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Entering the Markets of ASEAN: A Comparison between Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam

Table of contents

A. Indonesia 7

I. Market entry: Entity forms and restricted activities	7
1. Limited company	7
2. Representative Office / Trade Representative Office	8
II. Regulatory compliance: Key licences	9
1. Basic business licences	9
2. Common import licence issue	9
III. Tax	9
1. The basics	9
2. Tax incentives, allowances and facilities	10
IV. Labour law and immigration: Key issues	11
1. Employment agreements and termination	11
2. Engagement of foreign employees by PT PMA	12
V. Real estate	13
VI. FOREX	13

B. Malaysia 14

I. Market entry: Registration of a business	14
II. Regulatory compliance	16
III. Tax	18
1. Business taxation: An overview	18
2. Notable tax incentives	19
a. Pioneer Status and Investment Tax Allowance	19
b. Examples of activities eligible for incentives	19
3. Personal income tax	21
IV. Labour law	22
1. Employment agreements and policies	22
2. Common pitfall: Termination of employment	22
V. Social security	23
VI. Immigration	23
1. Long-term permits	23
a. Prerequisites for Employment Passes and Professional Visit Passes	23
b. Other types	25
2. Short-term permits	26
VII. Real estate	26
VIII. FOREX	26

C. Myanmar **29**

I. Market entry: Registration of a business	29
1. Registration under CA 2017	30
2. Registration under the MIL 2016	30
3. Registration under the SEZL 2014	31
II. Regulatory compliance: Restricted activities	31
III. Tax	31
1. Corporate income tax	31
2. Withholding tax	32
3. Commercial tax	33
4. Incentives	33
IV. Labour law and immigration: Highlights	35
1. Official employment agreement and employment forms	35
2. Immigration	35
V. Real estate	36
VI. FOREX	36
1. Restrictions on FX-transactions and foreign transfers	37
2. Restrictions on offshore bank accounts	37
3. Restrictions on foreign loans and offshore loan repayment	37
4. FATF blacklisting	38

D. Singapore **39**

I. Market entry: Registration of a business	39
II. Regulatory compliance	41
1. Protected industries	41
2. Common licences	41
III. Tax	43
1. Business taxation: An overview	43
2. Tax Incentives and tax exemption schemes	45
3. Goods and Services Tax (“GST”)	47
4. Inheritance tax	48
5. Personal income tax	48
IV. Labour law	49
1. Employment agreements and policies	49
2. Termination of employment	50
V. Social security	52
VI. Immigration: Common work passes	53
VII. Real estate	55
VIII. FOREX	56

E. Thailand **57**

I. Market entry: Registration of a business	58
II. Regulatory compliance: Protected and promoted sectors	60
1. Restricted activities	60
2. Promoted activities	61
c. Tax incentives	61
d. Non-tax incentives	62
III. Taxation: An overview	62
1. Corporate income tax	62
2. Personal income tax	63
3. Capital gains tax	63
4. Withholding tax	63
5. Value added tax	63
IV. Labour law and social security	64
1. Basic employment agreement requirements	64
2. Social security	64
V. Immigration: Basic work permit requirements	64
VI. Real estate	65

F. Vietnam **66**

I. Market entry: Business vehicles and arrangements	66
1. Independent legal entities	66
2. Representative office or branch office	68
3. Joint ventures, Business Cooperation Contracts and Public Private Partnerships	68
II. Key licences and restricted sectors	69
1. Investment Registration Certificate and Enterprise Registration Certificate	69
2. Restricted activities	69
III. Tax	70
1. Overview on types of tax	70
2. CIT incentives	72
IV. Labour law and social security	72
1. Basic employment agreement requirements	72
2. Social security and insurance	73
V. Immigration	73
1. Entry visas	73
2. Work permits	73
VI. Real estate	74
VII. FOREX	74

Contact persons	75
Hits the mark. Luther.	78
About unyer	79
Our locations	80
Our awards	81

Introduction

Since its inception in 1967, the Association of Southeast Asian Nations (“**ASEAN**”) has developed into a political and economic powerhouse consisting of 10 member states with a population of over 650 million. Over the past decade, the region has experienced a period of explosive growth, benefiting from both increased market integration internally and strengthened global ties through free trade agreements such as the Regional Comprehensive Economic Partnership.

Today, ASEAN countries are some of the most attractive destinations for foreign direct investment. However, for the potential investor, entering ASEAN markets for the first time can appear to be a daunting challenge: Each country has its own system of law, culture and language, as well as business benefits and downsides.

In this introductory guide, we compare six ASEAN countries—Indonesia, Malaysia, Myanmar, Singapore, Thailand, and Vietnam—from the perspective of a foreign investor, addressing the topics most relevant for market entry, including the following:

- Which is the most suitable business vehicle – a private limited company, partnership, representative office, or something else?
- Are there any rules against or requirements for foreign entities to participate in particular business sectors? If cooperation with a local partner is required, how should that be done?
- What does the tax regime look like, and are there any incentives an investor could benefit from?
- What are the key labour law requirements and pitfalls of which an employer should be aware?
- What is required for an employer to apply for work permits for its foreign personnel?
- Can a foreign entity own, lease or otherwise use land?
- Are there any foreign exchange rules which could affect business transactions?

If you have any questions or would like further information on doing business in any of these six countries, please contact us using the details on pages 49 of this guide.

A. Indonesia



As Southeast Asia's largest economy, the world's fourth most populous nation, and a G-20 member, Indonesia is a rapidly urbanising and modernising young democracy with a highly positive economic outlook despite heightened global uncertainty.

I. Market entry: Entity forms and restricted activities

Entry into Indonesia is typically done by setting up either a limited company or a representative office. Each is considered in turn:

1. Limited company

A limited company in Indonesia takes the form of the *Perseroan Terbatas* (“PT”). It is the only type of independent corporate entity which may have foreign shareholding. A PT which has partial or full foreign shareholding is known as a *Perseroan Terbatas Penanaman Modal Asing* (“PT PMA”, which translates as “limited company with foreign investment”).

Indonesia restricts the types of business activities in which a PT may participate. Crucially, there is a Negative Investment List (“NIL”) which bans or limits foreign investment in particular businesses. In addition, where a line of business is not restricted under the NIL, there may nevertheless be other laws and regulations which carry restrictions, or it may involve obtaining licences or permits which carry conditions on foreign shareholding. In general, however, restrictions on business fields have been significantly reduced since 2021.

In view of the restrictions, when setting up a PT PMA, its proposed scope of business activities must first be carefully assessed against Indonesian law to determine if any restrictions or conditions apply.

The table below summarises the key considerations in the incorporation of a PT PMA:

Initial minimum paid-up capital	IDR 10 billion.
Shareholders	At least 2.
Board of Directors (“BOD”)	Directors must be natural persons, not corporate entities. At least 1 director must be tax-registered in Indonesia.
Board of Commissioners (“BOC”)	In addition to a BOD, a PT needs to have a BOC, which has a supervisory role over the BOD. A single person cannot be a member of the BOD and BOC at the same time.

2. Representative Office / Trade Representative Office

In contrast to a PT, a Representative Office (“**RO**”) and a Trade Representative Office (“**TRO**”) are not independent legal entities. They instead constitute an Indonesian office of the foreign corporation (the “**Principal**”). Any liabilities arising from the acts of the RO / TRO lie with the Principal.

The difference between an RO and a TRO is as follows:

- ROs are for the representation of companies engaged in the provision of services, and they are regulated by the Badan Koordinasi Penanaman Modal (“**BKPM**”, the Authority for Capital Investment Coordination);
- TROs are for the representation of companies engaged in the sale of goods, and they are regulated by the Coordinating Ministry for Economic Affairs (“**CMEA**”).

A major characteristic of ROs / TROs is that—subject to a few exceptions—they cannot generate income or conclude sales transactions on behalf of the Principal or any other party. Instead, their permitted activities are preparatory and supportive in nature, including engaging in advertising, market research and sales support (e.g. the coordination of agents and distributors).

Two key considerations for the registration of an RO / TRO are as follows:

- An RO / TRO must appoint one Chief Representative resident in Indonesia;
- It must plan to employ a minimum of three Indonesian employees.

II. Regulatory compliance: Key licences

Indonesia's protected industries have been discussed under [Part I.1.](#) above. Here, we consider instead basic business licences, and a common issue with import licences.

1. Basic business licences

A PT PMA will be issued a business licence as part of the standard incorporation process. For some business activities, this is sufficient for the commencement of operations.

However, certain sectors require additional commercial or operational licences, for example the following:

- Manufacturing;
- Natural resource management; and
- Energy.

2. Common import licence issue

A PT PMA may only hold one of two types of import licences at any given time, namely:

- Either a Production Import Licence (“**API-P**”) for capital goods, e.g. machinery and raw materials; or
- A General Import Licence (“**API-U**”) for trading goods.

A problem commonly encountered is when a PT PMA participates in a combination of business fields, typically production *and* trade / distribution, and as a result requires both licences at the same time. At the importation stage, a PT PMA may, in practice, be limited to importing only either capital goods or trading goods despite its combined business fields.

Exemptions are currently possible for complementary goods, but they may be subject to change.

III. Tax

1. The basics

The table on the following page outlines the main types of tax likely to be of concern to a foreign company considering investment in Indonesia:

Tax	Details and rates
Corporate income tax	In general 22%.
Value Added Tax ("VAT")	Imposed on the delivery of most goods and services, at a rate of 10%.
Luxury tax	Imposed on the import and/or delivery of specified luxury goods and services, at rates ranging from 10% to 75%.
Withholding tax	For the transfer of profits or dividends to an entity or individual overseas, at a rate of 20%, subject to any reductions under double taxation agreements.

2. Tax incentives, allowances and facilities

There are many benefits that may be enjoyed by an eligible company in Indonesia. The main types are shown in the table below.

Benefits	Details
Incentives	<p>Depending on the particulars of a business project, tax incentives may be available for the following investments:</p> <ul style="list-style-type: none"> ■ Those which are labour-intensive; ■ In infrastructural development; ■ Involving technology transfers; ■ In pioneer industries; ■ In remote, underdeveloped or other specified geographical area; ■ In research, expansion and innovation; ■ Those which require collaboration / association with Indonesian micro, small or medium scale businesses or cooperatives; ■ In an industry which requires domestic capital goods such as machinery or equipment.

Allowances	Net income reduction up to a maximum of 30% of the amount invested in fixed assets, including land used for main business activities, which applies at 5% per year for 6 years from the commencement of commercial production.
	Accelerated depreciation of tangible assets and amortisation of intangible assets.
	Periods of loss can be carried forward between 5 to 10 years.
	Reduced withholding tax on dividends of 10% (if granted on a case-by-case basis under an applicable double taxation agreement).
	For qualifying investors in pioneer industries, a tax holiday in the form of corporate income tax reduction or exemptions for at least 5 and up to 10 years.
Import Facilities / BKPM Facilities	<p>These facilities amount to a reduction or exemption of import duties and import VAT for capital goods to be imported in order to facilitate planned foreign direct investment.</p> <p>Qualifying goods typically include machinery and raw materials, which have not been produced in Indonesia, or were produced in Indonesia in an insufficient quality or quantity for a particular project.</p>

IV. Labour law and immigration: Key issues

Indonesian labour law is relatively protective of employees, especially in relation to termination and severance payments. This will be discussed first in the sections below.

In a second step, we address the engagement of foreign employees by a PT PMA, which is subject to regulatory controls to be carefully considered.

1. Employment agreements and termination

As a starting point, employment agreements must be drafted in Indonesian. In the event that one is executed in Indonesian and another language, the Indonesian version will automatically prevail.

The unilateral termination of an employee is legally complex, involving mandatory negotiations

and mediation in order to determine adequate severance payments. For this reason, in general, the advisable route is settlement.

2. Engagement of foreign employees by PT PMA

Before a PT PMA may engage foreign employees, it must first obtain an approval from the Ministry of Manpower (“**MOM**”) for its Plan for the Utilisation of Foreign Workers (“**RPTKA**”). A work visa and residence permit for a foreign worker is obtained on the basis of the RPTKA and MOM approval.

The MOM has specified positions which usually cannot be held by a foreign national, for example a director for human resources. A brief check against these restricted positions is therefore generally necessary prior to the engagement of foreign nationals.

A recent development in the Indonesian immigration arena is the issuance of MOM regulations requiring employers to provide foreign workers with the means to study the Indonesian language, and which introduce basic rules for the testing of acquired skills. For the time being, the practical implementation of these regulations remains unclear.

There are four main types of work permits a foreign worker may hold, as set out in the table below.

Work permit	Key characteristics
One-time Business Visa	There are two types, namely: <ul style="list-style-type: none">■ The VoA, which permits a visit of up to 30 days; and■ The Visit Visa, which has a limit of 180 days.
Multiple Entry Business Visa (not in use until further notice)	For multiple visits within a 12 month period, adding up to an aggregate maximum of 60 days’ stay in Indonesia.
Short-term Work and Stay Permit	Enables the holder to work and stay in Indonesia for a maximum of 180 days. Suitable for short-term work, but it should be noted that the application process takes 2-3 months, and therefore an assignment on short notice may be unable to use this permit. This work permit also entails a contribution of USD 100 per month, to be paid up front.
IMTA & Notifikasi (“KITAS”)	This is a long-term work permit, allowing up to 2 years’ work and stay in Indonesia. It involves a contribution of USD 100 per month to be paid up front and contribution to social security schemes.

V. Real estate

The ownership of land in Indonesia in the form of a *Hak Milik* (essentially equivalent to a freehold title) is prohibited for PTs. However, it is possible for such entities to effectively gain control over land by acquiring a *Hak Guna Bangunan* (“HGB”).

An HGB confers on its holder the right to construct, develop and own buildings on the land in question. It lasts for a period up to 30 years, after which it is renewable for another 20 years.

There are two ways an HGB can be acquired, namely:

- By way of government resolution; and
- By way of agreement between the owner of the land (holder of the Hak Milik) and the proposed HGB holder.

In addition to an HGB, there are three other types of rights over land which a PT PMA may hold, as follows:

- *Hak Pakai*, a right to use land for a specific pre-agreed purpose;
- *Hak Sewa*, a leasehold; and
- *Hak Guna Usaha*, a right to exploit the land for the purposes of agriculture, fisheries or cattle breeding.

VI. FOREX

There are no foreign exchange controls in Indonesia; the IDR is freely convertible into any currency and vice versa.

However, it should be noted that, in general, all transactions conducted in Indonesia have to be in IDR, including payments, settlement of obligations and other financial transactions, whether in cash or otherwise. Certain transactions are exempt from this rule, namely:

- Sending or receiving overseas grants;
- International trade transactions;
- International financing transactions;
- Bank savings accounts in foreign exchange;
- Transactions implementing the state budget.

B. Malaysia



Malaysia is uniquely suited as a destination for both the establishment of regional headquarters and manufacturing operations. It offers not only modern infrastructure and open business policies, but also a highly skilled workforce, attractive fiscal incentives for a wide-range of industries, and affordable real estate open to foreign ownership.

I. Market entry: Registration of a business

For the establishment of a long-term presence in Malaysia, the entity of choice for most investors is the private company limited by shares (known as a *Sendirian Berhad* or Sdn. Bhd.).

If a less permanent presence is desired, there are several other options available, including registration as a foreign company in Malaysia (colloquially known as registering a “branch”) and the establishment of a Representative or Regional Office (respectively “**RE**” and “**RO**”).

In addition, there are entity forms which are suitable for specific industries and purposes, for example a limited liability partnership (“**LLP**”).

The table on the following page compares the key characteristics and requirements for each of the forms mentioned above. It is not exhaustive, and there are other forms which may be appropriate depending on the purpose and circumstances, such as a company limited by guarantee and public limited company.

Entity form	Key characteristics and requirements
<p><i>Sendirian Berhad</i> (private company limited by shares)</p>	<p>The <i>Sendirian Berhad</i> is a fully-fledged independent legal entity. It can be incorporated in a matter of weeks, and is generally very versatile for business purposes. It is capable of holding most regulatory approvals and incentives so long as the relevant requirements are fulfilled, whereas the same is not necessarily true for other entity forms.</p> <p>Shareholding:</p> <ul style="list-style-type: none"> ■ At least 1 shareholder (either a natural person or a corporate entity) is required; ■ 100% foreign shareholding is permissible. <p>Officers:</p> <ul style="list-style-type: none"> ■ At least 1 director residing in Malaysia is required; ■ At least 1 company secretary residing and licensed in Malaysia is required. <p>Address:</p> <ul style="list-style-type: none"> ■ A registered address in Malaysia where statutory records are kept is mandatory; ■ The company may have a business address separate from its registered address.
<p>Registration as foreign company (so-called “branch”)</p>	<p>An entity incorporated overseas may register as a foreign company in Malaysia. The so-called “branch” in Malaysia is not an independent legal entity, and therefore its rights and obligations will attach to the foreign parent entity.</p> <p>A branch is generally more cumbersome to register and maintain than a <i>Sendirian Berhad</i>, but it does have the benefit of a quick de-registration. Therefore, a branch is typically used where preserving the possibility of a quick exit from Malaysia is desirable.</p> <p>In terms of officers, a branch must have a branch agent resident in Malaysia. It is important to note that the branch agent can be personally liable for the branch’s breach of the Malaysian Companies Act 2016.</p>

<p>RE / RO</p>	<p>Neither an RE nor an RO is an independent legal entity. They are temporary vehicles primarily meant for investors to conduct market research and establish business contacts before deciding to commit to a more permanent presence. As such, they are subject to the following key limitations:</p> <ul style="list-style-type: none"> ■ Their lifespan is limited. The initial registration can be for a duration of up to 2 years, after which a renewal for a further 3 years is possible; ■ They cannot be used for profit-making activities, and are instead limited to activities within a specified list which includes data collection, research and development, and the coordination of regional business activities; ■ They must be entirely funded by sources outside Malaysia, and must have expected operational expenditure of at least MYR 300,000 per annum.
<p>LLP</p>	<p>The LLP has a separate legal identity from its partners. It offers the benefit of limiting the liability of its partners to their individual contribution (subject to certain exceptions). Further, it is taxed at the entity level, instead of the partners being taxed directly on their share of the partnership's income.</p> <p>LLPs are relatively easy to set up, but may run into issues as the business expands. Investors and banks, for example, may subject LLPs to additional scrutiny. Further, there are licences which LLPs cannot hold, e.g. a Wholesale, Retail Trade licence. Typically, LLPs are only suitable for specific industries, e.g. chartered accountants.</p>

II. Regulatory compliance

Malaysia is generally liberal and open to foreign investment, but there are still protected sectors where foreign participation is restricted, for example the oil and gas industry. Typically, the conduct of business in such sectors requires regulatory approvals which carry local involvement conditions, such as a minimum percentage of Malaysian shareholding or minimum number of Malaysian directors.

In addition, there are also common business activities which—while not requiring local involvement—still require licences. Three of these licenses are considered in the table below.

The need for regulatory approvals may affect the structure of a company (e.g. shareholding and capital), and is an important factor to plan for when considering the timeline for the commencement of operations. Sometimes, regulatory approvals are interdependent, i.e. one

must be approved before another can be applied for. Therefore, a pre-market entry regulatory assessment of the approvals required and the order in which they must be obtained is crucial to ensure a smooth set-up.

Common regulatory approvals	Key characteristics
<p>Business Premises Licence (“BPL”)</p>	<p>As its name suggests, a BPL is required for the operation of business premises, e.g. an office, warehouse, factory, or shop.</p>
<p>Manufacturing Licence</p>	<p>Subject to certain exceptions, a manufacturing company with either paid-up capital of at least MYR 2.5 million or 75 or more full-time employees must have a Manufacturing Licence.</p> <p>A BPL is a prerequisite for a Manufacturing Licence.</p>
<p>Wholesale, Retail Trade (“WRT”) Licence</p>	<p>A foreign-owned company must have a WRT Licence to conduct specified types of wholesale or retail trade.</p> <p>The requirements for the WRT Licence vary depending on the type of trade. Unless the type of trade in question involves the operation of a hypermarket, departmental store, superstore or specialty store, the minimum paid-up capital requirement is typically MYR 1 million.</p> <p>A BPL is a prerequisite for a WRT Licence.</p>

III. Tax

Malaysia offers an attractive corporate tax regime and a wide range of incentives. High-tech industries and the manufacturing sector, in particular, enjoy significant benefits.

In addition, Malaysia has a broad network of double taxation agreements with other countries, reducing the risk of double taxation and potential exposure to withholding tax.

1. Business taxation: An overview

Corporate tax	<p>Resident companies are taxed at a rate of 24%. However, with effect from year of assessment (“YA”) 2023, micro, small and medium enterprises (“MSMEs”) enjoy preferential rates of—</p> <ul style="list-style-type: none">■ 15% on the first MYR 150,000 of chargeable income;■ 17% on the remaining chargeable income up to MYR 600,000;■ 24% on the excess.
Dividends	<p>Dividends are exempt from tax.</p>
Capital gains	<p>With the exception of real property gains, capital gains are currently not taxed in Malaysia. The introduction of capital gains tax on the disposal of unlisted shares was proposed in 2023 but has not yet been implemented.</p>
Withholding tax on income accruing in or derived from Malaysia	<p>Subject to any reduction under applicable double taxation agreements, the following withholding tax rates apply:</p> <ul style="list-style-type: none">■ Royalties: 10%;■ Rental of moveable properties: 10%;■ Technical and management fees: 10%;■ Interests: 15%;■ Dividends: Exempt.
Sales and Service Tax (“SST”)	<p>Sales Tax is a single-stage tax imposed on taxable goods manufactured in Malaysia by a registered manufacturer or imported into Malaysia by any person. The default rate of Sales Tax is 10%, but there is a reduced rate of 5% for certain goods.</p> <p>Service Tax is a consumption tax levied and charged on any taxable services provided in Malaysia by a registered person in carrying on his business. It is also charged on imported taxable services acquired by a person who carries on a business in Malaysia. The rate of Service Tax is 6%, subject to limited exceptions.</p> <p>A company needs to be SST-registered and charge SST when its annual taxable turnover in Malaysia exceeds MYR 500,000 in a period of 12 months.</p>

2. Notable tax incentives

a. Pioneer Status and Investment Tax Allowance

The Pioneer Status (“**PS**”) is an incentive in the form of a tax exemption granted to companies participating in promoted activities or producing promoted products, for a period of 5 to 10 years.

The alternative to a PS is typically the Investment Tax Allowance (“**ITA**”). The ITA is an incentive granted based on capital expenditure incurred on industrial buildings, plant or machinery used for the purposes of promoted activities or the production of promoted products. The ITA is generally given for a period of 5 or 10 years.

The PS and the ITA are mutually exclusive.

b. Examples of activities eligible for incentives

There are a wide variety of activities eligible for the PS, the ITA or other incentives. Examples include the following:

Activity	Period within which application must be received to be eligible	Incentives
Aerospace companies in Malaysia undertaking specified high-value manufacturing / services	By 31 December 2025	For new companies, income tax exemption of 70% - 100% for 5 to 10 years. ITA of 60% to 100% set-off against 70% - 100% of statutory income.
Automotive industry: Investment in manufacturing of electric vehicle charging equipment	From 25 February 2023 to 31 December 2025	Income tax exemption of 100% of statutory income from YA 2023 to YA 2032, or ITA of 100% on qualifying expenditure set-off against 100% of statutory income.
Company undertaking Green Technology (“ GT ”) project or the purchase of GT assets	By 31 December 2023	ITA of 100% on qualifying expenditure set-off against 70% of statutory income, for 3 years.

Manufacturers producing promoted products or engaged in promoted activities	N/A	<p>For 5 years, PS with tax exemption of 70% of statutory income, or ITA of 60% on qualifying expenditure set-off against 70% of statutory income.</p> <p>Enhanced incentives are available for specific manufacturing activities, e.g. the production of high technology products.</p>
In the manufacturing sector, relocation of overseas business operations or facilities to Malaysia	Extended to 2024	<p>For a new company:</p> <p>0% tax rate (new investment in manufacturing sector with capital investment of MYR 300 million - MYR 500 million), for 10 years;</p> <p>0% tax rate (new investment in manufacturing sector with capital investment above MYR 500 million), for 15 years;</p> <p>0% to 10% tax rate (for relocation of services activities), for up to 10 years.</p>
Malaysia Digital Status	N/A	<p>For Category 1 (i.e. companies located at designated premises within cyber cities / centres) and Category 2 (i.e. companies located within cyber cities / centres):</p> <p>Tax exemption of 100% of statutory income for 5 years, extendable for another 5 years;</p> <p>Import duty exemption for multimedia equipment;</p> <p>For Category 3 (which is not subject to location conditions):</p> <p>Tax exemption of 70% of statutory income for 5 years, extendable for another 5 years subject to meeting the conditions of Category 1 or 2;</p> <p>Import duty exemption for multimedia equipment.</p>
Specified research and development activities	N/A	<p>For in-house R&D projects, ITA of 50% on qualifying expenditure set-off against 70% of statutory income, for 10 years.</p>

3. Personal income tax

A tax resident is subject to the progressive personal income tax rates shown in the table below. An individual is a tax resident in Malaysia where

- they are in Malaysia for at least 182 days in a calendar year;
- they are in Malaysia for a period of less than 182 days during the year but that period is linked to a period of physical presence of 182 or more consecutive days in the following or preceding year. Temporary absences from Malaysia due to business trips, ill-health treatments and social visits not exceeding 14 days are counted as part of the consecutive days, provided that the individual is in Malaysia before and after each temporary absence;
- they are in Malaysia for 90 days or more during the year and, in any 3 of the 4 immediately preceding years, they were in Malaysia for at least 90 days or were resident in Malaysia; or
- they will be resident for the year immediately following that year and for each of the 3 immediately preceding years.

Chargeable Income (MYR)	Rate %
0 – 5,000	0
5,001 – 20,000	1
20,001 – 35,000	3
35,001 – 50,000	8
50,001 – 70,000	13
70,001 – 100,000	21
100,001 – 250,000	24
250,001 – 400,000	24.5
400,001 – 600,000	25
600,001 – 1,000,000	26
1,000,001 – 2,000,000	28
Exceeding 2,000,000	30

In contrast, a non-resident's employment income is taxable at a flat rate of 30%.

IV. Labour law

Malaysia recently introduced widespread reform to closer align its labour law with the conventions of the International Labour Organisation. Generally, Malaysian labour law strikes a good balance between the business interests of an employer and the protection of employees, but there are areas where an employer should exercise particular care, for example the termination of employment.

1. Employment agreements and policies

There are many aspects of the employment relationship which can be freely determined by contract so long as minimum statutory standards are met. Therefore, employment agreements in Malaysia tend to be comprehensive and self-sufficient, with minimal reference to statutory entitlements.

Given that lengthy contracts are often inaccessible for employees and difficult to use for employers, a common alternative is to use a short employment agreement paired with an employee handbook. The handbook would contain rules which are applicable to all employees (e.g. confidentiality obligations), whereas the contract would only specify terms which vary from one employee to the next (e.g. the job title and salary). So long as both documents are properly drafted, the handbook and contract system confers a high degree of protection while maintaining practicality.

2. Common pitfall: Termination of employment

Under Malaysian law, an employee cannot be dismissed without just cause or excuse. In other words, there is no such thing as a lawful dismissal without cause, whether for probationers or confirmed employees. A dismissal without just cause or excuse could give rise to a claim in the Industrial Court which may lead to substantial liability for the employer. Therefore, each case of potential dismissal should be approached with care and assessed on its own facts to minimise legal risks.

V. Social security

There are three main social security schemes of which employers should be aware, as follows:

Social security scheme	Outline
Employee Provident Fund (“EPF”)	The EPF is a State pension scheme. The payment of EPF contributions by both the employee and the employer is compulsory for Malaysian citizens and permanent residents. Foreign employees may voluntarily choose to participate.
Social Security Organisation (“SOCSO”)	SOCSCO is an insurance scheme which primarily provides for injuries in the course of employment. It is compulsory for employers to make SOCSO contributions for both Malaysian and foreign employees.
Employment Insurance Scheme (“EIS”)	The EIS provides financial assistance for job-seekers. Contributions are compulsory for Malaysian employees. Foreign employees are not eligible.

VI. Immigration

Malaysia’s immigration regime differentiates between “expatriates” (i.e. skilled personnel) and “foreign workers” (i.e. manual labourers). There are also differences between East and West Malaysia. This section will address only the rules in West Malaysia for expatriates.

Generally, Malaysia welcomes expatriates and has relatively liberal immigration rules. However, the immigration system can be convoluted despite significant efforts to modernise and streamline it in recent years. Navigating the system requires a thorough understanding of fast-changing rules, policies, and unpublished practices. It is also crucial for immigration matters to be planned well in advance, not only taking into account the known steps required but also unexpected complications.

1. Long-term permits

a. Prerequisites for Employment Passes and Professional Visit Passes

The Employment Pass (“EP”) and the Professional Visit Pass (“PVP”) are the two most commonly required long-term work permits.

An EP is for an employee of a Malaysian sponsoring entity. It is a multiple-entry visa enabling the holder to live and work in Malaysia for the duration of the EP.

A PVP is for a visiting professional invited by a Malaysian sponsoring entity for a specific task (e.g. training or project implementation). The PVP holder cannot be an employee of the Malaysian sponsor. A PVP has a maximum validity period of 12 months.

EPs and PVPs in particular require planning in advance, because the prerequisites for a sponsoring company to apply for them can be cumbersome to fulfil. If no industry-specific rules apply, the main requirements are as follows:

- The sponsor must register for an Expatriate Services Division (“**ESD**”) account before it can apply for EPs or PVPs. To be eligible for the account, the sponsor must have
 - physical business premises and a BPL;
 - minimum paid-up capital of MYR 500,000 assuming that it is a 100% foreign-owned company *not* involved in wholesale or retail trade.
 - If a company *is* involved in wholesale or retail trade, it will have to first apply for the WRT Licence before it is eligible for the ESD account, and the minimum paid-up capital requirement would be MYR 1 million.
- After the registration of the ESD account, the company would then submit a workforce projection, which states and justifies the number of EPs and PVPs it requires in one calendar year. Upon approval of the workforce projection, the company would have the ability to apply for EPs and PVPs.
- For EPs, additional requirements apply:
 - With effect from 1 January 2023, employers must apply for the approval of the Director General of Labour before employing foreigners;
 - Employers must advertise vacancies for 30 days to local candidates on the government platform called MyFutureJobs before offering the position to a foreign candidate. However, this requirement is of limited relevance in practice because it is subject to numerous exemptions. For example, key management positions, positions with monthly wages of MYR 15,000 or more and positions being filled by employees transferred from group companies are automatically exempt from the requirement.

Due to the lengthy process above, for new companies, the typical time period between incorporation and the approval of the first EP or PVP is 6 months. For specific industries, e.g. manufacturing and construction, additional requirements apply.

b. Other types

Aside from EPs and PVPs, there are also other types of long-term visas. The table below provides a non-exhaustive overview.

Visa	Function
DE Rantau Nomad Pass	This Pass is essentially a special PVP for digital nomads who are freelancers, independent contractors and remote workers working in the IT industry.
Resident Pass – Talent	This is a long-term residence and work permit for expatriates. Unlike the EP, the Resident Pass – Talent is not linked to a particular employer.
Malaysia My Second Home (“ MM2H ”)	The MM2H programme is aimed at attracting high net worth individuals to live and invest in Malaysia. Applicants must be at least 35 years old, and are generally not allowed to work (with some exceptions). The programme is primarily aimed at foreigners wishing to retire in Malaysia.
Premium Visa Programme	The Premium Visa Programme is a long term residency visa that allows high net worth foreigners and to live, work, and study in Malaysia for up to 20 years. Unlike the MM2H, there is no minimum age, and successful applicants are allowed to take up employment as well as conduct business in Malaysia.

2. Short-term permits

Short-term visas are generally much easier to apply for than EPs and PVPs. The following table sets out common types and their purposes.

Permit	Function
Short-Term Social Visit Pass (“ ST-SVP ”)	The ST-SVP is the basic visa for short touristic, social or business trips. Nationals of most countries are eligible for an ST-SVP granted upon arrival for a stay of up to 90 days. The passport holders of some countries (e.g., China, India, and Pakistan) must apply for the ST-SVP prior to their arrival in Malaysia.
Multiple entry eVisa (“ MEV ”)	Foreign nationals who are not eligible for an ST-SVP upon arrival may apply for an MEV, which allows multiple entries for a specific purpose during a limited period of time, thereby dispensing with the need to apply for an ST-SVP prior to arrival for each entry.
PLS@Xpats work permit	The PLS@Xpats is not a visa. It is instead permission for an ST-SVP holder to work. It has a maximum duration of 30 days, and is meant for unforeseen emergencies or urgent work, e.g. repairs, installation, maintenance, testing and commissioning.

VII. Real estate

Malaysia allows foreign entities to own freehold land and lease land, provided that certain requirements are fulfilled, e.g. the land is not of a restricted type, its value is above thresholds prescribed by the relevant State authority, and the consent of the State authority is obtained.

Given that the precise conditions may vary from State to State, assessing whether the proposed owner or lessee of the land can fulfil all requirements in advance is advisable.

VIII. FOREX

In the normal course of business, Malaysia’s foreign exchange rules should pose few obstacles. The following table outlines the main rules for companies resident in Malaysia (a company is considered resident if, in essence, its management and control is exercised in Malaysia).

Activity	Rules
<p>Payment in foreign currency (“FC”)</p>	<p><u>Payment in foreign currency between residents</u></p> <p>A resident is free to pay or receive foreign currency (“FC”) to or from another resident for the following:</p> <ul style="list-style-type: none"> ■ Any purpose between immediate family members; ■ Education, employment or migration outside Malaysia; ■ A transaction between the resident and a licensed onshore bank, a licensed international takaful operator or an international currency business unit of a licensed takaful operator, in the conduct of the latter’s business involving FC; ■ Settlement of <ul style="list-style-type: none"> ■ a FC-denominated derivative, excluding exchange rate derivatives, transacted on a Specified Exchange under the Capital Market and Services Act 2007 between the resident and a resident futures broker; ■ a commodity murabahah transaction between residents undertaken through a resident commodity or a non-resident trading service provider; ■ a domestic trade in goods or services between a resident exporter and resident entities involved in Global Supply Chain operations in Malaysia, subject to specified conditions; or ■ a miscellaneous expense incurred outside Malaysia between a resident individual residing in Malaysia and a resident individual residing outside Malaysia. <p><u>Payment in foreign currency between resident and non-resident</u></p> <p>A resident is free to make or receive FC payment to or from non-resident for any purpose, <u>except for the following:</u></p> <ul style="list-style-type: none"> ■ FC-denominated derivatives offered by the resident unless approved by the Central Bank of Malaysia (“BNM”) or allowed in certain circumstances; ■ Malaysian Ringgit derivatives unless it is approved by BNM or allowed in certain circumstances; ■ exchange rate derivatives offered by a non-resident unless it is approved by BNM or allowed in certain circumstances.

Activity	Rules
Export of goods	<p>An exporter of goods can receive proceeds from its export of goods in ringgit or FC. The exporter must repatriate the export proceeds to Malaysia in full value within 6 months from the date of shipment. Repatriation up to 24 months is only allowed for reasons beyond the exporter's control and other permitted reasons.</p> <p>An exporter can undertake offsetting, netting-off and writing-off arrangement of export proceeds subject to permitted reasons only.</p>
FC borrowing	<p>A resident entity is free to borrow any amount in FC from licensed onshore banks, resident or non-resident entities within its group of entities, resident or non-resident direct shareholders, or another resident through issuance of FC debt securities.</p> <p>A resident entity may borrow in FC up to a prudential limit of MYR 100 million equivalent in aggregate from non-resident financial institutions and other unrelated non-residents, including through issuance of securities or Islamic securities denominated in FC.</p>
Financial guarantee	<p><u>Obtained by resident from non-resident</u></p> <p>A resident is free to obtain financial guarantee from a non-resident.</p> <p><u>Issued by resident to non-resident</u></p> <p>A resident is free to issue a financial guarantee to or on-behalf of non-resident to secure borrowing obtained by a non-resident with some exceptions as follows:</p> <ul style="list-style-type: none"> ■ the non-resident borrower is a special purpose vehicle or if the underlying borrowing is being utilised by the resident guarantor, therefore the resident shall be subjected to the rules on external borrowing; or ■ the underlying borrowing will be repaid by a resident, other than when financial guarantee is called upon. In such cases, the resident shall be subjected to the rules on investing in foreign currency assets.

C. Myanmar



Myanmar is the second-largest South Asian country and shares borders with China, India, Bangladesh, Laos and Thailand. Together, these countries account for about one-fifth of the global gross domestic product.

After Myanmar's military stepped aside and a quasi-civilian government was installed in 2011, the country had embarked on a comprehensive reform process to overhaul its legal framework and simplify doing business, increase transparency and strengthen the rule of law. However, the latest political developments have slowed down progress and marked a shift in the country's direction. There is no question that the impact of the global pandemic and the political events that took place in Myanmar since February 2021 will continue to impact Myanmar's economy at least in the medium term.

Myanmar's competitive advantage lies in its labour force, which is characterised by a relatively low wage level, and the country's almost unhindered access to other markets in the region due to its membership in the Association of Southeast Asian Nations (ASEAN). Moreover, Myanmar holds the status of a developing nation, which entitles it to enjoy the EU tariff preferences under the Generalised System of Preferences. These tariff preferences offer Myanmar certain trade benefits, including reduced tariffs on exports to the EU.

Overall, Myanmar's strategic location, large potential market, low labour costs, and preferential trade agreements make it an attractive destination for businesses seeking to establish a foothold in the region. It remains to be seen whether the country can regain its positive momentum and make full use of its potential in the near future.

I. Market entry: Registration of a business

In Myanmar, as in the preceding countries, the company limited by shares and the branch office are significant options for the establishment of a business presence.

In outline:

Entity	Key criteria and requirements
Company limited by shares	Fully-fledged, independent legal entity. Shareholding: <ul style="list-style-type: none">■ Minimum 1 shareholder, whether a natural person or corporate entity;■ No minimum share capital requirements;■ It is possible to have 100% foreign shareholding, unless the intended business activity requires a threshold percentage of Myanmar shareholding.
Branch office	A branch office is registered by an overseas corporation with the Directorate of Investment and Company Administration (“DICA”). It is not an independent legal entity, and there is no limitation of liability. A branch office may, by entering into contracts and incurring legal obligations, debts and liabilities, bind the overseas corporation. An authorised officer resident in Myanmar must be appointed.

In general, there are three options for the establishment of a business presence in Myanmar, as follows:

- Registration with DICA under the Companies Law 2017 (“**CA 2017**”);
- Additional registration under the Myanmar Investment Law 2016 (“**MIL 2016**”); and
- Additional registration under the Special Economic Zone Law 2014 (“**SEZL 2014**”).

1. Registration under CA 2017

Most businesses, whether a company limited by shares or a branch office, are registered under the CA 2017.

2. Registration under the MIL 2016

Certain strategic investments, long-term land use as well as tax and duty incentives (if eligible) under the MIL 2016 require a permit or an endorsement of the Myanmar Investment Commission (“**MIC**”).

Confirmation on whether an investment requires an MIC Permit, or is eligible for benefits and the application of an Endorsement, can be obtained through an investment screening application.

3. Registration under the SEZL 2014

Although there are three Special Economic Zones planned, namely Thilawa, Kyauk Phyu and Dawei, only Thilawa is currently operational.

Special Economic Zones differentiate between promotion zones and free zones for domestic and export-oriented industries, which are subject to different conditions and benefits.

II. Regulatory compliance: Restricted activities

There are certain business activities from which foreign investors are prohibited, for example:

- The provision of tour guide services;
- Prospecting;
- Exploration for and production of jade and other gem stones; and
- Operation of mini markets or convenience stores.

In addition, specified activities require a threshold percentage of Burmese shareholding, normally via a joint venture with a natural Burmese citizen, including the following:

- The development, sale and lease of residential apartments and condominiums; or
- The manufacture and distribution of purified drinking water.

Finally, approvals from the relevant government authorities are sometimes necessary, as is the case for the following:

- The provision of telecommunication services;
- Wholesale and retail trading; and
- Operation of a private hospital.

III. Tax

1. Corporate income tax

The rate of tax is 22% on income and 10% on capital gains (with the exception of the oil and gas industry, where increased rates of 40%-50% apply).

2. Withholding tax

Withholding tax (“**WHT**”) as a pre-paid income tax deducted “at source” (i.e. by the purchaser) is still imposed on certain payments to non-residents, as follows:

Category of Payment	Withholding tax (%)	
	Resident Citizens and Resident Foreigners	Non-resident Foreigners
Interest payment	-	15.0
Royalties	10.0	15.0
Payment by Union-level organisations, Union Ministries, Nay Pyi Taw Council, Region/state governing-bodies, Union-owned enterprises, Development Committees for purchase of goods, work performed or supply of services within the country under a tender or auction or competitive bidding system or a contract or agreement or other modes.	2.0	2.5
Payment by businesses, partnership firms, joint-ventures, companies, organisations composed of individuals, organisations or associations formed and registered under any prevailing law, cooperatives and foreign companies, foreigner-owned businesses, that are collaborating for mutual benefit with the Union for purchase of goods, work performed or supply of services within the country under a contract, agreement or other modes.	-	2.5

3. Commercial tax

Levy	Commercial tax is levied as a turnover tax on a wide range of goods and services produced, traded or rendered within Myanmar as well as the import of goods based on the landed costs (i.e. the sum of the cost, insurance and freight value, and customs duties). It is also levied on imports not exceeding the Custom Department's <i>de minimis</i> value threshold.
Registration	Any manufacturer, trader and service provider is required to register for commercial tax.
Exemption	Only enterprises which do not exceed statutory annual threshold for taxable supply of MMK 50 million are exempted from the collection of commercial tax.
Rates	General rate on the import or sale of goods and provision of services: 5% For specified goods or services announced annually: 0-3%

It should be noted that in addition to the commercial tax, there is a Special Goods Tax which is levied on products such as alcohol, tobacco, motor vehicles, gemstones, natural gas and logs.

4. Incentives

Scheme	Potential benefits
Under the MIL 2016, by application of MIC Permit or Endorsement holder	<ul style="list-style-type: none">■ Corporate income tax exemption (for 3, 5 or 7 years);■ Tax exemption for re-invested profits;■ Increased depreciation rate for machinery, equipment, building or capital assets;■ Tax deductions for research and development;■ Specified exemptions or reliefs from customs duties or other domestic taxes;■ Reimbursement of customs duties or other domestic taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export.

Special Economic Zone - Free Zones

- Tax holiday for the first 7 years from the commencement of the commercial operation; tax relief of 50% for additional 5 years; tax relief of 50% for additional 5 years on the profit which is reserved from the business as a reserve fund if it is reinvested within 1 year in the business;
- Specified import exemptions from customs duties and other taxation paid at the time of importation;
- Permission to carry forward losses for 5 consecutive years after the year in which the losses were incurred;
- Specified exemptions from commercial tax;
- Exemption of income tax for the dividends distributed to each shareholder based on the profits accrued locally for which tax has been paid;
- Income tax deductions for training of skilled or semi-skilled worker and staff of the management sector, as well as expenses for research and development related to the investment project.

Special Economic Zone - Promotion Zones

- Tax holiday for the first 5 years from the commencement of the commercial operation; tax relief of 50% for the second 5 years; tax relief of 50% for the third 5 years on the profit which is reserved from the business as a reserve fund if it is reinvested within one year in the business;
- Import relief from customs duties and other relevant taxation for 5 years from the commencement of business on the import of equipment and instruments not for sales as well as spare parts, the construction materials for factory, warehouse and office, motor vehicles and other materials which are essential for the business;
- Import refund of customs duties and other taxation paid at the time of importation on raw materials and other goods for production if the finished or semi-finished goods produced from those materials are exported abroad or into a Free Zone;
- Permission to carry forward losses for 5 consecutive years after the year in which the losses were incurred;
- General exemption from commercial tax;
- Exemption of income tax for the dividends distributed to each shareholder based on the profits accrued locally for which tax has been paid;
- Tax deductions for training, research and development related to the investment project.

IV. Labour law and immigration: Highlights

Since its political and economic liberalisation, Myanmar has embarked on a comprehensive reform process and is currently overhauling its legal framework. Existing laws were revised or replaced, and new laws enacted.

In practice, employer-employee relationships are however heavily influenced by the policies and practices of the Ministry of Labour. Regulations and notices issued by the Ministry and its departments not only provide for the interpretation of the existing laws, but also additional requirements imposed on employers and employees.

Most employment disputes are settled by the labour authorities on the township level, which tend to be protective of employees.

1. Official employment agreement and employment forms

An employer must enter into written employment agreements with its employees within the first 30 days of employment. Once executed, the employment agreement must be submitted to the relevant township labour office for registration.

Employment agreements follow an official template of the Ministry of Labour, which prescribes the fields to be included. There are equally standard employment forms, for matters ranging from overtime payment records to a register of child employees.

2. Immigration

With the exception of citizens of Brunei, Cambodia, Indonesia, Laos, the Philippines, Singapore, Thailand and Vietnam, any foreigner wishing to enter Myanmar must obtain a valid visa.

There are 14 types of visas, *inter alia*:

- Business visa;
- Crew visa; and
- Employment visa.

A foreigner staying in Myanmar for more than 90 consecutive days is also required to apply for a Foreigner Registration Certificate (“**FRC**”). Foreigners intending to reside in Myanmar usually apply for a Long-term Stay Permit (“**LTSP**”) and multiple-journey visa.

In relation to companies registered with the MIC, the company must apply for a labour card when hiring foreigners for the following positions:

- Senior management;
- Technical experts; and
- Consultants.

V. Real estate

Myanmar has strict constraints on dealings with land by foreign companies. In particular, no foreigner or foreign-owned Myanmar company may:

- Acquire immovable property by way of purchase, gift, mortgage, exchange or transfer; or
- Hold a lease of immovable property for a term exceeding one year.

Crucially, the MIL 2016 and the SEZL provide for exemptions to the latter, in that any foreign investor who has obtained an MIC Permit or Endorsement may apply for a Land-Rights Authorisation to enter into long-term leases of up to 50 years, with a possibility of a further two extensions of ten years each. Similarly, investors in a Special Economic Zone may enter into leases of up to 50 years, extendable for a period of 25 years.

VI. FOREX

The political events that took place in Myanmar after 1 February 2021 have severely impacted the formal banking sector, wire transfers and cash availability in Myanmar. As a result, the country has experienced a rapid depreciation of the Myanmar Kyat and a severe shortage of cash in foreign currency. In an effort to counter these developments, the State Administration Council and the Central Bank of Myanmar announced several legislative changes and instructions.

Most notably, all foreign currency earned by Myanmar residents and companies that do not enjoy exemptions must be deposited in banks with licenses to exchange foreign currency and converted into Myanmar Kyat at the exchange rate prescribed by the Central Bank of Myanmar.

It is important to note that forex management in Myanmar is currently characterized by frequent and substantial interventions by the State Administration Council and the Central Bank.

1. Restrictions on FX-transactions and foreign transfers

In general, all residents of Myanmar must obtain the permission of the Foreign Exchange Management Board in all practical dealings with foreign exchange.

Except with the prior approval of the Central Bank of Myanmar, all persons must transact with an authorised dealer in respect of the buying/borrowing, selling/lending, transfer or exchange of any foreign exchange.

Any transfer of foreign currency from Myanmar to abroad requires the prior approval from the Foreign Exchange Supervisory Committee. Such approval must be obtained by the bank account holder and submitted to the commercial bank facilitating the transfer together with other supporting documents.

2. Restrictions on offshore bank accounts

By law, any opening of an offshore account outside of Myanmar by a resident must have been approved in advance by the Central Bank of Myanmar.

Since foreign banks received licences to operate in Myanmar, criteria for the approval of offshore bank accounts have become increasingly strict and require sound justification. It should be noted that even if sufficient justification can be found, the approval process is nevertheless cumbersome and may take up to several months.

3. Restrictions on foreign loans and offshore loan repayment

Residents of Myanmar cannot take foreign loans or documents likely to be loans, or conduct other types of borrowing abroad without prior approval of the Central Bank. One qualification to this rule is that a resident enterprise registered with the MIC may apply via the MIC instead.

In deciding whether to grant approval, the Central Bank considers whether:

- The equity capital of the applicant is at least USD 500,000;
- The borrower has access to a matching foreign exchange income;
- The borrower is able to repay the loan from the income generated from domestic business and has a plan to mitigate the exchange risk;
- The borrower has already paid up 80% of the equity committed in an MIC Permit;
- The borrower's debt to equity ratio is within a certain threshold;
- The terms and conditions mentioned in loan agreement and documents are complete and correct;
- The loan tenure is medium-term or long-term, and whether the loan repayment schedule is consistent with loan agreement.

The repayment of offshore loans, including the principal amount as well as accrued interests are currently suspended by instructions from the Central Bank. Borrowers were asked to renegotiate the repayment terms of their loans with the overseas lenders.

4. FATF blacklisting

On 21 October 2022, the Financial Action Task Force (“**FATF**”) added Myanmar to its category of “*high-risk jurisdictions subject to a call for action*”, commonly known as the “*blacklist*”. FATF cited Myanmar’s persistent failure to combat money laundering and terrorist financing. Countries and financial institutions are advised to apply enhanced due diligence to business relations and transactions with Myanmar.

As a consequence, several USD clearing agents have suspended or severely restricted the clearing of USD transfers to and from Myanmar. Similarly, various banks outside of Myanmar have taken steps to reduce transactions with Myanmar.

D. Singapore



Consistently ranked as one of the key business hubs in the world, Singapore has a unique position in the global economy and a pivotal role as a business centre in the heart of Southeast Asia. Its strategic location, pro-business government policies, highly skilled workforce, and world-class infrastructure have made it an attractive destination for businesses seeking to establish a presence in Asia.

I. Market entry: Registration of a business

The Private Limited Company by Shares (“**Pte. Ltd.**”) is the preferred entity among foreign companies doing business in Singapore. This type of business vehicle is a legal entity separate from its shareholders, such that the shareholders will not be liable for the debts and obligations of the Pte. Ltd. Instead, the liability of shareholders is limited to the payment of the share capital they subscribed for. The incorporation process of the Pte. Ltd. is straightforward and can often be completed within one business day.

For foreign investors who wish to first explore the feasibility of doing business in Singapore, a Representative Office (“**RO**”) may however be a suitable option to consider. An RO is an “extended arm” of a foreign entity and is not a separate legal entity. While revenue-generating activities are not permitted for an RO, it enables the foreign entity to conduct market research and feasibility studies on the viability of setting up a more permanent entity in Singapore. An RO has a limited lifespan and must be entirely funded by sources outside of Singapore.

Foreign entities may also consider registering a Branch Office (“**Branch**”) in Singapore. Similar to the RO, a Branch is not a separate legal entity, but rather a part of the foreign entity. All legal obligations of the Branch are hence obligations of the foreign entity itself. Unlike the RO, a Branch can engage in revenue-generating activities.

Another possible business vehicle is the Limited Liability Partnership (“LLP”). An LLP is a legal entity separate from its owners, i.e., the partners. It can in certain circumstances carry tax advantages for its owners when compared to a Pte. Ltd.

The table below provides more details on the business vehicles introduced above:

Main entity forms	Key characteristics	Significant set-up conditions
<p>Private Company Limited by Shares</p>	<p>A Pte. Ltd. is a fully-fledged independent legal entity.</p> <p>Suitable for all kinds of business activities.</p>	<p>The minimum capital requirement for a company is SGD 1.</p> <p>Only one shareholder is required.</p> <p>Requires one director who is ordinarily resident in Singapore.</p> <p>A registered office in Singapore and a locally resident Company Secretary are required.</p>
<p>Representative Office</p>	<p>An RO is an “extended arm” of a foreign entity and not a separate legal entity from it.</p> <p>Cannot engage in any trading or business activities which yield a profit.</p>	<p>Initial registration period of 1 year. Registration can only be renewed twice.</p> <p>The foreign enterprise must be at least three years old.</p> <p>The sales turnover of the foreign enterprise must be higher than USD 250,000.</p> <p>The proposed number of employees of the RO must be less than five.</p>
<p>Branch Office</p>	<p>A Branch is part of the foreign enterprise it represents and is not a separate legal entity.</p> <p>Unlike an RO, a Branch is suitable for all kinds of business activities.</p>	<p>The registration of a Branch requires substantially more information to be filed with the authorities compared to the incorporation of a Pte. Ltd.</p> <p>Furthermore, the ongoing compliance requirements for maintaining a Branch are more cumbersome than those for a Pte. Ltd.</p> <p>Branches must have a locally resident authorised representative.</p>

<p>Limited Liability Partnership</p>	<p>An LLP is a separate legal entity from its partners. The partners' liabilities are limited to the individual contribution of each of the partners.</p> <p>The LLP is tax transparent. The profits of the LLP are taxed at the level of the partners directly.</p>	<p>Two or more partners, who may be local/foreign individuals or companies, are required to form an LLP.</p> <p>The LLP must appoint at least one manager, who must be a natural person ordinarily resident in Singapore.</p> <p>The LLP must maintain a registered office in Singapore.</p>
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II. Regulatory compliance

Generally Singapore has a business friendly environment. However, specific industries and activities are subject to licensing or other regulatory requirements. Some examples are listed below. It is advisable to conduct a brief compliance check before commencing your business.

1. Protected industries

There are certain industries which require local involvement, typically in relation to its ownership and management. For example, local broadcasting companies have limits on foreign shareholding and every director in a newspaper company must be a Singapore citizen.

2. Common licences

Depending on the business that an organisation wishes to engage in, it may be required to obtain a specific business licence before doing so. Regulated activities commonly carried out by companies entering the Singapore market include, among others, starting of an engineering business, engaging in trading activities or starting a food and beverage business. Details relating to these examples are set out in the table on the following page.

Licence	Purpose and key requirements
Engineering Business	<p>Any organisation that intends to supply professional engineering services in Singapore must be licensed by the Professional Engineers Board.</p> <p>Criteria for Pte. Ltds. include, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> ■ The corporation must have a paid-up capital of at least SGD 500,000. ■ The constitution of the corporation should state that a majority of the corporation's directors shall be registered professional engineers or allied professionals, each of whom shall hold a valid practising certificate. ■ The corporation must be insured against professional liability.
Trading Activities	<p>Every organisation who intends to engage in import and/or export activities in Singapore must register with the Accounting and Corporation Regulatory Authority or the relevant Unique Entity Number (“UEN”) Issuance Agency to obtain a UEN and activate their customs account.</p> <p>After activating the customs account, a Declaring Agent has to be appointed / registered and a customs permit application must be submitted via TradeNet.</p>
Food & Beverage Business	<p>Under the Environmental Public Health Act, it is mandatory to secure a Food Shop Licence for retailing food and/or drinks. There will be a pre-licensing inspection of the restaurant premises. The licence has to be renewed every year.</p>

III. Tax

Singapore's tax system is generally considered to be business-friendly and straightforward when compared to other countries.

In addition, Singapore has established an extensive network of double taxation agreements with other nations, through which double taxation is avoided and withholding tax rates are reduced.

1. Business taxation: An overview

Corporate income tax	Singapore's corporate income tax rate is 17% of the chargeable income. This applies to both local and foreign companies.
Dividends	Dividends paid by a Singapore resident company are generally tax exempt. Foreign dividends received by individuals are tax exempt as well. Foreign dividends received by Singapore tax resident companies are tax exempt if certain conditions are met. The same applies for dividends received by individuals through a partnership in Singapore.
Capital gains	In general, there is no capital gains tax in Singapore. However, the gains from a sale of assets may be taxable as income when the primary purpose of buying and selling is to make profits.

Withholding tax on income accruing in or derived from Singapore

Singapore corporations paying monies of a specified nature (e.g., royalty, interest, technical service fee) to a non-resident company or individual may be required to withhold tax. The rate of withholding tax depends on the type of payment being made, and the applicability of double tax treaties.

Payments to non-resident companies of the following types can be subject to withholding tax:

- Interest, commissions or fees in connection with any loan;
- Royalties for the use of or the right to use any movable property;
- Payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information or for the rendering of assistance or service in connection with the application or use of such knowledge or information;
- Payments of management fees;
- Rent for the use of any movable property;
- Payments for the purchase of real property from a non-resident property trader;
- Payments made from structured products; and
- Distributions from a real estate investment trust.

Payments to non-resident individuals of the following types can be subject to withholding tax:

- Payments to non-resident directors;
- Payments to non-resident professionals (consultant, trainer, coach, etc.);
- Payments to non-resident public entertainers (artists, musicians, sportsmen, etc.); and
- Interest and royalty payments.

2. Tax Incentives and tax exemption schemes

There are various types of tax incentives and exemptions available for companies in Singapore. Some are meant to benefit companies in general while others are meant to support companies in specific activities or industries. Some of the more notable schemes are described below:

Incentive scheme	Basic eligibility requirements	Key benefits
Pioneer Certificate Incentive	The Pioneer Certificate Incentive is granted to companies that engage in “pioneering” activities not currently being carried out in Singapore. This includes bringing in new technologies, skillsets or knowledge that is substantially significant or advanced. This incentive is available to companies registered and operating in Singapore.	Qualifying companies are eligible for a tax exemption on their income derived from qualifying activities for a period of up to 15 years.
International or Regional Headquarters Award (“IHA”, “RHA”)	<p>The Headquarters Awards encourage companies to set up or expand their global or regional headquarters activities in Singapore. Companies registered and operating in Singapore may make an application for such awards with the Singapore Economic Development Board. The applicant must meet certain requirements relating to:</p> <ul style="list-style-type: none">■ Headquarters activities in Singapore.■ Employment of skilled employees.■ Total business expenditure during the incentive period.	Under the IHA and RHA, qualifying companies can enjoy a concessionary tax rate of 10% and 15% for a period of up to 5 years.

Incentive scheme	Basic eligibility requirements	Key benefits
Tax Exemption Scheme for New Start-up Companies	<p>The qualifying conditions for the Tax Exemption Scheme for New Start-Up Companies are as follows:</p> <ul style="list-style-type: none"> ■ The start-up company must be incorporated in Singapore and be a tax resident of Singapore. ■ The start-up company must have its total share capital beneficially held directly by no more than 20 shareholders throughout a basis period, where all the shareholders are individuals or at least 1 shareholder is an individual holding at least 10% of the issued ordinary shares of the company. 	<p>The tax exemptions for qualifying companies for their first 3 consecutive years are as follows:</p> <ul style="list-style-type: none"> ■ 75% exemption on the first SGD 100,000 of normal chargeable income. ■ A further 50% exemption on the next SGD 100,000 of normal chargeable income.
Partial Tax Exemption Scheme for Companies	<p>All companies, including companies limited by guarantee, are eligible for partial tax exemption, unless they are claiming the tax exemption for new start-up companies.</p>	<p>The tax exemptions for qualifying companies are as follows:</p> <p>75% exemption on the first SGD 10,000 of normal chargeable income.</p> <p>A further 50% exemption on the next SGD 190,000 of normal chargeable income.</p>

Incentive scheme	Basic eligibility requirements	Key benefits
Enterprise Innovation Scheme (“EIS”)	From the Year of Assessment 2024, businesses that engage in research and development, innovation and capability development activities will be able to claim up to 400% tax deduction for five categories of qualifying activities.	<p>Tax deductions will be granted for the following five key areas:</p> <ul style="list-style-type: none"> Research and development carried out in Singapore. Registration of intellectual property. Acquisition and licensing of intellectual property rights for businesses with less than SGD 500 million in revenue. Innovation projects carried out with polytechnics, the Institute of Technical Education or other qualified partners. Training via courses approved by Skillsfuture Singapore and aligned to the Skills Framework. <p>Tax deductions for these activities will increase to 400%, with qualifying expenditure capped at SGD 400,000 for each activity, except for innovation projects with polytechnics (for which the cap will be SGD 50,000).</p>

3. Goods and Services Tax (“GST”)

The GST is a value-added tax in Singapore levied on the import of goods as well as on the supply of goods and services in Singapore. It is currently set at a rate of 8%. The rate will increase to 9% with effect from 1 January 2024.

A business must register for GST if the taxable turnover is:

- under the retrospective view, more than SGD 1 million at the end of a calendar year; or
- under the prospective view, expected to be more than SGD 1 million in the next 12 months.

The GST charged and collected is known as output tax which must be paid to the Inland Revenue Authority of Singapore within a month from the end of the accounting period.

4. Inheritance tax

Singapore's tax system does not employ any form of inheritance tax, which means the transfer of the ownership of a business or share of a business via inheritance is not subject to tax.

5. Personal income tax

Singapore's personal income tax rate for resident taxpayers is progressive. This means higher income earners pay a proportionately higher tax, with the current highest personal income tax rate being 24%.

A resident taxpayer is an individual who, in the year preceding the year of assessment, resided in Singapore except during temporary absences which are reasonable and not inconsistent with a claim by such a person to be resident in Singapore. It includes a person who was physically present or who exercised an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment.

The income tax rates for resident taxpayers are as follows:

Chargeable income (SGD)	Income Tax Rate (%) from YA 2024 onwards
0 - 20,000	0
20,001 – 30,000	2
30,001 – 40,000	3.50
40,001 – 80,000	7
80,001 – 120,000	11.5
120,001 – 160,000	15
160,001 – 200,000	18
200,001 – 240,000	19
240,001 – 280,000	19.5
280,001 – 320,000	20
320,001 – 500,000	22
500,001 – 1,000,000	23

The employment income of non-resident taxpayers is taxed at a flat rate of 15% or the progressive resident tax rates, whichever is higher. Special rules apply, e.g., with regard to the taxation of director's fees and consultants' fees.

IV. Labour law

The employment law in Singapore is more employer-friendly compared to general European standards. Yet, this should not obscure the fact that there are laws in place to protect and grant rights to employees, and that there are constant efforts to strengthen employees' positions.

In particular, workmen (performing manual labour) earning a monthly salary of not more than SGD 4,500 and other employees receiving a monthly salary not exceeding SGD 2,600 enjoy special protection, e.g., in relation to rest days, hours of work, overtime pay and other conditions of their employment.

1. Employment agreements and policies

As Singapore employment law does not comprehensively cover all aspects of an employment relationship, employers (especially foreign employers) often wish to grant their employees more benefits than the minimum required under the law. As such, Singapore employment agreements are often long and detailed. At a minimum, they should set out the so-called Key Employment Terms ("KETs"). These are the essential terms of employment, such as the job title, main duties, working arrangements, salary and overtime payments, bonuses, leave entitlement, medical benefits, and notice period for termination.

Employment contracts are often supplemented by employee policies or handbooks. These documents may address additional topics (e.g., travel policies or grievance policies). They can also be used to address arrangements which apply to all employees in a uniform manner (e.g., confidentiality requirements). In this way, such arrangements do not need to be stated expressly in individual employment contracts, allowing them to be more concise.

2. Termination of employment

In Singapore, employers can bring an employment relationship to an end by relying on their statutory or contractual right to terminate with notice (or by making payment *in lieu* of giving notice). There is no legal obligation for the employer to provide the employee with reasons for the termination by notice and, in practice, it is also not advisable to do so.

The notice period is typically stated in the employment contract. Absent any express terms, the following minimum notice periods apply:

Length of Service	Notice Period
Less than 26 weeks	1 day
26 weeks to less than 2 years	1 week
2 years to less than 5 years	2 weeks
5 years or more	4 weeks

While terminating employment in Singapore is generally a straightforward process, there has recently been an increase in the number of employees challenging the termination of their employment. In particular, complaints filed with the Ministry of Manpower (“**MOM**”) or the Tripartite Alliance for Fair and Progressive Employment Practices (“**TAFEP**”) are more common. While such complaints only require minimum effort from the employee, they can result in governmental investigations that may be time-consuming and costly for the employer. Against this background, the use of a mutual termination agreement is a common means of terminating an employment contract. This involves the employer and employee coming to an agreement on the terms of the termination of employment, which minimises the risk of subsequent disputes.

If an employer in Singapore terminates an employment contract with no immediate plan to fill the vacancy, this is presumed to be a retrenchment. Employers with more than 9 employees are required to notify the MOM of such a retrenchment exercise. In addition, the Tripartite Partners – the MOM, the National Trades Union Congress and the Singapore National Employers Federation – recommend the payment of retrenchment benefits to retrenched employees. While this recommendation is not legally binding, non-compliance may lead to unfavourable effects for the employer, e.g., when it comes to future work pass applications with the MOM.

For the sake of completeness, it should be noted that an employer can also dismiss an employee for misconduct with immediate effect. Such a termination must be preceded by due inquiry and should be considered only as a means of last resort. In general, a summary dismissal based on misconduct is more prone to a subsequent dispute than an ordinary termination with the contractual notice period.

V. Social security

Singapore's social security system is the Central Provident Fund ("CPF"), which is a mandatory savings scheme for Singapore citizens and Singapore permanent residents. The CPF is not open to foreigners holding a work pass. As such, employers do not have to pay any social security contributions for foreign employees unless the employees have permanent resident status. The purpose of CPF savings is to cater for housing, medical expenses, and basic living necessities during the retirement phase. The CPF is complemented by the Supplementary Retirement Scheme ("SRS") which mainly aims to help Singaporeans to increase their savings for their later years. Unlike the CPF, foreigners can take part in the SRS.

Social security Outline scheme	
Central Provident Fund	<p>Singapore's social security system relies heavily on the CPF as a fundamental component to address retirement, housing, and healthcare requirements. CPF contributions are mandatory only for Singapore citizens and permanent residents.</p> <p>CPF contributions must be made by employers and employees. Depending on the employee's age, the total CPF contribution rate can range from 12.5% to 37% of the monthly wage, whereby the employee contributes between 5% and 20% of his/her wage and the employer contributes an additional amount ranging between 7.5% and 17% of the employee's wage. The amount of wage that attracts CPF payments is currently capped at SGD 6,300/month for ordinary wages (such as the monthly salary). However, in several steps over the next years until 2026, this ordinary wage ceiling will be increased to SGD 8,000/month. The total annual wage which may attract CPF payments (i.e., the salary including additional payments such as bonuses) is currently capped at SGD 102,000.</p> <p>The CPF comprises the following four accounts:</p> <ul style="list-style-type: none">■ Ordinary Account: For retirement, housing, insurance and investment.■ MediSave Account: For hospitalisation expenses and approved medical insurance.■ Special Account: For old age and investment in retirement-related financial products.■ Retirement Account: For monthly retirement payouts (age 55 and above).
Supplementary Retirement Scheme ("SRS")	<p>The SRS complements the CPF as part of the Singapore government's strategy to address the financial needs of an aging population. Unlike the CPF scheme, participation in SRS is voluntary and SRS members can contribute a varying amount at their own discretion, subject to certain caps. Foreigners are also afforded the chance to save for their own retirement through the SRS.</p>

VI. Immigration: Common work passes

Foreigners generally need a “work visa” to work in Singapore. The most common work passes are described below:

Work pass	Purpose and key requirements
Employment Pass (“EP”)	<p>The Employment Pass allows foreign professionals, managers, and executives to work in Singapore. It is tied to a specific employer, i.e., an EP holder is not allowed to work for any other employer else in Singapore.</p> <p>The main eligibility criteria are as follows:</p> <ul style="list-style-type: none">■ A fixed monthly salary of at least SGD 5,000 (or SGD 5,500 in the financial services sector). The necessary minimum salary increases progressively with age from age 23, up to SGD 10,500 at age 45 and above (or SGD 11,500 in the financial services sector).■ Acceptable qualifications (usually a university degree or specialised skills).■ EP candidates must pass a points-based Complementarity Assessment Framework (“COMPASS”) which generally grants points in the following categories: employee’s salary and qualifications & employer’s workforce diversity and support for local employment. Extra points can be earned for candidates in jobs where a skills shortage exists or for employers who have partnerships with the government or ambitious innovation or internationalisation activities.
Personalised Employment Pass (“PEP”)	<p>The Personalised Employment Pass is not tied to an employer but only to the employee. It therefore grants the candidate more flexibility.</p> <p>An application for a PEP is possible for both Employment Pass holders and foreign professionals earning a fixed monthly salary of at least SGD 22,500.</p>

Entre Pass

Experienced entrepreneurs or investors, as well as high-level innovators who wish to operate a business in Singapore, can apply for an EntrePass. The EntrePass must be applied for before or within the first six months after the incorporation of the company. In addition, the applicant must meet the following requirements:

If the applicant is an **entrepreneur**:

- he must have extensive business experience or a network and a promising track record in starting highly scalable businesses and want to establish and operate an innovative tech or venture-backed business in Singapore;
- the registered company must receive financial support of at least SGD 100,000 from a government investment vehicle, venture capitalist or business angel that is recognised by a Singapore Government agency; or
- the registered company is an existing incubatee at an incubator or accelerator in Singapore that is recognised by the Government.

To be considered an **innovator** for the purpose of an EntrePass application—

- the applicant or his company must own intellectual property rights that are registered with an approved national IP institution and provide the proposed business with a significant competitive advantage that cannot be easily replicated;
- the registered company must have entered into a research collaboration with a research institution under the Agency for Science, Technology and Research, an Institute of Higher Learning in Singapore; or
- the applicant must have extraordinary technical or domain expertise in an area related to the proposed business, that is either venture-backed or owns innovative technologies.

To apply for an EntrePass as an **investor**, the applicant must have a good track record of investing in businesses and want to grow new or existing businesses in Singapore.

<p>Overseas Networks & Expertise Pass (“ONE Pass”)</p>	<p>The ONE Pass is an individualised pass designated for exceptional talents from various fields such as business, arts, culture, sports, academia, and research. This pass enables qualified candidates to simultaneously start, manage and work for multiple Singapore companies.</p> <p>Holders of a Singapore work pass and candidates from overseas can generally apply for the ONE Pass if they meet one of the following criteria:</p> <ul style="list-style-type: none"> ■ a fixed monthly salary of at least SGD 30,000 in the previous year; or ■ a fixed monthly salary of at least SGD 30,000 with a future employer in Singapore; or ■ outstanding achievements in arts and culture, sports, as well as science and research.
<p>S-Pass</p>	<p>The S-Pass is intended for mid-level skilled foreign employees to work in Singapore.</p> <p>Candidates must earn a fixed monthly salary of at least SGD 3,150 (a higher salary applies to candidates in the financial services sector). The necessary minimum salary increases progressively with age up to SGD 4,650 at age 45 and above.</p> <p>The allowed number of S-Pass holders in an organisation is limited to 10% to 15% of the total workforce of the organisation, depending on the industry sector.</p>

VII. Real estate

Singapore has an advanced housing market, with a range of options including public housing flats (known as HDB flats), private apartments and condominiums, landed properties and shophouses.

HDB flats are the most common type of housing in Singapore, being home for 80% of Singapore’s resident population. These flats are built and managed by the Housing & Development Board and are available for purchase or rent by eligible Singaporean citizens and permanent residents.

When purchasing a property in Singapore, the payment of Buyer Stamp Duty (“**BSD**”) is required. This is a one-time payment that is made by the buyer to the government upon the purchase of a property. The amount of BSD that a buyer must pay depends on the purchase price or market value of the property, whichever is higher. From 15 February 2023, the top marginal rate for residential properties is 6% and the top marginal rate for non-residential properties is 5%.

In addition to the BSD, there is the Additional Buyer's Stamp Duty ("**ABSD**") which is payable on top of the BSD and applies as follows:

- Foreigners (with the exception of those mentioned below) who buy residential properties in Singapore are subject to ABSD of 30%.
- Singapore Permanent Residents are subject to ABSD of—
 - 5% when buying their first residential property;
 - 25% when buying their second residential property; and
 - 30% when buying their third and subsequent residential properties.
- Singapore citizens and citizens of Iceland, Liechtenstein, Norway, Switzerland and the USA are subject to ABSD of—
 - 17% when buying their second residential property; and
 - 25% when buying their third and subsequent residential properties.

VIII. FOREX

Singapore is known for having a liberal foreign exchange policy, with no significant restrictions on foreign exchange transactions. In general, there are no foreign exchange controls in Singapore, and therefore residents and non-residents are free to convert and transfer currency in and out of the country without restriction.

However, the Monetary Authority of Singapore ("**MAS**") does have some measures in place to prevent money laundering and the financing of terrorism, which may affect certain foreign exchange transactions.

E. Thailand



Recognised by the World Bank as one of the most successful development stories, Thailand has made significant progress in social and economic development over the past four decades. Today, as the second-largest economy in Southeast Asia, Thailand's Eastern Economic Corridor, Special Economic Zones and other incentives have made it an increasingly attractive destination for foreign investors.

I. Market entry: Registration of a business

The most common entity option for foreign investors is a private limited company. Among the other available forms, the representative office and the branch office are also notable choices.

Main entity forms	Key characteristics	Significant set-up conditions
Private limited company	Fully-fledged independent legal entity	<p>Minimum of 2 natural promoters (founders)</p> <p>Minimum of 1 director</p> <p>Capital:</p> <ul style="list-style-type: none">■ No minimum share capital requirements;■ Where the company is foreign-owned, minimum registered capital of THB 2 million;■ The capital of the company must be divided into shares, each with an equal par value of at least THB 5;■ Minimum paid-up amount on shares issued is 25%, which can be used as working capital <p>Shareholding:</p> <ul style="list-style-type: none">■ Minimum of 2 shareholders (either natural or juristic persons);■ With certain restrictions, a private limited company can be wholly foreign-owned

<p>Branch Office</p>	<p>Not an independent legal entity</p> <p>May carry out business activities, subject to licensing requirements (e.g., Foreign Business Licence, Commercial Registration Certificate, VAT registration).</p> <p>May exist indefinitely.</p>	<p>An overseas corporation must appoint at least 1 branch office manager residing in Thailand to be in charge of operations.</p> <p>At least 25% of the estimated average annual operating costs for the first 3 years, but generally not less than THB 3 million.</p>
<p>Representative Office (“RO”)</p>	<p>Not an independent legal entity</p> <p>May only engage in limited non-revenue earning activities, for example reporting on local business developments and activities to its foreign parent company.</p> <p>All expenditures must be borne by its parent company.</p> <p>May exist indefinitely.</p>	<p>Must appoint at least 1 representative office manager residing in Thailand to be in charge of operations.</p> <p>Minimum THB 2 million registered capital (THB 3 million in the event that the regional office wishes to employ an expatriate).</p>
<p>Regional Office</p>	<p>Not an independent legal entity</p> <p>May only engage in limited non-revenue earning activities, for example coordinating regional activities and providing consultation, marketing or development services.</p> <p>All expenditures must be borne by its parent company.</p> <p>May exist indefinitely.</p>	<p>Must appoint at least 1 regional office manager residing in Thailand to be in charge of operations</p> <p>Minimum THB 2 million registered capital (THB 3 million in the event that the regional office wishes to employ an expatriate).</p>

II. Regulatory compliance: Protected and promoted sectors

1. Restricted activities

Thailand has protected sectors that are either prohibited to foreign investors or can only be entered with government permission. Therefore, it is recommended that a company conducts an assessment of its proposed business activities before entering the market. The table below provides examples of certain restricted businesses, but please note that it is not exhaustive.

Restrictions	Businesses
Absolute prohibition	Press, broadcasting station, radio, television station businesses Rice farming and other agriculture, livestock farming Forestry and timber processing from a natural forest Fishery, generally in Thai waters and certain economic zones Land trading
Permission of the Ministry of Commerce required	Businesses related to national safety or security
Conditions including a minimum percentage of Thai shareholding need to be fulfilled	Businesses with impacts on art, culture, traditions, customs and folk handicrafts Businesses with impacts on natural resources or the environment, e.g., mining

<p>Permission of the Ministry of Commerce's Department of Business Development required</p> <p>There is no requirement of minimum Thai shareholding</p>	<p>Provision of accounting, legal, architectural and engineering services</p> <p>Wholesale and retail trade below minimum capital thresholds</p> <p>Sale of food and beverages</p> <p>Specified types of construction</p> <p>Advertising</p>
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2. Promoted activities

In contrast to restricted activities, there are also activities promoted by Thailand's Board of Investment ("BOI") under the Investment Promotion Act 1977. Participation in such activities may allow companies to benefit from tax and non-tax incentives.

The promoted activities are, non-exhaustively, as follows:

- Agricultural, Food, Biotechnology, and Medical Industries;
- Machinery, Automotive, Electrical Appliances and Electronics industries;
- Metal, Material, Chemical and Petrochemical Industries, and Public Utilities;
- Digital, Creative Industries and High Value Services.

(BOI-promoted activities are applicable to both local and foreign investors. In practical terms, a foreign investor would first check whether its proposed activity is subject to restrictions, then, if it is permissible, whether it also constitutes a BOI-promoted activity).

c. Tax incentives

A company engaged in BOI-promoted activities may be entitled to the following tax incentives:

- Exemption/reduction of import duties on machinery;
- Reduction of import duties for raw or essential materials;
- Exemption of import duties on materials imported for R&D purposes;
- Exemption of corporate income tax on the net profit and dividends derived from the promoted activity;
- 50% reduction of the corporate income tax;
- Double deduction from the costs of transportation, electricity and water supply;
- Additional 25% deduction of the cost of installation or construction of facilities;
- Exemption of import duty on raw or essential materials imported for use in production for export.

d. Non-tax incentives

As for non-tax incentives, a company engaged in BOI-promoted activities may be eligible for permits allowing the following:

- Foreign nationals to enter Thailand for the purpose of studying investment opportunities;
- Bringing into Thailand skilled workers and experts to work in promoted activities;
- Ownership of land;
- Taking out or remitting money abroad in a foreign currency; and
- Having 100% foreign shareholding for certain businesses.

III. Taxation: An overview

1. Corporate income tax

The preceding section addressed tax incentives to which a company may be entitled if it carries out certain activities promoted by the Thai government.

In this section, we address instead the default corporate income tax regime.

Entity	Rate of corporate income tax
Company incorporated in Thailand	SME, defined as a company with: <ul style="list-style-type: none">■ Paid-up registered capital not exceeding THB 5 million as of the end of an accounting period; and■ Total revenue from sales and services in the previous accounting period not exceeding THB 30 million. Chargeable income up to THB 300,000 is tax exempt. From THB 300,001 to THB 3 million, it is taxed at 15%. In excess of THB 3 million, it is taxed at 20%.
	Non-SME
Branch office	20%, on Thai-sourced profits. A branch office is required to withhold 10% of the profits remitted to the overseas parent corporation.

Non-resident foreign company deemed to be carrying out business and deriving income in Thailand	20%, on Thai-sourced profits.
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2. Personal income tax

The taxation of income depends on an individual's residential status in Thailand.

Residents are taxed on (a) all income derived (earned or generated) in Thailand, irrespective of it being paid (received) in Thailand or outside of Thailand and (b) income that is derived (earned or generated) outside of Thailand, when it is remitted into Thailand in the year in which it is derived. Non-residents are taxed only on income that is derived (earned or generated) in Thailand, irrespective of it being paid (received) in Thailand or outside of Thailand.

Any person staying in Thailand for a period or periods aggregating 180 days or more in any tax year shall be deemed a tax-resident of Thailand. Individuals who stay in Thailand for less than this duration will be regarded as non-tax-residents.

Thailand employs a progressive tax system for personal income tax (at a rate of 0-35%).

3. Capital gains tax

In general, capital gains are treated as ordinary income (i.e., there is no separate capital gains tax). Tax on capital gains is thus calculated according to general income tax provisions.

4. Withholding tax

Under Thai law, withholding tax is a deduction from payments made to suppliers who provide a service. Whether withholding tax is applicable—and at which rate—depends on the nature of the service provided (e.g., 3% withholding tax applies to professional fees in Thailand). Withholding tax usually also applies to interest and dividend payments.

5. Value added tax

In general, value added tax is imposed on the sale of goods or provision of services that are executed or performed in Thailand by an operator or person selling goods or rendering services. It is also imposed on the importation and exportation of goods (at a rate of 0-7%).

Where an enterprise has a turnover THB 1.8 million per year, it must register for value added tax.

IV. Labour law and social security

1. Basic employment agreement requirements

Under Thai law, it is not mandatory for an employer and employee to enter into a written employment contract. A verbal agreement is sufficient to bind both parties. However, even though there is no direct requirement, we usually recommend that an employer and employee enter into a written contract to protect the rights and benefits of all parties. This can also help to prevent future disputes between the parties.

Furthermore, if an employer has a minimum of 10 employees, they must furnish employment rules in Thai language.

2. Social security

There are two social security schemes of which employers should be aware, namely the Social Security Fund (“**SSF**”) and the Workmen’s Compensation.

All employers and employees are required to make monthly contributions to the SSF, at a rate of 5% of the employee’s monthly wages, subject to a maximum of THB 750.

Employers must also contribute to the Workmen’s Compensation for every employee. The contribution rate depends on the type of business undertaken by the employer and its risk, ranging from 0.2% to 1% of an employee’s monthly wages.

V. Immigration: Basic work permit requirements

There are specific occupations which are exclusively reserved for Thai nationals, and foreign workers’ permits cannot be issued for such jobs. These occupations range from civil engineers to accountants. Therefore, it is recommended to conduct a brief search before hiring a foreign national for a specific role.

For non-reserved occupations, a private limited company can apply for work permits if it fulfils the following conditions:

- Capital requirement of THB 2 million per 1 foreign employee; and
- 4 Thai employees per 1 foreign employee.

A work permit is issued for a specific employer, employee occupation, and location. If the employer changes, a new work permit is required. Similarly, if the employee’s occupation or location changes, the work permit must be updated while keeping the employer the same.

VI. Real estate

Generally, a foreign company is not allowed to own freehold land in Thailand. However, it is possible to obtain ownership with special permission from the Minister of the Interior or the BOI where a company is engaged in a BOI-promoted activity. If permission is granted, the land acquired can only be used for the approved purpose. In contrast to freehold land, a foreign company may own buildings, houses and condominium units.

F. Vietnam



In recent years, Vietnam has been rising in prominence as an investment destination in Southeast Asia. Not only does it offer a large working-age population as a source of skilled labour, its government has expended significant efforts to attract foreign direct investment through the use of attractive incentives. With its emphasis on investments which promote technological transfer, innovation and sustainable development, Vietnam is likely to continue its rapid economic rise in the near future.

I. Market entry: Business vehicles and arrangements

The most practical and common ways available to foreign investors to enter the Vietnamese market are as follows:

- acquiring or incorporating a Vietnamese entity which the foreign investor controls;
- forming a joint venture with a Vietnamese partner;
- establishing a representative or branch office in Vietnam;
- participating in a direct investment activity without registering a local entity.

1. Independent legal entities

If a foreign investor wishes to register an independent legal entity in Vietnam, the following are likely to be the most relevant options:

Entity form	Key characteristics	Significant set-up conditions
Private limited liability company (LLC)	<p>An LLC offers the benefit of limiting the liability of its members while allowing access to most business activities in Vietnam.</p>	<p>There are 2 types of LLC:</p> <ul style="list-style-type: none"> ■ A single-member LLC, which, as its name suggests, has only 1 member; ■ A multiple-member LLC, which may have 2 to 50 members. <p>An LLC is prohibited from issuing shares unless such issuance is being done to convert the LLC into a joint stock company.</p>
Private partnership (PP)	<p>At least two General Partners (who must be natural persons) are required as the founding members of a PP. Their liability is unlimited, and they are personally liable for the debts incurred by the partnership. In addition to the General Partners, the partnership may have further members called Limited Partners (who may be either corporate entities or natural persons), whose liability is limited to the amount of capital they contribute.</p>	<p>Minimum of 2 General Partners. A PP is prohibited from issuing any kind of securities.</p>
Listed or unlisted Joint stock company (JSC)	<p>The JSC is the only entity form with charter capital divided into equitable shares.</p>	<p>Minimum of 3 shareholders.</p> <p>A JSC has 2 different governance structure options, both of which involve a board of directors as well as shareholders who are required hold a General Meeting annually.</p> <p>Depending on which governance structure option is used, either a Supervisory Board or an Audit Committee is also required.</p>

2. Representative office or branch office

Alternatively, a foreign entity can register a Representative Office (“**RO**”) or Branch Office (“**BO**”) in Vietnam, neither of which are independent legal entities. They are instead extensions of the foreign principal entity.

The establishment of ROs and BOs is administered by the Ministry of Industry and Trade, and is generally more complex than the establishment of a company.

An RO can be set up within a short time, but it is only allowed to conduct activities of an ancillary or supportive nature for the overseas operations of the foreign principal. To register a RO, the foreign principal must prove that it has the financial capacity to run the intended business operations of the RO in Vietnam.

A BO, in contrast, may perform business activities which are not merely of an ancillary or supportive nature. To set up a BO, the foreign principal must have been active in its industry for at least five years. BOs are generally used in specified industries, in particular the banking, finance and insurance sectors. The establishment licence of a BO can be issued within a month from the submission of documents to the relevant provincial Department of Industry and Trade.

3. Joint ventures, Business Cooperation Contracts and Public Private Partnerships

Where a foreign investor requires local know-how or wishes to participate in a protected industry which requires Vietnamese involvement, a joint venture is a common solution. A joint venture may be established and operated under the form of a multi-member LLC or any other entity form.

Alternatively, foreign and Vietnamese investors may enter into a so-called Business Cooperation Contract (“**BCC**”), under which they could share both the governance and profits of a project without establishing a joint venture entity. Key considerations for a BCC include each party’s financial contribution, tax liability and share of profits. A coordination board is sometimes established to administer the BCC.

Lastly, a Public Private Partnership (“**PPP**”) is commonly used to participate in infrastructure projects, for example those on telecommunications, renewable energy, highway and railway connectivity or air and sea ports. One of the partners must be a state-owned entity or a public institution with legal capacity to enter into business projects. Prior to the establishment of a PPP, both domestic and foreign investors generally take part in a bidding process to be selected as the partners for a PPP project. Upon the completion of the bidding process, the selected partners will establish a PPP company, either in the form of an LLC or a JSC.

II. Key licences and restricted sectors

1. Investment Registration Certificate and Enterprise Registration Certificate

Where foreign investor(s) contribute more than 50% to the charter capital of an entity, the entity will be considered a foreign-invested (“**FDI**”) entity.

FDI entities require certain business licenses, in particular the Investment Registration Certificate (“**IRC**”) and the Enterprise Registration Certificate (“**ERC**”).

Generally, it is the relevant provincial Department of Planning and Investment which would issue both the IRC and ERC. However, if an investment project is within an economic, industrial, export-processing or high-tech zone, the IRC will be issued by the zone’s Management Board.

In addition, investments in certain protected sectors may be subject to ministerial or other high-level in-principle approval, and therefore foreign investors must obtain such approval before applying for the IRC.

2. Restricted activities

Not all business sectors can be freely accessed by foreign investors.

For example, foreign investors are prohibited from entering the following business sectors:

- Trade in goods and services under state monopoly
- Press activities and the collection of news in any shape or form
- Catching or harvesting marine life
- Investigation and security services

Administrative and judicial services, including judicial assessment services, bailiff services, property auction services, notary services, official receiver’s services.

There are also sectors which foreign investors may only participate in under specified market access conditions, for example:

- The manufacture and distribution of media products, including video recordings
- The manufacture, distribution, and broadcasting of TV programmes, stage performances and cinematic works
- The provision of audio and television broadcasting services
- Insurance, banking, securities trading and related services
- Postal and telecommunications services

III. Tax

1. Overview on types of tax

The table below summarises the types of taxes which are most likely to be relevant to foreign investors.

Type of tax	Tax rate
Corporate Income Tax (CIT)	<p>The standard CIT rate is 20%.</p> <p>The CIT rate for enterprises involved in the exploration and mining of petroleum, gas and other rare and precious natural resources ranges from 32% to 50% depending on the location and type of project.</p> <p>Gains derived from the disposal of capital or securities in a Vietnam company are in many cases subject to 20% CIT (also referred to as capital gains tax). Transfers of securities by a foreign entity are subject to CIT at a rate of 0.1% of the total sales proceeds.</p> <p>Vietnam does not impose tax obligations on the abroad profit remittance to organisations.</p>
Value Added Tax (VAT)	<p>There are varying rates for VAT:</p> <ul style="list-style-type: none">■ 8% general rate;■ 5% for, e.g., clean water, pesticide, services for digging, embanking and dredging of canals, agricultural machinery and equipment, sugar and its by products, medical equipment, teaching aids, artistic and sports activities (the foregoing is not an exhaustive list and exceptions apply);■ 0% generally for exported goods and services, international transportation, aviation and maritime services provided either directly for foreign entities or through agents (the foregoing is not an exhaustive list and exceptions apply);■ 10% applicable for the remaining goods and services.

Foreign Contractor Withholding Tax (FCWT)	<p>FCWT applies to foreign contractors doing business and earning income from Vietnam under a contract, agreement or undertaking.</p> <p>A Vietnamese entity is normally required to withhold both CIT and VAT (at rates different from those set out above) when making payments to a foreign contractor. The rate of FCWT depends on the type of goods and services in question.</p>
Personal Income Tax (PIT)	<p>Personal income tax on employment income is levied on the following rates:</p> <ul style="list-style-type: none"> ■ For residents: 5% to 35% depending on the amount of income ■ For non-residents: 20% <p>As for non-employment income, the following rates apply:</p> <ul style="list-style-type: none"> ■ For residents: 0.1% to 10% depending on the type of income ■ For non-residents: 0.1% to 10% depending on the type of income

2. CIT incentives

Entities doing business in Vietnam may be eligible for CIT incentives if their business satisfies specified conditions on location, sector and business scale. Where an entity is eligible for a several incentives, they may choose to apply for the most favourable one.

The two most prevalent types of CIT incentives in Vietnam are as follows:

- “Tax holiday”: This refers to a tax exemption for a certain period of time or throughout a particular project. Generally, a tax holiday is available from the first profit-making year or the fourth revenue-generation year, where applicable, except in relation to high-tech enterprises.
- Preferential tax rates: Eligible entities may enjoy a preferential CIT rate lower than the standard 20% beginning from their first revenue-generation year, except in relation to high-tech enterprises or projects.

IV. Labour law and social security

Vietnamese labour law is generally protective of employees, especially in relation to the termination of employment. Given that potential liability for a breach of employment law may be quite severe, employers should take particular care to ensure compliance.

1. Basic employment agreement requirements

A Vietnamese employment contract must generally be concluded in written form and the Vietnamese language in order to be valid and binding. The employment contract may also be in form of verbal agreement if it has a term of less than one month.

Employment agreements may have definite or indefinite terms. Definite-term employment agreements may have a duration of up to 3 years and may generally be renewed once. If the employee continues working upon the expiry of the renewed term, the employment agreement will be considered as indefinite-term employment agreement.

The employment agreements of foreign employees must not have a duration of exceeding 2 years, i.e. the maximum validity period of a work permit. It is possible, however, for the work permit to be renewed, and for the employment agreement to likewise be renewed.

An employer with 10 or more employees must have written internal labor regulations (“**ILRs**”) which must be registered with a provincial labour department. IRLs are especially important in relation to the termination of employment. For instance, the dismissal or termination of an employee is permissible for reasons provided both at law and under the employer’s registered IRLs. In the event of an unlawful unilateral termination of employment, the party in breach (usually the employer) is liable to compensate the other party.

2. Social security and insurance

Both employers and employees are obliged to make contributions under a State social security regimen. The funds collected will be utilised in the event of the employee’s sickness, maternity, occupational accident, disease, retirement or death. It should also be noted that health and unemployment insurances are mandatory for local employees.

V. Immigration

Due to the Covid-19 pandemic, Vietnamese immigration law and work permit procedures have undergone multiple changes in recent times. Since the beginning of 2022, a careful re-opening strategy has been implemented. It prioritises production and manufacturing, followed by tourism.

1. Entry visas

In general, a foreign national requires a valid visa issued by the Vietnamese Embassy or Consulate in order to enter Vietnam. However, exemptions apply for nationals of certain countries. For instance:

- ASEAN citizens generally do not require visas for short-term visits, but the duration of the permitted stay varies.
- Citizens of the United Kingdom, Germany, France, Italy, Spain Denmark, Finland, Sweden, Japan, South Korea, Norway, Belarus and Russia do not require visas for visits of up to 45 days.

Vietnam has recently re-introduced e-Visas for single-entry and multi-entry stays of up to 90 days for visitors from every country. e-Visa applications can be made online.

Lastly, where a Vietnamese company or organisation is willing to act as sponsor, a foreign national may apply for a business visa.

2. Work permits

Work permits are valid for up to 24 months and can be renewed if all requirements are met. Employers are generally required to apply for the approval of the provincial Department of Labour, Invalids and Social Affairs ("**DOLISA**") for their need for foreign employees at least 15 days before the employment commences.

Effective 1 January 2024, the employer will be obliged to post recruitment notices for vacancies for foreign employees on the electronic portal of the relevant labor authority. Only if no Vietnamese person is recruited within 15 days of posting may the employer submit an explanation for the use of foreign labor to DOLISA.

Subject to certain exemptions, employers must obtain work permits for their foreign employees before the employees commence employment. Where an exemption applies, the employer is obliged to either notify DOLISA about its applicability or apply for DOLISA's confirmation of its applicability.

VI. Real estate

Land in Vietnam is under the ownership of the entire people with the State acting as the people's representative and uniformly managing all land. As such, foreign enterprises cannot acquire ownership of land.

However, they may use land allocated by the State where a land use fee is payable. A land use

term by a foreign enterprise in Vietnam cannot exceed 50 years. However, for large investment projects with slow recovery of capital, projects in areas with difficult or especially difficult socio-economic conditions which require a longer term, the land use term may be extended to 70 years. It is also possible for land users to apply for an extension upon the expiry of the land use term. Foreign enterprises may also lease land from the State or real estate developers.

VII. FOREX

Foreign investment into Vietnam must be conducted through a bank account opened by a licensed bank. Accordingly, while direct foreign investment can be made in foreign currency, indirect foreign investment must be converted into Vietnamese Dong.

Within Vietnam's territory, except in specified cases, foreign currency cannot be used in any kind of transaction, offering of payments, advertisements, quotations, price setting etc. However, foreigners working in Vietnam are still allowed to receive salaries, bonuses and allowances in a foreign currency.

Contracts must state specify consideration in Vietnamese Dong unless an exception applies under Vietnam's Forex regulations. Non-compliance with Forex regulations may lead to an administrative fine being imposed.

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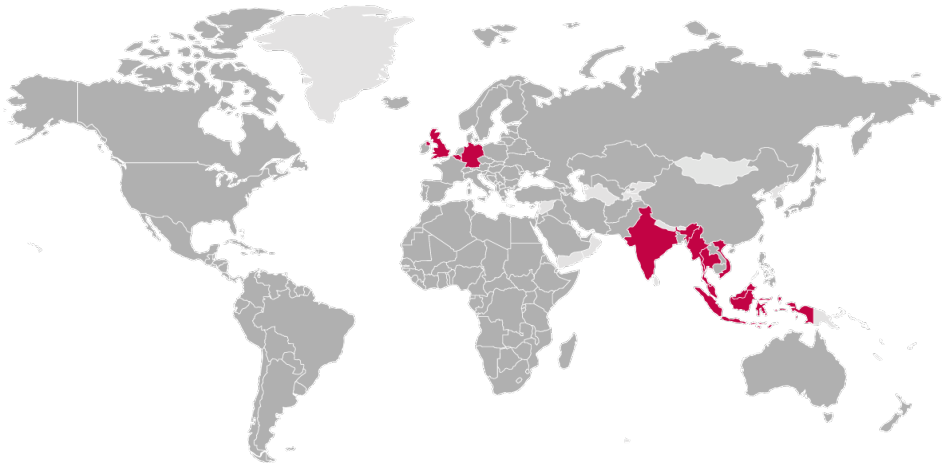
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Our awards



JUVE

In the 2022/2023 JUVE Guide to Commercial Law Firms, 52 lawyers from Luther were recommended, and 10 of these were also listed as “leading advisors”. The legal publisher JUVE ranked Luther in 31 areas of law. In 2022, Luther was nominated for the JUVE award “Employment Law” as well as “Real Estate” and was named “Law Firm of the Year” by JUVE in 2019. In the past, Luther already won the JUVE award “Law Firm of the Year 2017 for Environmental and Regulatory Law”.



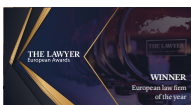
The Legal 500

The Legal 500 Germany 2023 recommends Luther in 30 areas of law, with “Top Tier” rankings in two of these areas. 72 lawyers are being recommended, 12 of whom have been specially recognised as “Leading Individual” or “Next Generation Partner”. Luther has also been included for Germany in the first edition of **The Legal 500 Green Guide EMEA 2022**. This guide provides an overview of law firms’ engagement with sustainability, including both work for clients as well as firms’ own best practices and initiatives.



Chambers

In 2023, Luther was recognised by Chambers Europe for 13 practice areas in Germany as well as in two practice areas in Luxembourg. Moreover, 15 partners were included in the Individual Ranking. Additionally, in 2023, Luther was recognised by Chambers Global in three advisory areas in Germany and Myanmar, while five partners were also included in the Individual Ranking.



The Lawyer European Awards

Luther has been named “Law Firm of the Year: Germany 2021” and also “European Law Firm of the Year 2021” by The Lawyer, one of the most well-known legal magazines worldwide.



Kanzleimonitor

Kanzleimonitor 2022/2023 recommends Luther in 25 areas of law and has also included 16 Luther lawyers among the recommended lawyers mentioned by name.

Best Lawyers

“Best Lawyers in Germany 2023”

For the year 2023, 111 lawyers have been recommended by Luther as “Best Lawyers in Germany 2023”, an award presented by the US publisher “Best Lawyers” in cooperation with the German *Handelsblatt*, including three partners as “Lawyer of the Year” for their area of law and 12 colleagues who have received the recommendation “Best Lawyers - Ones to Watch”.



WHO'S WHO LEGAL

WHO'S WHO LEGAL listed 21 lawyers in December 2022, four of whom were recognised as Thought Leaders, which is the highest award, and three of whom were named Future Leaders.

Imprint

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