proposed type of business
- (d) Minimum paid-up capital of RM1.00
- (e) The address of registered office (through engagement of company secretary)
- (f) The business address
- (g) Complete details of directors(s) and promoter(s) including identity card/passport
- (h) Declaration from directors(s) and promoter(s)
- (i) Declaration of compliance from individuals responsible for incorporation
- (j) Registration fee of RM1,000.00

If documents are in order, a Notice of Registration will be issued by CCM within 4-7 days after submission of documents by company secretary.

#### **(C) Share Capital**

Minimum one (1) share issued at the price determined by the director(s).

#### **(D) Requirement Of Constitution**

Under the current regime, a private limited company now can choose not to adopt a constitution. If this is the case, the company, its directors, and each member of the company shall have the rights, powers, duties, and obligations set out in the Companies Act 2016 (“CA 2016”).

#### **(E) Execution Of Documents**

Under the CA 2016, it is no longer mandatory for a private limited company to have a common seal. The execution of documents can be done by either one of the options below:

- (a) If a private limited company adopts common seal, by affixing of the common seal subject to limitations and conditions in the constitution of a private limited company;
- (b) If a private limited company does not adopt common seal, signatures of two authorised persons, one of whom should be the director; OR
- (c) In the case of a sole director, by that director in the presence of a witness.

However, a common seal is recommended to be made if the company intends to invest in real estate to comply with the relevant land registry's rules and policy.

#### **(F) Corporate Income Tax**

Income tax applicable to Small and Medium Enterprises (SMEs) with a paid-up capital of up to RM2.5 million at the beginning of the basis period:

The first RM600,000	17%
In excess of RM600,000	24%

Whereas a company with paid-up capital above RM2.5million at the beginning of the basis period shall be 24%.

#### **(G) Public Limited Company**

A public limited company is a company limited by shares and which offers its shares to the public (known in the Malaysian language as *Berhad, Bhd*). They are the largest companies in Malaysia as the public owns the shareholding rights of these companies and are renowned on national and international platforms. They include banks like Malayan Banking Berhad, CIMB Bank Berhad and Public Bank Berhad. They also have strict financial standards as they must disclose their reports to the public who are stakeholders.

Unlike a private limited company, a public limited company must have at least two shareholders (while having no limitations to the number of shareholders it possesses), two directors and a company secretary who must be citizens of Malaysia. It must be located in Malaysia.

While certain aspects such as the incorporation procedure, requirement of constitution and the execution of documents and corporate income tax in respect of a public limited company are the same as those of a private limited company, nevertheless a public company with share capital which has not issued a prospectus inviting the public to subscribe for its shares or has not issued a prospectus under the Capital Markets and Services Act 2007, cannot commence any business or exercise any borrowing power until a statement in lieu of prospectus which complies with CA 2016 has been lodged with CCM and a statutory declaration verifying the requirements under the relevant paragraphs in CA 2016 have been complied with.

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For further information on the process or for assistance with incorporating a company in Malaysia please contact:

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## CHAPTER 15

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN MALTA

#### A. Who can set up a company in Malta?

In principle any person, whether corporate or individual, may incorporate a company in Malta.

#### B. What are the benefits of setting up a company in Malta?

##### **Tax refund system:**

Malta is well-known as one of the EU states with the lowest net effective tax rates. A company in Malta pays 35% tax on its profits. However, the Malta Taxation Refund System entitles shareholders to claim back a portion (typically 6/7ths) of tax paid in Malta after a distribution of dividends thereto thus resulting in a Net Effective Tax Rate of 5%. A 5/7ths, 2/3rds or 100% refund may also apply in different circumstances.

**Double Taxation Treaties:** Malta has signed over 70 Double Taxation Treaties.

**Other Tax Benefits:** Malta has no wealth, capital, or inheritance taxes as well as no withholding taxes on the distribution of dividends, interests, and royalties to non-resident shareholders. Another significant advantage of Maltese companies is the availability of an effective participation exemption in connection with income derived from foreign subsidiaries.

**Low Incorporation and Maintenance Costs:** The minimum share capital to open a company in Malta is €1.165, 20% of which should be paid up, with a total of €245 to be deposited.

**Strategically located:** The Republic of Malta is centrally located in the Mediterranean Sea, a couple of hours flight from major capitals of both Europe and Northern Africa.

**Quality workforce:** The Cost of living in Malta is on average 18% cheaper compared to its EU counterparts. Most importantly, the standard of education in Malta is world-class, making Malta an excellent spot to find a good team.

**Multicultural and Multilingual:** Malta's official languages are English and Maltese with English being the main language of business. This makes business with the rest of the world a much easier task. Moreover, the country is culturally diverse, attracting foreigners from all over the world providing a multilingual workforce.

**Visa-Free Zone:** Since Malta is a member state of the Schengen Area there are no travel restrictions between Malta and the remaining countries that fall within the Zone.

**Climate:** Malta boasts of a great climate, being blessed with 300 days of sunshine and only a few rain showers.

#### C. How to open a company in Malta

##### **Choose a Company type**

There are four different types of company you can choose from when setting up in Malta:

1. Limited Liability Company. This is the most common type, and it can be:

- Private, if it limits the number of members to fifty, and it prohibits any invitation to the public to subscribe for any of its shares or debentures. Some private companies may qualify for certain

benefits if they meet specific criteria that enables them to list themselves as Private Exempt Companies.

- Public, if it does not qualify as a private company and publicly offers shares or debentures.
- 2. General Partnership are best suited for medium-to-small sized businesses and can be:
  - 'En Nom Collectif', which refers to a partnership between two or more partners, one of which must be either an individual or a corporate body.
  - 'En Commandite', also known as Limited Partnership, where members hold limited liability over the company.
- 3. Single Proprietorship or Single Member Company, an enterprise held in ownership by one person. This can happen either at the time of incorporation or through the acquisition of all shares by one person only.
- 4. Overseas Companies, having a corporate body outside of Malta with a branch located in Malta

### **Choose the name**

The Company name must not be a copy of a previously incorporated enterprise and must not contain specific words which may be deemed to be offensive. Besides this, a company name must not misrepresent the nature of the enterprise. In some particular cases, you must be able to show evidence that you are allowed to use certain words as part of the company name such as the word "Bank" or "Insurance".

### **Have the necessary documentation drafted**

Once the Company type and name have been established, a few documents must be prepared and submitted to the Registrar of Companies Association of Malta. First and foremost, the Memorandum and Articles of Associations. The Memorandum is a document that contains important and relevant information such as:

- The type of company;
- Complete identification of its subscribers be it persons or corporate body;
- The company name;
- The company's registered office in Malta;
- The objectives of the company and the main trading activity;
- The number of directors and their identifications;
- The amount of share capital, its division into shares, the number of which taken by each subscriber, and the rights attached to each class of share;
- The name and residence of the first company secretary;
- Identification of each shareholder, director, legal and judicial representatives, and company secretary.
- If fixed, the period of duration of the company;

The Articles of Association, on the other hand, are documents that outline the internal regulations of the Company. If this document is not registered, it will automatically be implied that the company has adopted the model articles found in the 'First Schedule' to the Companies Act.

If you are registering a new company and any of its shareholders is a corporate entity, an additional document known as Form BO1 must be annexed with the rest of the documentation. This form contains information on the identification of the company's ultimate beneficial owners.

Evidence of paid-up share capital should also be produced and can be submitted in the form of just a bank deposit advice.

A registration fee will also have to be paid – the amount depends on the company's authorised share capital. Additional supporting documents may also be requested at the Registrar's discretion.

#### **Obtain the Certificate of Registration**

In the case that all the necessary documentation is accepted by the Registrar, a Certificate of Registration will be issued. This certificate proves that the company has come into existence and is authorised to conduct business starting from the date of issuing of said certificate.

#### **D. Incorporation timing and costs**

The time required for incorporation of a company in Malta depends on the type of company being registered. Provided incorporation and due diligence documentation is satisfactory, the process usually takes between 5-10 days.

For the incorporation of a company, fees and expenses typically range between EUR 2,500 and EUR 3,000.

Reference contact in Malta

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## CHAPTER 16

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN SPAIN

#### **(A) Who can set up a company in Spain?**

The Company must have at least one Shareholder that must be identified in the deed of incorporation. The shareholding partners of a Company in Spain can be either individuals or legal entities.

#### **(B) How to set up a company in Spain?**

A certification by the Central Commercial Registry must be obtained, stating that the **name of the company** chosen for the new company is not being used by an existing company.

It is recommended to have at least 3 possible names for the Company with order of preference in case that the first choice is not available.

The minimum **share capital** for a Spanish S.L. amounts up to 3.000 euros.

The amount of the capital must be transferred to a bank account in Spain, which is opened in the name of the Company. The Spanish bank issues the corresponding certificate for the capital paid in.

The **governing body** of the Company (administration and representation) can be a sole director, two or more directors with single power, two directors with joint powers or a Board of Directors (minimum three directors).

In case of a Board, one member must be appointed as Chairman and a Secretary must be designated who does not need to be a member of the Board.

The **By-Laws** must be drawn up, which contain the relevant information of the Company, like the **Corporate Name, Share Capital, Registered Office, Corporate Purpose, Duration of the Company, General Meetings, Governing Body, Financial Year and Liquidation**.

The **Deed of Incorporation** including the necessary documents must be signed at a Spanish Notary. The founding shareholders appear in person or duly represented. When the deed of incorporation has been signed, the company can start its activities, if the by-laws don't state otherwise.

Afterwards the public deed will be filed with the **Commercial Register** to register the Company.

#### **(C) Which documents are needed?**

Certification of the Central Commercial Register with the name of the company, validity 6 months, renewable;  
Certification of the paid up capital;

By-Laws as described above;

Identification of the Shareholders

-DNI/NIE of the shareholder

-in the case of representation, e.g., by their lawyers: power of attorney issued by a notary and provided with Apostille if the shareholder is located in another country.

- in the case of a legal entity, it must have a NIF (Tax Number) in Spain which can also be obtained with powers of attorney;

Identification of the persons, who will carry out the Administration of the Company,

-Any person appointed as Director in Spain must have a DNI (if Spanish nationality) or a NIE Number (if foreigner), which can also be obtained with powers of attorney;

In case of a foreign founder: Form for foreign investments for statistical purposes

**(D) Further steps to complete the incorporation process**

The census declaration in the incorporation of a company, form 036, is used to communicate certain census information to the Tax Administration,

**(E) Incorporation timing and costs**

Once there are all the necessary documents, the public deed can be signed within a week. The registration of the Company normally takes around 15 days.

Average costs, including notary's fees for the deed of constitution, Register, tax agency process and expenses are about 3.000 EUR.

Reference contact in Spain

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**CHAPTER 17**  
**HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN TURKEY**

**A. Conditions of Establishing LLC in terms of Persons and Capital**

LLC may be established by at least one shareholder to fifty shareholders; foreign or local natural person(s) or legal entity(ies). The share capital of LLC shall not be less than TL 10.000. Establishing LLC by foreign shareholder(s) is same as domestic process.

**B. Process of Establishing LLC**

Firstly, the below mentioned documents should be prepared and uploaded to MERSİS<sup>2</sup> system. Secondly, the applicant (authorized person or authorized attorney) applies to trade registry office with given application code. Lastly, establishment of LLC should be published on Turkish Trade Registry Gazette.

**C. The required documents for establishment LLC are as follows:**

	<b>DOCUMENTATION</b>
<b>POWER OF ATTORNEY</b>	A <b><u>notarized and legalized/apostilled</u></b> PoA provided by the shareholder which authorizing persons to carry out any and all necessary formalities on behalf of the shareholder/parent company with respect to set up and registration including obtaining a potential tax number from the relevant tax office. A <b><u>notarized and legalized/apostilled</u></b> PoA given by the manager(s) or company's authorizing member for obtaining a Turkish tax ID (if the board member is a foreigner)
<b>REGISTRATION WITH THE TRADE REGISTRY</b>	Petition to the Trade Registry signed by the authorized persons (if the petition is signed by proxy, the original or the notarized copy of the PoA shall be attached to the petition); Declaration of Founders; Articles of association of the LLC; ( <i>the articles of association of the LLC shall be inserted to MERSİS.</i> ) <b><i>***Please kindly be informed that the registered address of the LLC shall be inserted to the articles of association of the LLC and other documents. Therefore, the address to be registered should be determined by your side prior to the registration.</i></b> Bank Receipt Stating that Payment for the Fund of Competition Board has been made; ( <i>Prior to the application to the Trade Registry, an amount equal to 0.04% of the capital of the LLC is transferred to the account of Competition Board and the receipt of this payment should be submitted to the Trade Registry office.</i> ) Bank letter indicating the minimum amount of the share capital according to Turkish Commercial Code or articles of association are paid ( <i>At least 25% of the nominal value of the shares subscribed in cash shall be paid before official registration, whereas the balance shall be paid within twenty-four month following the registration of the company.</i> ),

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<sup>2</sup> MERSİS is a central information system for carrying out commercial registry processes and storing commercial registry data electronically on a regular basis.

	<b>DOCUMENTATION</b>
	<p>Chamber of Commerce registration form to be signed by each authorized signatory of the shareholders;</p> <p>Declaration of Non-Shareholding Board of Managers Members; (<i>Trade Registry requires a declaration filled by the non-shareholding members of the board of managers which indicates the acceptance of such assignment</i>)</p> <p>Signature Declaration(s) of the Board Manager(s) issued under the title of the LLC. (<i>Please note that this document shall be notarized and certified by the Turkish embassy or consulate in the parent company's residence country.</i>),</p> <p>BoD Resolution: Shall be defined with taking into consideration the competent organ of the parent company which is entitled to hold such decision indicating the participation intend of the company to a LLC, participation ratio and amount of the shareholders, total capital amount of the LLC, place and intended title of the LLC.</p> <p>Resolution of the Legal Entity Appointed as the Member of the Board of Managers: In case a legal entity is appointed as a member of the board of managers of the LLC, such legal entity shall adopt a resolution indicating name and surname, address, nationality, Turkish ID number or foreign ID number/temporary tax number, of the individual representative of the legal entity member of the board of directors. If the individual representative is foreign citizen and resident in Turkey, residence permit and notarized copy of the passport translated to Turkish will also be required. (<i>Please note that these documents shall be notarized and apostilled.</i>)</p> <p>Certificate of Activity issued by the Chamber of Commerce or Companies House which also includes the information regarding the persons who are authorized to represent the legal entity founder (<i>Please note that these documents shall be apostilled.</i>)</p> <p>This certificate should verify the following:</p> <p>The company is a valid company and good standing,</p> <p>The authorized signatories that are entitled to act on behalf of the foreign entity founder, (information shall also indicate the limitations of authorities)</p> <p>The fact that whether the authorized signatories are entitled to represent the founder with sole or joint signatures.</p> <p>Identification of the Members of the Board of Managers;</p> <p><b>For Representative(s)/Board Manager(s)</b></p> <p><b>For foreign representative(s)/Board Manager(s);</b></p> <ul style="list-style-type: none"> <li>- Notarized and apostilled copy of the passport</li> <li>- Residency permit, (<i>if available</i>)</li> </ul> <p><b>For Turkish representative(s);</b></p> <ul style="list-style-type: none"> <li>- A copy of Identity Registration</li> <li>- Residency certificate</li> </ul>

#### D. Establishment Expenses and Duration

Duration is more relating to collection of the above-mentioned documents. After collected necessary documents, process in Turkey will take 2-5 days. LLC will valid after, publication on Trade Registry Gasette. For the establishment expenses depends on LLC's capital but if LLC will establishment with minimum capital (TL 10.000), excluding attorney's fees; it will cost around EUR 400.

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## CHAPTER 18

### HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN VIETNAM

#### **(A) Who can set up a company in Vietnam?**

Foreign individuals and organizations (“**Investors**”) can set up a limited liability company (“**LLC**” or the “**Company**”) in Vietnam. Before incorporation of LLCs, Investors are required to register an investment project (the “**Project**”) in accordance with the Law on Investment No. 61/2020/QH14 dated 17 June 2020 (the “**Investment Law**”), and then the LLC shall be duly established under the Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 (the “**Enterprise Law**”). There may be additional requirements depending on the business investment sector of the Company, but in general there are no prohibitions against foreign investors for setting up LLCs.

#### **(B) How to set up a company in Vietnam?**

Under the current laws, a foreign invested company in Vietnam may be in the form of an LLC (limited liability company, with either one member / sole owner, the “**SM-LLC**” or multiple members / from two members or more, the “**MM-LLC**”). Accordingly, the SM-LLC is mostly recommended because the Investor will be the sole owner who wholly controls and manages its subsidiary in Vietnam.

In general, the Investors seeking to set up an LLC shall apply for obtaining the following certificates / licenses:

- (a) An Investment Registration Certificate (“**IRC**”) for registration of the Project is obtained from the Department of Planning and Investment (the “**DPI**”) of the City/Province where the Project is located and outside of economic / industrial parks or the Management Board of economic / industrial parks in case the application is located inside of economic / industrial parks (collectively called the “**Licensing Authority**”). The application dossier for issuance of IRC shall be submitted directly by paper or electronically on the National Information System on Foreign Investment (“**NISFI**”) to the Licensing Authority. The statutory time to obtain an IRC upon submission of the proper application dossier is fifteen (15) working days;
- (b) An Enterprise Registration Certificate (“**ERC**”) for setup of the Company is obtained from the DPI, i.e., Business Registration Bureau of the DPI. The application dossier for issuance of an ERC may be done directly, via post, or electronically on the National Business Registration Portal (“**NBRP**”) to the DPI. The DPI will then consider the application dossier and announce its decision on whether to grant the ERC within three (3) working days of receipt of a proper application dossier; and
- (c) Upon receipt of the ERC, Investors must conduct post-licensing procedures (“**Post-licensed Jobs**”), including but not limited to:
  - (i) announce the Company’s establishment on the NBRP as required by the Enterprise Law;
  - (ii) make (a) corporate seal(s)<sup>3</sup> for the Company subject to the Company’s demand;
  - (iii) open a direct investment capital account (DICA) at a commercial bank in Vietnam for capital contribution by the Investor as required by the laws; and

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<sup>3</sup> Under the Enterprise Law, the Company may have more than one seal and no longer require registration of seal sample before use.

- (iv) open and activate an enterprise account online on the NISFI for reporting periodically implementation of the Project, including the first report on status of investment capital once paid-up in full.

**(C) Which documents are needed?**

Apart from documentation drafted by local advisors/ lawyers, the following are the common documents required to bind a conventional application for the establishment of a LLC by individuals or organizations as Investors. These documents may differ slightly based on the kind of Investors:

No.	Docs required to be prepared by Investors as an organization	Docs required to be prepared by Investors as an individual
1.	Certificate of Incorporation or an equivalent document that can certify the legal status	Passport of Investors
2.	Memorandum and Articles of Association	N/A
3.	Register of director(s) or an equivalent document that can identify responsible director(s) to pass decision/ resolution to incorporation of an LLC in Vietnam	N/A
4.	Passport of key personnels for managing and controlling the Project and the Company in Vietnam	
5.	Audited financial reports in two recent years. Accordingly, total assets and profit after tax shall be <b>at least equal to an amount of total invested capital and capital to be contributed to the Project respectively</b>	N/A
6.	In case the audited financial reports are not available and/or insufficient, a bank statement on balance of account will be alternative, in which the balance must be shown <b>at least equal to an amount of total invested capital of the Project</b>	Bank statement issued by any bank (local or overseas banks) as long as it shows that account owner is the Investor. The balance of account should be <b>at least equal to an amount of total invested capital of the Project</b>
7.	Memorandum of Understanding (MOU) or lease agreement for premises to be used as location of the Project as well as head office of the Company. The premises must be a physical office / working space, at least 1 – 2 fixed seats	
8.	Landlord/ lessor's documents to show their right to lease the premises, including: <ul style="list-style-type: none"> <li>▪ Certificate of ownership or duly use right in respect of the premises to be leased/ sub-leased; and</li> <li>▪ Enterprise registration certificate of the landlord/ lessor (<i>in case of legal entity</i>).</li> </ul>	

The documents from No. 1 to No. 5 in the table above are requested to be legalized properly in home country of Investors before submitting to the Licensing Authority. Legalization involves the following steps:

- Step 1: To have the documents certified by Notary Public Office at home country / living country;
- Step 2: To have the documents (certified in Step 1) legalized by the Ministry of Foreign Affairs of home country/ living country; and

- Step 3: To have the documents (legalized in Step 2) finally consularized the Vietnamese Embassy/General Consulate of Vietnam at home country/ living country.

**(D) Information needed for the preparation of the incorporating documents**

- A request for enterprise registration shall contain the following particulars:
  - Name of the enterprise
  - Address of the head office of the enterprise; telephone number, facsimile number, email (if any).
  - Lines of business.
  - Charter capital;
  - Information about registration of tax.
  - Proposed number of employees.
  - Full name, signature, contact address, nationality, and details of the personal legal document with respect to the legal representative of the LLC.
- The charter of a company shall contain the following main contents:
  - Name and head office address of the company; names and addresses of branches and representative offices (if any);
  - Lines of business;
  - Charter capital;
  - Full names, contact addresses and nationalities of the company owner or of members. Capital contribution portion and its value for each member;
  - Rights and obligations of members;
  - Organizational and managerial structure;
  - Number, managerial positions and rights and obligations of legal representatives of the enterprise; allocation of rights and obligations of legal representatives in accordance with law where the company has more than one legal representative;
  - Procedures for passing decisions of the company; rules for resolution of internal disputes;
  - Bases and methods of determining wages, remuneration and bonuses of managers and inspectors;
  - Circumstances in which a member has the right to require the company to redeem its capital contribution portion;
  - Rules for distribution of after-tax profit and dealing with losses in the business;
  - Circumstances for dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
  - Procedures for amendment of or addition to the charter of the company.
  - The charter of the company upon enterprise registration must contain full names and signatures of the following persons:
    - The company owner being an individual or the legal representative of the company owner being an organization in the case of a one [single] member LLC;

2. The member(s) being individual(s) and the legal representative(s) or the authorized representative(s) of the member(s) being organization(s) in the case of an LLC with two or more members [multi-member];

#### **(E) Time schedule and costs**

The whole establishment process takes approximately one to two months depending on the preparation of documents or working with the Licensing Authority to clarify points in the dossiers for issuance of IRC and ERC, if required. The timeline given below is only estimated and unexpected delays may occur:

1. Preparation and binding the documents: 10-15 working days.
2. Submission and obtainment of IRC: 15 working days.
3. Submission and obtainment of ERC: 3 working days.
4. Completion of the Post-licensed Jobs: 5-10 working days.
5. Contribution of charter capital: within 90 days (as maximum) as from the issuing date of ERC.

For the incorporation of an LLC, certain official fees to be paid to the Government are due which together with the notarization fees can amount in a range between VND3,000,000 and VND5,000,000, equivalent to EUR111 and EUR186.

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