



# Country by country guide





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# 1. Introduction

## 1.1 Corporate Forms Across Europe

This guide is intended to assist the reader in determining what corporate forms in other jurisdictions are most akin to those in one's own jurisdiction. Whilst the terminology is often radically different, the principles are generally very similar, but with important specific characteristics. Some jurisdictions allow unincorporated business arrangements to arise as a matter of law or to subsist, others require a level of registration. In addition to company law aspects, it will always be necessary to consider issues of tax. These readily digestible summaries are intended to give the reader a first flavour of another jurisdiction and should not be treated as a complete exposition of the relevant law.

Specific advice will always be required. This document sets out the law and practice as it stands on 20 May 2017.

## 1.2 Corporate Governance

The last 30 years has seen an ever-accelerating development of the companion to company law and practice, namely corporate governance. The modern concept of corporate governance can trace its history directly back to the Cadbury Report produced in the UK in 1992, being the report issued by The Committee on the Financial Aspects of Corporate Governance chaired by Adrian Cadbury and charged with investigating the issue in a business environment besmirched by the corporate scandals of the day. In more recent times we have seen catastrophic failures of governance and destruction of shareholder value in many areas. There does seem to be a clear link between poorly governed companies and systemic risk and significant value destruction.

Good governance is much more than a defensive response to the latest business scandal. Well-governed companies set clear corporate goals, confidently stating the corporate ambition with a focus on delivering sustainable value for shareholders. We are now in a time where governance and law are ever-more entwined. One cannot effectively serve as a director in compliance with law without also considering issues of good governance and risk management.

## 1.3 Transparency Registers and Beneficial Ownership of Corporations

Corporations are very convenient forms for conducting business. Across Europe companies exist within an environment where the social contract which allows shareholders to benefit from limited liability also requires the company to:

- file public accounts;
- provide certain narrative reporting and reporting to taxing authorities;
- disclose owners.

The transparency obligations on companies and investors are becoming more detailed and more burdensome. On 26 June 2017, all EU member states must implement the Fourth EU Anti-Money Laundering Directive which will require almost all companies to maintain registers of beneficial owners of their shares in addition to registers of membership, etc.

We cannot expect politicians to desist from pursuing this path. In our view, the need for greater transparency and disclosure presents an opportunity to do things simpler, removing artificiality and presenting a clear and understandable corporate structure which is easy to understand, efficient to govern and contributes towards simpler discussions with taxing authorities.

#### 1.4 About Telfa

Trans-European Law Firm Alliance (TELFA) was founded in 1989 and born out of the need to serve clients doing business across the jurisdictions of Europe.

TELFA member firms now have more than 1000 lawyers throughout Europe. Through the sustained commitment of its members, TELFA has become one of the strongest alliances of independent law firms in Europe.

The fact that the member firms of TELFA are independent offers clients a flexible alternative to the global law firm model, in which internal pressures sometimes compete with the needs of client service. TELFA's focus is on client service through the provision of quality legal advice, which can be managed by the member firm in the client's jurisdiction, or the client can go direct to the member firm in the foreign jurisdiction(s) in which the client has the need for advice.

TELFA's vision is to create and maintain a network of independent law firms that share a similar ethos. TELFA member firms do not „sell products“, rather we build relationships with our clients so as to become trusted advisers allowing us to serve our clients more effectively.

Just as the foundation of good service for our clients is built on strong personal relationships, so it is among the lawyers that make up the membership of TELFA. The lawyers in TELFA get to know one another both professionally, through working together on client assignments.

Also flexibility - either clients can have a single point of contact through which to engage lawyers throughout Europe, or a personal introduction to law firms in foreign jurisdictions, so that clients can feel comfortable with and assured in the service that they are to receive.

All the member firms offer a partner led - not necessarily „partner does“ - service; the firms ensure that clients have continuity of contact and are not passed from one lawyer to another.

TELFA members are sensitive to cultural differences and work hard to frame their advice in a way that is understandable, practical and „digestible“ by their clients.

The member firms share resources, knowhow and best practice whilst respecting the different requirements made of each firm by its local „bar rules“.

For TELFA clients this means that TELFA is not just a referrals network that operates like a brokerage clearing house; rather the TELFA brand stands for personal service, facilitating clients' needs for advice in what may be unfamiliar jurisdictions, so as to ensure the client feels safe in the knowledge that the firm is respected (and respectable) within their local jurisdiction.

TELFA firms can draw on and leverage the expertise and experience of its members so as to respond effectively and flexibly to the demands made by clients.

More information about TELFA and its wider international associations can be found following the link below:

<http://www.telfa.law/>

TELFA firms benefit from a strong relationship with USLAW Network, Inc., with firms across most of the United States, and other parts of North and South America. More information about USLAW Network, Inc. can be found following the link below:

<https://web.uslaw.org/>

### 1.5 This document

This document has been prepared by TELFA lawyers drawn from a broad range of firms. In time, it will be expanded to address all TELFA jurisdictions and other key affiliated jurisdictions. The document analyses corporate forms across 24 European jurisdictions, listed alphabetically.

**Annex 1** is a summary of the terminology of corporate forms.

**Annex 2** is a glossary of key terms.

**Annex 3** puts you in contact with the corporate lawyers who have been involved in the preparation of this document.

### 1.6 Jurisdictions Covered

Austria	Belgium	Cyprus
Czech Republic	Denmark	Estonia
France	Finland	Germany
Greece	Hungary	Ireland
Italy	Latvia	Lithuania
Luxembourg	Malta	Netherlands
Norway (EEA, non-EU)	Portugal	Slovakia
Spain	Sweden	United Kingdom*

All jurisdictions are European Union Member States, unless otherwise indicated.

\* It should be noted that on 29 March 2017 the United Kingdom served a notice of an intention to withdraw from the European Union.

## 2. Austria

### 2.1 Corporate forms available

In Austria, business undertakings, can be structured in both corporate and non-corporate legal forms. Corporate forms include the Austrian limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*), the Austrian joint stock company (*Aktiengesellschaft – AG*) and the European joint stock company (*Societas Europea - SE*). The form of a GmbH is best suited for wholly or closely owned companies; AGs are regularly chosen as public companies and subject to a number of additional requirements.

The most important non-corporate legal forms are the sole entrepreneurship, the civil law partnership, the general partnership and the limited partnership.

As a GmbH is by far the most popular corporate form in Austria and typically chosen as corporate vehicle by foreign investors when coming to Austria, this outline focuses on the GmbH.

### 2.2 Incorporation (form, time, costs, share capital requirements)

The Articles of Association (the AoA) set forth the basic structure of the GmbH (e.g. corporate name and seat, share capital existence and structure of supervisory board and advisory board and voting and other shareholder rights) and are the most important constitutional document of a GmbH.

The AoA must be executed by way of a notarial deed to establish the GmbH. Changes to the AoA are still possible after establishment but result in further costs and time delays.

After establishment of the GmbH, the GmbH must be registered with the commercial register upon which it becomes a full legal entity. The register filing has to include the notarial deed establishing the GmbH, the notarized document on the appointment of the managing director(s), the notarized sample signature page of the managing director(s), the confirmation of a bank that payment of the agreed share capital (see below as to the minimum share capital requirement) has been received and confirmation of the competent tax authorities that all taxes due have been paid (please see section 4. below on taxes payable upon incorporation). The German language originals of the register filing must be signed by all managing directors personally; the signatures need to be notarized. Registration with the commercial register usually takes 1 to 2 weeks from submission of the filing.

As set forth above, the AoA must determine the nominal amount of the share capital of the GmbH. The minimum share capital of a GmbH is €35,000.00 of which at least 50% has to be paid in. However, founders may opt for a so called “GmbH light” with a reduced initial capital contribution of at least €10,000.00 (again at least 50% of that has to be paid in at foundation), but this privilege carries limitations and ends after 10 years from foundation.

The notarial fees and the court fees for founding a GmbH are approximately €1,500.00 – €2,000.00. Legal fees for the set-up of a standard GmbH are approximately €2,000.00 – €3,000.00.

### 2.3 Managing directors (power, appointment, liability)

Simultaneously with the execution of the AoA, the first managing director(s) of the GmbH should be appointed. The managing director(s) do not need to be Austrian or European citizen(s); a residence in Austria is not required either.

The power of representation of a managing director of a GmbH is by law unlimited. It may be restricted solely by providing that a managing director may only act jointly with a second managing director or a registered agent (*Prokurist*). Any other type of restriction of authority solely works internally as a fiduciary duty imposed upon the managing directors.

The managing directors of a GmbH owe a duty of care and diligence expected of a prudent businessman towards the company. This includes the actual conduct of the business of the company as well as compliance with reporting and filing requirements (e.g. preparation and filing of the annual accounts, notification of changes of shareholders, appointment or revocation of managing directors and the institution of insolvency proceedings).

Managing directors are liable to the GmbH for any damage caused as a result of a breach of their duties; in the case that more than one managing director is appointed, their liability is joint. This liability cannot be restricted by an allocation of responsibilities among the managing directors. A direct instruction by the shareholders releases the managing directors from their liability, unless the implementation of the instruction would contravene statutory law.

## 2.4 Taxation (corporate tax, capital gains tax, other taxes)

GmbHs (as well as other Austrian corporations) are subject to corporate income tax (*Körperschaftsteuer*) on their entire (domestic and foreign) income, if they have their seat or place of effective management in Austria. Profits are taxed at a standard tax rate of 25%. GmbHs incurring losses must nonetheless pay a minimum corporate income tax of €1,750.00 annually. Such minimum tax payments can be credited against corporate income tax payable in the following years. Non-resident companies are not subject to the minimum tax.

Any dividends paid by an Austrian company to its shareholders are subject to capital gains tax (*Kapitalertragssteuer*) at a rate 25%, unless a reduced rate applies under a tax treaty.

Capital transfer tax (*Kapitalverkehrssteuer*) at a level of 1% is payable on any contribution towards the company, including on the payment of the share capital upon registration.

If an Austrian company participates directly or indirectly in other corporations, in a way that it has a controlling interest and if these companies form a tax group, a group taxation system (*Gruppenbesteuerung*) applies for at least three years. Tax groups provide for various tax benefits and can be attractive to foreign investors, since the group taxation system applies not only to domestic but also to foreign companies. In general, any losses of members of the group can be immediately offset by profits accumulated by other group members.

## 2.5 Reporting Requirements

Managing directors of a GmbH need to file any changes in the corporate structure of the company with the commercial register without undue delay. This means that any change in name, shareholders, seat, share capital and managing directors of the company will need to be filed as soon as these changes occur. For the most part, these changes become effective only upon registration. A GmbH is required to file its annual financial statements with the companies' register within nine months of the respective balance sheet date e.g., if the balance sheet date.

# 3. Belgium

## 3.1 Corporate forms available

Belgian law provides for numerous corporate legal entities including various forms of partnership and company, non-profit associations, the European Economic Interest Grouping and the European Company. The civil or commercial nature of a company is determined by reference to its corporate objects.

The most commonly used forms, both of which have limited liability, are the Private Limited Liability Company (*Société privée à responsabilité limitée – Besloten vennootschap met beperkte aansprakelijkheid*), and the Public Limited Liability Company (*Société anonyme – Naamloze vennootschap*).

Special governance, reporting and other rules apply to listed companies.

## 3.2 Incorporation (form, time, costs, share capital requirements, liability of founders)

Off the shelf companies are not generally available and the incorporation process requires the founding shareholders to appear, in person or via a written power of attorney, before a Belgian Notary for the purposes of enacting the company Statutes (Articles) in a notarial deed. Prior to incorporation, the founding shareholders must file with the Notary a Financial Plan in the form of a projection of the company's capital needs over the first three years of its activity. In the event of the bankruptcy of the company within the three years following incorporation the founders may be held personally liable for the debts of the company where the capital was manifestly insufficient to finance the company's activities for an initial period of at least two years.

### 3.2.1 Private Limited Liability Company (SPRL/BVBA)

This type of company, which may not be used for listed companies, is widely used, including by foreign companies for the incorporation of their Belgian subsidiary, where they are the majority founding shareholder. A minimum of at least two shareholders at all times is advisable given that, if there is only one founding corporate shareholder, and, subsequently during the life of the company, 12 months after such time as there is only one shareholder, the sole shareholder is deemed to guarantee all debts and liabilities of the company. The minimum capital is € 18.550, of which at least € 6.200 must be paid-up at the time of incorporation, which amount is increased to € 12.400 if there is only one sole private individual as founding shareholder. Shares must be in registered form, of equal value and with identical rights. Preference shares, non-capital shares, warrants or convertible debentures are all prohibited. Non-voting shares may be issued but are subject to statutory restrictions. The company may issue registered non-convertible debentures which may however not be listed. Share transfers are restricted by law and require the consent of at least one half of the shareholders representing three quarters of the issued capital not including the shares to be transferred.

### 3.2.2 Starter Company (SPRL/BVBA Starter)

This form of company is a variation of the SPRL/BVBA, which has been specially created for start-ups. It may only be incorporated and used by private individuals who do not own more than a 5% interest in any other company. The initial share capital requirement is a minimum of € 1 and the company is

allowed period of 5 years in which to build-up a capital to the minimum level of € 18.550, at which time the company becomes an ordinary SPRL/BVBA. With a view to building up this minimum level of capital, the company is required to place 25% of its annual profits in a capital reserve fund.

The company is incorporated in the same manner as the ordinary SPRL/BVBA except that the Financial Plan must obligatorily be drawn-up by an accounting professional.

Until such time as it becomes an ordinary SPRL/BVBA shares in the company may only be transferred to another private individual and not to a company or legal entity.

The company must identify itself as a starter by using the terms SPRL-S or BVBA-S on all its documentation and literature.

The management of the company is also the same as the ordinary SPRL except that the manager must be a private individual and may not be a company or legal entity.

### **3.2.3 Public Limited Liability Company (SA/NV)**

Companies whose shares are listed must adopt the form of the Public Limited Liability Company but this form may also be used by unlisted companies. A minimum of at least two shareholders at all times is advisable given that 12 months after such time as there is only one shareholder the sole shareholder is deemed to guarantee all debts and liabilities of the company. The minimum capital is € 61.500, all of which must be paid-up at the time of incorporation. It is possible to provide for an authorized capital. Shares must be registered or held in so-called dematerialized form via a trustee account. Preference shares, non-capital shares, warrants, debentures, including convertible debentures, and, within certain limits, non-voting shares may all be issued. Different classes of shares with differing rights may also be created. Shares are in principle freely transferable but limitations, not amounting to a total and long term ban on transfers, may be included in the company articles or in a shareholders agreement. If so authorized by the company's articles the Board of Directors make pay interim dividends.

## **3.3 Managers and directors (power, appointment, liability)**

### **3.3.1 SPRL/BVBA**

The SPRL/BVBA is managed by one or more "managers" (*gérants/zaakvoeders*) who may or may not be shareholders.

Except in the case of an SPRL/BVBA with one sole individual founding shareholder a legal entity may act as manager but must designate a named physical person as its representative.

There are no nationality or residence requirements in order to be appointed as a manager.

The manager is appointed in the articles (statutory manager) or elected by the shareholders (ordinary manager) representing at least 50% of the share capital (unless the articles provide for a higher percentage). The term is as stipulated in the shareholders decision and, failing any other specification, the statutory manager is appointed for the life of the company.

The manager is invested with the full power to manage and represent the company towards third parties.

In the event that there two or more managers, unless provided otherwise, each manager has individually full power to represent the company.

The removal of the statutory manager requires a decision to modify the company's articles whereas the ordinary manager may be revoked at any time by decision of the shareholders.

### 3.3.2 SA/NV

The SA/NV is managed by a Board of Directors that must be composed of a minimum of three members, which may be reduced to two for so long as the company has no more than two shareholders.

A legal entity may be elected as a director but must designate a named physical person as its representative.

There are no nationality or residence requirements in order to be elected as a director.

The Board of Directors acts as a collegiate body and has full power to manage the company, subject to such powers as are reserved by law or by the company articles to the General Meeting of Shareholders.

Each director is elected by the shareholders representing at least 50% of the shares (unless the articles provide for a higher percentage or different arrangement). The term of office is as stipulated in the **shareholders** decision with a maximum term of 6 years, which is renewable.

Irrespective of the term of office, each director may be removed at any time by decision of the General Meeting of Shareholders.

The company articles may authorize the Board of Directors to delegate its management powers to a so-called management committee (comité de direction/directiecomité), which may be composed of both directors and non-directors.

Powers of day to day management may also be delegated by the Board of Directors to a managing-director, member of the Board, or to a General Manager, who is not a member of the Board.

## 3.4 Personal liability for directors and managers

In both the SA/NV and the SPRL/BVBA directors and managers are liable both towards the company and towards third parties for damages resulting from violations of the Belgian Companies Code or of the company articles.

In the event of bankruptcy of the company the directors and managers, including persons who have de facto managed the company, may be held personally liable for all or part of the company's unpaid debts in the event that they have committed an act of serious negligence, including but not limited to, tax fraud, which has contributed to the bankruptcy.

Directors and managers, including persons who have de facto managed the company, are also personally liable for the payment of VAT due by the company as well as income tax payments which have to be withheld by the company on the salary paid to its employees. In the event of the bankruptcy a similar liability arises in respect of unpaid social security contributions due by the

company where the directors and managers have been seriously negligent and such negligence has led to the bankruptcy.

### **3.5 Taxation (corporate tax, capital gains tax, other taxes)**

Subject to the provisions of the double taxation treaties to which Belgium is a party, the above mentioned companies are liable to Belgian corporation tax on their worldwide income less admissible expenses.

There is no group consolidation for tax purposes.

For 2016 the applicable rate is 33.99 %. Subject to certain conditions and limits, reduced rates going down to the minimum rate of 24.25 % on the first tranche of income up to € 25.000, are applied to companies the majority of whose shares are held by private individuals as opposed to other companies or legal entities.

Capital gains on the sale of shares are in general subject to corporation tax but capital gains on shares whose dividends have already been subject to final taxation at a normal rate in Belgium or another jurisdiction are subject to a reduced rate of tax of either 25.75 % or 0.412% (reduced to 0% for small companies), depending on whether or not the shares have been held for a period of more than 12 months.

Subject to the provisions of the double taxation treaties to which Belgium is a party and /or the EU parent/subsidiary directive, dividends paid out by a Belgian company are subject to a withholding tax at source of 25 %.

There is a 95% participation exemption for dividends received by a Belgian company from qualifying subsidiaries.

Various tax incentives are available, including the Notional Interest Deduction (tax deduction on qualifying net equity).

The standard rate of VAT applicable in Belgium is 21%.

When a company is liquidated, a specific liquidation tax of 10% is levied on any liquidation surplus.

Advance Tax Rulings on proposed methods of operation or specific transactions may be obtained.

### **3.6 Reporting, Accounting and Audit Requirements**

Companies are required to file certain information with the Belgian companies register, some of which is published in the annexes to the *Moniteur Belge/Belgisch Staatsblad*.

All Belgian companies must maintain books and accounts in accordance with the Belgian legal requirements, including the Belgian minimum chart of accounts and Belgian GAAP. They must also prepare in the required local language and file annual accounts (balance sheet, income statement, notes to the financial statements, summary of accounting principles, list of board members and so-called "social" balance sheet) according to a predefined format, which varies according to whether the company qualifies as a small or a large company.

Auditing requirements depend on the size of the company. Under the Companies Code, a company qualifies as a large company if the annual average of its workforce exceeds 100 persons or more than one of the following criteria is met:

- Annual average workforce: 50
- Total assets: 3,650,000 EUR
- Annual turnover (excluding VAT): 7,300,000 EUR

All other companies are considered as small companies.

Large companies are required to appoint a Belgian qualified statutory auditor who must carry out an annual audit and other auditing requirements.

# 4. Cyprus

## 4.1 Corporate forms available

As an international business centre, Cyprus provides a variety of options to entrepreneurs seeking to establish a legal entity in Cyprus, always designed to meet their specific needs.

The forms of corporate entities include the Limited Liability Company by shares, the Limited Liability Company by guarantee with share capital or without share capital, the Public Company limited by shares and the European joint stock company (*Societas Euros - SE*).

The Companies Law Cap.113 also provides for the re-domiciliation of a foreign company (where this is permitted by the foreign jurisdiction) as well as for the establishment of a branch of a foreign company.

The non- corporate legal forms include the Sole Proprietor, the Limited Partnership, the General Partnership and the Cyprus International Trust.

The majority of business organisations in Cyprus are Limited Liability Companies by shares and therefore this outline will focus on the characteristics and features of this popular legal entity.

## 4.2 Incorporation (form, time, costs, share capital requirements)

In order to set up the Limited Liability Company, the following steps need to be taken:

**4.2.1** Application to the Registrar of Companies for the approval of the company name, unless a shelf company is used.

**4.2.2** Preparation of the Memorandum and Articles of Association of the company signed and prepared by a lawyer registered with the Cyprus Bar Association, together with the relevant forms containing the following information to be submitted for the registration of the company:

- the name of the company that has been approved by the Registrar;
- the authorised and issued share capital of the company. There is no restriction by law in relation to the amount of the authorised share capital nor to the currency;
- the directors and the secretary of the company;
- the shareholders; and
- the registered address of the company.

The process of registration may take up to three working days. Once the company is registered, the Registrar issues a certified copy of the Memorandum and Articles of Association, Certificates of Registration, Registered Address, Directors and Secretary and Shareholders.

The average cost of setting up a company is between the range of €1,500.00 – €3,000.00 depending on the type of services provided.

The company is also required to pay an annual levy of €350.00 in order for the company to remain in good standing.

In addition the company will have to prepare financial statements for every year. The cost of this preparation will depend on the transactions and type of transactions.

### **4.3 Managing directors (power, appointment, liability)**

The minimum number of directors required for a private Limited Liability Company is one. The appointment and removal of such a director is at the discretion of the shareholders. The law does not distinguish between executive and non-executive directors, nor between substantive and nominal directors.

There is no obligation to appoint a director whose nationality is Cypriot unless it is considered as essential in order to establish local management for tax or other reasons depending on the facts and circumstances of each case.

In general, the business of the company is managed by the Directors and they may exercise all the powers of the company although certain crucial matters can be reserved in the Articles of Association of the company so that they are decided by the Shareholders.

The directors owe fiduciary duties to the company. More specifically, they need to act in good faith and for the benefit of the company, comply with the company's Memorandum and Articles of Association and manage the company's day to day operations in accordance with the Cyprus Company Law Cap. 113. They also have a duty to exercise reasonable care and skill and the law also provides for several statutory duties that directors need to comply with in order to keep and maintain the day to day operations of the company.

Directors can be personally liable due to an illegal action or due to an ultra vires act done by them and their liability can be criminal, administrative or civil.

A breach of a fiduciary duty or a common law duty will render a director personally liable to the company in damages or injunctive relief. In case of such a breach, an action may be brought by the company or by one or more members suing in a derivative action.

### **4.4 Taxation (corporate tax, capital gains tax, other taxes)**

When a company is Cyprus tax resident, tax is imposed on income accruing or arising both from sources in and outside of Cyprus whereas when a company is not Cyprus tax resident, tax is imposed on income accruing or arising only from sources within Cyprus. A company is considered to be tax resident in Cyprus if it is managed and controlled in Cyprus and will then attract a corporate tax rate is 12.5%, the lowest in the European Union.

There is no corporation tax on the distribution of dividends by a Cypriot company to its shareholders. Dividends paid to Cypriot tax resident natural persons are subject to special defence contribution at the rate of 17%. There is no special defence contribution on the payment of dividends to shareholders

that are Cyprus tax resident companies. Moreover, there is no special defence contribution on the payment of dividends by a Cypriot company to non-Cyprus tax residents shareholders.

Cyprus has an advantageous tax system and there are many fiscal incentives for foreign businesses willing to invest through or in a Cyprus Limited Liability Company. The following incentives are considered among the most advantageous: (a) any gains arising from the disposal of securities are exempted from corporation tax (b) profits from a permanent establishment maintained outside of Cyprus are exempted from corporation tax (c) significant deductions of expenses. Generally all expenses that have been incurred wholly and exclusively for the production of income are deductible (d) advantageous capital allowances (e) profits from the exploitation and/or disposal of intellectual property rights are 80% exempted.

Capital gains tax is imposed at the rate of 20% on gains from the disposal of immovable property situated in Cyprus including shares of companies not listed on a recognised Stock Exchange which own immovable property situated in the Cyprus. However, no capital gains tax will be imposed on the sale of immovable property until the 31 December 2016 due to a recent amendment in the Capital Gains Law.

Furthermore, capital gains tax will not apply to a Cypriot company disposing of shares of another Cypriot company which owns immovable property to which it is a shareholder. For the exemption to apply the immovable property owned must not exceed 50% of the value of the shares being disposed.

#### **4.5 Reporting Requirements**

The Secretary and/or the Director of the company has a duty to inform the Registrar of Companies of any changes in the corporate structure of the Limited Liability Company. The forms relating to the changes must be accompanied by a certification from the company's Secretary that the changes are in accordance with the Register which is kept at the registered office of the company.

Every company incorporated in Cyprus is obliged by law to maintain accurate books of accounts which should reflect the true and correct position of its affairs, as well as giving sufficient clarification of its activities.

All companies are also required to submit an Annual Return to the Registrar of Companies and the Annual Return must be accompanied by the audited financial statements of the company.

# 5. Czech Republic

## 5.1 Corporate forms available

For the purpose of doing business in the Czech Republic, Czech law provides for several legal forms of business corporations.

According to the new Czech legislation (the new Civil Code and the Act on Business Corporations Commercial code), effective from 1 January 2014, business corporations include commercial companies and cooperatives.

### Commercial companies are following:

- an unlimited partnership (“*veřejná obchodní společnost*” – “*veř. obch. spol.*” or “*v.o.s.*”) and a limited partnership (“*komanditní společnost*” – “*kom. spol.*” or “*k.s.*”), which are together called “partnerships”;
- a limited liability company (“*společnost s ručením omezeným*” – “*spol. s r.o.*” or “*s.r.o.*”) and a joint stock company (“*akciová společnost*” – “*akc. spol.*” or “*a.s.*”), together as “capital companies” and
- a European Company (“*SE*”); and
- a European Economic Interest Grouping (“*EEIG*”).

### Cooperatives include:

- a cooperative (e.g. a housing cooperative or a social cooperative) and
- a European Cooperative Society (“*SCE*”).

From abovementioned types of business corporations the capital companies are usually regarded as the most suitable legal forms for foreign investors when coming to the Czech Republic. This outline is focused on the Czech limited liability company and the Czech joint stock company.

## 5.2 Incorporation (form, time, costs, share capital requirements)

### 5.2.1 Limited liability company

A limited liability company is defined as a company whose members are jointly and severally liable for the company’s debts up to the amount at which they have not fulfilled their contribution obligation, pursuant to the record in the Commercial Register at the time when such a fulfillment was demanded by a creditor.

The business name of the company shall include the words “*společnost s ručením omezeným*”, which can be replaced with the abbreviation “*spol. s.r.o.*” or “*s.r.o.*”

A limited liability company may be established by a single founder (either by a natural (individual) or a legal person (entity), either by a Czech or a foreign person). The maximum possible amount of members is not set down.

A limited liability company is established by a memorandum of association, which must have the form of a notarial deed. If the company is established by a sole founder, the foundation document is called a deed of foundation and must be executed in the form of a notarial deed, too.

The memorandum of association is the most important constitutional document of this form of the company and determines the basic structure of it (e.g. company business name and company

registered office, scope of business activities, registered capital, determination of company members, determination of types of ownership interests of each member, contributions connected with ownership interests of members, rights and duties of company members, number of executives and their acting on behalf of the company, the structure and competence of the company bodies - the general meeting, the executive, the supervisory board, if any).

The new law does not prescribe minimum amount for registered capital, respectively the minimum amount of shareholder's contribution is CZK 1.00 as opposed to CZK 20,000 and the minimum registered capital of CZK 200,000 according to the previous legislation. So the limited liability company can be newly founded only with CZK 1.00 registered capital.

After establishment of the limited liability company, the company must be registered with the Commercial Register upon which it becomes a legal entity and can start operating. The application for registration is filled in an electronic or paper form and is submitted and signed (with certified signatures) by all executives of the company. Not submitting the application within 6 months after the date of its establishment shall be conclusively presumed to have the same effect as a withdrawal from a contract. However, the period may be modified in the memorandum of association.

The registration of a new company with the Commercial Register is newly possible to be executed either by Notaries or by relevant courts. Option to decide whether the registration will be carried out by a Notary or if the applicant will proceed via the court channel is given to the actual applicant.

However, there is a difference between notarial fees and court fees for the registration and also in a time period in which the registration is performed. The first registration of a new simple limited liability company (i.e. a company whose foundation deed includes only minimum mandatory provisions prescribed by the new Civil Code and the Business Corporation Act and the founder's contributions are made in cash - monetary kind) carried out by a Notary is newly exempted from the incorporation fee. The notarial fee for the first registration of other new limited liability companies is CZK 2,700 and the current court fee for the first registration of any new limited liability company is CZK 6,000. The registration executed by Notaries is performed "without any delay" (i.e. in fact immediately upon presenting all necessary paperwork); the registration carried out by courts shall take 5 working days from submission of the application.

### **5.2.2 Joint stock company**

A joint stock company is defined as a company whose registered capital is apportioned among a certain number of shares.

The business name shall include the words "*akciová společnost*", which can be replaced with the abbreviation "*akc. spol.*" or "*a.s.*"

A limited liability company, so a joint stock company, may be established by a single founder (either by a natural or a legal person, either by a Czech or a foreign person).

A joint stock company is established by adoption of its articles of association (there is no longer need for a separate foundation deed). The document must be executed in the form of a notarial deed disregarding the number of the founding shareholders.

The articles of association shall include: the company business name and company registered office,

scope of business activity, registered capital, shares and rights connected thereto (number of shares, nominal value, form and type of the shares), information about the selected internal structure system of the company (which may involve either a two-tier or unitary board structure), determination of companies bodies – the general meeting, the board of directors, the supervisory board, rules of the appointment, company representation and any of its limitation, etc.

The registered capital of a joint stock company shall amount to at least CZK 2,000,000 or €80,000.00.

The establishment of a company shall be effective provided that every founder has paid up the share premium, if any, and at least 30% in aggregate of the par or book value of the subscribed shares within the period of time set in the articles of association, but no later than by the date of filing of the application for the company's registration in the Commercial Register. If the obligation is not met, the company cannot be registered.

After establishment of the joint stock company, the company must be registered with the Commercial Register. The application for registration is filled in an electronic or paper form and submitted and signed (with certified signatures) by all members of the board of directors or the statutory director. Failing to submit the application within 6 months after the date of its establishment shall be conclusively presumed to have the same effect as a withdrawal from a contract. However, the period may be modified in articles of association.

The notarial fee for the first registration of a new joint stock company is CZK 8,000, whereas the court fee for the first registration of a new joint stock company is currently CZK 12,000. The registration executed by Notaries is performed immediately; the registration by courts shall take 5 working days from submission of the application.

### 5.3 Managing directors (power, appointment, liability)

#### 5.3.1 Limited liability company

The statutory body of a limited liability company is one or more **executives**. If so provided in the memorandum of association, multiple executives shall constitute a collective body.

An executive can be a natural person or a legal entity and is elected and recalled by the general meeting of the company.

The Czech Republic has recently revised its corporate law which expressly vests to the powers of the executive *the business management of the company and procuring for prescribed accounting evidence of the company*. Nobody shall be entitled to give him instructions regarding the management of business.

The new legislation keeps the obligation of an executive to act *with care of diligent manager + business judgement rule*, which provides for protection of the members of statutory bodies provided their decisions and actions are: (a) legitimate, (b) carried out in good faith, (c) leading to good course, (d) carried out with necessary degree of loyalty and (e) not in breach of good morals. When judging if a member of a statutory body acted with the required care of diligent manager, it will have to be judged against degree of care provided by other reasonably diligent person in the same situation, if such person was in the position of the member of statutory body.

At the same time the new legislation brings new risks for the executives, of particular relevance are:

- obligation to account the company for all benefits acquired as a result of breach of duty;
- disqualification from the office of member of corporate body due to breach of duty to act with care of diligent manager — by court decision;
- obligation to return to the company all benefits earned from the company (on the basis of executive agreement or other benefits) during the period of two years preceding a final and legally valid court decision on the declaration of the company's bankruptcy, provided the member of the relevant body knew about the threatening bankruptcy and did not take any necessary measures;
- personal liability for any debts of the company in case of breach of, or disqualification from, the office;
- unlimited liability for any debts of the company in case of company's bankruptcy, provided the member of the relevant body knew about the threatening bankruptcy and did not take any necessary measures;
- personal liability to the creditors of the company for any debts of the company, provided the member of the corporate body did not compensate to the company damages caused by the breach of his obligation to act with the care of diligent manager.

The executive's (service) agreement between an executive and the company must be executed in written form and must be approved by the supreme body of the corporation, i.e. the general meeting. An agreement executed in other than written form (orally or implied by conduct) would be considered invalid. The agreement must include the description of all individual components of the service fee, benefits and profit share entitlements, including any methods for their calculation. If the agreement does not specify the remuneration, or if there is no written agreement at all, it is deemed that the office is performed for free.

### **5.3.2 Joint stock company**

The joint stock company is entitled to choose its internal structure system (two tier or unitary system).

In case of the two-tier system a board of executive directors and a supervisory board are established. If the articles of association do not provide otherwise, each of those boards is composed by three members.

The board of executive directors is responsible for the commercial management of the company and decides on all company matters, unless the law or articles of association reserve these for the competence of the general meeting or the supervisory board or another company body.

Nobody shall be entitled to instruct the board of directors regarding the management of the company's business.

The board of directors shall ensure the books are properly kept, and submit ordinary, extraordinary, consolidated and, where appropriate, interim financial statements to the general meeting for approval. In accordance with the articles of association, it shall also submit a proposal on profit distribution or coverage of loss.

Members of the board of directors can be natural persons or legal entities and are elected and recalled by the general meeting, unless it is determined in the articles of association that the same falls within the powers of the supervisory board. Where members of the board of directors are elected by the supervisory board, the supervisory board shall also approve the executive service agreements concluded with the individual members of the board of directors.

The new legislation keeps the obligation to act *with care of diligent manager + business judgement rule* (more details see above in part 3.A.).

The new legislation also brings new risks for members of supervisory body, which are the same as by the executives of limited liability companies (see above).

In case of the unitary structure system, the company has two basic bodies: an Administrative Council with a President and a Statutory Manager (which represents the company). If so provided in the articles of association, the management of the company may be concentrated into the hands of one person only, as the relevant bodies can be single-membered (the President and the only member of the Council could be at the same time the Statutory Manager).

Joint stock companies are not obliged to expressly (actively) opt for one or the other internal system, but in the absence of such selection or in case of doubts, it is presumed that the company opted for the dualistic system.

Also in a joint stock company the service agreement must be executed in *written form* and approved by the supreme body of the corporation. Other details related to the service agreement see above.

#### **5.4 Taxation (corporate tax, capital gains tax, other taxes)**

A limited liability company and a joint stock company that have their registered office or place of leadership in the Czech Republic are regarded as tax residents of the Czech Republic and they are obliged to pay a corporate income tax on their entire (domestic and foreign) income. Non-resident taxpayers have a tax obligation, which applies only to income from sources in the Czech Republic. The current corporate income tax rate is 19% and the Czech tax law does not prescribe a minimum tax, which should be paid if the company reported a tax loss.

The double taxation of the income from dividends still remains in the Czech Republic. The income is firstly taxed as a profit of the company (with the tax rate 19%) and secondly by a payment to a shareholder of the company (with the withholding tax rate 15%).

As regard distribution of profit to foreign owners of the Czech companies this may be subject to relieve under: (i) the respective double tax treaties between the Czech Republic and other countries; as well as (ii) the respective EU laws.

#### **5.5 Reporting Requirements**

Managing directors are obliged to file with the Commercial Register any changes in the corporate structure of the company without any delay. This means that any change in name, shareholders, seat, registered capital and members of statutory body of the company will need to be filed as soon as these changes occur. Documents that proved changes in the company shall be deposited in the Collection of Deeds ("*sbírka listin*"), which is a part of the Commercial Register.

A limited liability company and a joint stock company are also required to deposit in the Collection of Deeds its annual reports, closing of accounts statements, decisions regarding profit distribution, auditor reports, etc.

To make the companies to comply with the statutory obligations for filing documentation in Collection of Deeds the new legislation has tightened up possible sanctions, which may be applied for the breach of it (e.g. financial fine up to the amount of CZK 100,000 - prior legislation had a limit up to CZK 20,000, or commencement of liquidation process of the company, by means of a court decision).

As of 1<sup>st</sup> January 2018 there will be a new reporting duty for limited liability companies and joint stock companies. According to the new Czech law introduced by the novelization of the so-called AML Act all registered legal entities will be obliged to notify their beneficial owners, which shall be held in the non-public section of the Commercial Register. This obligation must be fulfilled without undue delay. A failure to do so may also lead to commencement by a court of liquidation of the company.

From 1 January 2014 all joint stock companies must have their own website on which they have to publish information that must be shown on their business documents (such as information about the amount of the registered capital, business name, registered seat, ID no., Commercial Register identification details) together with other information prescribed by law (such as invitation to general meeting, holding structure etc.). Breach of this obligation may lead to penalization by the Commercial Register court up to the amount of CZK 100,000.

The abovementioned obligation is not mandatory for limited liability companies, but if a limited liability company has its own web pages, it must publish the same scope of information as prescribed by law for the joint stock companies.

## **5.6 Criminal Liability of business corporations**

As of 1<sup>st</sup> December 2016 the novelization of the Act on Criminal Liability of Legal Entities became effective. It brought: (i) new concept of the determination of criminal offences for which a legal entity may be criminally prosecuted; and (ii) modification of the possibility of the exculpation of legal entities.

According to the previous law, legal entities might have been held liable only for criminal offences listed in the above mentioned Act (in total 73 criminal offences); the new law extends this list to nearly all criminal acts listed in the Czech Criminal Code, except for criminal offences expressly excluded (only 21 criminal offences).

Nevertheless, the novelization also extends the possibility for exculpation to conduct of the members of the statutory body (i.e. not only to conduct of regular employees), provided the legal entity made all reasonable efforts to prevent the commission of a criminal offence by such an individual. Therefore companies should now implement a system of internal measures and procedures (so-called Criminal Compliance program) in order to be able to release themselves from criminal liability and insist that such a compliance program is strictly respected in practice.

# 6. Denmark

## 6.1 Corporate forms available

The corporate legislation in Denmark allows the establishment of two (2) main groups of Danish companies; (i) companies with limited liability and (ii) companies without limited liability. The first group, the companies with limited liability, is popular amongst both Danish small, mid-sized and large companies and foreign founders and include:

- (i) public limited liability companies (in Danish: aktieselskaber),
- (ii) private limited liability companies (in Danish: anpartsselskaber),
- (iii) entrepreneurial companies (in Danish: iværksætterselskaber),
- (iv) limited partnership company (in Danish: partnerselskaber), and
- (v) the European companies (in Danish: SE-selskaber).

The second group, the companies without limited liability, i.e. with personal liability for the owners, is mostly used in form of one man businesses or within specific lines of business and include

- (i) one man businesses (in Danish: enkeltmandsselskaber),
- (ii) partnerships (in Danish: interessentskaber), and
- (iii) limited liability partnerships (in Danish: kommanditselskaber) (partly limited liability company).

There are also associations and foundations which are very rarely used by foreign corporations.

For foreign corporations setting up business in Denmark it may be considered to establish a Danish branch (in Danish: filial). A branch is not an individual legal entity, but a representation of a foreign legal entity. Establishment of branches are however typically more expensive and the casework times may be long.

This account will focus on (i) public limited liability companies, (ii) private limited liability companies and (iii) entrepreneurial companies with limited liability being the most used limited liability corporate forms, including for foreign corporations setting up business in Denmark.

## 6.2 Incorporation

Setting up a private limited liability company in Denmark is done via online registration with the Danish Business Authority and can be done from day to day provided that the documentation and share capital are prepared.

The limited liability companies are mainly governed by the Danish Companies Act. The documentation required to establish said companies pursuant to the Danish Companies Act are (i) a memorandum of association and (ii) articles of association. Other than that the minimum share capital shall be on the company's account or on the account of the attorney establishing the company on behalf of the founders. The requirements to the minimum share capital for the limited liability companies – and one of the main differences of the limited liability companies – are as follows:

Public limited liability companies: DKK 500,000,

Private limited liability companies: DKK 50,000,

Entrepreneurial companies: DKK 1,00.

The share capital may be provided by way of (i) contribution in cash or by (ii) non-cash asset contribution, provided that the value of the assets have been confirmed by an auditor.

Which of the limited liability companies is recommendable to establish depends on the specific needs of the founding corporation. All of the companies are governed by the Danish Companies Act. However, as a general point, partly due to the minimum share capital requirements, larger corporations usually set up public liability companies, which is also the only corporate form that can be listed on the Copenhagen Stock Exchange. Consequently public liability companies are subject more restrictions than private limited liability companies and entrepreneurial companies. Private limited liability companies is the most popular limited liability companies in Denmark and is used by both (i) larger corporations who deem it unnecessary to inject DKK 500,000 in a public limited liability company and by (ii) smaller startups. Entrepreneurial companies were introduced in 2014 in order to incite more entrepreneurs to start up businesses. Thus, entrepreneurial companies are mostly used as startups without the capital of DKK 50,000 to found a private limited liability company.

Both private limited liability company and entrepreneurial companies can subsequently be converted into a public limited liability company.

The Danish Business Authority's fee for establishing a limited liability company is DKK 760.

### **6.3 Corporate Structure**

Danish corporate legislation provides a two (2) tier management structure consisting of (i) a board of directors or – in rare cases a supervisory board – which is the superior execute corporate body of a limited liability company and (ii) a management board which handles the day-to-day management of the company and shall follow the instructions set forth by the board of directors.

In public limited liability companies it is mandatory to have both a board of directors and a management board. The board of directors shall consist of a minimum of three (3) board members. The chairman of the board of directors cannot be elected member of the management board as well.

In private limited liability companies it is optional whether to elect a board of directors or not, whilst it is mandatory to have a management board.

Entrepreneurial companies are subject to the same rules as private limited liability companies in this regard.

Members of the company managements may be both Danish and non-Danish citizens.

#### **6.4 Auditing and Taxation**

As a general rule it is mandatory for limited liability companies to appoint an auditor to audit the annual reports of the company. A limited liability company may however deselect auditing provided that the limited liability company for two (2) consecutive fiscal years does not exceed two (2) of the following limitations:

- a balance sheet that amounts to DKK 4,000,000;
- a net turnover of DKK 8,000,000;
- an average of 12 full time employees during the fiscal year.

A limited liability company can also deselect auditing at the establishment of the company or deselect auditing after the first fiscal year if the above requirements are met.

Limited liability companies are subject to taxation. The general corporate income tax rate in Denmark is 22 %.

Depending on the corporate structure payment of dividends to corporate shareholders may be exempt from taxation.

#### **6.5 Reporting requirements**

Reporting requirements to public authorities vary in type and extent depending on the actual business operated.

Of the most common reporting the following may be mentioned:

Annual reports: All limited liability companies must file an annual report with the Danish Business Authority. The specific requirements to the annual report are set forth in the Danish Financial Statements Act and vary depending on the size and type of the company. It is the board of directors' responsibility, or the management board if there is no board of directors, to file the annual report;

Ordinary general meeting: A limited liability company must hold at least one (1) ordinary general meeting upon which they, among other things, approve the annual report;

Tax and VAT returns: A annual tax return must be filed with the Danish Taxation Authorities following the end of a fiscal year.

# 7. Estonia

## 7.1 Corporate forms available

Business undertakings in Estonia are companies and sole proprietorships.

Companies are classified as follows: a general partnership (Täisühing – TÜ), limited partnership (Usaldusühing – UÜ), the Estonian private limited company (Osaühing – OÜ), the Estonian public limited company (Aktsiaselts – AS), commercial association (Tulundusühistu) and the European joint stock company (Societas Europaea – SE).

A sole proprietor (Füüsilisest isikust ettevõtja – FIE) can be any natural person. A sole proprietor is liable for his/her obligations with all of his/her assets. This form of business is best suited to those who are going into business alone or with their family.

The most usual corporate forms used and typically chosen as corporate vehicle by foreign investors in Estonia are the OÜ and the AS.

OÜ is the most favoured corporate form in Estonia because of its simple registration process, a low share capital requirement and shareholders have no personal liability for the obligations of the OÜ and this outline is focused on OÜ.

## 7.2 Incorporation (form, time, costs, share capital requirements)

### Formation

There are two ways to register the OÜ. It can be done electronically and also through a notary.

Firstly, OÜ can be registered in the Company Registration Portal of the e-Business Register. For that it is necessary to have ID-card for digital signature. Foreign persons should apply for e-residency to enjoy same benefits. All founders and management board members need to be able to sign the establishment documents digitally.

Secondly, OÜ can be established in a notary. All founders and management board members need to present before the notary. Following information and documents will be submitted to the commercial register: memorandum of association, articles of association, application, contact information, certificate regarding payment of share capital and of state fee.

### Time

Establishing a company via electronic registration will usually take a few hours, but no more than one business day. Registering OÜ established before a notary will take 2-5 days.

### Costs

The state fee for establishing OÜ is 145 euros. The state fee for establishing OÜ electronically in expedited procedure is 190 euros. The state fee can later be recognized as a business expense of the OÜ.

Notary fees will add if registering the OÜ via notary.

### **Corporate capital requirements**

Minimum share capital of the OÜ is 2,500 euros. The OÜ share capital contribution can be monetary or non-monetary, if this is provided in the articles of association.

If the share capital is at least 25,000 euros and the value of a non-monetary contribution exceeds 1/10 of the share capital or if all non-monetary contributions collectively form more than one-half of the share capital, the valuation of the sufficiency of the value of the non-monetary contribution need to be verified by an auditor.

In principle, the share capital has to be paid in before OÜ is registered. If all founders are natural persons (not companies) and the registered share capital does not exceed 25,000 euros, OÜ can be registered without paying in the share capital right away. In that case the founders will agree in the founding memorandum deadline for them to pay in the share capital. This deadline can be up to three years. It is the obligation of the management board to collect the share capital from the shareholders in the name of the company. Before that the OÜ will be registered with a notice "Share capital not paid".

Until the complete payment of the contributions by all the shareholders, the OÜ shall neither increase nor decrease the share capital, and in addition the OÜ shall not make any disbursements to the shareholders.

### **7.3 Managing directors (power, appointment, liability)**

Managing body of OÜ is the management board. Supervisory board is optional.

The members of the management board are elected and removed by the shareholders. The management board may have one member (manager) or several members. A member of the management board does not have to be a shareholder. A member of the management board must be a natural person with active legal capacity.

A member of the management board is elected without term unless the articles of association prescribe a term (usually 3-5 years).

Every member of the management board may represent the OÜ in all transactions unless the articles of association prescribe that some or all of members of the management board shall represent the OÜ jointly. Joint representation is followed by third parties only if it is entered in the commercial register.

Management board members are responsible for day-to-day business of the company and for organising its accounting.

Members of the management board solitarily liable for the damage caused due to violation of obligations. A member of the management board is released from liability if he/she proves that he/she has performed his/ her obligations with due diligence. The limitation period for assertion of a claim against a member of the management board is five years unless the articles of association or an agreement prescribes another limitation period.

## 7.4 Taxation (corporate tax, capital gains tax, other taxes)

OÜ is subject to a corporate income tax ("CIT") as other Estonian business entities. The main feature that makes Estonian CIT system exceptional is that Estonian companies do not pay income tax on retained or reinvested profits. This means that all the earnings of an OÜ are not liable to taxation up to the point of distributing them. This exemption covers all economic activity of an Estonian company, i.e. both active and passive income and capital gains.

When profits are distributed CIT at the rate of 20% is charged on gross dividends (20/80, when calculated from the net distribution).

For instance, if an OÜ accrues profits in the years of 2011 to 2016, then up to the point of distributing the profits no CIT is due. This means that the OÜ can use the accumulated earnings for investment, lending to third persons or using for other business purposes without taxation. If the OÜ decides to pay EUR 1,000,000 dividends to its shareholders, the income tax payable is EUR 250,00 (20/80 of 1,000,000). This means that if the OÜ wants to distribute dividends in the amount EUR 1,000,000, it should have profits at least of EUR 1,250,000 (1,000,000 EUR for dividends and EUR 250,000 for tax payment).

OÜ has to pay CIT also on expenses and payments not related to OÜ's business and on gifts, donations, costs of entertaining guests and fringe benefits granted to employees which are deemed as profit distribution.

Yet another advantage is that the Estonian participation exemption rule allows carrying on the dividends paid the subsidiary of OÜ through OÜ to its shareholders without taxation. This exemption applies in case (i) OÜ has at least 10% shareholding in the EEA or Swiss subsidiary or (ii) OÜ has at least 10% shareholding in the subsidiary located in any other jurisdiction (other than low-tax territories) if the income tax has been withheld from the dividend paid out by the subsidiary or income tax has been charged on the share of profit which is the basis thereof.

A legal entity (i.e. OÜ) is an Estonian tax resident if it is established pursuant to Estonian laws. It does not need to be managed from Estonia.

It is also worth mentioning that dividends paid by OÜ to its non-resident shareholders are not subject to any withholding tax.

The Estonian VAT system is based on the EU VAT Directive. The standard VAT rate is 20% and the reduced rate is 9%. If the taxable supplies of an OÜ in Estonia exceed EUR 16,000 in a calendar year, VAT registration is required.

## 7.5 Reporting Requirements

The management board of the OÜ must submit a petition for amendment of any b-card entry (address, share capital, financial year, means of communication, changes in the management board, main area of activity) in the commercial register as soon as possible.

Management board submits the approved annual report together with the proposal for the distribution of profit or for covering of loss, the division of the sales revenue and the sworn auditor's

report, if auditing is compulsory, to the commercial register within six months after the end of the financial year. If compared to the time of the approval of the previous annual report the shareholders' data have changed, a new list of shareholders will also be submitted together with the annual report as at the approval of the annual report.

# 8. France

## 8.1 Corporate forms available

French law provides for numerous corporate legal entities that may be mainly distinguished in two groups:

- 8.1.1 Civil companies which are non-commercial entities. These companies are found mainly in the fields of real estate (*Société civile immobilière - SCI*), agriculture (*Société civile agricole*), professional and intellectual activities (*Société civile professionnelle; Société d'exercice libéral - SEL*). Their main characteristics are that their shareholders are liable on their own assets and may be requested to cover the company's debts if the company becomes insolvent.
- 8.1.2 Commercial companies which include unlimited liability company such as partnership (*Société en nom collectif - SNC*) and limited liability companies, such as the French limited liability company (*Société à responsabilité limitée - SARL*), the French limited liability company by shares (*Société anonyme - SA*), the simplified joint stock company (*Société par action simplifiée - SAS*), or the European joint stock company (*Société européenne - SE*).

The non-corporate forms consist of sole entrepreneurship and limited partnerships, rarely used by foreign investors.

The most usual corporate forms used by foreign investors in France are SAS and SARL. The SA is more and more often narrowed to listed companies even if it is possible to have a non-listed SA. This summary is therefore focused on these three forms of company.

## 8.2 Incorporation (form, time, costs, share capital requirements)

It is not possible, under French law, to incorporate a company in advance even if we can incorporate a company without any activity and then activate it later. However, the incorporation process only requires a 8 to 15 day period to get a fully operative company.

### 8.2.1 « Société anonyme »

A SA is, in principle, held by a large number of investors and the share capital of the company is divided into a specific number of shares with a designated nominal value. The company must at least be incorporated by 7 shareholders (individuals or legal entities) for listed companies and at least 2 shareholders for non-listed companies, with no maximum of shareholders.

The minimum share capital of a SA is €37,000.00. At least 50% of the issued share capital must be paid up prior to the registration of the company. The remaining part of the share capital must be paid up within a 5 year period after the incorporation.

Like in most of the limited liability companies, the bylaws will provide for some compulsory information (name, purpose, head office, share capital, shareholders rights, etc.). The appointment of a statutory auditor is mandatory.

### 8.2.2 « Société par actions simplifiée »

The SAS is, nowadays, the most common form of limited liability company in France: it allows its founders to be very flexible when drafting the bylaws of the company. This flexibility is a very useful tool.

For instance, it is quite common to insert the terms and conditions of a shareholders agreement within the bylaws (with first refusal, tag along, drag along rights, etc.). It is also possible to structure the governance with one or more committees, give more rights to one shareholder vs the others, issue preferred shares, issue bonds, etc.

Indeed, the company can be established by a natural person or a legal entity, with no minimum or maximum of shareholders. Moreover, the share capital minimum is €1.00. In case of contribution in kind, a statutory auditor must be appointed by the shareholders to validate the value of such contribution.

Still, bylaws must be carefully drafted and their flexibility may also be a danger since many people with no proper legal assistance, tend to draft articles which could be, in the end, contradictory. In addition, there are only limited rules that apply to the SAS and in case of omission in the bylaws, it will not be possible to seek for the protection of the general commercial code provisions. If the company is controlled by a legal person, a statutory auditor must be appointed (which also applies if the company is controlled by natural persons but reaches determined thresholds).

### 8.2.3 « Société à responsabilité limitée »

The SARL, which literally stands for “Limited Liability Company” is also of very common form of company but it is quite strictly framed by law (on the contrary to the SAS). It is designated for smaller legal structures.

Indeed, this form of company can also be established by an individual or legal entity but with a maximum of 50 shareholders. The minimum share capital is also €1.00.

## 8.3 Managing directors (power, appointment, liability)

### 8.3.1 SA

SA management can be organized according to two governance standards:

- a Board of Directors (*Conseil d'administration*) with at least three members (individuals or legal entities). The board then appoints the managing director and the president of the board,
- a Supervisory Board (*Conseil de surveillance*) which appoints a management committee (*Directoire*) (German standard);

The members of the Board of Directors or of the Supervisory Board are appointed and revoked by the ordinary general meeting. However:

- The Board of Directors has the authority to appoint and repeal the President and the Managing Director.
- The Supervisory Board has the authority to appoint the Management committee (including the President and Managing Directors). The power of repealing the management committee is, however, granted to the ordinary general meeting unless the bylaws provide otherwise.

The Board of Directors decides on general guidance of the company's activities and has special powers (grant collaterals to third parties, approve the agreements concluded between the companies and the management – directly or indirectly, etc).

The CEO is called "*Directeur Général*" and the Chairman of the Board, "*Président du conseil d'administration*". One person can have the two positions and will therefore be named "PDG", which stands for "*Président Directeur Général*".

### 8.3.2 SAS

In a SAS, there is no compulsory form of administration. As set forth above, it is possible to provide almost everything in the bylaws. Therefore it is possible to create committees, Boards of Directors or Management Board, strategic boards, etc.

The only legal obligation is the appointment of a "President" (individual or legal person) who will act on behalf of the company and who will hold the executive position (he will be the CEO). This power may also be granted by the bylaws to deputy Managing Directors.

The "*Président*" of the SAS has a real executive position contrary to the SA where the real executive is the "*Directeur Général*".

### 8.3.3 SARL

A SARL is managed by one or several "managers" (*gérant*) chosen or not among the shareholders. A legal entity cannot be manager of a SARL, it must be an individual.

The manager is appointed by the bylaws or elected by the shareholders representing at least 50% of the share capital (unless the bylaws provide for a greater %).

A manager has the most extensive powers to engage the company towards third parties. However when dealing with shareholders, its powers may be limited by the bylaws and a prior authorisation may be needed.

The manager of a SARL is liable for faults committed during its mandate, in the same way as the managers of SA or SAS. He is also subject to a non-competition obligation with the company.

## 8.4 Personal liability for executives

The executives of a commercial legal structure are obliged to exercise their duties with care and, in very general terms, their liability may be sought in three particular cases:

- Violation of laws or regulations applicable to SA. For instance if there are irregularities in the keeping of social accounts, or in case of non-compliance with the rules applicable to the company (i.e. no statutory auditor has been appointed whereas one should be).
- Violation of the bylaws: in case of non-compliance with a clause of the bylaws (i.e. the *Président* of an SAS has exceeded his powers which were limited under the bylaws).
- Mismanagement: if the managing director does not act in accordance with the interest of the company which means, primarily, in accordance with the company's statutory purpose (i.e. abuse of corporate assets). Its liability may be sought even in case of negligence.

## 8.5 Taxation (corporate tax, capital gains tax, other taxes)

SARL, SA and SAS are mainly subject to corporation tax (*Impôt sur les Sociétés*) on their entire net income before tax. Note that, generally speaking, foreign income is not taxed in France unless an international tax treaty provides so.

Profits are taxed at a standard tax rate of 33, 33%. However, this rate is lowered at 15% for the first €38,120 of profit (the rate is 33, 33% above this threshold) if:

- The global turnover of the company is lower than €7,630,000.00 or;
- The share capital has been entirely paid-up and is only held by individuals (directly or indirectly).

In addition, if a corporate structure subject to “*Impôt sur les Sociétés*” owns an interest in another company for more than 2 years, the capital gain will only be taxed at a 4% rate.

Note that French companies are also subject to a regional tax (*Contribution économique territoriale*), with a maximum rate of 3% of the added value produced by the company during the financial year.

There is no specific tax for any share capital increase/decrease in SARL, SA or SAS but only a registration fee of €375.00 or €500.00 depending on the amount of the share capital.

A French company can exercise the option for a tax consolidation: it allows a parent company to be liable for corporation tax due on the overall results of the group formed by itself and its affiliates in which it holds at least 95% of the share capital in a continuous manner during the financial year, directly or indirectly.

## 8.6 Reporting Requirements

In case of modification of any of the mandatory information for registration (purpose of the company, name, capital, seat, corporate form, share capital, directors, executives, etc.), the managing director must publish this amendment in a “legal” newspaper (*Journal d’annonces légales*) and fill the changes with the Trade and Companies’ registry without delay (no more than 30 days).

These changes will become effective vis à vis third parties only upon registration and are available on an official website ([www.infogreffe.fr](http://www.infogreffe.fr)).

French Companies also have an obligation to fill their annual financial statements within seven months after the closing of the financial year. Note that a one month delay may be granted if the submission is made online.

# 9. Finland

## 9.1 Corporate forms available

The main corporate forms in Finland are as follows:

- (i) Private limited liability company (Fin. yksityinen osakeyhtiö).
- (ii) Public limited liability company (Fin. julkinen osakeyhtiö).
- (iii) Partnership (Fin. avoin yhtiö).
- (iv) Limited liability partnership (Fin. kommandiittiyhtiö).
- (v) Sole proprietorship (Fin. yksityinen elinkeinonharjoittaja).
- (vi) European limited liability company (Fin. Eurooppayhtiö).
- (vii) Cooperative society (Fin. osuuskunta)

Private and public limited liability companies, hereinafter referred to as companies, are the most common corporate forms in Finland and hence, the focus on this chapter is on these.

## 9.2 Incorporation (form, time, costs, share capital requirements)

The incorporation of a limited liability company is regulated in Chapter 2 of the Finnish Limited Liability Companies Act (624/2006). A company shall be incorporated by way of a written Memorandum of Association signed by all shareholders. The Articles of Association, hereinafter referred to as AoA, shall be included or attached to the Memorandum of Association.

The Memorandum of Association shall always contain (1) the date of the contract; (2) all shareholders and the quantity of shares subscribed for by each of them; (3) the price to be paid to the company for each share (subscription price); (4) the time when the shares are to be paid; (5) the Members of the Board of Directors of the company. The financial period of the company shall be determined either in the Memorandum of Association or in the AoA. Where appropriate, the Memorandum of Association shall also contain information on the Managing Director, the Members of the Supervisory Board and the Auditors. The Chairmen of the Board of Directors and of the Supervisory Board may be designated in the Memorandum of Association.

The company shall be established upon registration. The company shall be notified for registration to the Finnish Patent and Registration Office within three months of the signing of the Memorandum of Association; failing this, the incorporation of the company shall lapse. The registration fee is EUR 330-380 and the registration procedure takes usually up to two weeks.

The AoA shall always contain the following information on the company: (1) its trade name; (2) the municipality in Finland where it has its registered office; and (3) its field of operation. If the trade name of the company is to be used in two or more languages, all of the language versions shall be mentioned in the Articles of Association.

A Private limited liability company shall have a minimum share capital of EUR 2 500 and a public limited company a minimum share capital of EUR 80 000.

### 9.3 **Managing directors (power, appointment, liability)**

Limited liability company shall have a Board of Directors. The Board of Directors may appoint (not obligatory) a Managing Director and a Supervisory Board. The Board of Directors shall see to the administration of the company and the appropriate organization of its operations (general competence). The Board of Directors shall be responsible for the appropriate arrangement of the control of the company accounts and finances. The general meeting shall appoint the Members of the Board of Directors, unless it is provided by the AoA that the Supervisory Board is to appoint the Members.

The Managing Director is responsible for the operational activities and shall see to the executive management of the company in accordance with the instructions and orders given by the Board of Directors (general competence). The Managing Director is liable that the accounts of the company are in compliance with the laws and that its financial affairs have been arranged in a reliable manner. The Managing Director shall supply the Board of Directors and the Members of the Board of Directors with the information necessary for the performance of their duties.

The Managing Director may undertake measures that are unusual or extensive in view of the scope and nature of the activities of the company only if so authorized by the Board of Directors or if it is not possible to wait for a decision of the Board of Directors without causing essential harm to the business operations of the company. In the latter case, the Board of Directors shall be notified of the measures as soon as possible.

The Board of Directors shall represent the company. The Managing Director may represent the company in matters falling within the Managing Director's duties as described above. The management of the company shall act with due care and promote the interests of the company. A member of a Board of Directors and the Managing Director shall be liable for damages that he or she, in violation of this duty of care, has in office deliberately or negligently caused to the company, a shareholder or a third party.

### 9.4 **Taxation (corporate tax, capital gains tax, other taxes)**

Companies are liable to pay the state income tax (Corporate income tax). The rate of corporate income tax in Finland is currently 20%. Company shall deduct the deductible expenses and the losses assessed in taxation from the taxable incomes.

For a shareholder, who is a *natural person*, dividends are subject to taxation. The amount of taxable dividends depends on whether the company paying dividends is public or private. The tax rate for capital gains for natural persons is 30 or 34 per cent, depending on the yearly amount of the capital gains of the tax subject in question.

For a shareholder, who is a *legal entity*, dividends on business-related shares are exempt from tax when paid by a Finnish entity or an entity mentioned in the Parent-Subsidiary Directive. Dividends are exempt from tax also if they are deriving from an EU/EEA area entity, other than referred to in the Parent-Subsidiary Directive, in case the distributing entity is:

- without exemption liable to pay tax at least 10 percent (for the dividend in question); and
- the entity's country of residence according to applicable tax legislation is in this EU/EEA country and not outside the EU/EEA area according to the agreement regarding the avoidance of double taxation.

Other dividends are taxable according to the main rule.

Companies which operate by trading goods or services in Finland are obliged to charge VAT to customers and pay VAT to the Finnish Tax Authority. In sales of products and services, VAT is included in the sales price at the rate of 24 %, 14 % or 10 %, depending on products or services in question. Some services are tax free. The seller has the right to deduct the VAT of his purchases of goods and services for business purposes if another VAT taxpayer has supplied them to him.

## 9.5 Reporting requirements

Whenever the company's details change, the Finnish Patent and Registration Office must be notified about changes by filing a notification thereof. A limited liability company must file a notification if e.g. the following details change: persons authorised to represent the company, board of directors, auditor, place of registered office (domicile), changes in share capital, address and contact details, procuration rights, merger, financial period, line of business, company name, managing director, or the AoA.

Several decisions of the company (e.g. changes in AoA and in share capital) do not come into force until they are notified to the Finnish Patent and Registration Office and recorded into the Trade Register. Usually these must be notified without delay after the change has taken place. However, some changes must be notified within a deadline, e.g. the incorporation of a limited liability company, reduction of share capital, share issue, option rights and other special rights as well as merger and demerger proceedings.

After each financial year the limited liability company must prepare annual accounts and report them to the Finnish Patent and Registration Office.

# 10. Germany

## Corporate forms available

A foreign company wishing to establish a business presence in Germany can choose from the full range of corporate forms, being either corporations (*Kapitalgesellschaften*) or partnerships (*Personengesellschaften*). Only corporations are legal entities with legal personality under German law. Partnerships can be subject to certain direct rights and obligations. The main practical differences are therefore shareholders' liabilities and taxation treatment.

The principal types of corporations are

- Private Limited Liability Company (usually, the *Gesellschaft mit beschränkter Haftung*)(the GmbH) and the
- Public Limited Company / Stock Corporation (*Aktiengesellschaft*)(AG).

Partnerships include:

- Civil Law Association (*Gesellschaft bürgerlichen Rechts*),
- General Partnership (*Offene Handelsgesellschaft, or OHG*) and
- Limited Partnership (*Kommanditgesellschaft, or KG*).

Foreign companies might also consider only to establish a branch (or, in tax terms, a permanent establishment) in Germany. Although a branch of the foreign company has no legal personality, as it is actually only the “extended arm” of the foreign company, it still requires registration in the Commercial Register where the branch has its office. Although the branch does not have a legal identity of its own (it is just the “extended arm” of the foreign entity), there are some formalities to comply with, such as the entry in the local official registry of business activities (*Gewerberegister*), the registration with the local tax offices, etc. If the branch has employees, more obligations arise, as for instance the registration in the social security system. In addition, the branch has to keep its own books (accounting) and is subject to taxes based on the profits generated in Germany.

It will also be important to assess whether a permanent establishment is created and the taxation effect of the same. A permanent establishment may exist without a branch (for instance, when a foreign company, without office or other business structure, just runs a warehouse as a distribution centre without employees). For this reason, it is very important to obtain legal advice prior to commencing business activities in Germany. Virtually any activity requires complying with registration and similar requirements.

It is also important at this stage to note that German commercial law does not recognise the concept of a “representative office”, a concept that exists in many other countries and which is basically an office from which only the market is observed and the sale of goods is promoted.

## 10.1 Corporations (Kapitalgesellschaften)

### 10.1.1 Private Limited Liability Company (Gesellschaft mit beschränkter Haftung / GmbH)

The most common corporate legal form in Germany is the Private Limited Liability Company (*Gesellschaft mit beschränkter Haftung*, or *GmbH*). This is due both to its easy incorporation as well as the agility of its internal management and easy transfer of shares.

Actually, there are two forms of limited liability company, the traditional GmbH and the *Unternehmergeellschaft (haftungsbeschränkt)*, a modified GmbH which can be incorporated with no statutory minimum share capital.

### 10.1.2 The “traditional” GmbH

#### (a) Legal Nature

The Private Limited Liability Company is an entity with legal personality and a share capital – different from its founders’ property, capital and assets. Its shareholders can only be held liable with their respective shares in the capital. In this respect, it is comparable to the Limited Liability Company in the US or to a Private Company Limited by Shares in the UK.

#### (b) Shareholders

It is possible to incorporate a GmbH with one single shareholder. This can be an individual or a legal entity, such as a foreign company. There are some special provisions for a single-shareholder GmbH, e. g. any business between the company and the sole shareholder shall be recorded in a specific way. However, unlike in some other jurisdictions, it is not possible to deduce from the corporate name that it has a sole member.

In any event, the Commercial Register provides for a list of shareholders that is public knowledge, thus a GmbH with only one shareholder can easily be identified as such. The list of shareholders has to be updated every year and whenever shares are being transferred to a third party.

### 10.1.3 The “German Limited” – Unternehmergeellschaft (haftungsbeschränkt)

The freedom of establishment within the European Union has made Germany compete with other countries for the most appropriate corporate legal forms. As the UK Limited Company does not require any minimum share capital it became a popular business structure within Germany. According to official statistics about 30,000 English private limited companies are said to be business active in Germany.

As an answer to the increasing popularity of the use of an English private limited company established by German citizens to carry on business in Germany, and consequently in order to meet the needs of small business owners and start-ups a new form was introduced in 2008: the *Unternehmergeellschaft (haftungsbeschränkt)*, known by its acronym “UG”.

The UG does not require a minimum share capital to be incorporated. However, the UG must, over time, retain earned profits in order to be in a position to capitalise at 25,000 €, when it may then be converted into a “traditional” GmbH. Although the incorporation of a UG also requires notarial form, this can be done in a standardized way: model incorporation protocols are available which simplify the process. This simplification is achieved by the unification of three documents in one: (a) shareholders’ agreement/articles of incorporation, (b) appointment of manager and (c) list of shareholders. This also leads to a cost reduction. However, it is obvious that an entity with negligible

capital will literally not have much credit in business, let alone the financial world. The incorporators need to weigh this downside well when deciding whether this corporate form is adequate to meet their purposes. In practice, personal guarantees of the shareholders will be required for any credit or funding measure.

#### **10.1.4 Public Limited Company (Aktiengesellschaft)**

Alternatively, foreign companies might consider incorporating a Public Limited Company (*Aktiengesellschaft*, also known under its abbreviation “AG”); this legal form is comparable to Public Limited Companies in the UK and Stock Corporations in the US. The Public Limited Company is especially attractive when it comes to raising funds as its securities may be offered to the public. Shares are easily transferable. Therefore, the Public Limited Company most conveniently attracts external investors.

#### **10.1.5 Legal Nature**

The Public Limited Company is a legally autonomous entity. Its shareholders participate in the capital without taking any personal risk beyond paying in the subscribed capital.

#### **10.1.6 Shareholders**

The German Stock Corporations Act no longer provides for a minimum number of shareholders. Consequently, the establishment of a single-shareholder *Aktiengesellschaft* is possible. There is no maximum number of shareholders. Unlike in the Private Limited Liability Company (*GmbH*), the identity of the shareholders is not public. Exceptions to this rule apply, most notably under the Transparency Directive regime for traded companies.

### **10.2 Incorporation (form, time, costs, share capital requirements)**

#### **Private Limited Liability Company**

##### **10.2.1 Formal Requirements for the Incorporation**

The incorporation of the GmbH – as well as any transfer of shares – requires the notarial form. Both shareholders and the managers may be of foreign nationality and are not required to have their legal domicile in Germany. If the managing director resides outside the European Union, he will, however, need an immigration status that allows him to enter into Germany at any time (in order to comply with the relevant duties in the fields of accounting, surveillance of the capital stock, etc.). As mentioned before, the GmbH comes into existence as such with its registration in the Commercial Register. A list of shareholders needs to be deposited with the Register.

##### **10.2.2 Time needed for incorporation**

The time needed for incorporation of the company in the Commercial Register has been visibly reduced by a law which came into force in 2007. At present, the necessary documents for the incorporation are filed electronically with the Commercial Register. The latter can decide immediately on the quality of the documents and proceed to the incorporation of the company. Provided that all documents that have to be filed with the Commercial Register by the Notary public after the formal constitution of the company comply with the necessary requirements (sworn translations, Apostille, etc.), the registration of the company should not take longer than between 3 to 4 weeks.

### 10.2.3 Costs

Costs for incorporation depend on the amount of the statutory share capital. For a Private Limited Liability Company with a statutory capital of 25,000 € notary and registration fees will be in the range of €1,000 plus V.A.T. (without expenses for translations, interpreters etc., if necessary).

### 10.2.4 Share Capital Requirements

The Private Limited Companies Act (*GmbH-G*) establishes a minimum capital of 25,000 €. This money can be invested either by paying the capital in a bank account of the newly established GmbH or in kind, providing goods for a minimum value of 25,000 €- e.g. construction machinery, vehicles, real estate etc.

The GmbH will only be registered with the Commercial Register (*Handelsregister*) once a quarter of the subscribed shares has been disbursed: provided, however, that half of the minimum statutory capital is paid in (i.e. a minimum of 12,500 €).

In the event the share capital is contributed in kind, a report on the value of the assets to be contributed will be needed to ensure that the contributions in kind are at least equivalent to the nominal value of the subscribed capital. In this case, the company will only be registered with the Commercial Register (*Handelsregister*) once the report confirming that the capital in kind was provided in its entirety will have been filed. It is important to mention that the Private Limited Liability Company only comes into existence as such when registered.

The Commercial Register is maintained locally in a large number of courts across Germany.

### Public Limited Company (*Aktiengesellschaft*)

#### 10.2.5 Formal Requirements for the Incorporation

The Public Limited Company (*Aktiengesellschaft*) is incorporated by notarial deed and comes into existence with its entry in the Commercial Register.

#### 10.2.6 Time needed for incorporation

Provided that all relevant documents required for its registration have been well prepared, the registration process should not take more than between 5 and 6 weeks from the signing of the notarial deed.

#### 10.2.7 Costs

Costs for incorporation depend on the amount of the statutory share capital. For a Public Limited Liability Company with a statutory capital of 50,000 € notary and registration fees will be in the range of 3,500 € plus V.A.T. (without expenses for translations, interpreters etc., if necessary).

#### 10.2.8 Share Capital Requirements

According to the German Stock Corporation Act (*Aktiengesetz*), the minimum share capital is 50,000 €. As outlined above, shares are easily transferable, both in and outside of public stock exchanges, helping the AG to be an ideal means to raise funds. Hence, it is a classic instrument for projects that require a larger investment.

## 10.3 Managing directors (power, appointment, liability)

### Private Limited liability company

#### 10.3.1 Management and Representation

The company's administration is led by one or more persons called *Geschäftsführer* (Managing Director). The company may have more than one Managing Director. The Managing Director is appointed by a shareholders' meeting and he is the only legal representative of the company vis-à-vis third parties. The powers of a Managing Director are unlimited towards third parties but it is possible to restrict them in the internal regime as follows:

- (a) When appointing more than one manager, it is possible to stipulate the right of joint representation, i.e. two managers need to act jointly in order to enter into legally binding commitments for the company.
- (b) It is also possible to establish a list of specific issues for which the manager requires the prior consent of the shareholders' meeting. Usually, these are issues which do not occur on a daily basis, such as the purchase or sale of real property, establishing certain long-term contracts, setting up branches or incorporating subsidiaries, etc.

Although not mandatory, it is not uncommon for Limited Liability Companies to establish a voluntary advisory body (*Beirat*) to advise and support the shareholders' meetings. However, a GmbH with more than 500 employees is legally required to establish a supervisory board (*Aufsichtsrat*) which has certain supervisory tasks. This is due to particular German legislation on the co-determination by employees (*Mitbestimmung*) which also applies to corporations. Germany and Austria has a very different approach to board governance to the English or US model of a unitary board (see 3.2.1 below).

#### 10.3.2 Personal Liability of the Managing Director of a Private Limited Liability Company

A Managing Director has to act with due care observing the diligence of a prudent business person when exercising his office.

It is, for example, the Managing Director's duty to register any relevant changes of the company in the Commercial Register; to timely remit taxes and social security contributions; to take care of proper accounting and balance-sheet reporting, and, generally speaking, to act in the best interest of the company. In situations of business failure, one of the responsibilities of the Managing Director is to timely file for opening the insolvency proceedings, as the case may be.

Violations of the aforementioned duties may result in personal liability of the Managing Director towards the shareholders of the company and creditors if his actions have caused damage to the company but in some cases also towards third persons, namely in case of non-observance of the duty to pay taxes, social security contributions, filing for insolvency and, if the Managing Director acted to the detriment of third parties (namely in tort).

## 10.4 Public Limited Company

### 10.4.1 Management and Representation

The provisions on the German Stock Corporation Act provide for the following three mandatory executive bodies:

- General Assembly of shareholders (*Hauptversammlung*),
- Management Board (*Vorstand*),
- Supervisory Board (*Aufsichtsrat*).

The General Assembly of shareholders is the general shareholder's meeting by means of which, among other things, members of the supervisory board are appointed and resolutions on the distribution of profits are adopted. The Management Board (*Vorstand*) is appointed by the Supervisory Board (*Aufsichtsrat*) also and it consists of one or more members. In companies with a share capital of more than 3,000,000 € the law provides for a statutory minimum of two board members. However, this is the statutory standard case and the company's articles of association may reduce this body to only one individual.

The Management Board is the legal representative of the Corporation with unlimited powers vis-à-vis third parties. Nonetheless, the articles of association, the Supervisory Board, the General Assembly of shareholders and statutory law may limit the powers of the Management Board in its (internal) relation between the company and the board. These limitations are not enforceable against third parties.

The Supervisory Board consists of 3 to 21 members, depending on the amount of the share capital of the corporation.

In companies with more than 500 employees, the total number always needs to be a multiple of three:

- two thirds of the Supervisory Board necessarily need to consist of shareholder representatives; and
- one third of employee representatives.

In companies with more than 2,000 employees, the supervisory board consists of:

- 50 percent shareholder representatives; and
- 50 percent employee representatives (as stipulated by the Co-Determination Act - *Mitbestimmungsgesetz*).

It is important to understand that the company's management has no representation on the supervisory board.

#### **10.4.2 Personal Liability of the Management Board of a Public Limited Company**

Members of the Management Board of a Public Limited Company (“Directors”) can be personally held liable if they breach any of their fiduciary duties of loyalty and care. Typical situations which trigger the Director’s personal liability are unsuccessful speculative transactions, hazardous investment of capital of the company, lack of diligence in case of the acquisition of another company or assets.

Maybe, the biggest difference compared to the situation in the Private Limited Liability Company lies in the fact that in a Public Limited Liability Company, the Supervisory Board has the obligation to identify possible breaches of duty by the Directors and to recover and, as the case may be, to sue them in order to recover any damages caused.

# 11. Greece

## 11.1 Corporate forms available

Greek law provides for various legal forms of companies that can be used for operating a company, depending mainly on the business to be assumed and the legal requirements.

Corporate legal forms include the Greek limited liability by shares company (“Societe Anonyme” - “SA” - law 2190/1920 as applicable), the limited liability company (“EPE”), the - recently established in Greece - private capital company (“PCC” - “I.K.E.” - law 4072/2012, as applicable) and the European company (“Societas Europea” - “SE”). The form of the SA is the most common in Greece and in some cases (e.g. banking and insurance operations) it is the exclusively available corporate type, however the FCC-IKE has started to gain ground amongst the corporate forms due to fewer formal requirements than these provided for SA or EPE.

Regarding the non corporate forms, these consist mainly of the sole entrepreneurship, the general and limited partnership that are governed by the Greek Civil Code and the Greek Commercial Law. These forms apply mostly for family or small scale businesses, while the corporate forms such as SA or FCC-IKE are the ones regularly chosen by foreign investors that establish or even expand their activities in Greece.

## 11.2 Incorporation (form, time, costs, share capital requirements)

### 11.2.1 Societe Anonyme

Governed by mandatory legislation (“ius cogens”) of the codified law 2190/1920, the basic characteristics of this company type are set forth in its Articles of Association, which are drafted based on the requirements of law. Therefore, there should be a minimum mandatory content of the AoA, including provisions of the company’s registered seat, name (with certain regulations applicable for its approval as such), objects/purpose, duration, share capital and its payment, type of shares (registered or non registered, classes of shares etc) Board of Directors, powers of representation, shareholders’ rights. The AoA should be drafted and executed before a notary public, through a notarial deed. The rest of corporate documentation (minutes of General Meetings of the shareholders, minutes/resolutions of the Board of Directors) do not have to be notarized, except for the General Meetings of the Shareholders in case of one sole shareholder.

After the execution of the AoA, the company should be registered at the competent General Business Register (the competence is determined by the company’s seat) and upon its registration, it becomes a legal entity. Recently, the department of One-Shop-Stop has been introduced in the General Business Registers, where the entire procedure of incorporation is finalized within approximately 10-15 days, upon proper submission of the documentation required.

The share capital of the company is always indicated in money even if the shareholders’ contributions consist in kind. The part of the capital that is equal to the minimum limit of the share capital of the S.A. (today 24.000,00 Euro as provided for by law) must be paid either in cash or in kind when the company is being incorporated.

The notarial fees incorporating an SA are approximately 1.000,00 - 1.500,00 Euro. Legal fees for the set-up of a standard SA are approximately 2.000,00 Euro - 2.500,00 Euro and the costs of the

procedure before public authorities for the registration of the company are approximately 200 Euro. It is noted that the previously imposed tax of 1% on the company's initial share capital has been abolished (according to law 4254/2014), yet it remains for any share capital increase.

### **11.2.2 Private Capital Company**

The P.C.C, introduced in Greece in 2012 according to law 4072/2012, is incorporated through a simple private agreement executed by its founders/shareholders. The incorporation agreement/deed is then filed with the competent Business Register and the entire procedure is completed at the One Stop Shop department of the Business Register, within approximately 10-15 days after the submission of the required documents. All company data and corporate details referring to its corporation and amendments thereof are published on the internet, through the company's website, as required by law.

The Articles of Association are included into the private agreement for the company's incorporation. The AoA can be customized according to the special needs or objects of the business. For any amendments to the AoA or for any shares sale and purchase agreement, just a private agreement is required by the law, which then has to be filed with the Business Register.

The shareholders resolve upon the amount of the company's share capital, without any limitation as per its minimum amount (this could be even zero). Since the previously imposed tax of 1% on the company's initial share capital has been abolished (according to law 4254/2014, yet remaining for any share capital increase), actually there are no restrictions towards determining the initial share capital, apart from that this should be deposited at the company's treasury or bank account.

The AoA of the P.C.C, their amendments thereof and the resolutions of the shareholders could be drafted in one of the official EU languages, but the Greek text/version shall prevail concerning relations between the company and its shareholders on one hand and third parties on the other hand.

Legal fees for the incorporation of a standard P.C.C. are approximately 1.500,00 Euro-2.000,00 Euro, while the estimated cost for the incorporation is approximately 100,00 Euro.

## **11.3 Managing directors (power, appointment, liability)**

### **11.3.1 Societe Anonyme:**

The Societe Anonyme is managed by a Board of Directors, consisted of at least three members, which may be either individuals or legal entities (in such case for the exercise of management a representative is appointed). The members of the first Board of Directors are appointed through its AoA and then the Board is constituted in corpore by a separate meeting/resolution. There is not any restriction as per the nationality or residence of the members of the BoD, however they should acquire a Tax Payer Identification number in Greece and -under specific circumstances- they may be requested to be registered at the social security system and thereupon to pay social security contributions on a regular basis.

The power of representation of the Managing Director and of the rest of the members of the Board is determined by the company's AoA and the resolutions taken by the company's shareholders and Board of Directors, within the special provisions of the law. The company's representatives have to prudently conduct the company's business in compliance with the applicable legislation and AoA, especially regarding the annual financial statements and accounts of the company. The members of the BoD are liable for any damage caused as a result of breach of their duties and the shareholders

may discharge them from any and all liability during the annual General Meeting of the shareholders which resolves upon the approval of the financial statements of the previous fiscal year.

### **11.3.2 Private Capital Company**

The P.C.C. is managed by one or more Administrator(s). The Administrator should be a natural person/ individual Greek or European citizen holding a Tax Payer Identification number in Greece, and in case of a non-European resident, a Visa is normally requested (Visa for business executives), as per the special applicable legislation. The Administrator should be registered at the Greek social security system. His/her power of representation is determined by the AoA and the shareholders' resolutions.

The Administrator is liable towards the company for any breach of the company's AoA, of the law or of the shareholders' resolutions, as well as for any damage caused as a result of breach of his/her duties. Such liability does not exist in case of actions or omissions based on a lawful resolution taken by the shareholders or on reasonable business decision, taken in good faith, based on sufficient information and only towards the corporate interest. If more managers acted together, they are jointly and severally liable. The shareholders may discharge the Administrator(s) from any and all liability during the annual General Meeting of the shareholders which resolves upon the approval of the financial statements of the previous fiscal year.

### **11.4 Taxation (corporate tax, capital gains tax, other taxes)**

For both Societe Anonyme and P.C.C. the below general tax obligations apply. Special tax obligations may arise in case of ownership of real estate, for example.

Societe Anonyme and P.C.C. are subject to corporate income tax on their income and the profits are currently taxed at a rate of 29%.

For any dividends paid by a Greek SA or any profit distribution by a P.C.C. to natural or legal persons, a withholding tax is effected at the rate of 15%. With this withholding, the tax liability of the beneficiaries for the above income is exhausted.

Capital Concentration Tax of 1% of the amount of the share capital increase is imposed upon any share capital increase in the SA or in the P.C.C. This tax is no longer payable in Greece at the incorporation of the companies.

### **11.5 Reporting Requirements**

The legal representatives of both company types (SA and FCC) -or any other person appointed for this reason- have to file any amendments of the AoA with the business register as well as any corporate resolutions (of the shareholders or of the BoD-Administrators) which have to be filed according to the law, within 20 days from their date. The amendments in the AoA become effective upon their registration at the Register, while the resolutions of the BoD or of the Administrators (in case of a PCC) are effective from their respective date.

The shareholders of both company types have to resolve upon the approval of the financial statements of the previous year at their Annual General Meetings, which should be convened until the 10th calendar day of the 9th month after the end of each financial year. The financial statements that are going to be approved should be filed with the business register and published, according to the law and the respective minutes of the Annual General Meetings have to be filed with the Business Register within 20 days.

Greek law provides for various legal forms of companies that can be used for operating a company, depending mainly on the business to be assumed and the legal requirements.

Corporate legal forms include the Greek limited liability by shares company (“Societe Anonyme” – “SA”), the limited liability company (“EPE”), the, recently established in Greece, private capital company (“PCC-IKE”) and the European company (“Societas Euros” – “SE”). The form of the SA is the most common in Greece and in some cases (e.g. banking and insurance operations) it is the exclusively available corporate type, however the PCC-IKE has started to gain ground amongst the corporate forms due to fewer formal requirements than these provided for SA or EPE.

Regarding the non-corporate forms, these consist mainly of the sole entrepreneurship, the general and limited partnership that are governed by the Greek Civil Code and the Greek Commercial Law. These forms apply mostly for family or small scale businesses, while the corporate forms such as SA or PCC-IKE are the ones regularly chosen by foreign investors that establish or even expand their activities in Greece.

# 12. Hungary

## 12.1 Corporate forms available

Business undertakings can be operated in Hungary with limited or unlimited liability. Companies with unlimited liability are the “közkereseti társaság” (“Kkt.” - general partnership) and the “betéti társaság” (“Bt.” - unlimited partnership). The main forms of companies with limited liability are the “korlátolt felelősségű társaság” (“Kft.” - limited liability company) and the “részvénytársaság” (“Rt.” - joint stock company).

Kkt. and Bt. are generally used by smaller, more personal undertakings.

The most popular form both for domestic and foreign investment and business is the Kft. The Rt. is more often used by undertakings that operate with an equity capital above HUF 100 million and this form is also preferred by financial companies.

## 12.2 Incorporation (form, time, costs, share capital requirements)

### 12.2.1 Form

Each form of legal persons in Hungary (incl. civil societies and foundations) shall be incorporated by a Deed of Foundation that shall be signed by all members of the legal entity and countersigned by a Hungarian attorney-at-law. No notarization is required.

The Deed of Foundation shall contain the most significant elements of the company's organization and operation, such as the name and seat of the company, its aim or main activity, name and data of the founders (members) of the company, financial contribution of the founders (members), the name and data of the first managing directors of the company.

Companies are registered by the Courts of Registration. All registered data of the companies are public and could be searched on the following website of the Corporate Register in Hungarian: <http://www.e-cegjegyzek.hu/index.html>

A Kft. shall be established by one or more natural or legal persons with previously determined equity capital and primary stakes of the members. The primary stake is the contribution of the members which could be monetary contribution or contribution in kind. The rights and liabilities of the members of the Kft. will be incorporated in their business quota that corresponds in value to their primary stakes. The members' liability is limited to the value of their contribution.

In case of an Rt. the company is established with a share capital that consists of shares of primarily determined par value. An Rt. shall be founded as a private company but later the shareholders could resolve to introduce the shares of the company to the stock exchange by which the company becomes public.

### 12.2.2 Time

The deed of foundation of a company shall be filed to the Court of Registration within 30 days following its execution. Courts of Registration have a 15 working days deadline for the registration of the company. In case of Kft. and Rt. a more preferred way is the simplified fast-track procedure through which the court shall register the new company within 1-2 working days following the filing

of the Deed of Foundation. In the fast-track registration process companies shall use a “Model Deed of Foundation” that is established by government decree. In case the operation of the company requires special content in the Deed of Foundation the Model Deed of Foundation could be modified later at any time.

### **12.2.3 Corporate capital requirements**

The corporate capital of the companies operating with unlimited liability is not defined by law, but each member of the company shall fulfill a certain financial contribution that could be even €1.00.

On the other hand the corporate capital of a Kft. and Rt. shall reach the minimum amount defined by the Civil Code. The minimum amounts of corporate capital are the following:

Kft. - HUF 3,000,000 (€9,500.00)

Rt. (private) - HUF 5,000,000 (€16,000.00)

Rt. (public) - HUF 20,000,000 (€63,500.00)

Hungarian companies are entitled to keep their accounting in € or in any other foreign currency.

### **12.3 Managing directors (power, appointment, liability)**

The management of a Kft. shall be carried out by one or more managing directors who are appointed by the general meeting of the Kft. Managing directors could be appointed for a definite or an indefinite period of time.

An Rt. shall be managed by the board of directors or by one general manager.

Managing directors may represent the company individually or jointly. The rules of representation shall be set forth in the Deed of Foundation. Managing directors may not take any instructions from the members of the company, their actions shall conform the interest of the company and the creditors of the company. Managing directors shall discharge their duty in due compliance with the acts of law, the Deed of Foundation and the resolutions of the supreme body (General Meeting) of the company. The power of representation of managing directors is unlimited and cannot be restricted towards third persons. Managing directors do not need to be Hungarian citizens, a residence in Hungary is not required either.

Managing directors shall be liable to the company according to the rules of contractual liability. This results in an almost entirely objective measure where the managing director's liability could only be excluded if the breach of contract was caused by unforeseeable circumstances and it was beyond the sphere of control of the managing director and it could not have reasonably been expected of the managing director to avoid the circumstances or prevent the damage occurring.

These rules shall be applied to Managing Directors if they discharge their duties based on an assignment contract.

If the managing director is an employee of the company his/her liability shall be regulated by the rules of the Hungarian Labour Code.

On the other hand the liability of Managing Directors against third parties shall be governed by the rules of non-contractual liability. Basically the company itself shall be liable for claims of third parties, but a new institution of the new Hungarian Civil Code established a special provision for the non-contractual liability of the managing directors which determines that managing directors have joint and several liability with the company in connection with any damage caused by the managing director related to his/her office in the company. However, this provision shall be applied in rare cases when the act of the managing director could not be attributed to the company.

#### **12.4 Taxation (corporate tax, capital gains tax, other taxes)**

Hungarian companies are subject to corporate income tax (TAO) on their entire realized income irrespective of the source of income being domestic or foreign. In terms of corporate income tax those companies shall be considered Hungarian that have been established according to domestic regulations.

The measures of the corporate income tax are the following:

- 10% up to the first €1.7 million income (positive corporate tax income base); and
- 19% for the income above (over €1.7 million positive corporate tax income base).

Capital gains are as a general rule taxable (basically with a tax rate of 16%).

There are no withholding taxes for dividends paid out for companies.

#### **12.5 Reporting Requirements**

Managing directors are obliged to file to the Court of Registration any changes in the corporate structure (i.e. appointments of the directors, modification of the deed of foundation) within 30 days following the actual change.

One exception of the 30 days period is when one member of the company receives qualified control over the company that may be gained by 75% of the shares of the company. The qualified control shall be reported to the Court of Registration within 15 days following the change.

It is also the managing directors' liability to publish the annual balance sheet report of the company within 6 months following the accounting date of the company.

# 13. Ireland

## 13.1 Corporate forms available

A business can be operated in Ireland through several different vehicles (e.g. as a sole trader, partnership or as a company). The most appropriate structure will depend upon your attitude to risk, the type of business and with whom you shall be doing business. A brief outline of the most commonly used corporate forms is set out below.

## 13.2 Sole Trader

It is relatively simple to set up as a sole trader, however, if the business fails, the sole trader's personal assets may be used to discharge its creditors. A sole trader must register as a self-employed person for tax purposes and if they wish to trade under a name that is not their own, they must name with the Companies Registration Office (CRO).

## 13.3 Public and Private Companies

- Most companies are incorporated under and regulated by the Companies Act 2014 (the "Act"). The Act consolidated and replaced the Companies Acts 1963-2013, and came into effect on 1 June 2015.
- Prior to the Act, private companies limited by shares accounted for nearly 9 out of every 10 companies formed in Ireland.
- Under the Act, all existing private companies limited by shares (i.e. companies incorporated under the previous Companies Acts) had the option of converting to one of two company types, LTD or DAC (see 1.4 below), introduced by the Act during a transition period which ended on 30 November 2016. If such companies did not apply to be converted to either a DAC or an LTD during the transition period, they were automatically converted to an DAC on 1 December 2016.
- Companies are deemed to be separate legal entities, distinct from those who own and/or manage the business; they contract and hold property in their own name and unless a member has assumed responsibility for the company's liabilities, it is the company, and not its members who may be sued on foot of its obligations, and who may sue to enforce its rights.
- The liability of members of a company is generally limited to the amount paid on any share; however, members (or directors) may assume responsibility for such liabilities, for example, through the provision of personal guarantee.
- The profits of companies are distributed to the members through the payment of dividends determined by the rights attaching to their respective shares.
- Private companies are prohibited from offering their shares or other securities to the public; whereas, in practice, the principal reasons for the formation of a public company are to enable it to offer shares and securities to the public and to list on a securities market.
- All companies (except for an LTD) must have two directors and a company secretary (either a corporate or natural person).

- All companies may be incorporated as or become a single member company where its membership is reduced to one person/member. In such circumstances, the sole member, can dispense with the holding of General Meetings, including Annual General Meetings (AGMs). The financial statements and reports that would normally be laid before an AGM of the company will still need to be prepared and forwarded to the member.

### **13.4 Private Companies Limited by Shares (LTDs), Designated Activity Companies (DACs), Companies Limited by Guarantee (CLGs), Public Limited Companies (PLCs), Unlimited Companies**

#### **13.4.1 Private Company Limited by Shares (LTD):**

- Constitution does not include stated objects and can undertake a broad range of activities;
- Prohibited from carrying on the activity of a credit institution or an insurance undertaking;
- May have between 1 and 149 members;
- Members' liability limited to the amount, if any, unpaid on the shares they hold;
- Requires a secretary and may have only 1 director, however, if only 1 director, they cannot act as both director and secretary.

#### **13.4.2 Designated Activity Company Limited (DAC) – (limited by shares):**

- Constitution includes stated objects, limiting the activities that can be undertaken;
- Members' liability limited to the amount, if any, unpaid on the shares they hold;
- May have between 1 and 149 members;
- Requires a secretary and at least 2 directors;
- Director can also act as secretary.

#### **13.4.3 Designated Activity Company (DAC) – (limited by guarantee):**

- Constitution includes stated objects, limiting the activities that can be undertaken;
- Members have liability under two headings; firstly, the amount they have undertaken to contribute to the assets of the company, if it is wound up, and secondly, the amount, if any, unpaid on the shares they hold;
- May have between 1 and 149 members;
- Requires a secretary and at least 2 directors;
- Director can also act as secretary.

#### **13.4.4 Company Limited by Guarantee (CLG):**

- Constitution includes stated objects, limiting the activities that can be undertaken;
- As a CLG does not have share capital, members not required to buy any shares in the company;
- Members' liability is limited by the constitution to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up.
- Approximately 8% of companies in Ireland are incorporated as CLGs
- Suitable vehicle for charitable and professional bodies that wish to secure the benefits of separate legal personality and of limited liability without the requirement of raising funds from members.

#### **13.4.5 Public Limited Company (PLC):**

- Constitution includes stated objects, limiting the activities that can be undertaken;
- Members' liability limited to the amount, if any, unpaid on the shares they hold;
- Less than 1% of companies in Ireland are unlimited companies.

- (d) Nominal value of the PLC's allotted share capital must not be less than €25,000, at least 25% of which must also be fully paid up before the company commences business or exercises any borrowing powers.

#### **13.4.6 Unlimited company (ULC, PUC or PULC):**

- (a) Can be either a public or private company;
- (b) Constitution includes stated objects, limiting the activities that can be undertaken;
- (c) Members' liability unlimited; recourse may be had by creditors to the members in respect of any liabilities owed by the company which it has failed to discharge.
- (d) Approximately 2% of companies in Ireland are unlimited companies.
- (e) One of the primary reasons for use of such companies is that ULCs are not required to file their financial statements/accounts and accordingly keep their affairs private.

#### **13.4.7 Partnerships (including Limited Partnerships)**

- (a) A partnership may be formed where a minimum of two persons (natural persons/bodies corporate) conduct business with a view to making a profit. It must consist of at least two partners and there is normally a maximum of 20. However, this limit does not apply to solicitors or accountancy partnerships, and certain financial partnerships may have up to 50 members.
- (b) The partnership is not a separate legal entity i.e. it has no legal personality, separate and distinct from the various partners which comprise the partnership. The partners are jointly responsible for running the business and if it fails all partners are jointly responsible for the debt.
- (c) A partnership that adopts a name that does not consist of true names of the partners without any addition must register the name as a Business Name.
- (d) The Limited Partnership Act 1907 facilitates the creation of a partnership in which some members have limited liability for the debts of the firm. As with a general partnership, a limited partnership is not a separate legal entity.
- (e) A limited partnership must consist of at least one general partner and one limited partner. The general partner(s) is/are liable for all the debts and obligations of the firm. The limited partners contribute a stated amount of capital and are not liable for the debts of the partnership beyond the amount contributed.
- (f) A limited partnership must be registered with the CRO and in accordance with the 1907 Act; otherwise the partnership is a general partnership.

### **13.5 Incorporation**

#### **13.5.1 Companies**

- (a) Companies are incorporated by filing the company's Constitution outlining its corporate structure and the terms governing its operation with the CRO. The Shareholders' Agreement (if any) is not generally required to be filed with the CRO unless it is specifically referred to in the company's Constitution.
- (b) Private companies have no minimum capital requirement, but public companies must have at least €25,000 of allotted share capital, 25% or more of which must be paid up.

#### **13.5.2 Partnerships (including Limited Partnerships)**

- (a) Partnerships are governed by contract (the partnership agreement), common law and the Partnership Act 1890; the Limited Liability Partnerships Act 1907 also applies to limited partnerships.

- (b) Only Limited Partnerships are required to register with the CRO, which registration should disclose the capital contribution of the limited partner(s). The Partnership Agreement is not filed with the CRO.

## **13.6 Management Structure**

### **13.6.1 Companies**

- (a) Ireland operates a unitary board (rather than a dual board) system with management delegated to the directors of the company.
- (b) Directors can be appointed by the members, usually by a simple majority vote, or the board of directors.
- (c) With the exception of LTDs, all companies are required to have minimum of two directors and a secretary from incorporation. While a body corporate or company may be appointed secretary of a company, they are precluded from being directors, who must be natural persons. Subject to one exception, at least one of the directors of a company being incorporated is required to be resident in a member State of the EEA.
- (d) Directors' duties have been summarised in the Act inter alia their duty to ensure the company's compliance with the Act. The duties set out in the Act are not exhaustive.
- (e) Their principal fiduciary responsibilities are set out in Part 5 of the Act, including the requirement to act in good faith, to act honestly and responsibly and to act according to the company's constitution.
- (f) There is also a requirement for the directors to have regard to the interests of the company's employees as well as to the interest of the members and to disclose any interest they have in contracts made by the company.

### **13.6.2 Partnership**

- (a) In general, a Partnership is managed by the Partners, with all partners having equal rights to participate in management, unless otherwise agreed between them.
- (b) A Limited Partnership is managed by the General Partner(s) in accordance with the Partnership agreement in a similar manner to a board of board of directors of a company, but without any statutory duties. The Limited Partner(s) does not take participate in the management of the Partnership.

## **13.7 Taxation**

### **13.7.1 Companies**

- (a) All companies must comply with its Revenue tax obligations inter alia PAYE/PRSI deductions and payments for employers and all filing requirements.
- (b) A company is required to register for VAT if certain turnover thresholds are exceeded or are likely to be exceeded in any twelve-month period. While the current general turnover threshold for the supply of goods and supplies are €75,000 and €37,500, these thresholds may be reduced/increased depending on the nature of the supply.
- (c) All companies (with some exceptions) are required to pay Corporation Tax on their profits (income and gains) within nine months of the company's financial year end. Corporation Tax is charged at two rates: 12.5% for trading income (unless the income is from an excepted trade e.g. certain land dealing activities, income from working minerals and petroleum activities, in which case the rate is 25%), and 25% for non-trading income (e.g. investment income, rental income).

### **13.8 Partnerships**

Each Partner must be registered with Revenue, and pay tax on their share of the profits and gains made on the disposal of partnership assets.

### **13.9 Reporting Requirements**

- (a) Pursuant to the Act, all companies whether trading or not, must file an annual return at the CRO not later than 28 days from its statutory annual return date (ARD). The annual return must set out certain prescribed information in respect of the company, and generally (with limited exceptions e.g. ULCs) requires financial statements (accounts) to be attached. The late filing of an annual return may lead to the loss of a company's audit exemption.
- (b) Companies are also obliged to maintain proper and up-to-date books and records; and to notify the CRO of particular matters e.g. certain shareholder resolutions, address and/or management changes (appointment/resignation of directors etc.).

# 14. Italy

## 14.1 Corporate forms available

Business undertakings can be operated in Italy either through corporate or non-corporate legal entities.

Corporate legal entities must be distinguished between:

**14.1.1** Partnerships which do not provide for any limited liability of their members, such as e.g. the simple partnership (*Società Semplice – S.s.*) and the general partnership (*Società in nome collettivo – S.n.c.*);

**14.1.2** Limited liability companies in which some or all members are not liable for the debts of the company beyond the value of their contribution into the corporate capital, such as e.g. the Italian limited liability company (*Società a responsabilità limitata – S.r.l.*) and its simplified form (*Società a responsabilità limitata semplificata – S.r.l.s.*), the Italian joint stock company (*Società per Azioni – S.p.A.*) the Italian partnership in which the liability of certain partners (*Accomandanti*) is limited, whereas the other managing partners (*Accomandatari*) do not benefit of this advantage, in its simple form (*Società in accomandita semplice – S.a.s.*) or joint stock form (*Società in accomandita per Azioni – S.a.p.A.*) and the European joint stock company (*Società Euros – SE*).

Non-corporate legal entities are sole entrepreneurships, civil law associations in participation, associations and foundations.

The most usual corporate forms used as a vehicle for foreign investments in Italy are the S.p.A.s and the S.r.l.s.

The S.p.A. is a company typically incorporated to undertake major operations and a wide range of activities. Its stock is represented by share certificates, differently from an S.r.l., where no certificates are issued and the stock is represented by a legal fiction called “quotas”, which consist of portions of the company’s stock but are physically not represented by any certificate or other written instrument.

Incorporation and running costs of an S.p.A. are, generally, significant, and its minimum capital requirements are higher than in the case of an S.r.l. – in addition, only an S.p.A. can be listed on the stock exchange.

This outline is therefore focused on the S.r.l. legal form.

## 14.2 Incorporation (form, time, costs, share capital requirements)

### 14.2.1 Form

An S.r.l. must be incorporated by way of a public deed (“*deed of incorporation*”) before a notary.

At the time of entering into the deed of incorporation, the S.r.l. must also adopt its bylaws to be attached to the deed of incorporation. The bylaws set out specific rules for the internal management of the company and cover matters such as the mechanism for issuing or transferring quotas, holding of and voting at general meetings, the appointment and removal of directors, their powers and duties

and proceedings at both the meetings of the board of directors and of the quota-holders. Any subsequent amendment to the bylaws requires a resolution of the quota-holders' meeting, to be held before a notary.

Being the S.r.l. a legal entity separated from its quota-holders, the latter are in no way responsible for the former's debts. This is, however, subject to one limitation in the event that the entire corporate capital is held by one person. In fact where an insolvent company has only one quota-holder, said quota-holder is liable without limitation for the company's obligations which arose during the period of sole ownership, but only in case the subscribed capital is not entirely paid in and details of the sole quota-holder have not been filed with the relevant Companies' Register.

As a further exception to the rule of the limited liability for the company's obligations, quota-holders of an Italian S.r.l. which have intentionally decided or authorised management acts that are detrimental for the company or third parties are jointly liable for said acts along with the directors who have carried out them.

#### **14.2.2 Time**

Within 20 days of the date of incorporation, the notary must record the company in the relevant Companies' Register (held by the chamber of commerce). A company acquires "legal personality", and thus full corporate status, upon registration in the companies' register. The appointed directors, however, can act in the name of the company even prior to such registration (but not prior to the date of the deed of incorporation), having personal, unlimited, liability for their actions.

#### **14.2.3 Corporate capital requirements**

The corporate capital of the S.r.l. is represented by quotas and each quota gives to the owner the voting right.

At the time of its incorporation, S.r.l. must be funded with a corporate capital not lower than €10,000.00 of which initially only 25% (twenty five per cent) must be actually paid in.

A recent law (i.e. Decree No. 76/2013) has introduced the possibility to establish a "simplified" S.r.l. ("Srls") ("S.r.l.s") which can be incorporated with an initial corporate capital of € 1.00 and not higher than €10,000.00 which must be fully paid in.

Whenever the capital of an S.r.l. is diminished by more than one third as a result of losses, the directors must, without delay, call a quota-holders' meeting to take any appropriate action. If, within the following financial year, such loss has not been reduced to less than one third of the capital, at the quota-holders' meeting held for the approval of the annual accounts, the quota-holders must resolve to reduce the corporate capital in proportion to the losses.

If the capital of the company falls below the minimum threshold provided by law (i.e. €10,000.00 for S.r.l.'s) because of a loss of more than one third of the corporate capital, the directors must immediately call a quota-holders' meeting to resolve upon either the reduction of the capital and its simultaneous increase to a figure not less than €10,000.00 or, alternatively, the transformation of the company into a partnership (partnerships have no minimum capital requirements).

### 14.3 Managing directors (power, appointment, liability)

The management of an S.r.l. can be entrusted to one or more directors. In particular an S.r.l. can be managed by:

- (a) a board of directors, which passes resolutions by majority and can delegate certain powers to a managing director or to another of its members;
- (b) two or more directors who do not constitute and operate as a board and who can be vested by the bylaws with the powers to manage the company either severally or jointly; or
- (c) a sole director.

The board or the directors, in the situation envisaged under (ii) and (iii) above, can delegate some management powers to a general manager or other key officers. Unless the bylaws provide otherwise (and it is important that this contrary provision be inserted in the bylaws so as to allow that managers of your group be appointed as directors of the company), the directors must be quota-holders and may serve for an unlimited period of time. Furthermore, they may be foreigners. Directors may be either individuals or legal entities.

The first directors are appointed upon incorporation of the company; thereafter, they are elected by the quota-holders' meeting.

With a view to avoiding any difficulties in managing the company and its business in case the company is managed by a board, it would be easier to appoint an odd number of directors, and that the director actually vested with the day-to-day management is resident in Italy. In an S.r.l., directors and quota-holder can also take decisions by written consultation.

Many of the rules regarding the management and the reporting requirements applicable to the joint stock option companies are as well applicable as for the S.r.l..

The directors are jointly liable towards the company for the damages derived from the infringement of the rules set forth the law and the deed of incorporation.

The directors who formally expressed their dissent towards the resolution regarding the act that was going to be adopted, are not liable for the damages occurred to the company and derived from such acts.

Each quota-holder can sue the directors either on behalf of the company or to demand the reimbursement of any personal economic damages occurred.

### 14.4 Taxation (corporate tax, capital gains tax, other taxes)

S.r.l. is subject to corporate income tax (*IRES*) on their entire (domestic and foreign sourced) realised income, if they have their seat, main business purpose or place of effective management in Italy.

Profits are taxed at a standard tax rate of 24% from 2017 tax period. The relevant loss "carry-forward" is allowed with no time-limit, within the threshold of 80% of the yearly realised income. Conversely, the losses incurred in the first three tax periods can be fully offset with any future income.

It is also worth noting that Italian companies are subject to a regional tax on productive activities (IRAP), with a standard tax rate of 3.90%, applied on a basis which is different from IRES' basis (in

particular, incurred interest are not deductible and personnel costs are deductible only under certain circumstances).

Dividends paid to domestic/non-resident recipients

Any dividends paid by an Italian company to its domestic quota-holders are subject to a different tax regime depending on the recipient. If the recipient is a resident individual, the taxation of dividends could vary depending on specific circumstances.

If the dividends are paid to resident companies and to commercial entities, under certain conditions they are excluded from the taxable income of the recipient company for the 95% of their amount.

In general terms, if the recipient is not resident in Italy a 26% withholding tax is applied. This withholding can be reduced/eliminated provided that a Double Tax Treaty/Other provisions (e.g. European Directive “Parent/Subsidiary”) take place.

Finally, it is also worth noting that Italian entities and business entities could exercise the option for the world-wide tax consolidation. The worldwide tax consolidation allows the Italian parent company to include in its tax basis losses/incomes of foreign subsidiaries. In this way, foreign subsidiaries are treated by the Italian Tax Authorities the same way as foreign permanent establishments of Italian companies.

The option could be exercised only by the Italian parent company and it could not be revoked for at least five years. The option is tacitly renewed for the subsequent three years unless revoked. This system of group taxation provides for various tax benefits. In general, any losses of the members of the group can be immediately offset by profits accumulated by other group members.

## **14.5 Reporting Requirements**

Managing directors need to file with the Companies’ register any changes in the corporate structure (i.e. termination of the office of directors, appointments of the directors) without delay.

Any changes to the company’s bylaws (i.e. increase or decrease of the corporate capital, moving of the registered office, deed of merger, etc.) must be made before a Notary Public which shall file the decision with the Companies’ Register. Changes become effective only upon registration.

Directors are required to register S.r.l.’s annual financial statements with the Companies’ Register within thirty days after the quota-holders’ meeting approving it has been held, e.g. If the annual financial statements is approved on April 30, a filing made after May 31 determines a fine for the Company and for the directors (from €96.00 to €206.00).

# 15. Latvia

## 15.1 Corporate forms available

The main legislative act that governs commerce in Latvia is the Commercial Law. It allows for two major types of merchants (persons performing economic activities): individual merchants (only a natural person) and commercial companies (legal persons).

Commercial companies are as follows:

- (i) partnerships;
- (ii) capital companies;
- (iii) commercial companies which are not regulated in the Commercial Law.

Partnerships are as follows:

- (i) general partnership;
- (ii) limited partnership.

Capital companies are as follows:

- (i) limited liability companies (in Latvian “sabiedrība ar ierobežotu atbildību”, also known as “SIA”);
- (ii) stock companies (in Latvian “akciju sabiedrība”, also known as “AS”).

## 15.2 Incorporation (form, time, costs, equity capital requirements)

The incorporation process usually takes 1-3 weekdays. It can also be done online in the portal [www.latvija.lv](http://www.latvija.lv). Following is a brief overview of registering of individual merchants and incorporation of limited liability companies and stock companies.

## 15.3 Individual merchant

An individual merchant is a natural person who performs economic activities and is registered as a merchant with the Commercial Register. A natural person has a duty to register with the Commercial Register as an individual merchant if either of the following is true:

- (i) the annual turnover from his or her economic activities exceeds 284 600 euro;
- (ii) the economic activities performed conform to the activities of a commercial agent or a broker;
- (iii) the yearly turnover from economic activities exceeds 28 500 euros and the person, to perform his or her economic activities, provides employment simultaneously to more than 5 employees.

If those conditions are absent, a person may voluntarily apply to be registered as an individual merchant. Upon registration a state fee of 28,46 EUR has to be paid, as well as a payment of 18,50 EUR for official publication.

#### **15.4 Limited liability company**

A limited liability company (SIA) is the most common form of doing business in Latvia. The SIA has its own legal personality that is separate from the legal personality of its shareholders. The shareholders of SIA are also not liable for its obligations – instead, their liability is limited to the extent of their investment into the SIA.

The minimum amount of equity capital of a limited liability company is 2800 euro (although an exception exists in the form of “limited liability company with reduced capital”).

At least one founder is required in order to incorporate a SIA. Before registering the SIA in the Commercial Register, the founders have to set up the administrative institutions of the company as well as prepare a memorandum of association (if there is only one founder – the decision on founding of a company) and the articles of association, which are mandatory documents. The signatures on these documents do not have to be notarised, but the signature on the application for the Commercial Register has to be.

The other documents that require a notarised signature and have to be submitted along with the application are the register of shareholders, the consent of the members of the board of directors and the consent of the members of a council (if one is formed).

If the documents have been drawn up in electronic form, they have to be signed by a secure electronic signature and do not have to be notarised.

Upon registration in the Commercial Register, a state charge of EUR 142,29 has to be paid, as well as a payment of EUR 27,03 for the official publication.

#### **15.5 Stock company**

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

The minimum amount of equity capital of a stock company is 35 000 euros.

At least one founder is required in order to incorporate a stock company. The incorporation procedure is similar to that of the limited liability company - the founders have to set up administrative institutions of the company and prepare a memorandum of association (if there is only one founder – the decision on founding of a company) and the articles of association. The founders' signatures only have to be notarised on the application for the Commercial Register. The members of the board of directors also have to provide their consent with notarised signatures.

Upon registration in the Commercial Register a state fee of EUR 355,72 has to be paid, as well as a payment of EUR 27,03 for the official publication.

## **15.6 Managing directors (power, appointment, liability)**

### **Limited liability company (SIA)**

The institutions of a limited liability company (SIA) are the meeting of shareholders and the board of directors, as well as the council (optional).

The meeting of shareholders elects as well as recalls members of the board of directors. It also has the right to decide on issues that are within the competence of the board of directors or the council. A meeting of shareholders is entitled to take decisions if the present shareholders jointly represent not less than 1/2 of the equity capital with voting rights (unless the articles of association provide for a larger quota of representation). Shareholders can also make decisions without convening a meeting of shareholders, unless the law or the articles of association specify that certain issues can only be decided at a meeting of shareholders.

The board of directors is the executive body of a SIA, which manages and represents the company. It consists of at least one member. All members of the board of directors have representation rights (unrestrictable towards a third party) and they represent the company jointly unless the articles of association specify otherwise. The board of directors has the duty to submit to the council (if one exists), at least quarterly, a report on the activities and financial circumstances of the company. It also has to notify the council regarding deterioration of the financial condition of the company or other significant circumstances.

## **15.7 Stock company (AS)**

A stock company is administered by a meeting of stockholders, a council and a board of directors. Unlike in a limited liability company, the competences of these institutions are strictly separated.

A meeting of stockholders takes decisions on the annual accounts, the use of the profit, the election and recall of members of the council, amending the articles of association as well as the termination of the activities of the company or reorganisation. A meeting of stockholders is entitled to take decisions irrespective of the equity capital represented there (unless the articles of association specify a representation norm).

The council elects and recalls members of the board of directors, supervises their activities, monitors if the business of the company is conducted in accordance with law. The minimum number of council members is 3 but the allowed maximum – 20.

The board of directors manages and represents the company. It is responsible for the commercial activities of the company, as well as for accounting. It also administers the property of the company.

Both for SIA and stock company, members of the board of directors and council are not liable for losses caused to the company if they have acted in good faith within the framework of a lawful decision of the meeting of shareholders/stockholders. It should be noted that the mere fact that the council has approved the actions of the board of directors does not release its members from liability to the company.

## **15.8 Taxation (Enterprise income tax, personal income tax, other taxes)**

Companies in Latvia have to pay a 15% Enterprise income tax from their taxable income. For residents the taxable income is their income obtained during a taxation period in Latvia and foreign countries.

In respect of non-residents, the tax is imposed on income obtained in Latvia from economic activity or related activity.

Payments of dividends between resident companies are not taxed with the Enterprise income tax. The exception is dividends paid to persons in the so-called “low-tax or tax-free” countries.

Natural persons have to pay a Personal income tax. The tax rate for income from capital, which is not an increase in capital, is 10%. This applies to bank deposits and also to dividends, which are income from capital shares or stocks of a capital company or co-operative shares of a co-operative company. The rate of tax for an increase in capital is 15%. The increase in capital is the difference between the purchase price and the later selling price of an asset, for example, company shares, bonds, etc.

## **15.9 Reporting Requirements**

The general principle is that any information which has to be entered in the Commercial Register has to be submitted within 14 days from the day when the relevant decision was taken.

After the end of the accounting year, the board of directors have to compile and sign the annual accounts of the company which are then approved by a meeting of shareholders. If the company has a council, the council first makes a report on annual accounts and only then the shareholders approve them. This applies both to limited liability and stock companies.

It should be noted that a decision by a meeting of shareholders to approve the annual accounts does not release members of the board of directors and council from liability for their actions during the relevant accounting period.

# 16. Lithuania

## 16.1 Corporate forms available

Lithuanian law provides for corporate and non-corporate legal forms with regard to business undertakings. Non corporate forms consist of sole entrepreneurship and partnership without incorporation of legal entity operating under regulations of the Civil Code of the Republic of Lithuania.

The forms of corporate entities include the Public or private limited liability company; Individual (personal) enterprise; Partnership (general or limited); Micro company; Professional law partnership; Agricultural company; Co-operative company; European company; European economic interest grouping; European co-operative company; Public legal entities (state enterprise, municipal enterprise, etc.). The principles of freedom of companies to establish branches and representative offices and enter into associations are also ensured in Lithuania.

For the purposes of conducting business activities the Private Limited Liability Companies (UAB) and the Public limited liability companies (AB) are founded in most of the cases.

The most popular corporate form in Lithuania and typically chosen as corporate vehicle by foreign investors is limited liability company (in Lithuanian Uždaroji akcinė bendrovė – UAB), therefore this outline focuses on UAB.

## 16.2 Incorporation (form, time, costs, share capital requirements)

### Private Limited Liability company

Statutory capital of a private limited company is divided into shares. Shareholders of the private limited company are not liable for the obligations of the Company, with exception to the cases provided by law.

A private limited liability company may be established by a single founder (either natural (individual) or a legal person (entity), either by national or foreign person). The maximum possible amount of shareholders is 249.

The statutory (share) capital of a Private limited liability company may not be lower than EUR 2500.

A private limited company is established by a Foundation Resolution or a Foundation Agreement in case of several founders. Upon execution of Foundation document an accumulative account is opened in the bank and founders shall pay initial contributions to the share capital. The statutory capital of the Company shall be fully paid in 12 month after signature of Foundation document. If the Foundation document provides for minimal statutory capital (2500 EUR) it shall be paid fully before registration of the Company.

Before registration of the Company in the Company Register of the Republic of Lithuania, the managing director shall be elected, initial contributions to statutory capital paid and the articles of association approved by the Founders and signed by person authorized by founders, the notary has confirmed that incorporation documents are in line with legal requirements. The Company is deemed to be incorporated on the date of its registration within the Register of companies.

Persons having Lithuanian ID card or a qualified certificate for electronic signature can incorporate the company online, which does not involve notary fees.

The fees of the Register of Companies and the notary fees for company incorporation are about 300 EUR and the legal fees about 1000 EUR plus VAT.

The Company is registered in 3 business days after submission all necessary documentation to the Register of Companies.

### **16.3 Managing directors (power, appointment, liability) Private Limited Liability company**

According to the Lithuanian Law on Companies a private company (UAB) must have the general meeting of shareholders and a single-person management body – the managing director. A collegial management body – the board and a collegial supervisory body – the supervisory board may be formed in a company, but this is not mandatory.

If no board is formed, the board's functions shall be performed by the managing director, with the exception of the appointment and dismissal of the managing director which power rests with the general meeting.

The number of the Board members shall be laid down in the Articles of Association of the company. The Board must have at least three members and the term of its office shall not be more than 4 years, however the number of cadences is not limited. The board's competence includes election of managing director, approving of strategy of the Company as well as analysis of annual accounts, plan of profit distribution and presenting it for shareholders' approval, decisions regarding transfer of long term assets or otherwise disposing over it and etc.

Talking about the management structure of the private companies (UAB), it is worthwhile mentioning that the director shall be employed in the company and this is mandatory position. The members of the board (if the board is foreseen according to the articles of the Company) are not employed in the Company and they serve on election basis. Board members are remunerated by payments from the Company profit.

The Managing director is the sole management body and is responsible for day to day operations of the Company as well as entitled to solely enter into the agreements on behalf of the company with exception to agreements and decisions which need to be approved by the general meeting of the shareholders/sole shareholder in accordance to the Articles of Association of the Company. The Managing Director is responsible for organization of activities and implementation of purposes of the company, drawing up of drafts of annual financial statements and drafting of an annual report of the company, decisions of profit distribution, employees employment and other. The director is liable for observation of legal regulations as regards tax, labor safety and etc.

The managing director and the board members (if the board is formed) are obliged to exercise their functions with due care and in compliance with the interest of the company and of all its members. They are particularly obliged to seek and take into account in making decisions all available information related to the subject of decision, keep silent on confidential information and facts the disclosure of which to third parties might cause damage to the company or threaten its interest or the interest of its members, and during the exercise of their functions, they may not prefer their own

interests, the interests of some members or the interests of third parties over interests of the company. The Managing director and the board members (if the board is formed) who have breached their obligations during the performance of their functions are jointly and severally liable for damage incurred to the company.

## 16.4 Taxation (corporate tax, capital gains tax, other taxes)

### CIT

Corporate Income Tax Rates:

The standard corporate income tax (CIT) tax rate is 15%

5% CIT rate is applied to:

- the taxable profit of small companies with an average number of employees not exceeding 10 and income not exceeding EUR 290000 over the relevant tax period (with certain exceptions);
- the taxable profit of companies with income from agricultural activities accounting for more than 50% of the company's total income over the relevant tax period.

0% CIT rate is applied to social companies if the following conditions are met:

- the number of employees eligible for social support accounts for not less than 40% of the total number of employees; and
- the income from activities that are non-supportable for social companies does not exceed 20% of the total income earned; and
- a company has a status of a social company.

All income sourced by local companies registered in Lithuania inside and outside Lithuania is taxable minus allowable deductions.

### Withholding tax

Dividends

Dividends paid out to foreign/Lithuanian companies are generally subject to withholding tax at a rate of 15%.

Participation exemption rule: Dividends paid out to foreign/Lithuanian companies are exempt from CIT if:

- the recipient holds not less than 10% of voting shares and;
- It holds these shares for at least 12 successive months.

Dividends received by Lithuanian company from foreign companies are exempt from CIT if a foreign company is registered in a country within the EEA and these dividends were distributed from profits that have already been subject to CIT or similar tax.

The following income sourced in Lithuania and received by a foreign company is taxed at a rate of 10%:

- interest on any type of debt obligations including securities;
- royalties;
- indemnities received in respect of any infringement of the company's copyrights or neighboring rights.

There is no withholding tax on interest paid from Lithuanian companies to foreign companies established in the EEA or in countries which have concluded a DTT with Lithuania or on the royalties paid to the qualifying related parties, where these are EU tax residents.

The following income sourced in Lithuania and received by a foreign company is taxed at a rate of 15%:

- income from the sale, transfer or lease of immovable property located in Lithuania;
- income from performers' or sports activities carried on in Lithuania;
- payments to the Supervisory Board members.

### **Other**

Other applicable taxes in Lithuania include VAT, Personal income tax (15% with certain exceptions); Real estate tax (rate ranges from 0.3% to 4% depending on local municipalities); Pollution tax (rates vary depending on the type and toxicity of the pollutant in question); Contributions to the Guarantee Fund (0,2% levied on the gross salary payable to employees); Land tax (rate ranges from 0.01% to 4% depending on local municipalities); Land lease tax (The minimum tax rate is 0.1% and the maximum tax rate is 4%); Lottery and gaming tax.

### **Reporting Requirements**

Managing director of the private limited company shall be responsible for file of any changes in the corporate structure of the company with the Register of Companies of the Republic of Lithuania without undue delay.

The managing director must submit annual and interim (if produced) financial statements to the Register of Companies. The set of annual financial statements of a company together with the annual report of the company and the auditor's report (where the audit is mandatory under laws or provided for in the articles of association) as well as interim financial accounts must be submitted to the administrator of the Register of Legal Entities within 30 days after the annual general meeting of shareholders.

# 17. Luxembourg

## 17.1 Corporate forms available

As to business undertakings, Luxembourg law provides for corporate and non-corporate legal forms.

Corporate forms include the private limited liability company (*Société à responsabilité limitée – Sàrl*), the public limited company (*Société Anonyme – SA*), the common limited partnership (*Société en commandite simple - SCS*), the corporate partnership limited by shares (*Société en commandite par actions – SCA*), the general corporate partnership (*Société en nom collectif – SNC*), the co-operative society (*société coopérative – SC*) and the European company (*Société Européenne - SE*).

Sàrls and SAs may have only a single shareholder.

The forms of SA and of Sàrl are by far the most popular corporate forms in Luxembourg and typically chosen as corporate vehicles by foreign investors when coming to Luxembourg.

## 17.2 Incorporation (form, time, costs, share capital requirements)

An SA or an Sàrl must be formed before a Luxembourg notary. The articles of association (the “AoA”) may be in French, German or English even if a French or German version is required for publication purposes. The notary is coordinating the registration of the AoA with the tax authorities (*Administration de l’Enregistrement*) and their filing with the Luxembourg trade and companies register. They are also published in the “Memorial C” (Luxembourg official gazette).

The company is considered to exist as from the moment when the founders have signed the notarial deed.

The notarial fees for founding an SA or Sàrl with a minimum share capital are approximately €1,250.00 – 2,000.00 ex VAT; the legal fees of our law firm for the set-up of a standard SA or Sàrl with a minimum share capital are of €2,300.00 ex VAT or €3,800.00 ex VAT should the share capital be paid-up by contribution in kind.

## 17.3 Public limited company

The AoA set forth the basic structure of the SA: name, corporate object, duration, registered office, amount of the subscribed capital (including the subscribed capital initially paid-up) and, where applicable, of the authorised capital, rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among such corporate bodies and all shareholders rights.

A blocking certificate issued by a well-known bank stating that it is holding the required funds in a blocked account on behalf of the company in formation until release by the notary is used for cash contributions. For other contributions, an independent registered auditor (member of the Luxembourg *Institut des Réviseurs d’Entreprises*) must for the SA confirm that the value of the non-cash contributions is at least equal to the value of the shares to be issued in exchange.

The minimum share capital of an SA is €30,986.69 fully subscribed with a minimum of 25% paid up.

Shares of an SA can be issued in registered (with ownership evidenced by the appropriate entry in the shareholders share register) or bearer form (if fully paid-up). Shares in bearer form shall be deposited with a Luxembourg financial institution or regulated professional intermediary including lawyers (“Avocats à la Cour”), notaries, independent registered auditors and chartered accountants, appointed by the management body of the issuing company and subject to the legal regulations against money laundering and terrorism financing. The depositary shall keep a register containing all the information needed to identify the relevant shareholders, with the number of shares held by each of them, the date of the deposit and all relevant details regarding any transfer or conversion of such shares. The judicial and tax authorities have unlimited access to the register, whereas other shareholders may only consult the information relating to their own shareholding.

#### **17.4 Private limited liability company**

The AoA set forth the basic structure of the Sàrl: name, corporate object, duration, registered office, amount of the share capital, rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, administration, management, and the allocation of powers among such corporate bodies and all shareholders rights.

A blocking certificate is also used for cash contributions. For other contributions, the confirmation of the value of the non-cash contributions by an independent registered auditor (member of the Luxembourg Institut des Réviseurs d’Entreprises) is not required.

The minimum share capital of a Sàrl is €12,394.68 fully subscribed and fully paid up. The parts of an Sàrl are in registered form only. The transfer of parts to non-members can only be done with the approval of the three-quarters of the capital during a general meeting. A transfer of parts is opposable after notification to the company or acceptance of the transfer. The transfer of parts is also subject to publication with the Luxembourg trade and companies register.

The number of members shall be limited to forty.

#### **17.5 Directors / Managers (power, appointment, liability)**

There is no requirement to have directors/managers be Luxembourg nationals or residents, nor need they be shareholders. The place of the meetings is however of importance in order to avoid tax residence in another country. The tax administration considers that a company engaged in intra-group financing activities should have a majority of the members of the board of directors or managers being either Luxembourg residents or non-residents with a professional activity in Luxembourg who are liable to tax in Luxembourg for at least 50% of the total revenues. These directors or managers need to have the required professional knowledge to fulfil their duties correctly. Their decisions have to be taken in Luxembourg.

#### **17.6 Public limited company**

Simultaneously with the execution of the AoA, the first director(s) of the SA are appointed by an extraordinary general meeting of the shareholders.

A minimum of three directors is required except the case of a sole shareholder where one director is sufficient. A company acting as a director must appoint a permanent representative considered as jointly liable. The board of directors of an SA must appoint a Chairman who has a casting voice in the event of a tied vote, if not provided to the contrary in the AoA. Directors are appointed for a maximum

term of six years with right of renewal. Directors of an SA may be removed ad nutum.

The AoA in general confirm the powers of signature and/or legal representation towards the third parties.

The board of directors has all powers to perform the transactions necessary or useful to execute the social object except the powers reserved by the law or the AoA to the general meeting.

The directors of an SA owe a duty of care and diligence expected of a prudent businessman towards the company. This includes the actual conduct of the business of the company as well as compliance with reporting and filing requirements.

The directors shall be liable to the company in accordance with general law for the execution of the mandate given to them and for any misconduct in the management of the company's affairs. They shall be jointly and severally liable towards the company and any third parties for damages resulting from the violation of the Company law or the AoA. They shall be discharged from such liability in the case of a violation to which they were not a party provided no misconduct is attributable to them and they have reported such violation to the first general meeting after they had acquired knowledge thereof.

### **17.7 Private limited liability company**

Simultaneously with the execution of the AoA, the first manager(s) of the Sàrl are appointed by an extraordinary general meeting of the partners.

A Sàrl shall be managed by one or more agents, who may but are not required to be partners and who may receive a salary or not. They shall be appointed by the partners for a limited or undetermined period. Unless otherwise provided for in the AoA, they may be removed, regardless of the method of their appointment, for legitimate reasons only.

The managers shall be liable to the company in accordance with general law for the execution of the mandate given to them and for any misconduct in the management of the company's affairs. They shall be jointly and severally liable towards the company and any third parties for damages resulting from the violation of the Company law or the AoA. They shall be discharged from such liability in the case of a violation to which they were not a party provided no misconduct is attributable to them and they have reported such violation to the first general meeting after they had acquired knowledge thereof.

### **17.8 Taxation (corporate tax, capital gains tax, other taxes)**

SAs and Sàrls (as well as other Luxembourg corporations) are subject to corporate income tax on their income. Profits are taxed at the standard tax rate of 29.22% in Luxembourg-City.

Corporation taxes include a (i) 21% corporate income tax (impôt sur le revenu des collectivités) on which a 7% solidarity surcharge (contribution au fonds pour l'emploi) is added, leading to an effective corporate income tax rate of 22.47%, plus (ii) a municipal business tax (impôt commercial communal). The municipal business tax rate varies from one municipality to another. In Luxembourg-City, the municipal business tax is 6.75%.

Corporations for which the sum of financial assets, transferable securities and bank deposits,

receivables held against related parties or shares or units in tax transparent entities exceeds (i) 90% of their total balance sheet and (ii) €350,000, are subject to a minimum flat tax of €3,000 (€3,210.00 including the 7% solidarity surcharge).

Corporations are also liable to an annual 0.5% net wealth tax in Luxembourg (impôt sur la fortune) on their unitary value (i.e. taxable assets minus liabilities financing such taxable assets) as at 1 January of each year.

The so-called “Sociétés de Participations Financières” or “SOPARFIs”, which are ordinary commercial companies incorporated and operating in compliance with the general rules of Luxembourg corporate law and whose the principal activity consists usually in the management and control of investments in other companies benefit under some conditions – including the holding or undertaking to hold a participation of at least 10% of the subsidiary’s capital or with a minimum acquisition price of at least €1,200,000.00 (dividends) or €6,000,000.00 (capital gains) for an uninterrupted period of at least 12 months – from the “participation exemption” (on dividends paid or received, capital gains and net wealth tax) and are entitled to benefit from the reduced withholding tax rates provided for in the double tax treaties concluded by the Grand-Duchy of Luxembourg.

## 17.9 Reporting Requirements

Any amendment of the AoA of the company must be passed before a Luxembourg notary. The notary will co-ordinate the registration of the said amendments with the tax authorities (Administration de l’Enregistrement) and their filing with the Luxembourg trade and companies register. The notarial deed is also published in the “Memorial C” (Luxembourg official gazette).

The amendments become effective as from the moment when the notarial deed has been signed.

Any changes regarding the (managing) directors, managers and auditors will need to be filed as soon as these changes occur. The legal representatives or any other empowered person have to file the said changes with the Luxembourg trade and companies register.

Furthermore, it is compulsory to issue each year annual accounts to be submitted by the board of directors of an SA to the auditor one month before the holding of the annual general meeting as determined in the AoA in order to enable him to prepare his report. The annual accounts of an SA must be published within one month after approval by the general meeting.

In a Sàrl, annual accounts have to be established by the board of managers within the six months following the closing day of the financial year and also published after the approval by the general meeting.

# 18. Malta

## 18.1 Corporate Forms Available

Commercial Partnerships can take several forms, mainly that of a Partnership *en nom Collectif* in which the liabilities of the partnership are guaranteed by the unlimited, joint and several liability of all the partners, a Partnership *en Commandite* in which the liabilities of the partnership are guaranteed by the unlimited, joint and several liability of the general partners, and by the liability, limited to the amount, if any, unpaid on the contribution, of one or more partners, called limited partners and a Limited Liability Company in which the liability of the shareholders is limited to the part unpaid (if any) on their shares.

## 18.2 Incorporation (form, time, costs, share capital requirements)

### 18.2.1 Form

A Limited Liability Company is the preferred means of doing business in Malta, due to its separate legal personality and limited liability. Limited liability companies can be classified as either of a private nature (Limited or Ltd) or of a public nature (Plc). With the exception of single member companies (discussed below), private and public companies must have a minimum of two shareholders.

Private limited companies are formed by means of capital divided into shares and shareholder liability is limited to the amount of unpaid share capital. In a private company the right to transfer shares must be restricted, the number of members cannot exceed 50 and invitations to the public to subscribe to its shares or debentures are prohibited.

It is possible to set-up a single member company, however, such a company may only carry out one principal activity. In addition it must satisfy the conditions of a private exempt company, being, that it cannot have more than 50 debenture holders and that no body corporate can act as a director.

With the exception of the restrictions mentioned above the Memorandum and Articles of Association of both private and public Companies must contain:

- (i) the name of the company; which is to include Plc, Limited or Ltd, subject to the public or private nature of the company respectively,
- (ii) the name and residence of the subscribers,
- (iii) the registered office of the company,
- (iv) objects of the company,
- (v) the authorised and issued share capital of the company divided into shares of fixed nominal value,
- (vi) number of directors,
- (vii) name and residence of first directors, and name and registered or principal office if the director is a body corporate,

(viii) manner in which company is to be represented, and the chosen representative

(ix) Name and residence of first company secretaries.

#### Share Capital Requirements

The minimum share capital in private limited companies is €1,165.00 and the minimum percentage paid up is 20%, whereas in public companies the minimum share capital is €46,588.00 and minimum percentage paid up is 25%.

### 18.2.2 Time

Following satisfactory completion of the KYC/due diligence process, a company can be registered by submitting the necessary documentation to the Registrar of Companies, including therefore the Memorandum and Articles of Association as well as an identification document of the subscribers and proof that the initial share capital was deposited in favour of the company in formation. The Memorandum and Articles of Association must be signed by the subscribers or their attorneys. This will enable the company to be set up physically in Malta. Generally registration is completed within 24 hours of receipt of all documentation required.

### 18.2.3 Cost

A registration fee is to be paid to the Registrar of Companies, the value of which depends on the amount of authorised share capital of the company being set-up but ranges between a minimum of €245.00 (for a share capital that does not exceed €1,500.00) and a maximum of €2,250.00 (for a share capital exceeding €2,500,000.00).

## 18.3 Managing directors (power, appointment, liability)

### 18.3.1 Appointment

The business of limited liability companies is conducted by its directors. The directors are appointed by the shareholders. Directors may be individuals or corporate entities. A person shall not be qualified for appointment or hold office as director of a company if:

- he is prohibited or incapacitated or is an undischarged bankrupt;
- he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;
- he is a minor who has not been emancipated; or
- he is the subject to a disqualification order.

### 18.3.2 Power

Company directors are generally vested with the legal and judicial representation of the company. This authority is however limited by the Companies Act and Memorandum and Articles of the Company. Directors may not:

- act or enter into transactions which go beyond the company's objects and powers;
- disregard other limitations imposed by the company's memorandum or articles of association; or

- disregard instructions properly issued by the company in relation to the exercise of their powers.

The Directors have the power to appoint and remove the company secretary

### 18.3.3 Duties and Liabilities

The directors must perform their duties with a degree of care, diligence and skill which is to be exercised by a reasonably diligent individual. They must not have a conflict of interest between the benefit of the reasonable company and their personal benefit and they must not compete with the company.

Furthermore, the Director *qua* fiduciaries owe fiduciary obligations towards the company which include the duty of loyalty and a standard of care drawn from the Roman law concept of *bonus pater familias*. The director must keep property acquired under fiduciary obligations separate from their own personal property, they must render an account and keep records in relation to the management of the property held under fiduciary obligation, and are duty bound to return property held under a fiduciary obligation when their mandate terminates.

Directors as officers of the company are entrusted with keeping statutory registers and minute books such as a register of members, a register of debentures, Board and general meetings' minutes and minute books as well as completing the annual returns and filing any changes in the company's corporate structure with the registry of companies.

Directors are personally liable in damages for any breach of duty committed as well as liable to make a payment towards the company's assets, as deemed fit by the court, upon dissolution if the company continues to trade while said director knew, or ought to have known that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency. The court may release the director from liability if it is satisfied that the director took every step he ought to have taken with a view of minimising the potential loss to the company's creditors.

## 18.4 Taxation (corporate tax, capital gains tax, other taxes)

Companies incorporated in Malta are subject to income tax on their worldwide income as they are considered to be ordinarily resident and domiciled in Malta by virtue of their incorporation.

Companies registered outside Malta are considered resident in Malta if the management and control is exercised therein, whereas companies that are neither resident nor domiciled in Malta are only subject to income tax on income and capital gains arising in Malta.

Companies registered or resident in Malta are subject to income tax on chargeable income at a standard rate of 35%. However it is significant to note that Malta has adopted the full imputation system whereby dividends paid by a Malta company do not attract any further tax since they carry a tax credit equivalent to the tax paid by the company upon the distribution of profits. This means that the shareholder is entitled to claim a refund which may be equivalent to either 2/3rds, 5/7ths, 6/7ths or 100% of the income tax paid by the Malta company upon the distribution of a dividend.

## **18.5 Reporting requirements**

Directors are to draw up an annual report stating the names of those individuals that were directors during the period in question, mentioning the principal activities of the companies and any of its subsidiaries, any significant changes that have occurred during this same period, and a clear picture of the development or otherwise of the company and its subsidiaries, as well as the position as at the end of that accounting period. A copy of the report together with the annual accounts of the company shall be delivered to the Registrar of Companies within forty days from the end of the period for the laying of the annual accounts. The company's accounts must be audited.

# 19. Netherlands

## 19.1 Corporate forms available

As to business undertakings, Dutch law provides for corporate and non-corporate legal forms.

Corporate forms include the Dutch private company with limited liability (*Besloten Vennootschap – BV*), the Dutch joint stock company (*Naamloze Vennootschap – NV*) and the European joint stock company (*Societas Euroapea – SE*). The form of a BV is best suited for wholly or closely owned companies; NVs are regularly chosen as public companies and subject to a number of additional requirements.

The most important non-corporate legal forms are the sole entrepreneurship (*eenmanszaak*), the civil partnership (*Maatschap*), the general partnership (*Vennootschap onder Firma – VOF*) and the limited partnership (*Commanditaire Vennootschap – CV*).

New legislation regarding the simplification and flexibilization of the rules on Dutch private companies with limited liability (*Wet vereenvoudiging en flexibilisering bv-recht – the Flex BV Act*), came into effect on 1 October 2012. The Flex BV Act is applicable to all existing BVs in the [Netherlands](#) and is meant to simplify company rules for BVs; it also makes the rules more flexible. However, as a consequence of the flexibility and simplification of several provisions, the (potential) liability of the managing directors for certain (juristic) acts has increased. Furthermore, the Act on the management and supervision (*Wet bestuur en toezicht – the AMS*) of BVs and NVs came into effect on 1 January 2013. This new legislation allows BV's and NV's to choose for either a “one-tier board” (with executive and non-executive directors) or the - already existing - system with a [management board](#) (with executive powers) and a [supervisory board](#) (the “two-tier board”). Furthermore, new rules on conflicts of interest and absence/inability to act have been introduced.

A BV is by far the most popular corporate form in the Netherlands and typically chosen as corporate vehicle by foreign investors when coming to the Netherlands, this outline focuses on the BV.

## 19.2 Incorporation BV (form, time, costs, share capital requirements)

The Articles of Association (the AoA) set forth the basic structure of the BV (e.g. corporate name and seat, objects, the management board (and optional supervisory board), share capital and share transfer restriction rights (not mandatory), provisions regarding the allotment of new shares, the general meeting of shareholders and the distribution of profits and reserves); the AoA are the most important constitutional document of a BV. The deed of incorporation must be executed in the Dutch language; often an unofficial translation into English, German (or another language) is provided for.

A BV can be incorporated by one or more incorporators (shareholders) and is established by a notarial deed of incorporation (in the Dutch language), in which deed the AoA are included.

The BV must open a bank account in the name of the BV in which the paid up capital is paid; also payment in kind on the shares is possible. As part of the implementation of the Flex BV, there is no longer a minimum capital requirement. Basically, one can incorporate a BV with a capital of €0.01 or also with a foreign denomination; however, the BV must be capitalized in a sufficient manner. In the final statements to the deed of incorporation, the shareholding is confirmed, as well as how payment

on the share(s) has taken casu quo will take place, the determination of the first financial year and who will be appointed as first managing/supervisory director(s).

In the previous legislation (and therefore in most of current AoA of BV's), the shares of a BV are not freely transferable as the AoA contain so-called 'share transfer restrictions' (*blokkeringsregeling*). However, as a further consequence of the implementation of the Flex BV, the registered shares may also be freely transferable; this flexibility will result in a less private character of a BV.

After establishment of the BV, the BV must be registered with the trade register. The notary involved will file not only a true copy of the deed of incorporation, but will also register specific data of the BV (place of business, activities etc.), (only) its sole shareholder and data of the officers: the managing/supervisory directors and possible proxy-holder(s) (*gevolmachtigde(n)*), all with the scope of their capacity. The filing furthermore has to include (notarized) forms of the Trade Register with sample signature page(s) of the sole shareholder and each (of the) appointed officer(s).

The management board shall furthermore keep a so-called shareholders' register in which the names and addresses of all shareholders and holders of a restricted right on shares have been recorded, including the date at which they acquired the shares or the restricted rights, the date of acknowledgement, as well as the amount paid up on each share.

Due to the minimized requirements, but depending on the complexity of the AoA and the shareholding/board structure, a BV can be incorporated in a few days -if so desired. The notarial fees for the incorporation of a BV by a foreign client vary between approximately €1,500.00 - 2,500.00 (excluding 21% VAT and disbursements).

Changes to the AoA are possible after incorporation; in general this requires a shareholders' resolution and a notarial deed of amendment of the AoA. This will result in further costs and can be done in a couple of days (or depending on the extent of the changes, can also be a rather time-consuming process). Each update of the AoA must be registered at the trade register and in the shareholders' register.

### **19.3 Managing directors (appointment, power, liability)**

Simultaneously with the execution of the AoA, the first managing director(s) of the BV are appointed in the deed of incorporation. The managing director(s) do not need to be Dutch or European citizen(s) or legal persons; a residence in the Netherlands is not required either. For registration at the trade register, each must be identified by (or on behalf of) the notary and provide certain proof of address to the notary. After incorporation, a managing director is appointed by the general meeting of shareholders or, if so arranged for in the AoA, by the meeting of holders of a particular class of shares. Only natural persons can be appointed as supervisory directors.

The power of representation of a BV by a managing director is unlimited by law. It may be restricted solely by providing that a managing director may only act jointly with (an) other (non-executive) managing director(s). Furthermore, the AoA may restrict the powers of the management board by submitting certain acts of management to the approval of another body of the BV, such as the general meeting of shareholders. The absence of such approval does not affect the representative authority of the management board.

The (general) duties of the management board are:

- (a) to act responsibly and in the interest of the BV and/or the enterprise connected to it;
- (b) to duly observe the BV's objects (not only in day-to-day business but also strategically);
- (c) if the AoA stipulate so: to follow the general instructions of the general meeting of shareholders, unless these are in conflict with any interest of the BV and/or the enterprise connected to it;
- (d) in case of a conflict of interest: the managing director shall not take part in the deliberations and the decision making if he has any direct or indirect personal interest therein that is in conflict with any interest of the BV and/or the enterprise connected to it, if as a result thereof no resolution can be adopted by the Management Board, the resolution shall be adopted by the general meeting of shareholders; and
- (e) in case of absence or impediment of a managing director, the other managing directors, or the only remaining managing director, shall temporarily be charged with the management of the BV. In case of absence or impediment of all managing directors - or of the only managing director -, the person who is or has been designated for that purpose by the general meeting of shareholders shall temporarily be charged with the management of the BV. The provisions set forth in the AoA regarding the management board and a managing director shall apply to that person *mutatis mutandis*. Furthermore he shall be held as soon as possible to convene a general meeting of shareholders in which a resolution can be adopted regarding the appointment of one or more managing directors.

A managing director of a BV has to be well informed on the (financial) position of the BV on all important management matters and on all matters within the scope of his responsibility and owes a duty of care and diligence expected of a prudent businessman towards the company. This includes the actual conduct of the business of the company as well as compliance with reporting and filing requirements (for example - but not limited to the preparation and filing of the annual accounts, notification of changes of shareholders, appointment or revocation of managing directors, the institution of insolvency proceedings and to pay any taxes, duties or contributions in time and to keep the (tax) authorities informed in time if he becomes aware of inability of the BV to pay any of these).

Managing directors are liable to the BV for any damage caused as a result of a breach of their duties; in case more than one managing director is appointed, principal rule is that their liability is a joint one. This joint liability cannot be restricted by an allocation of responsibilities among the managing directors, although if a managing director can prove that he has taken all reasonable measures to prevent (further) damage to the company and/or to third parties which may result from any matter connected with the company and within the scope of its responsibility.

#### **19.4 Taxation (corporate tax, capital gains tax, other taxes)**

When a BV is registered with the trade register of the Dutch Chamber of Commerce, the Chamber of Commerce will forward all the information of the BV to the tax authorities. In principle, no separate action for this purpose is required.

A Dutch company is subject to corporate tax (*vennootschapsbelasting*) on its worldwide profits. Companies can distribute some of their profits as dividend to their shareholders. Dividends are subject to tax (*dividendbelasting*).

If a Dutch company is trading in goods and services, then the consumers will pay value added tax (VAT, known in Dutch as '*omzetbelasting*') on the goods and services they buy. The company will pass on the VAT to the consumers. The company remits the VAT to the Tax and Customs Administration.

When a BV does business with customers in other countries, then it may have to deal with other taxes.

In principle, every company pays its own tax. However, if a company forms a tax group with one or more of its subsidiaries, they may be treated as a single taxpayer (*deelnemingsvrijstelling*). In that case it is advisable to call in a tax advisor.

## 19.5 Reporting Requirements

Managing directors of a BV need to file any changes in the corporate structure of the company with the commercial register without undue delay. This means that any change in name, shareholders, registered office and actual place(s) of business, share capital and managing directors of the company will need to be filed as soon as these changes occur. For the most part, these changes become effective on the date as resolved to by the respective organ and registration is required to keep the registers up to date and accurate (for example, the date of appointment of a managing/supervisory director depends on the date of the resolution or date of appointment and not on the date of registration).

Each year within five months of the end of the financial year of the BV, except where this period is extended for up to five months by the general meeting of shareholders due to special circumstances, the board of directors shall prepare annual accounts and (where the company is legally required to do so) a directors' report for that financial year. The company's financial year is the same as the calendar year, unless the AoA say that it is not the calendar year. The annual accounts shall be signed by the managing directors (and the supervisory directors) of the BV. The annual accounts must be adopted by the general meeting of shareholders within two months after the preparation. The annual accounts must be filed at the Chamber of Commerce within eight days after the adoption by the general meeting of shareholders.

# 20. Norway

## 20.1 Corporate forms available

There are different corporate forms available for those who wish to establish corporations in Norway.

Corporate legal forms include Limited Liability Company ("*aksjeselskap*", "*AS*"), Public Limited Company ("*Allmennaksjeselskap*", "*ASA*"), Norwegian Registered Foreign Company ("*NUF*") and Societas Euros ("*SE-selskap*"). Corporate legal forms with unlimited liability are General Partnership ("*Ansvarlig selskap*") and Limited Partnership ("*Kommandittselskap*"). General partnerships can be formed as a corporation with joint responsibility. Non-corporate legal entities are among others sole proprietorship, associations and foundations.

Hereinafter, the focus will be on Limited Liability Companies, Public Limited Companies, Norwegian Registered Foreign Companies and Societas Euros.

## 20.2 Incorporation

A Limited Liability Company, AS, is founded by a memorandum of association. The content of this memorandum is regulated by the Limited Liability Company Act ("*Aksjeselskapsloven*"). E.g. the memorandum must contain the company's bylaws, name, number of shares, the paid-up part of share capital and the members of the board.

The Joint Stock Public Companies Act ("*Allmennaksjeselskaploven*") regulates a Public Limited Company, ASA. Joint Stock Public Companies Act and Limited Liability Company Act have in most cases the same or similar rules. The differences are mainly that the Joint Stock Public Companies Act has rules which purpose is to protect investors with a limited insight in the company.

Limited Liability Company Act is written for companies with few shareholders whose stocks typically are not as easily transferable. Joint Stock Public Companies Act are is on the other side written for big companies with substantial liquidity in the shares, and which have the ability to raise capital by invitation to subscribe to the general public.

Limited Liability Companies must have a share capital of at least 30,000 NOK or approximately €3,275.00. Public Limited Companies are required to have a share capital of at least 1,000,000 NOK or about €109,000.00. The paid-up part of the share capital is due at the time set in the memorandum of association, but at the latest at the time the company notifies to the Register of Business Enterprises.

A NUF is not a company – it is a Norwegian registered branch of a foreign company. The initial starting point is an enterprise abroad, which has a kind of business that makes it necessary to register a branch in Norway. The branch is not an independent legal entity, and therefore not regulated by Norwegian company law, but by the law of the country where the company is established. The property rights and obligations of the Norwegian registered branch must be allocated to the foreign company. A NUF does not have the capacity to be a party of a law suit; a civil suit must be raised against the initializing company.

The European Joint Stock Company (Società Euros or SE) is a European company with limited liability which is similar to the public limited company, ASA. The European joint stock company can only be

used if it will be operating in at least two EU or EEA states. The aim of this corporate form is that EU and EEA citizens should have the opportunity to organize its transboundary activities in a way that is uniform and simple. The required share capital is €120,000.00.

Both AS, ASA, NUF and SE has to be registered in the Register of Business Enterprises. The price for registration AS, ASAL or SE is 5,666 NOK, or about €623.00, if it is done electronically. Registration done by paper costs 6,797 NOK, or €747.00. For NUF the price is 2,265 NOK or €249.00 electronically, and 2,832 NOK or €311.00 by paper. These figures are exclusive of legal fees.

### 20.3 Managing directors

In Limited Liability Companies and Public Limited Companies, the managing director is as a rule appointed by the board. There is no requirement for Norwegian citizenship, but the managing director, as well as at least half of the board, must be resident in Norway. This rule does not apply for citizens of EU or EEA countries, which is resident in such a country.

The managing director is responsible for daily management of the company, and has to follow the board's directions and general requirements. Managing director must regularly notify the board about the company's activities, position and results.

the managing director is authorized to make any decisions related to the daily management of the company. The board can provide the managing director with the power to sign on behalf of the firm on a general basis. If the managing director exceeds his authority, the company can still be bound. This applies as long as the third party understood or should have understood that the managing director exceeded his authority, and it would go against integrity to hold the company liable.

The managing director may be held liable for damage made negligently or intentionally towards the company, stockholders or others.

### 20.4 Taxation

Limited liability companies and public limited companies are subject to tax, as opposed to e.g. general and limited partnerships. The profits of the enterprise may be taxed as ordinary income at a flat rate of 27%. Ordinary income is defined as total income minus all expenses in economic activity, including tax depreciation.

Corporate shareholders are generally exempted from taxation of gains and dividends on shares etc. There is, however, introduced a rule stating that 3% of the income that is exempt from taxation should be regarded as taxable income.

As a main rule, this provisions also applies to European joint stock companies.

For a NUF where someone with ties to Norway establishes companies with limited liability abroad, but operates only through the business in Norway, the enterprise will be fully taxable in Norway. In such cases, the same rules will apply to the NUF as to the company the NUF is a part of. In cases where the management of the company takes place abroad, the NUF will be taxable to Norway for business conducted in Norway.

## 20.5 Reporting requirements

If there are any changes in the corporate structure in the company, this has to be reported the Register of Business Enterprises. Notification shall be filed without undue delay.

The obligation to report lie with each board member. Upon conveyance and other changes in registered relations, the obligation to report lie with whoever after the change is the proprietor, responsible partner, director or manager.

Special provisions apply for NUF, where the obligation to report lie to the board for the establishment in Norway, if such a board exists. If there is no such board, the obligation to report lies to the managing director. If there is no managing director, the obligation to report lie with the ones who can commit the company by their mark.

# 21. Portugal

## 21.1 Corporate Forms available

Portuguese law allows businesses to be run either under corporate or non corporate forms. Corporate entities are the following:

- Public Limited Company (*Sociedade Anónima*);
- Private Limited Liability Company (*Sociedade por Quotas*);
- Single Shareholder Limited Liability Company (*Sociedade Unipessoal por Quotas*);
- Partnership Company (*Sociedade em Nome Colectivo*);
- Limited Partnership Company (*Sociedade em Comandita*).

Corporate forms without a business purpose (cooperative companies, associations, foundations) will not be addressd here.

The first three types listed above account for the vast majority of commercial companies in Portugal and the last two, although popular in the past, are seldom used in present days.

Non corporate business structures are:

- Sole Entrepreneurship (*Empresário em nome Individual*);
- The Individual Liability Establishment (*Estabelecimento Individual de Responsabilidade Limitada*).

**21.1.1** The Public Limited Company (*Sociedade Anónima*) is the type most usually used by large companies. The capital is represented by shares (*acções*) and as a rule there must be a minimum of five shareholders, but the law also allows for the incorporation of an SA by another SA which shall be the sole owner of the entirety of its share capital. Minimum capital is 50.000 euros.

**21.1.2** The Private Limited Liability Company (*Sociedade por Quotas*) is the company type most common with medium and small businesses. The capital is represented by the aggregate of the contributions (*quota*) of all shareholders (*sócios*). There is a minimum requirement of two shareholders, but it can be just one for a period not exceeding one year. Each shareholder is liable to the company and its creditors only up to the limit of his contribution (*quota*), but the articles of association may define that one or more shareholders shall also be liable up to an established amount. There is no minimum capital requirement, it can be 2 euros (the minimum of 2 quotas of 1 euro each).

**21.1.3** The Single Shareholder Limited Liability Company (*Sociedade Unipessoal por Quotas*) is a simple variation to the model above, with the difference that one single individual or legal person (*sócio único*) may hold the entire business capital. The rules applicable to this corporate model are the same applicable to the model above, except those that imply the existence of multiple shareholders. There is no minimum capital required.

- 21.1.4** The Partnership Company (*Sociedade em Nome Colectivo*) is an unlimited entity in which partners have unlimited liability before the company creditors. Those partners who meet the obligations of the company have a right of return against other partners. The minimum number of partners is two and partners of industry are admitted provided its respective share has a value defined in the articles of association. There is no minimum capital required since partners have unlimited liability.
- 21.1.5** The Limited Partnership Company (*Sociedade em Comandita*) is a company with mixed types of liability, where one or more partners (*sócios comanditados*) are subject to unlimited liability for the company's obligations, as in the model above, and others (*sócios comanditários*) have their liability limited to their respective contributions to the capital. One of two subspecies shall be adopted: Simple Limited Partnership (*Sociedade em Comandita Simples*), with a minimum of two partners and no minimum capital, or Partnership Limited by Shares (*Sociedade em Comandita por Acções*), with a minimum of five partners whose liability is limited to their shares and minimum capital of 50,000 euros. As already mentioned, this model and the one above have been in disuse.
- 21.1.6** The Sole Entrepreneurship (*Empresário em nome Individual*) non corporate model is a common way of running a business by physical persons. There is no minimum capital required to start an activity and its owner has unlimited liability for the business losses and debts. There is no legal separation between business and proprietors' assets.
- 21.1.7** The Individual Liability Establishment (*Estabelecimento Individual de Responsabilidade Limitada*) is another form of running a business by a physical person, with the difference that in this case there is a legal distinction between owner's assets and business assets. Owner's personal assets do not respond for business debts. Minimum capital required is 5.000 euros, of which at least two thirds must be paid in cash, the remaining being allowed in kind. The registered name of the business must include the name of its owner.

## **21.2 Incorporation (form, time, costs, share capital requirements)**

There are two different ways of incorporating a company in Portugal: a) The simplified regime, using the On the Spot Firm or the Online Set-up services and b) the traditional set-up.

### **21.2.1 Simplified regime:**

- a) The On the Spot Firm (*Empresa na Hora*) service - available since 2005, allows setting up a business in less than an hour. All the procedures are carried out at one of the desks of the On the Spot Firm service available throughout the country, regardless the location of the company's main office. The service also provides a pre-approved trade mark similar to the company's trade name.

This service is only available for Public Limited Companies (*Sociedade Anónima*), Private Limited Liability Companies (*Sociedade por Quotas*) and Single Shareholder Limited Liability Companies (*Sociedade Unipessoal por Quotas*). The shareholders may choose a name for the company from a list of pre-approved names, which includes already the corporate identification number, taxpayer number (*NIPC*) and social security number. A reference to the nature of the company's activity shall be added to the pre-approved name. The alternative to use a not pre-approved name is possible, in which case a certificate of the name approval issued by the National Registry of Corporations must be produced, which cost is 75 euros.

Shareholders shall also choose the articles of association from one of the several pre-approved models, that will be immediately executed, followed by the commercial registry which is performed immediately afterwards. An access code to the on-line commercial registry certificate will be immediately provided, as well as the company card with all corporate data and a certified copy of the articles of association.

Shareholders shall proceed with the deposit of the share capital within five days after the incorporation or, in the case of Private Limited Liability Companies and Single Shareholder Limited Liability Companies, the shareholders may declare in the incorporation document that the capital will be deposited in a company's bank account until the end of the first fiscal year.

In cases where the capital shall be paid in kind with assets whose transfer is subject to taxation, evidence of its payment shall be provided.

Cost of incorporation in case of pre-approved name and articles of association is 360 euros.

- b) Online Set-up - enables the incorporation of a company on the internet. Available for Public and Private Limited Liability companies is made at the Company Portal (*Portal da Empresa* [www.portaldaempresa.pt](http://www.portaldaempresa.pt)), which procedure is supervised by the National Registry of Corporations.

Procedures are the same as described above. Registration on the National Registry shall be immediate if the company chooses a pre-approved model of articles of association, or within a maximum of two business days if a different version is used.

Incorporation process is confirmed by e-mail and documentation will be sent by regular mail to the company's head office.

Cost of incorporation in case of pre-approved name and articles is 180 euros and 380 euros otherwise. Technology and Investigation companies only pay 120 and 300 euros. The provision of an associated trade mark costs 120 and 100 euros respectively.

- 21.2.2** Traditional set-up – although companies may be incorporated in Portugal through the highly simplified procedures described above, investors may prefer to follow the traditional procedure which main steps are: (i) the obtainment of a name approval certificate (*certificado de admissibilidade*) from the National Registry of Corporations (*RNPC*); (ii) the execution of a written memorandum of association, which shall contain as an attachment the articles of association, signed by the shareholders and which signatures shall be certified, in presence, by a notary or a lawyer, (iii) the registration of the company and its corporate bodies with the National Commercial Registry and (iv) the deposit of the share capital.

Cost of incorporation may vary slightly according to the company type, but is approximately 700 euros.

### **21.3 Managing directors (appointment, power, liability)**

In general, managing directors are responsible for representing the company and managing its business and must perform their duties with diligence and loyalty, in the best interests of the company and its shareholders. They have the power to carry out all acts necessary to achieve the

objects of the company, but taking into consideration any restrictions that may be imposed in the articles of association or by resolution of the shareholders. Their actions are assessed with reference to the standards of care of a reasonable businessman and will be deemed valid as long as they have acted informedly, independently and in accordance with acceptable business criteria. The liability of the directors to the company does not exist when the act or omission shall be based on a resolution of the shareholders.

### **21.3.1** Public Limited Liability Company (*Sociedade Anónima*)

May have three different models of corporate structure:

- a) Board of Directors (*Conselho de Administração*) and Supervisory Board (*Conselho Fiscal*);
- b) Board of Directors (*Conselho de Administração*) including an Auditing Committee (*Comissão de Auditoria*) and an independent Auditor (*Revisor Oficial de Contas - ROC*);
- c) Executive Board of Directors (*Conselho de Administração Executivo*), General and Supervisory Board (*Conselho Geral e de Supervisão*) and independent Auditor (*Revisor Oficial de Contas - ROC*).

The articles of association shall fix the number of members of each body. If the share capital does not exceed 200.000 euros the articles of association may allow that the board be replaced by one sole director.

The law may impose that companies following model a) above must in some cases appoint an auditor (*ROC*) who shall be independent from the Supervisory Board.

Companies with one sole director may not follow model b) above.

Board directors may be designed in the articles of association, otherwise shall be elected at the general shareholders meeting. Term of office is also fixed in the articles of association but shall not exceed four years. Shareholders may be part of the board of directors. Members of the board must be physical persons. If a legal person is elected to the board it shall appoint an individual to perform the role in his own name.

### **21.3.2** Private Limited Liability Company (*Sociedade por Quotas*)

Must have one or more managers (*gerentes*) designed in the articles of association or elected by the shareholders unless otherwise stated, who are entitled to exercise all the powers. They must be physical persons with full legal capacity and do not need to be shareholders. Managers may only delegate their powers to other managers and, in any case, just for a specific deal or type of deals. Term of office is not limited by the law but may be fixed in the articles of association.

### **21.3.3** Single Shareholder Limited Liability Company (*Sociedade Unipessoal por Quotas*)

As above. The single shareholder (*sócio único*) may appoint the manager/s and exercises all the powers of the general meeting.

### 21.3.5 Partnership Company (*Sociedade em Nome Colectivo*)

Save when otherwise stated in the articles of association all partners are deemed company managers, but they may decide by unanimous voting to appoint as manager any person alien to the company.

A partner that is a legal person may not act as manager but may appoint an individual to act as such in his own name, unless prohibited in the articles of association.

Term of office is not limited by the law.

### 21.3.6 Limited Partnership Company (*Sociedade em Comandita*)

a) - Simple Limited Partnership (*Sociedade em Comandita Simples*):

As in 21.3.5 (Partnership Company) above.

b) - Partnership Limited by Shares (*Sociedade em Comandita por Acções*):

As in 21.3.3 (Public Limited Liability Company) above.

## 21.3 Taxation

Corporate tax (*Imposto sobre o Rendimento das Pessoas Colectivas-IRC*) is charged on companies profits. Standard corporate tax rate is 21% (16,8% in the Azores). A reduced rate of 17% (13,6% in the Azores) applies to the first 15,000 euros of taxable profits of small and medium size companies.

A state surcharge is levied in 2017 on taxable profits at the following rates: 3% for profits over 1.5 million up to 7.5 million euros; 5% on profits over 7.5 million up to 35 million euros and 7% on profits over 35 million euros.

A municipal charge (*derrama*) is levied on taxable profits at rates up 1.5%, depending on the respective local council, resulting in a maximum possible combined rate of tax of 29,5%.

## 21.4 Reporting Requirements

Any change in the name of the company, capital, form of binding, seat, structure and members of the corporate bodies shall be registered with the National Commercial Registry.

The annual accounts are also subject to registration and must be submitted until 15 July of the immediate following year, together with other accounting, fiscal and statistics information (*Informação Empresarial Simplificada – IES*), in electronic format at the portal [www.portaldasfinancas.gov.pt](http://www.portaldasfinancas.gov.pt) of the Ministry of Finance. This information is available to the public.

# 22. Slovakia

## 22.1 Corporate forms available

The Slovak Law recognizes a variety legal forms of companies under which it is possible to do business in the Slovak Republic.

Corporate legal forms include Limited Liability Company (the name of the corporation must contain the word “*spoločnosť s ručením obmedzeným*”; or its abbreviation “*s.r.o.*” or a “*spol. s r.o.*”), Joint-stock Company (the name of the corporation must contain the word “*akciová spoločnosť*” or its abbreviation “*a.s.*” or an “*akc. spol.*”) and the European Company (Societas Euros). For the purposes of conducting business activities in the territory of the SR, the Limited Liability Companies and the Joint-stock Companies are founded in most of the cases. Limited Liability Company is usually seen as being the most convenient for foreign investors due to its relatively simple procedure of incorporation and corporate governance. The legal regulation of a Limited Liability Company is adapted to companies with small number of partners and its operation is therefore less formalized than the operation of a Joint-stock Company.

The non-corporate forms consist of sole entrepreneurship, general partnership and limited partnership.

## 22.2 Incorporation (form, time, costs, share capital requirements)

### 22.2.1 Limited Liability Company

A Limited Liability Company is the most commonly used legal form of corporate entity in Slovak republic and is described by the Commercial Code in detail.

The company can be established by one natural person or by one legal entity whether domestic or foreign, with the maximum number of 50 shareholders. The foundation document of a Limited Liability Company is known as the Memorandum of Association. If there is only one participant, instead of a Memorandum of Association, a Foundation Deed is to be executed. Memorandum of Association may provide that the company shall issue statutes to govern the internal organization and detailed some of the matters contained in the Memorandum of Association. The signatures of founders in Memorandum of Association must be officially certified. After establishing the company the company has to obtain a permit for its scope of business. A Limited Liability Company can only be established by a person who has no tax arrears. Applications to register a limited company in the commercial register must therefore include a certificate to that effect from the tax authority. This will be issued by the tax administrator within five business days unless the aggregate tax arrears exceed €-170.00.

A limited liability company is a company where the basic capital includes the predetermined investments of the partners. The value of the basic capital of the company must be at least €-5.000.00. The minimum investment is €-750.00, per shareholder. The investment can also be non-monetary. At least 30% of each such investment must be paid up prior to the registration with the commercial register; however, the total amount of paid up registered capital together with paid non-monetary investments must be at least €-2.500.00. The rest of investments must be paid up within the period of five years after the incorporation. If the company was founded by one founder, the company can be incorporated only if the basic capital was repaid in full amount.

Limited Liability Company comes into existence on the date on which it is incorporated into the Commercial Register. Application for the incorporation into the commercial register must be filed not later than 90 days from the establishment of the company and is subject to fees. Court fee for registration Limited Liability Company is €331,50.00 for standard paper submissions and for electronic filing, the court fee is halved - therefore only €165,75.00.

Commercial register shall incorporate company within the period of two business days from the submission of complete and duly prepared application.

### **22.2.2 Joint-stock Company**

A Joint-stock Company is a company where the basic capital is divided into a specific number of shares with a designated nominal value. The legal regulation of a Joint-stock Company is adapted to companies with a large number of shareholders and its operation is therefore much more formalized than the operation of other types of companies. The shares must be registered with the Central Securities Depository of the Slovak Republic, what is accompanied by further expenses.

A Joint-stock Company may be established by a legal entity or two or more founders. If the company is established by two or more founders, a Memorandum of Association must be executed. If a sole founder establishes the company, instead a Memorandum of Association, a Foundation Deed is to be executed. The Memorandum of Association or the Foundation Deed must be executed in the form of a Public Notary's Deed. The Articles of Association of the company shall form a part of the Memorandum of Association, or where applicable, the Foundation Deed

A Joint-stock company may be a private Joint-stock Company or a public Joint-stock Company. A company that has issued all or part of its shares on the basis of a public call for subscription of shares, or whose shares were admitted by a stock exchange to be traded on the stock market, shall be regarded as a public Joint-stock Company. The basic capital of the company is at least €-25,000.00, at least 30% of the monetary investments must be paid by its founders prior to the registration of the company with the commercial register, while all non-monetary investments must be paid up in full and the rest within the period of one year after incorporation.

A joint stock company must create a reserve fund upon its incorporation in the amount of at least 10% of its registered capital and supplement it each year with the amount of at least 10% of the net profit up to the total amount of 20% of the registered capital.

The Constituent General Meeting is required unless the founders agree to pay the entire share capital themselves without raising funds through a public call for subscriptions. The Constituent General Meeting must be conveyed within 60 days of the last subscription for shares. If it is not, the subscription will be null and void. The Constituent General Meeting shall (i) decide on the company's establishment; (ii) approve the Articles of Association, (iii) elect such company bodies, which the General Meeting is authorized to elect according to the Articles of Association. The course of the Constituent General Meeting shall be substantiated by a Public Notary's Deed. If the founders agree to pay up the entire share capital themselves, the presence of all founders gives the meeting the same status as the General Meeting. After establishing the company the company has to obtain a permit for its scope of business.

Application for the incorporation into the commercial register must be filed not later than 90 days from the establishment of the company and is subject to fees. Court fee for registration Joint-stock

Company is €829,50.00 for standard paper submissions and for electronic filing the court fee is halved, therefore only €414,75.00.

Once a complete application for the registration of the company is filed with the competent court, the court should decide on the registration of the company within two business days from delivery of that application.

## **22.3 Managing directors (power, appointment, liability)**

### **22.3.1 Limited Liability Company**

The general assembly appoints one or more managing directors as the statutory body of the Limited Liability Company. If there are more managing directors each of them shall be entitled to act individually on behalf of the company, unless the Memorandum of Association or the Articles of Association stipulate otherwise. The managing director can only be a natural person, not a legal entity. Managing directors decide on all matters of the company not vested to its general assembly, act on behalf of the company and represent the company in relations with third persons. Only the Memorandum of Association or the general assembly may only restrict the power of managing director.

The managing directors are obliged to exercise their functions with due care and in compliance with the interest of the company and of all its members. They are particularly obliged to seek and take into account in making decisions all available information related to the subject of decision, keep silent on confidential information and facts the disclosure of which to third parties might cause damage to the company or threaten its interest for the interest of its members, and during the exercise of their functions, they may not prefer their own interests, the interests of some members or the interests of third parties over interests of the company. The Managing directors who have breached their obligations during the performance of their functions are jointly and severally liable for damaged incurred by their company by their breach.

### **22.3.2 Joint-stock Company**

The Board of Directors shall be the statutory body of the company, which shall manage its operations and act on its behalf. The Board of Directors shall decide on all matters of the company, unless they are reserved to the authority of the General Meeting, by the Commercial Code or the Articles of Association. Unless the Articles of Association stipulate otherwise, any member of the Board of Directors shall be authorized to act on behalf of the company. The names of the members of the Board of Directors authorized to bind the company and the manner in which they take over such binding obligations shall be recorded in the Companies Register.

Members of the Board of Directors shall be elected by the general assembly from among the shareholders or other persons for a period stipulated in the Articles of Association, however not exceeding 5 years. The Articles of Association may provide that the Directors shall be elected and recalled by the Supervisory Board in the manner specified therein. The members of the Board of Directors shall be bound to exercise their authority with due care. Members of the Board of Directors who have breached their duties in the performance of their activity are jointly and severally liable for damages that they caused to the company.

## **22.4 Taxation (corporate tax, capital gains tax, other taxes)**

Legal entities, which seat in the Slovak Republic or whose management is seated in Slovakia, are generally regarded as resident and they are liable to pay corporate income tax in Slovakia.

Limited Liability Company and Joint-stock Company are subject to corporate income tax on their income and profits which is currently at a rate of 22%.

Recently a minimum tax, that is, a tax license has been introduced for legal persons, to be paid always, also in the event that the company reported a tax loss. The tax license is dependent on the turnover and on whether a company is or is not subject to VAT. The lowest tax license is in the amount of €-480.00, and maximum in amount of €-2.880.00.

## **22.5 Reporting Requirements**

Both companies are obliged to file any amendments in the corporate structure of the company with the commercial register within period stated in the Commercial Code. The most of changes shall become effective only upon registration in commercial register.

The competent authority of a Joint-stock company and Limited Liability Company must submit ordinary financial statements and extraordinary individual financial statements for approval within six months after expiration of the financial year. Currently, the financial statements are inserted only in the register of accounts and operator of the registry of accounts sent the financial statements in the collection of documents which is publicly available.

# 23. Spain

## 23.1 Corporate forms available

As to business undertakings, Spanish law provides for a variety of vehicles (corporate and non-corporate legal forms). The most significant are:

- Corporation (*Sociedad Anónima*, abbreviated as “S.A.”).
- European Public Limited-Liability Company (*Sociedad Anónima Europea*, abbreviated as “S.E.”). Possibility offered by EU legislation to companies that operate in various Member States to create a single company capable of operating in the EU in accordance with a single set of rules and a unified management system.
- Limited Liability Company (*Sociedad de Responsabilidad Limitada*, abbreviated as “S.L.” or “S. R. L.”).
- New Limited Liability Company (“*Sociedad Limitada Nueva Empresa*” abbreviated as “S.L.N.E.”), a variation on the S.L. specially intended for small and medium-sized companies that simplifies the requirements for its formation.

The most common forms used are the corporation (S.A.) and, principally, the limited liability company (S.L.), both regulated by the Companies Act (“Ley de Sociedades de Capital”).

Individuals can develop professional or business activities directly and, as an exception to the limited liability regime for any public law debts acquired, to join to the specific regime of the “Limited Liability Entrepreneur” which implies some limitations or the liability in terms of the principal/normal residence cannot be affected by the debts.

Furthermore, it is also possible to doing business in Spain through a branch or permanent establishment, joint venture, or even, without setting up a business or entering into an association with existing business or signing a distribution agreement, operating through an agent or commission agents.

## 23.2 Incorporation (form, time, costs, share capital requirements)

The incorporation of a corporation (S.A.) and a limited liability company (S.L.) requires, in any case, the execution of a public deed before a public notary for which it will be necessary to obtain, previously, the following documentation:

- NIF (Spanish Foreigner Identification Number) for the shareholders / Directors of the company, if necessary (non-residents in Spain), and the Spanish VAT number for the company before the Spanish Tax Office;
- Certificate from the Central Commercial Registry with the proposed corporate name;
- Certificate from a Spanish bank entity accrediting the transfer of the minimum share capital into an account open under the name of the company in case of contributions in cash.

The public deed will also incorporate the articles of association of the company in which it is indicated the following data: registered address, corporate purpose, duration, share capital and its payment, type of shares, Board of Directors, powers of representation, shareholders' rights.

The process of incorporation ends with the registration of the deed of incorporation before the Spanish Commercial Register.

The minimum share capital for corporation (S.A.) is €60,000 and, at least the 25% must be paid upon formation; in case of the limited liability company (S.L.), the minimum share capital is €3,000 and must be totally paid upon formation. In case of non-monetary, for the S.A. it is necessary a report from an independent expert; for the S.L., it is not required although the founders and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made.

Once the public deed has been filed with the Spanish Commercial Register, the registration must be done within the fifteen (15) working days as from the date of the entry recording the filing of the deed, unless there is just cause, in which case the period will be thirty (30) working days. Our experience is that, setting up a corporation (S.A.) or limited liability company (S.L.) using the ordinary procedure takes between 3 - 6 weeks.

The notarial fees are charged on a sliding scale based on the share capital (approximately €90 for the first €6,010, after which rates of between 0.03% and 0.45% are applied to amounts of between €6,010,121 and €601,012.10). The costs of the registration before the Spanish Commercial Register amount to €6.01 for the first €3,005, after which there is a sliding scale ranging from 0.005% and 0.10% for capital more than €6,010,121 (with a maximum of €2,180). Our experience is that the incorporation of a limited liability company (S.L.) with the minimum share capital (€3,000) will amount €450 approximately.

Without prejudice to the foregoing, the Law 14/2013, of September 27, 2013, on support to entrepreneurs and their internationalization (the "Entrepreneurs Law") provides an express regime for the formation of limited liability companies, with or without standard articles of association, in 24 hours and with reduced costs.

### **23.3 Managing directors (power, appointment, liability)**

For all kinds of companies, it is mandatory that the management body structure is contained in the public deed of incorporation and articles of association, and filed with the Spanish Commercial Register. It is also mandatory that the appointment of the persons/entities (who needn't be shareholders or have Spanish nationality) being part of the management body structure be filed with the Commercial Register.

Each of a corporation (S.A.) and limited liability company (S.L.) may have the following governing structure:

- Sole Director;
- Two of more joint and severally Directors;
- Two joint Directors in case of corporation (S.A.); two or more joint Directors in case of limited liability company (S.L.);

- Board of Directors with a minimum of three members in both type of entities and a maximum of twelve members in case of limited liability company (S.L.); with no limit of members for corporation (S.A.). It is possible to delegate daily matters to any person/s (with limited or unlimited faculties), acting singly or jointly.

The articles of association must specify the term of office (for S.A. for a maximum 6 years, although they may be reelected for periods of the same maximum duration; for S.L. may be indefinite); as well as if the charge is remunerated or non-remunerated.

Directors must comply with the duty of diligent administration and faithful defense of the corporate interests. Directors are liable to the company, its shareholders and its creditors for damage caused by acts that are illegal, contrary to the articles of association or carried out in breach of the duties specific to the office. In such cases, all directors are jointly and severally liable. A director can only be released from liability in some specific circumstances (it will be necessary to prove that the Director did not participate in the adoption or execution of the resolution and that was unaware of the existence of the harmful act that he/she did everything reasonably possible to mitigate it or at least expressly opposed the resolution giving rise to the harm). The liability of the Directors is equally extended to those “de facto” Directors.

#### **23.4 Taxation (corporate tax, capital gains tax, other taxes)**

Corporate income tax (“*Impuesto sobre Sociedades*”) applies to entities that are tax resident in Spain. Tax-resident entities are taxed on their worldwide income, and an entity is considered resident in Spain for tax purposes if it has been incorporated in accordance with the laws of Spain, or if it has its registered office or its effective place of management, in Spain.

The general rate in Spain is 25% for tax periods starting on or after 1 January 2016. Other tax rates may apply, depending on the type of company that is taxed and the type of business carried out (i.e. banks are subject to a rate of 30%).

New companies are taxed at a 15% tax rate for tax periods starting on or after 1 January 2015, for both the first tax period in which they obtain a profit and the following tax period. This tax rate is not applicable to companies that, by law, are considered equity companies.

#### **23.5 Reporting Requirements**

The legal representatives of both, corporation (S.A.) and limited liability company (S.L.), or any other person holding a special authority for these purposes, must file any amendments of the articles of association or any General Meeting/Board of Directors resolutions before the Spanish Commercial Register which imply an alteration of the representation before third parties (i.e. cessation or appointment of legal representatives, the granting or revocation of powers of attorney). In general terms, it also requires the granting of a public deed (which will be the document to be filed with the Commercial Register) but there are some exceptions (i.e. the appointment of a legal representative if it does not imply a modification of the articles of association).

The shareholders of both type of companies must approve, within the six months following the closing of the fiscal year, the financial statements of the previous year at their Annual General Meeting. The financial statements should be filed with the Spanish Commercial Register during the month following its approval.

# 24. Sweden

## 24.1 Company forms available

The main company legal forms in Sweden are the following:

- (a) Private limited liability Company (*Swe. Privat aktiebolag*).
- (b) Public limited liability Company (*Swe. Publikt aktiebolag*).
- (c) Partnership (*Swe. Handelsbolag*).
- (d) Limited liability partnership (*Swe. Kommanditbolag*).
- (e) Sole proprietorship (*Swe. Enskild firma*).
- (f) European limited liability company (*Swe. €pabolag*).
- (g) Economic association (*Swe. Ekonomisk förening*)

Private limited liability companies, hereinafter referred to as companies, is by far the most common corporate form in Sweden, why this outline focuses on companies.

## 24.2 Incorporation (form, time, costs, share capital requirements)

The Swedish Companies Act (2005:551) and the Articles of association, hereinafter referred to as AoA, set forth the legal structure for a company. At the formation of a company, the first step should be for the founders to prepare a draft memorandum of association, included with the AoA. The memorandum of association is the basic contract document regarding the formation of the company, while the AoA is the basic document of the company's future operations.

The memorandum of association shall contain information regarding the subscription price, full name, postal address, ID number of members of the board and, where applicable, auditors, alternate board members, alternate auditors and general examiners. Subscription for shares shall take place in the memorandum of association. The company shall be deemed formed when the memorandum of association has been signed by all founders. The board of directors shall apply for registration of the company in the Companies Registry within six months of the signing of the memorandum of association. The registration fee at the Companies Registry is 1,900 – 2,200 SEK.

The AoA shall state the company's name, the location of the company's registered office, the object of the company's business, the share capital, the number of shares, the number of board members and auditors, the procedure for convening general meetings and the financial year, calendar year or other. If the company has the € as its accounting currency, this shall be specified. Alternations of the AoA shall be resolved upon by the general meeting.

A company shall have a minimum share capital of 50,000 SEK. It should be noted that the most quick and cost-efficient way to establish a company in Sweden normally is to buy an off-the shelf company. Such companies can be obtained from several suppliers at a cost of approximately 10,000 SEK.

### **24.3 Managing directors (power, appointment, liability)**

The board of directors may appoint a managing director and the managing director shall attend to the day-to-day management of the company pursuant to the board's guidelines and instructions. In addition, the managing director may, without authorization by the board of directors, take measures which are of an unusual nature and of great significance, provided a decision by the board of directors cannot be awaited without significant prejudice to the company's operations. The managing director may at all times represent the company and has the power to sign for the company regarding the day-to-day management. The managing director shall be resident within the European Economic Area but the Swedish Companies Registration Office may grant an exemption to this requirement.

A founder, member of a board of directors or a managing director who, in the performance of his or her duties, intentionally or negligently causes damage to the company shall compensate such damage. This shall also apply where damage is caused to a shareholder or a third party as a consequence of a violation of the Swedish Companies Act, the applicable annual reports legislation, or the AoA.

### **24.4 Taxation (corporate tax, capital gains tax, other taxes)**

Legal entities are only liable to pay the state income tax. The income tax for companies has a tax rate of 22%. Dividends are subject for income tax by the shareholder with a tax rate of maximum 30% if the shareholder is a natural person. For a legal entity, all taxable income constitutes business income and is considered as acquired in one single business. This means, inter alia, that the same tax period applies to a company for all of its activities and incomes.

Companies which operate by trading goods or services in Sweden are obliged to charge VAT to customers and pay VAT to the Swedish Tax Authority. In sales of products and services, VAT is included at the rate of 25%, 12% or 6% of the sales price, depending on which products and services. Some services are outside of the scope of VAT. Companies with employees must pay employer's contributions, which, for the year 2015, was 31.42% of the paid salary and benefits.

Group contributions and other dividends for companies are, in most cases, free from income tax, if the holding is attributable for the business of the holding company. According to the Swedish Income Tax Act (1999:129) group relationships is taken into account in different ways. There is, inter alia, tax exemptions for dividends and capital gains on business-related shares, including subsidiary shares.

### **24.5 Reporting requirements**

Changes of company name, seat, composition of the board, managing director, AoA and signatory must be registered by the Swedish Companies Registration Office. Then the new AoA and minutes from the general meeting of shareholders must be sent to the Swedish Companies Registration Office, along with the notification.

After each financial year the companies must always prepare annual accounts and report to the Swedish Companies Registration Office. This applies regardless of whether the company has been operational or dormant.

# 25. Switzerland

## 25.1 Corporate forms available

Under Swiss law, it is possible to choose between several company forms. Swiss Law distinguishes between capital companies and unincorporated companies (sole proprietorship and partnerships).

The corporation (Ltd) (Société anonyme – SA / Aktiengesellschaft – AG) and the limited liability company (LLC) (Société à responsabilité limitée – Sàrl / Gesellschaft mit beschränkter Haftung – GmbH) are the most common forms of capital companies. The most important unincorporated company is the simple partnership.

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### 25.1.1 Corporation

The corporation is a company with its own firm name, a fixed capital (share capital) divided into specific amounts (shares) whose liability is limited exclusively to the company's assets. Furthermore, the corporation can pursue any purpose which is legally permitted.

The corporation is the most important company form in Switzerland. It is suitable for a wide range of businesses, both small and large, and it is the only company form that may be listed on a stock exchange. It is a legal entity that maintains legal relationships with third parties and its shareholders. The shareholders, however, have no legal relationship with each other unless through a shareholders' agreement. Moreover, the identity of the shareholders is not public. In contrast, the identity of the members of the board of directors (the BoD) appears on the excerpt of the commercial register which is, apart from the articles of association and other documents filed with the commercial register, the only public document for non-listed companies.

Shareholders are either individual persons or legal entities. There is no maximum or minimum number of shareholders. The corporation is a suitable vehicle for companies with only one shareholder on the one hand and for large public corporations with thousands of shareholders on the other hand.

As a general rule, shareholders and members of the BoD have no liability per se for corporate debts which makes the corporation attractive. Members of the BoD may be held liable in case of violation of the law or the articles of association of the corporation.

### 25.1.2 Limited liability company

As in the case of a corporation, the limited liability company is a corporate entity with an own firm name and a registered capital fixed in advance. Limited liability companies pursue primarily commercial purposes but are also allowed to pursue non-commercial purposes.

In line with the rules for corporations, a limited liability company may be established by one or more individuals or legal entities or other commercial companies (*Handelsgesellschaften*). There is no maximum or minimum number of members.

As with corporations, members and managing directors of limited liability companies have no liability for debts of the limited liability company. In other words, a limited liability company is liable to its creditors only with its corporate assets. However, the articles of association of the limited liability company may require the members (*Gesellschafter*) to make additional capital contributions when the sum of the nominal capital and statutory reserves is no longer covered, when the company is unable to continue its business affairs in a proper manner without additional funds or for reasons specified in the articles of association.

Unlike corporations, a limited liability company has a personal element. Unless agreed otherwise, all members have both the right and the obligation to take part in management.

While the identity of the shareholders of a corporation does not appear on the excerpt of the commercial register, the identity of the members of a limited liability company does appear on the excerpt of the commercial register as well as the number and the value of their capital contributions (*Stammanteile*).

This form of company is more attractive than the corporation for small businesses. However, the limited liability company can be structured in many ways like a corporation.

### **25.1.3 Simple partnership**

The most important unincorporated company is the simple partnership. The simple partnership is a contractual agreement which can also be entered into by implicit conduct of the parties. In terms of the object of this agreement, the founders only need to agree on the achievement of a common purpose and on the contribution obligation. A simple partnership is a partnership that does not fulfil the requirements of any of the other company forms. Thus, the simple partnership is subsidiary to all other company forms. The simple partnership is particularly suitable for relationships of a limited duration - because in comparison to other company forms a simple partnership can easily be dissolved - and where personal involvement of the partners of the simple partnership is desirable. The simple partnership does not need to be registered with the commercial register.

In practice, the simple partnership is a significant company form. Consortiums relating to large construction projects and joint ventures are often structured as simple partnerships. The same applies to shareholders' agreements.

## **25.2 Incorporation (form, time, costs, capital requirements)**

The document evidencing the establishment of a corporation as well as the establishment of a limited liability company is the notarised public deed. In this document, the founders declare that a company is formed by adopting the articles of association (the AoA) and by appointing the various bodies.

For both the corporation and the limited liability company, the AoA set forth the basic structure of the company. The AoA contain notably provisions on the following: company name and domicile of the company; purpose of the company; amount of the capital and number and nominal value of the shares or of the capital contribution.

Amendments to the AoA are still possible after the formation of the company but result in further costs and time delays as they need to be notarised.

Upon incorporation of the company, the corporation as well as the limited liability company must be registered with the commercial register at the place it has its registered office. Upon entry in the commercial register, the company comes formally into existence.

The commercial register application must be accompanied by all the documents required by law (such as the public deed, AoA, letters of acceptance regarding the election of the BoD (for corporations)/ managing directors (for limited liability companies) and the auditors, Stampa- and Lex-Friedrich declarations).

The application for registration with the commercial register must be signed by one director with sole signatory power or two directors with joint signature power. Registration with the commercial register usually takes 1 to 2 weeks from submission of the filing.

As set forth above, the AoA must contain the nominal value of the shares (for corporations) and capital contributions (for limited liability companies). The minimum share capital of a corporation is CHF 100,000 of which a capital equivalent to at least 20% of the nominal value of each share, but no less than CHF 50,000 in total, must be paid in at the time of incorporation. The minimum nominal value of the capital contributions required to be fully paid in for a limited liability company is CHF 20,000.

While the fees of the notary public and the commercial register vary between the cantons, the overall costs for a simple cash formation of a company with minimum capital amount to around CHF 5,000.

### **25.3 Members of the board of directors (Corporation) and Managing directors (limited liability company) (power, appointment, liability)**

Simultaneously with the execution of the AoA, the first member(s) of the BoD of the corporation, respectively the first managing director(s) of the limited liability company, must be appointed. They do not need to be Swiss citizen(s). However, either one individual with sole signatory power or two individuals with joint signatory power having their place of residence in Switzerland must be registered with the competent cantonal commercial register. Such individuals must either be members of the BoD (respectively a managing director) or a member of the executive management.

As the governing body, the members of the BoD and the managing directors represent the company. They are responsible for managing the business of the company unless responsibility for such management has been delegated. The members of the BoD and the managing directors may pass resolutions on all matters that are not explicitly reserved to the shareholders' meeting by law or by the AoA and which have not been delegated to the executive management.

The members of the BOD and the managing directors have duties of care and loyalty towards the company. These duties require them to act in the same way as a diligent and competent member would have acted in the same circumstances. Compliance with the duties is, hence, assessed by reference to an objective standard unless a director is an expert in a certain field, in which case the duty of care of such director will be assessed by reference to a diligent and competent director having the same level of expertise in the relevant field.

It is established case law that decisions of the directors that are based on adequate information and a reasonable and professional decision-making process do not constitute a breach of duty, even if such decision proves to be wrong retrospectively, provided, however, that directors involved acted in an impartial and independent manner and were free of any conflict of interests when making the decision (the 'business judgement rule'). If a decision meets these standards, directors cannot be held liable for a decision which turns out to be unfavourable.

In general, the members of the BoD of a corporation and the managing directors of a limited liability company as well as all members of the executive management are liable to the company, to the individual shareholders and creditors for any losses or damages arising from any intentional or negligent breach of their duties.

#### **25.4 Taxation (corporate tax, capital gains tax, other taxes)**

The Swiss tax system is shaped by the country's federal structure. Companies and individuals are taxed at three different levels in Switzerland:

- national level (federal taxes)
- cantonal level (cantonal taxes)
- municipal level (municipal taxes)

The largest portion of taxes is levied by the cantons and municipalities. All taxes (at the federal, cantonal and municipal level) are collected by a single cantonal authority in the respective canton.

Each canton has its own tax laws that are, however, harmonized by federal law. Nevertheless, the competence to set the tax rate remains with the cantons and the municipalities respectively. Therefore, there are significant differences between cantons and combined effective tax rates, i.e. tax rates currently vary between 12% and 24% depending on the canton and the municipality of residence of the person or company.

Corporate income tax is levied on the net worldwide income generated by companies with registered office in Switzerland and the taxable income constitutes the gross income generated during the financial year, reduced by justifiable expenses. These include any and all expenses that are economically justifiable while conducting the business. Among others, taxes are considered to be tax deductible expenses. Hence, when calculating the rate of taxation, it is important to distinguish between the statutory rates, which are based on after-tax income, and effective tax rates, which are pre-tax income (see above).

Losses of the 7 years preceding the calculation period are deductible if they remained unused. Capital gains and dividend income may benefit from the participation relief (Beteiligungsabzug), provided certain conditions are met.

In addition to corporate income tax, companies with registered office in Switzerland are usually subject to an annual capital tax on share capital, retained earnings and open reserves. Depending on the canton, the capital tax may however be deducted from income tax owed. Furthermore, Switzerland applies value added tax, withholding tax, securities transfer tax as well as issuance stamp duty on federal level.

On February 2017, Swiss voters, in a popular vote, rejected the federal bill on Corporate Tax Reform III (CTR III). CTR III was supposed to align the Swiss corporate tax system with international tax standards by replacing existing tax regimes with a new set of internationally accepted measures. Among other provisions, the CTR III included the abolishment of the cantonal tax regimes for holding, domiciliary and mixed companies and their substitution by new competitive and internationally accepted measures.

The need for tax reform is undisputed in Switzerland. Therefore, the Swiss Federal Council will now prepare a revised bill as quickly as possible. Consequently, the reform will not take effect in 2019 as planned but may be delayed by one to three years depending on the further legislative procedures.

The rejection of CTR III has no direct impact for Swiss-based companies in the short term. The current tax laws remain in force until a new law is passed. Therefore, current tax regimes should generally remain available until a revised tax reform is effectively enacted.

The Swiss cantons are sovereign to adopt unilateral changes to their cantonal tax laws within the framework of the federal tax harmonization law. Therefore, the cantons have the possibility to unilaterally reduce their corporate tax rates in order to strengthen their fiscal competitiveness. As a consequence, many cantons are already providing very attractive low effective tax rates between 12% and 15%.

## **25.5 Reporting Requirements**

Non-public Swiss companies do have very few reporting requirements. The members of the BoD of a corporation and the managing directors of a limited liability company respectively are generally required to register changes in the corporate structure of the company with the commercial register without undue delay. This means that any change in firm name, registered office, capital and members of the BoD or managing directors of the company will need to be filed with the commercial register as soon as these changes occur. As a rule, changes requiring an amendment of the AoA become effective only upon registration in the commercial register.

Swiss companies have an obligation to hold the annual shareholders' meeting within six months after the closing of the financial year and to report to the shareholders with respect to the business and the financial situation of the company. Companies subject to an ordinary audit must provide additional information in the notes to the annual financial statements, prepare a cash flow statement and draw up a management report. In the event a company uses an international accounting standard such as IFRS or US GAAP in preparing its financial statements such accounting standard will require the company to publish additional information.

Companies also have an obligation to file an annual company tax return and quarterly value added tax declarations if they are subject to value added tax.

It is important to note that financial statements and tax declarations are not filed with the commercial register and, thus, are not accessible by the public.

Public companies have additional reporting requirements based on the respective stock exchange regulations.

# 26. United Kingdom

**NOTE: Whilst Companies Act 2006 (as amended) applies to all parts of the UK, there are a number of minor differences in relation to Scotland and Northern Ireland. This summary is based on the laws of England and Wales.**

## 26.1 The most common types of companies used for business are:

- (a) Public Companies Limited by Shares;
  - (b) Private Companies Limited by Shares.
- Private Companies Limited by Guarantee are also common, but are generally not used for business purposes.

Most companies are incorporated under the Companies Act 2006 (as amended) or by a prior Companies Act. Whilst it is very rare, companies may also be incorporated by Royal Charter, public or private Act of Parliament or by customary law.

The liability of members/shareholders of a company is generally limited to the amount due to be on any share (par and premium). However it is possible to have unlimited liability companies too.

Registration is effected through the Registrar of Companies, commonly known as Companies House.

## 26.2 Public Companies and Private Companies

- The principal distinction between companies is between a **public company** and a **private company**.
- Only public companies are able to make a general offer of securities to the public.
- A public company may also choose to have its debt or equity securities listed, thereby enabling them to be traded on a recognised stock exchange or to apply for such securities to be admitted to trading on a secondary market. A private company limited by shares does not need to make their shares available for purchase by the public and can have a single shareholder. Shareholders in these companies have a liability limited to the value of the nominal value of the shares held, unless a shareholder has expressly assumed an additional liability of the company e.g. by way of guarantee (which would be evidenced in a separate document).

## 26.3 Private Company Limited by Guarantee

A **private company** limited by guarantee does not have a share capital requirement. Its members are liable by guarantee to contribute a predetermined amount to the company's liabilities, usually a nominal sum. Members however can expressly assume a liability of the company, for example by expressly giving a personal guarantee.

## 26.4 Generally

- Shareholders in public companies and private companies limited by shares participate in the profits of the company by way of dividend to the extent determined by the rights attaching to the class of share they hold in the capital of the company or as a result of share buyback/capital reduction or return of capital transactions. Private companies limited by guarantee have severe restrictions on any profit distribution or return of capital.

- Public companies must have both directors and a company secretary (either a corporate or natural person), whereas private companies limited by shares or by guarantee must simply have at least one director and there is no requirement to have a company secretary (although the company can elect to have one).
- All these companies may contract and hold property in its own name and they are liable for their own debts and liabilities. These companies have a distinct separation between their ownership (shareholders) and management (directors).

### **26.5 Limited Liability Partnership (LLP)**

- LLPs are, despite the name, not partnerships. The LLP is a different type of legal entity with a capital structure, but no shares. LLPs are principally governed by the Limited Liability Partnerships Act 2000 and subordinate statutory instruments. Unless otherwise agreed, members have equal ownership interests in the LLP. Each LLP is required to have two or more designated members, meaning that it is required to have a minimum of two members.
- Members have no obligation to contribute capital to the LLP.
- Members are not required to adopt any constitutional documents however an LLP agreement is always recommended to set out the management of the LLP and its ownership, otherwise inappropriate default rules will apply.
- LLPs are tax transparent, like partnerships.

### **26.6 Partnerships (including Limited Partnerships)**

- Partnerships are formed of two or more persons either by contract or conduct. The defining characteristic is two or more persons carrying on a business in common with a view to profit. A partnership can be for a fixed term or have an indefinite term.
- Partnerships are governed by contract, common law and the Partnership Act 1890. The Limited Liability Partnerships Act 1907 also applies to limited partnerships.
- English law partnerships have no legal personality and are tax transparent.
- Partners have management control of the partnership (unless a partner has agreed to restrict such right by contract) and share in the profits of the partnership. Each partner is jointly and severally liable with the other partners for the debts and obligations of the partnership.
- Limited partnerships are a particular type of partnership in which the partners do not want each of the partners to be jointly and severally liable for all of the debts of the partnership. This makes the limited partnership particularly attractive for co-investments formed by a contractual agreement of two or more partners for a fixed or indefinite term. However upon formation one or more of the partners (known as a limited partner) elects to not become involved in the management of the limited partnership and in return received limited liability for the debts and obligations of the limited partnership. The limited partnership however still needs to have at least one partner with unlimited liability (known as a general partner) who has management control of the limited partnership and unlimited liability for its debts and obligations. A 2017 legislative reform order has recently made some changes to limited partnerships (creating the sub-category of a Private Fund Limited Partnership).

## 26.7 Incorporation of all Companies

- Articles of Association filed with the Registrar of Companies form the basis of the corporate constitution. If the company does not adopt bespoke Articles of Association setting out individual requirements of the company, a default form (called the Model Articles) will apply.
- All companies are incorporated through the Registrar of Companies (Companies House). Public Companies and Private Companies Limited by Shares can incorporate online in a matter of minutes with a small filing fee.
- Private companies have no minimum capital requirement, but public companies must have at least (c.€60,000.00) £50,000 of share capital, one quarter of which must be paid up.

## 26.8 Incorporation of an LLPs

- LLPs are established by registration with Companies House. Like a company, LLPs can register with Companies House electronically by way of same-day incorporation.
- The LLP Agreement is not filed with Companies House and is therefore not made publically available: it is a private contract between members.

## 26.9 Establishment of a Partnership (including a Limited Partnership)

- The structure and management of partnerships and limited partnerships are governed by their partnership agreement, with default provisions provided in the Partnership Act 1890 and Limited Partnerships Act 1907 respectively.
- Only limited partnerships are required to register with Companies House.

## 26.10 The Board and Management of all Companies

- All directors owe duties to the company. These are summarised in company legislation. The UK adopts a unitary board model where each director owes the same duties regardless of function.
- Public companies are required to have minimum of two directors from incorporation. At least one director has to be a natural person.
- Private companies limited by shares and by guarantee are required to have a minimum of one director from incorporation. At least one director has to be a natural person, meaning that sole directors of a company must be natural persons. However, recent legislation has been passed which will make the use of corporate directors going forward even more restricted. Although this requirement is on the statutory books, it is not yet in force.
- Directors can be appointed by shareholders, usually by a simple majority vote, or the board of directors.
- All companies can opt to appoint a director as a managing director and set out bespoke responsibilities for this role, as appropriate to the company in question. However, the English company structure is based on a unitary board where all directors (executive and non-executive) take collective responsibility.

### **26.11 LLPs: Management**

An LLP does not appoint directors. However an LLP can create a management body, consisting of designated members, through an LLP agreement. This would function akin to a board of directors of a company, but the “board members” do not owe statutory duties as do company directors.

### **26.12 Taxation of all Companies**

- All companies (other than non-commercial entities which are registered as charities) will pay corporation tax on company profits. Companies have nine months to pay any corporation tax due after the end of the company’s financial year. Companies can be liable for corporation tax on gains made from the disposal of company assets.
- A company needs to register for VAT if its annual taxable supplies exceed c.€100,000.00 (£85,000) (tax year 2017-2018). All companies must comply with HMRC requirements for PAYE for employers and other general filing and record keeping obligations.

### **26.13 Taxation of Partnerships and Limited Partnerships**

- Each partner of a partnership (including a limited partnership) is liable to pay income tax on their share of the profits and is liable to pay capital gains tax on any gains made on the disposal of partnership assets.
- Upon becoming a partner, each such person (whether natural or legal) must register with HM Revenue & Customs for a Self-Assessment tax return.

### **26.14 Reporting Requirements for a public company and a private company whether limited by shares or by guarantee**

- All companies (other than the rare categories of unlimited companies, companies incorporated by Royal Charter and companies incorporated by an act of parliament other than Companies Act 2006 or any prior Companies Act) have an obligation to report matters to Companies House, such as appointments and resignations of directors, a confirmation statement (delivered at least annually) or changes to the Articles of Association and update company books within the required time limits. This is in accordance with the statutory requirements pursuant to the Companies Act 2006 (as amended).
- All companies incorporated under Companies Act 2006 (as amended) are obliged to prepare and file annual accounts. Private company accounts are usually filed within nine months of the end of the company’s financial year. Companies also have an obligation to file an annual company tax return.

### **26.15 Reporting Requirements of LLPs**

All LLPs have obligations to report certain matters to Companies House in the same way as companies e.g. appointments and resignations of members and designated members and annual confirmation statements.

LLPs are also obliged to prepare and file annual accounts.

# APPENDIX 1 summary of corporate forms

Country	Principal Law	Principal Types of Corporate Entity
<b>Austria</b>	Austrian Company Act, Austrian Commercial Code, Austrian Trade Law 1994	Gesellschaft mit beschränkter Haftung – GmbH Aktiengesellschaft – AG Societas Europea – SE
<b>Belgium</b>	Belgian Company Code	Private Limited Liability Company ( <i>Société privée à responsabilité limitée – Besloten vennootschap met beperkte aansprakelijkheid</i> ) Public Limited Liability Company ( <i>Société anonyme – Naamloze vennootschap</i> )
<b>Cyprus</b>	Cyprus Companies Law, Chapter 113	Limited Liability Company by shares Limited Liability Company by guarantee with share capital Limited Liability Company by guarantee without share capital Public Company limited by shares European joint stock company Societas Europea – SE
<b>Czech Republic</b>	New Civil Code and the Act on Business Corporations Commercial code (effective from 1 January 2014)	unlimited partnership - “veřejná obchodní společnost” limited partnership - “komanditní společnost” limited liability company - “společnost s ručením omezeným” joint stock company - “akciová společnost” European Company - “SE” European Economic Interest Grouping - “EEIG” Cooperative European Cooperative Society - “SCE”
<b>Denmark</b>	Danish Act on Public and Private Limited Companies 2010	public limited liability companies (in Danish: aktieselskaber) private limited liability companies (in Danish: anpartsselskaber) entrepreneurial companies (in Danish: iværksætterselskaber) limited partnership company (in Danish: partnerselskaber), and the European companies (in Danish: SE-selskaber)

Country	Principal Law	Principal Types of Corporate Entity
<b>Estonia</b>	Commercial Code 1995	<p>general partnership (Täisühing – TÜ)</p> <p>limited partnership (Usaldusühing – UÜ),</p> <p>Estonian private limited company (Osaühing – OÜ)</p> <p>Estonian public limited company (Aksiaselts – AS)</p> <p>commercial association (Tulundusühistu)</p> <p>European joint stock company (Societas Europaea – SE)</p> <p>sole proprietor (Füüsilisest isikust ettevõtja – FIE)</p>
<b>France</b>	French Commercial Code	<p>Société civile immobilière – SCI</p> <p>Société civile agricole</p> <p>Société civile professionnelle;</p> <p>Société d'exercice libéral – SEL</p> <p>Société en nom collectif – SNC</p> <p>Société à responsabilité limitée – SARL</p> <p>Société anonyme – SA</p> <p>Société par action simplifiée – SAS</p> <p>Société Européenne – SE</p>
<b>Finland</b>	Finnish Limited Liability Companies Act (624/2006)	<p>Private limited liability company (<i>yksityinen osakeyhtiö</i>)</p> <p>Public limited liability company (<i>julkinen osakeyhtiö</i>)</p> <p>Partnership (<i>avoin yhtiö</i>).</p> <p>Limited liability partnership (<i>kommandiittiyhtiö</i>).</p> <p>Sole proprietorship (<i>yksityinen elinkeinonharjoittaja</i>).</p> <p>European limited liability company (<i>Fin. Eurooppayhtiö</i>).</p> <p>Co-operative society (<i>Fin. osuuskunta</i>)</p>
<b>Germany</b>	German Commercial Code, Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)	<p>Private Limited Liability Company - Gesellschaft mit beschränkter Haftung (GmbH)</p> <p>Public Limited Company / Stock Corporation - (Aktiengesellschaft)(AG)</p> <p>Civil Law Association - (Gesellschaft bürgerlichen Rechts)</p> <p>General Partnership - (Offene Handelsgesellschaft, or OHG)</p> <p>Limited Partnership - (Kommanditgesellschaft, or KG)</p>

Country	Principal Law	Principal Types of Corporate Entity
<b>Greece</b>	Greek Civil Code and the Greek Commercial Law	Limited liability by shares company (“Societe Anonyme”) – “SA”  Limited liability company - (“EPE”) private capital company - (“PCC-IKE”) European company (“Societas Europea” – “SE”)
<b>Hungary</b>	Act 4 of 2006 on Business Associations (Companies Act)	“közkereseti társaság” (“Kkt.” - general partnership) “betéti társaság” (“Bt.” - unlimited partnership) “korlátolt felelősségű társaság” (“Kft.” - limited liability company) “részvénytársaság” (“Rt.” - joint stock company)
<b>Ireland</b>	Companies Act 2014	Private Companies Limited by Shares (LTDs) Designated Activity Companies (DACs) Companies Limited by Guarantee (CLGs) Public Limited Companies (PLCs) Unlimited Companies
<b>Italy</b>	The Italian Civil Code; - Legislative Decree 58/1998 (abbreviated TUF in Italy); - The rulings set forth by the National Commission for Companies and the Stock Exchange (CONSOB) - The code issued by the Italian Stock Exchange (Borsa Italiana) - The company’s own Articles of Incorporation.	S.s. - Società semplice S.n.c. – Società in nome collettivo S.r.l. – Società a responsabilità limitata S.r.l.s. – Società a responsabilità limitata semplificata S.p.A. – Società per Azioni S.a.s. – Società in accomandita semplice S.a.p.A. – Società in accomandita per Azioni SE – Società Europea
<b>Latvia</b>	Company Law 2000	limited liability companies (in Latvian “ <i>sabiedrība ar ierobežotu atbildību</i> ”, also known as “SIA”)  stock companies (in Latvian “ <i>akciju sabiedrība</i> ”, also known as “AS”)
<b>Lithuania</b>	Company Law 2000 Law on Companies 13 July 2000, as amended	Private Limited Liability Companies (UAB) and the Public limited liability companies (AB) are founded in most of the cases  the most popular corporate form in Lithuania and typically chosen as corporate vehicle by foreign investors is limited liability company (in Lithuanian Uždaroji akcinė bendrovė – UAB)

Country	Principal Law	Principal Types of Corporate Entity
<b>Luxembourg</b>	Law concerning Commercial Companies 1915 (Company Act in Luxembourg)	<p>Private limited liability company (Société à responsabilité limitée – Sàrl)</p> <p>Public limited company (Société Anonyme – SA)</p> <p>Common limited partnership (Société en commandite simple - SCS)</p> <p>Corporate partnership limited by shares (Société en commandite par actions – SCA)</p> <p>General corporate partnership (Société en nom collectif – SNC)</p> <p>Co-operative society (société coopérative – SC)</p> <p>European company (Société Européenne - SE)</p>
<b>Malta</b>	Companies Act, Chapter 386	<p>Partnership en nom Collectif</p> <p>Partnership en Commandite</p> <p>Limited Liability Company</p>
<b>Netherlands</b>	Dutch Civil Code (Book 2)	<p>Dutch private company with limited liability (Besloten Vennootschap – BV)</p> <p>Dutch joint stock company (Naamloze Vennootschap – NV)</p> <p>European joint stock company (Societas Europea - SE)</p>
<b>Norway</b>	Act of 13 June 1997 (No. 45) Norwegian Public Limited Liability Companies Act	<p>Limited Liability Company (“aksjeselskap”, “AS”)</p> <p>Public Limited Company (“Allmennaksjeselskap”, “ASA”)</p> <p>Norwegian Registered Foreign Company (“NUF”)</p> <p>Societas Europea (“SE-selskap”)</p> <p>General Partnership (“Ansvarlig selskap”)</p> <p>Limited Partnership (“Kommandittselskap”)</p>
<b>Portugal</b>	Commercial Companies Act Decree Law nr.248/86 of 25.08.86	<p>Public Limited Company (<i>Sociedade Anónima</i>);</p> <p>Private Limited Liability Company (<i>Sociedade por Quotas</i>);</p> <p>Single Shareholder Limited Liability Company (<i>Sociedade Unipessoal por Quotas</i>);</p> <p>Partnership Company (<i>Sociedade em Nome Colectivo</i>);</p> <p>Limited Partnership Company (<i>Sociedade em Comandita</i>).</p> <p>Sole Entrepreneurship (<i>Empresário em nome Individual</i>);</p> <p>The Individual Liability Establishment (<i>Estabelecimento Individual de Responsabilidade Limitada</i>).</p>

Country	Principal Law	Principal Types of Corporate Entity
<b>Slovakia</b>	Slovakian Commercial Code	Limited Liability Company (“spoločnosť s ručením obmedzeným”; or its abbreviation “s.r.o.” or a “spol. s r.o.”) Joint-stock Company (“akciová spoločnosť” or its abbreviation “a.s.” or an “akc. spol.”) European Company (Societas Europea)
<b>Spain</b>	Companies Act (RDL 1/2010) Commercial Code Commercial Register Regulations	Corporation - <i>Sociedad Anónima</i> “S.A.” Limited Liability Company - <i>Sociedad de Responsabilidad Limitada</i> “S.L.” New Limited Liability Company - <i>Sociedad Limitada Nueva Empresa</i> “S.L.N.E.” European Public Limited-Liability Company - <i>Sociedad Anónima Europea</i> “SE”
<b>Sweden</b>	Swedish Companies Act 2005	Private limited liability Company (Swe. Privat aktiebolag). Public limited liability Company (Swe. Publikt aktiebolag). Partnership (Swe. Handelsbolag). Limited liability partnership (Swe. Kommanditbolag). Sole proprietorship (Swe. Enskild firma). European limited liability company (Swe. Europabolag). Economic association (Swe. Ekonomisk förening)
<b>Switzerland</b>	Swiss Civil Code Swiss Code of Obligations	corporation (Ltd) Société anonyme – SA / Aktiengesellschaft – AG limited liability company (LLC) Société à responsabilité limitée – Sàrl / Gesellschaft mit beschränkter Haftung – GmbH
<b>United Kingdom</b>	Companies Act 2006, as amended Partnership Act 1890 Limited Partnerships Act 1907	Limited – private company limited by shares PLC – public limited company LLP – limited liability partnership (NB: not a partnership despite the name) Partnership (including a limited partnership)

## APPENDIX 2 glossary



Term	Definition
<b>Articles of association/AoA</b>	The constitution of the company, being the rules setting out how the company will operate, including precise share rights and detail of the competencies of the board and any limitations placed thereon.
<b>auditor</b>	The role of the auditor is to certify a companies' financial statements as true and fair (i.e., to provide shareholders with an opinion on the accuracy of companies' accounts). For larger companies, including those on a public market, the auditor also needs to provide some verification to the narrative reports of the company.
<b>bylaws</b>	The regulations governing the mode of conduct of business and internal organization of a company. Almost always an entirely interchangeable term with articles of association. By way of illustration, and English company generally has a constitution based on articles of association and not bylaws. However, other common law jurisdictions, may describe the document as a set of bylaws.
<b>CEO</b>	The Chief Executive Officer, or CEO, is responsible for the day-to-day management of the business, in line with the strategy and long term objectives approved by the management or supervisory board.
<b>commercial register</b>	A register of organizations, businesses and companies in the jurisdiction they exist or operate in. In some jurisdictions this is held centrally, and in others locally.
<b>comply or explain</b>	The prevailing approach to corporate governance through the application of a code standard: if the code standard is not met the corporate is encouraged to explain why this is the case and how good governance objectives can be met notwithstanding.
<b>conflict of interest</b>	A situation which may either arise or subsist where a person has a fiduciary or business duty or contractual obligation to two separate organizations, but fulfilling his/her duty or obligation to one may mean failing to fulfill his/her duty to the other or when a director or supervisory board member (or a person connected with him or her) has a direct or indirect personal interest which is in conflict with the interests of the company.
<b>corporate income tax/corporation tax</b>	A direct tax that a company has to pay on its revenue and/or capital profit.
<b>corporate governance</b>	The system of rules, practices and processes by which a company is managed and controlled, including the responsibilities and powers of its board(s), shareholders and other stakeholders and the supervision and accountability of the company.

Term	Definition
<b>corporation (legal entity) v. partnership</b>	A corporation is a separate legal entity, with a capital divided into either shares or membership interests. A partnership is a business entity with individuals who share the risks and the benefits of business, based on a partnership agreement. Note that partnerships are generally not subject to registration requirements and do not have separate legal personality. However, there are some anomalies, such as a Scottish partnership which possesses its own legal personality.
<b>chairman</b>	The chairman is responsible for the proper conduct of the management or supervisory board and is responsible for determining the board agenda.
<b>civil v. commercial company</b>	A civil company has a non-commercial purpose and is ruled by civil law (in France, the French civil code). A commercial company has a commercial purpose and is ruled by commercial law (in France, the French commercial code). These two codes are distinct and therefore the two types of company are significantly different in character.
<b>director</b>	A company officer who is a member of the board of directors, being the key decision making forum for any company.
<b>General Assembly/General Meeting</b>	A meeting of members of a company.  Each jurisdiction has complex rules as to member meetings, including rules of quorum and majority. These rules may exist in any of statute law, the articles of association or bylaws. Different types of resolution may require different voting thresholds.
<b>joint stock company/joint stock corporation</b>	An organization whose capital is divided into negotiable shares of equal value, generally accepted to have been developed in the Dutch Republic in the early seventeenth century. Under English corporate law, shareholders of a joint stock company are only liable to contribute cash to the company to the extent of their share in the capital of the company (unpaid par value and unpaid premium), but not otherwise.
<b>Limited Liability Partnership</b>	A separate entity from its partners and has to be registered. The partners in this structure are liable only to the extent of their contribution. Notwithstanding the name, not a form of partnership.
<b>Management Board/Vorstand</b>	The committee responsible for the management of a company in a two-tier board structure, consisting of one or more directors and chaired by the chairman and/or managing director.
<b>Managing Director</b>	A person in charge of the day-to-day management of the company. Managing director is the term used under English corporate law, whereas the CEO is the term used under American corporate law. Not all companies will appoint an executive to this role.
<b>notary (as used in many civil law European jurisdictions)</b>	A notary is a public official specifically authorized to execute authentic instruments (notarial deeds) in which agreements and declarations are legally recorded. In some jurisdictions certain types of agreement and corporate actions may only be valid if executed by a notary in a notarial deed. This function is distinct from that of many English solicitors and American attorneys who might also be notaries.

Term	Definition
<b>public company v. private company</b>	A public company is generally the legal designation of a company whose securities are capable of being traded on a stock exchange market. Directors of public companies have additional legal obligations to directors of private companies and liabilities are greater. Public companies are less flexible than private companies (for example, in relation to capital reductions and in providing financial assistance).
<b>secretary of the company/ company secretary</b>	The officer responsible for the efficient administration of a company, particularly with regard to ensuring compliance with administrative requirements. Importantly, the secretary is generally not responsible for making commercial decisions, which are for the board of directors.
<b>sole entrepreneurship</b>	A form of business in which there is no separate legal entity, and the entrepreneur owns all the assets of the business in his or her own name, in contrast with a partnership or a corporation.
<b>Supervisory Board/Aufsichtsrat</b>	The corporate body responsible for the supervision of the management conducted by the directors and the general course of business in the company and its group companies. Certain jurisdictions have strict requirements as to the composition of a supervisory board. Note that members of a supervisory board are distinct from non-executive directors of a unitary board. In certain jurisdictions, supervisory board members are not directors at all.
<b>unitary board</b>	In a unitary board (the one tier board system), there is a single board of directors. The board may comprise both executive and non-executive directors. Good corporate governance practice expects the board of a large listed company to be comprised of a majority of non-executive directors. The function of a non-executive director is similar to the tasks of the supervisory board members in a two-tier board, albeit the manner in which directors' duties present themselves is notably different. A non-executive director owes exactly the same duties as an executive director, and is effectively alongside the executive directors, whereas a supervisory board member has a function more akin to holding the executive directors to account.

## APPENDIX 3 key contacts

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