DENTONS

Setting up a Legal Entity in Asia

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Economic growth in Asia has become a focal point of global attention, particularly as several countries in the region demonstrate remarkable resilience and potential for expansion. We have seen an influx of companies seeking to establish and expand their presence in the region to capitalise on its growth potential. As a firm, we have assisted numerous clients through our extensive network in the region to set up new corporate entities.

A frequent inquiry we receive from our clients pertains to the requirements for establishing a company and the related requirements for doing so. To assist our clients and others in navigating this process, **we have curated this comprehensive guide outlining the general requirements for company formation across several countries in Asia** (based on prevailing laws as of 15 September 2024).

These countries include:

- India
- Indonesia
- Malaysia
- Philippines
- Singapore
- South Korea
- Vietnam

This guide would be the most useful for companies looking to expand to an Asian jurisdiction and interested in knowing the setting-up requirements in that jurisdiction. **The focus here is on a private company or corporate vehicle**, a business form which is a legal entity separate and distinct from its shareholders and directors.

We hope you find this guide useful as you explore the various business opportunities in South Asia and South-East Asia. We would also strongly encourage you to connect with our local experts to ensure that you have a complete understanding of the regulatory and compliance requirements and also if you need assistance with incorporating the entity.

We appreciate the opportunity to present this guide and welcome any questions you may have. We would also be happy to have a conversation with you if you are looking to expand to Asia.

Thank you.

Best regards

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India

Owned by:

- *One Person Company* ("**OPC**"):
  - the member must be an Indian resident and citizen; foreign entities not permitted to form OPCs.
- *Private Company*: minimum of 2 and a maximum of 200 members; transfer of shares is restricted.
- *Public Company*: minimum of 7 members; can either be listed on a recognised stock exchange or unlisted.

Legal Status:

- A separate legal entity from its members and directors.
- Members have limited liability.
- Can sue or be sued in Company's name.
- Can own property in company's name.
- Members not personally liable for debts and losses of company.

Registration Requirements:

- At least two shareholders (can be natural persons or companies, including foreign companies) with the exception of OPCs.
- Private companies must have a minimum of two directors and public companies must have a minimum of three directors. One person companies can have only one director.
- At least one director ordinarily resident in India (must have stayed in India for a total of at least 182 days in the previous calendar year); must obtain a director identification number and a digital signature certificate.

Formalities:

- Every company having paid-up capital of INR 5 crore or more has to mandatorily have a Company Secretary in whole time employment.
- The auditor shall be appointed at the first general meeting and shall hold office until the conclusion of the company's sixth annual general meeting.
- Annual Returns must be filed. Statutory requirements for general meetings, directors, company secretary, share allotments, etc. must be complied with.

Taxes:

- Profits taxed at corporate tax rates – 34.61%.

Any tax treaty or free trade agreement with Singapore?

- India-Singapore Comprehensive Economic Cooperation Agreement ("**CECA**").
- Singapore-India Double Taxation Agreement.

Continuity in Law:

- A company (except a partnership) has perpetual succession until wound up or struck off.

Closing the Business:

- Winding up voluntarily by members or creditors, compulsorily by the Tribunal.
- Striking off.

Any other comments

(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- Foreign exchange laws and regulations govern the level of foreign direct investment in entities by prescribing caps and performance conditions in various sectors. There are restrictions on foreign shareholders investing in certain sectors in India. Under the exchange control laws and regulations in India, foreign shareholders can invest in all sectors, subject to certain sector-specific restrictions and conditions.

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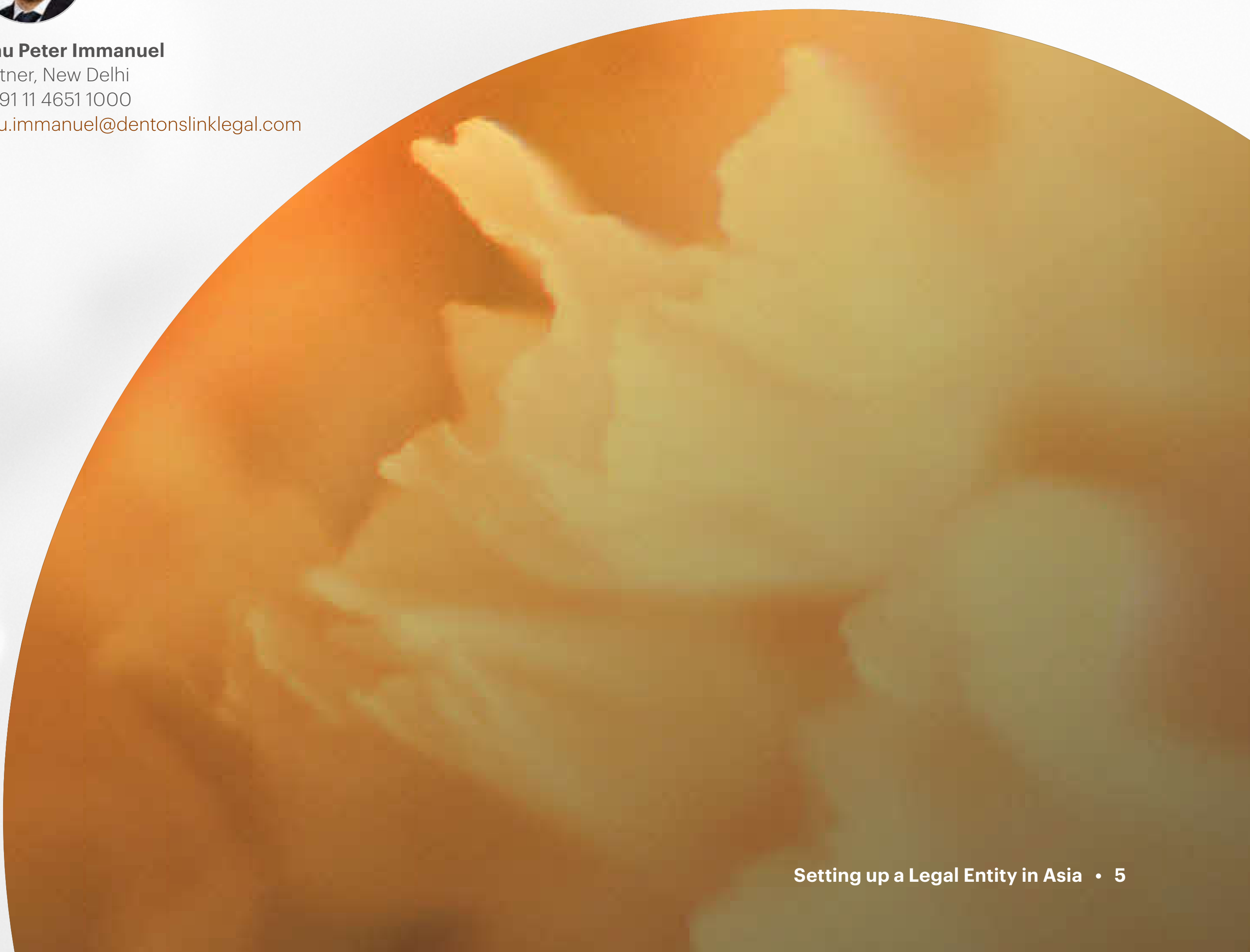

Indonesia

Owned by:

- *Limited liability company* (also known as "Perseroan Terbatas" ("**PT**")):
    - private company limited by shares if less than 300 shareholders.
    - public company limited by shares if more than 300 shareholders or has conducted a public offering.

Legal Status:

- A legal entity, separate from its shareholders.
- Can incur obligations and acquire, own, hold or dispose of property on its own.
- Can sue and be sued in its own name.
- Enter into contracts or transactions on its own.

Registration Requirements:

- At least two shareholders (can be a corporate body or individual, Indonesian or foreign).
- For private companies, at least one director and one commissioner (Indonesian citizen or foreigner). Different sectors may require a higher number of directors and commissioners, sometimes with specialized roles (e.g. compliance director, technology director, etc.).
- For public companies, at least two directors and two commissioners (one of which is an independent commissioner).
- Shareholders may determine the authorized capital, but at least Rp.10 billion are issued and paid-up for private company set up by foreign investment. Higher amounts may be required for other sectors.
- Investment value must at least be Rp.10 billion for each line of business (5 digits of the Indonesian Standard Industrial Classifications (also known as *"Klasifikasi Baku Lapangan Usaha"* ("**KBLI**")) for private company set up by foreign investment. For instance, in the event a PMA Company has 3 (three) lines of business, the total investment value of the PMA company must be more than Rp.30 billion, a total of Rp.10 billion for each line of business, excluding the value of land and buildings.
- All companies must obtain standard licenses through the Online Single Submission ("**OSS**") system. Depending on the industry the company operates in, it may have to procure certain additional licences to operate its business in Indonesia.

Formalities:

- Check availability of the company's name with the Ministry of Law and Human Rights.
- Liaising with a public notary to prepare and execute the company's deed of establishment and articles of association.
- Obtain ratification for the company's deed of establishment from the Ministry of Law and Human Rights.
- Publish the company's deed of establishment and articles of association in the state gazette.
- Audited financial statements are to be filed annually in the company's annual report.

Taxes:

- Corporate income tax rate on all net taxable income – 22%.

Any tax treaty or free trade agreement with Singapore?

- Singapore-Indonesia Tax Treaty.
- ASEAN Free Trade Area ("**AFTA**") which includes Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Cambodia, Laos, Myanmar and Vietnam.

Continuity in Law:

- A company may exist for an indefinite time period until it is dissolved in accordance with the law or on agreement among the shareholders.
- Shareholders may determine a certain time period for the company's validity period.

Closing the Business:

- Insolvency that leads to liquidation.
- Winding up by expiry of validity period, voluntarily by shareholders or compulsorily by court decision.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- Foreigners can either set up a limited liability company (Perseroan Terbatas ("**PT**")) with foreign ownership ("**PT PMA**") or acquire an existing PT PMA.
- The Positive Investment List states business fields which are (i) wholly open to foreign investor, (ii) closed to foreign investors, and those which are (iii) open with certain requirements and ownership limitation for foreign investments.

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Malaysia

Owned by:

- *Exempt Private Company*: 20 members or less (none a corporation) and no corporation holds beneficial interest in the company's shares.
- *Private Company*: 50 members or less.
- *Public Company*: Can have more than 50 members.
- No par value regime.

Legal Status:

- The incorporated company will be a separate legal entity from its members.
- Can sue and be sued in Company's name.
- Can acquire, own, hold, develop or dispose of any property.
- Can do any act which it may do or enter into transactions.
- Members are not liable for obligations of the company by reason only of being a member of the company and the liability of a member, in the case of a company limited by shares, is limited to any amount unpaid on shares held by the member.

Registration Requirements:

- At least one shareholder holding at least one share.
- Minimum number of directors:
    - *For private company*: At least one director ordinarily resident in Malaysia by having a principal place of residence in Malaysia, and who is at least 18 years old.
    - *For public company*: At least two directors ordinarily resident in Malaysia, by having a principal place of residence in Malaysia, and who are at least 18 years old.
- Undischarged bankrupts and persons who have been convicted of prescribed offences cannot be a director without approval from the Court or the Official Receiver.
- For a foreigner to act as a local director of the company and work in Malaysia, he must apply for an expatriate Employment Pass from the Expatriate Services Division ("**ESD**") of Immigration Department of Malaysia.
- At least one secretary who is a citizen or permanent resident of Malaysia, aged 18 years and above and ordinarily resident in Malaysia by having a principal place of residence in Malaysia. The secretary must also be a member of the prescribed professional body or an individual licensed by the Companies Commission of Malaysia.

Formalities:

- The Board must appoint the first secretary within 30 days of incorporation.
- The Board must appoint an auditor of the company at least 30 days before the end of the period for the submission of the first financial statements to the Registrar.
- Must lodge an annual return with the Registrar for each calendar year not later than 30 days from the anniversary of its incorporation date.
- In the case of a private company, the company should lodge an audited financial statement with the Registrar within 30 days after the audited financial statements have been circulated to members. In the case of a public company, the filing is to be completed within 30 days of its annual general meeting ("**AGM**").
- There is no requirement for AGM for private companies but public companies are still required to hold AGM every calendar year.

- A company, other than a company limited by guarantee, may or may not have a Constitution. If a company has no constitution, the company, directors and members of the company will have such rights, powers, duties and obligations as set out in the Companies Act 2016.
- Other statutory requirements for general meetings, directors, company secretary, share and capital maintenance, etc. must be complied with.
- *Note*: Exempt private companies are required to lodge with the Registrar for each a financial year a certificate relating to its status as an exempt private company within 30 days from the circulation of financial statements and reports.

Taxes:

- Profits of resident companies are generally taxed at a headline rate of 24%.

Any tax treaty or free trade agreement with Singapore?

- Agreement for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income.
- ASEAN Free Trade Area ("**AFTA**") which includes Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Cambodia, Laos, Myanmar and Vietnam.

Continuity in Law:

- A company will continue in existence until it is removed from the register.

Closing the Business:

- Winding up by way of a winding up order made by the Court, or by way of a voluntary winding up by members or creditors.
- Striking off.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- There is no blanket prohibition on foreign equity in Malaysia save only in respect of certain industries and sectors. For example, companies with foreign ownership intending to operate in the distributive trade sector are required to obtain the approval of the Ministry of Domestic Trade and Cost of Living Affairs in Malaysia and comply with specific guidelines and regulations set forth by the ministry. One should check on the respective industry to determine the permissible equity participation in such industry.

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Philippines

Owned by:

- *Stock Corporation*: incorporators may include any combination of natural persons, partnerships, associations, or corporations, up to a maximum of 15 incorporators at the time of incorporation, each of whom must subscribe to at least one share of the capital stock of the corporation.
- *Non-Stock Corporation*: Incorporators may include any combination of natural persons, partnerships, associations, or corporations, up to a maximum of 15 in number at the time of incorporation.
- *One-Person Corporation*: One natural person.

Legal Status:

- May be organized as either a stock or non-stock corporation.
- Considered a separate legal entity from its members, officers, and directors.
- Can incur obligations and acquire property on its own.
- Can sue and be sued in its own name.
- Can enter contracts on its own.

Registration Requirements:

- For stock corporations, each incorporator must own at least one share of stock of the corporation.
- Foreign shareholders must obtain a Philippine Tax Identification Number.
- Foreign ownership in certain specified industries is limited by the Foreign Investments Act ("**FIA**").
- Stock corporations are not required to have a minimum capital, except as otherwise specifically provided by law.
- For stock corporations, there must be at least 2 members of the board of directors. Each director must own at least one share of stock of the corporation.
- For one person corporations, the single incorporator is the sole director and president.

Formalities:

- Registration with the Securities and Exchange Commission ("**SEC**"), which includes submission of the Articles of Incorporation and By-laws.
- Registration of the business with the local government unit where the business will be established, which includes obtaining a Mayor's Permit, Business Permit, and Barangay Clearance.
- Registration of the business with the Bureau of Internal Revenue for corporate taxation.

Taxes:

- Corporate income tax rate of 25%, or 20% (subject to certain conditions).
- Minimum Corporate Income Tax of 2% of gross income, beginning the 4th taxable year after commencement of business operations; the corporation must pay the higher between the MCIT and the regular corporate income tax.
- Other taxes may be applicable depending on the industry, and as required for particular acts, such as Value-Added Tax, Withholding Tax, Excise Tax, and other such taxes.

Any tax treaty or free trade agreement with Singapore?

- Philippines-Singapore Double Tax Avoidance Agreement ("**DTAA**").
- ASEAN Free Trade Area ("**AFTA**") which includes Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Cambodia, Laos, Myanmar and Vietnam.

Continuity in Law:

- Corporations have perpetual existence unless its articles of incorporation provide for a shorter term.

Closing the Business:

- A corporation may be dissolved voluntarily or involuntarily.
- Voluntary Dissolution, through shortening the corporate term, filing a request for dissolution (if no creditor is affected) or filing a petition for dissolution (if creditors are affected).
- Involuntary Dissolution, when a complaint or application is filed against the Corporation, and the dissolution is decreed by the SEC.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- Aside from incorporating in the Philippines, a foreign corporation may obtain a license to do business in the Philippines, or may opt to invest in a Philippine Corporation.
- *License to do Business as a Foreign Corporation*: The foreign corporation is organized under the laws of the corporation's country, but may establish a Philippine branch, representative office, regional operating headquarters, or regional headquarters.
- *Foreign direct investment*: The foreign corporation may choose to invest equity in a Philippine corporation, subject to the foreign ownership restrictions under the FIA.

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Singapore

Owned by:

- *Exempt Private Company*: 20 members or less and no corporation holds beneficial interest in the company's shares.
- *Private Company*: 50 members or less.
- *Public Company*: can have more than 50 members.
- No par value regime.

Legal Status:

- A separate legal entity from its members and directors.
- Members have limited liability.
- Can sue or be sued in Company's name.
- Can own property in company's name.
- Members not personally liable for debts and losses of company.

Registration Requirements:

- At least one shareholder holding at least one share.
- At least one director ordinarily resident in Singapore, at least 18 years old.
- Undischarged bankrupts cannot be a director and cannot manage a company without approval from the High Court or the Official Assignee.

Formalities:

- Must appoint a company secretary within 6 months of incorporation.
- Must appoint an auditor within 3 months after incorporation unless the company is exempt from audit requirements.
- Annual Returns must be filed. Statutory requirements for general meetings, directors, company secretary, share allotments, etc. must be complied with.

Taxes:

- Profits taxed at corporate tax rates – 17%.
- A newly incorporated company may be eligible for certain tax exemption schemes or incentives.

Continuity in Law:

- A company has perpetual succession until wound up or struck off.

Closing the Business:

- Winding up (voluntarily by members/creditors or compulsorily by the High Court).
- Striking off.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- N.A.

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South Korea

Owned by:

- *Joint Stock Corporation*: Suitable for larger enterprises requiring significant capital and many shareholders; Managed by directors; Shareholders' liability is limited to the amount of their investment.
- *Private Limited Company*: At least one limited member; Managed by directors; Members' liability is limited to their investment.
- *Limited Liability Company*: At least one limited member; Managed by members; Members' liability is limited to their investment, and members can directly participate in the management.

Legal Status:

- A separate legal entity from its members and directors.
- Can sue or be sued in company's name.
- Can acquire, own, hold, develop or dispose of any property.
- Members' liability is limited to their capital contributions.
- Members are not personally liable for debts and losses of company.

Registration Requirements:

- Articles of Incorporation must be drafted and include details such as the company's name, business scope, amount of capital, and corporate structure.
- Shareholders must pay the amount for their subscribed shares into a designated bank account. There is no minimum capital requirement but capital for a corporation is typically KRW 100 million.
- The incorporation documents must be submitted to the relevant district registry office.
- Companies must apply for business registration at the local tax office within 20 days of the incorporation.
- Companies must obtain any additional permits or licenses required for specific industries (e.g., finance, pharmaceuticals).
- A joint stock corporation must have three or more directors. However, a joint stock corporation with total capital of less than KRW 1 billion may have one or two directors.

Formalities:

- A joint stock corporation must have at least one auditor appointed by the shareholders' meeting. A joint stock corporation with total capital of less than KRW 1 billion may choose not to appoint an auditor. The term of office for auditors is three years unless otherwise specified in the Articles of Incorporation.
- Directors of a company must prepare the financial statements, including any necessary reports (e.g., business report, audit report).
- Financial statements must be approved by the board of directors and then submitted to the general meeting of shareholders for final approval.
- Companies subject to external audit must have their financial statements audited by an independent auditor. This is typically mandatory for large corporations and publicly traded companies.
- Companies are required to file their audited financial statements with the Financial Supervisory Service ("**FSS**") if they are classified as a large corporation or is a publicly traded company, and make them available to shareholders.
- Companies are required to maintain proper accounting records and supporting documents for a specified period, usually five years.

Taxes:

- Standard corporate income tax (CIT) rates are as follows:
    - *Taxable income under KRW 200 million*: 9% (rate including local income tax: 9.9%).
    - *Taxable income of KRW 200 million to KRW 20 billion*: 19% (20.9%).
    - *Taxable income of KRW 20 billion to KRW 300 billion*: 21% (23.1%).
    - *Taxable income over KRW 300 billion*: 24% (26.4%).
- Foreign-invested companies fall under the Foreign Investment Promotion Act, whereas foreign companies' domestic branches are governed by the Foreign Exchange Transaction Act; Foreign-invested companies must pay taxes on all domestic and foreign income, while foreign corporations are only taxed on domestic-sourced income in Korea.
- Companies must file value-added tax (VAT) returns quarterly. The standard VAT rate is 10%.

Any tax treaty or free trade agreement with Singapore?

- Korea-Singapore Free Trade Agreement ("**KSFTA**").
- Singapore-Korea Double Tax Avoidance Agreement ("**DTA**").

Continuity in Law:

- Amendment of the Articles of Incorporation can secure a company's long-term existence and operational continuity.
- A company's perpetuity comes to an end only through formal procedures such as a resolution by shareholders, court orders, or bankruptcy proceedings.

Closing the Business:

- A company can be dissolved voluntarily through a resolution passed by its shareholders.
- A company can be dissolved involuntarily by a court order under specific circumstances, such as insolvency or unlawful activities. The court may appoint a liquidator to oversee the dissolution process.
- The South Korean government may also initiate dissolution if the company fails to comply with legal requirements, such as filing annual reports or paying taxes.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- Foreigners can own up to 100% of a South Korean company's shares in most sectors. There are certain sectors where foreign ownership is restricted or limited such as broadcasting, telecommunications, and defense-related industries.
- Foreign investors must report their investment to the Ministry of Trade, Industry, and Energy ("**MOTIE**") or a designated foreign exchange bank. This registration must be done before or immediately after making the investment.
- Foreign investors may be eligible for tax incentives, including tax exemptions and reductions, especially if they invest in high-tech industries or designated Free Economic Zones ("**FEZs**").

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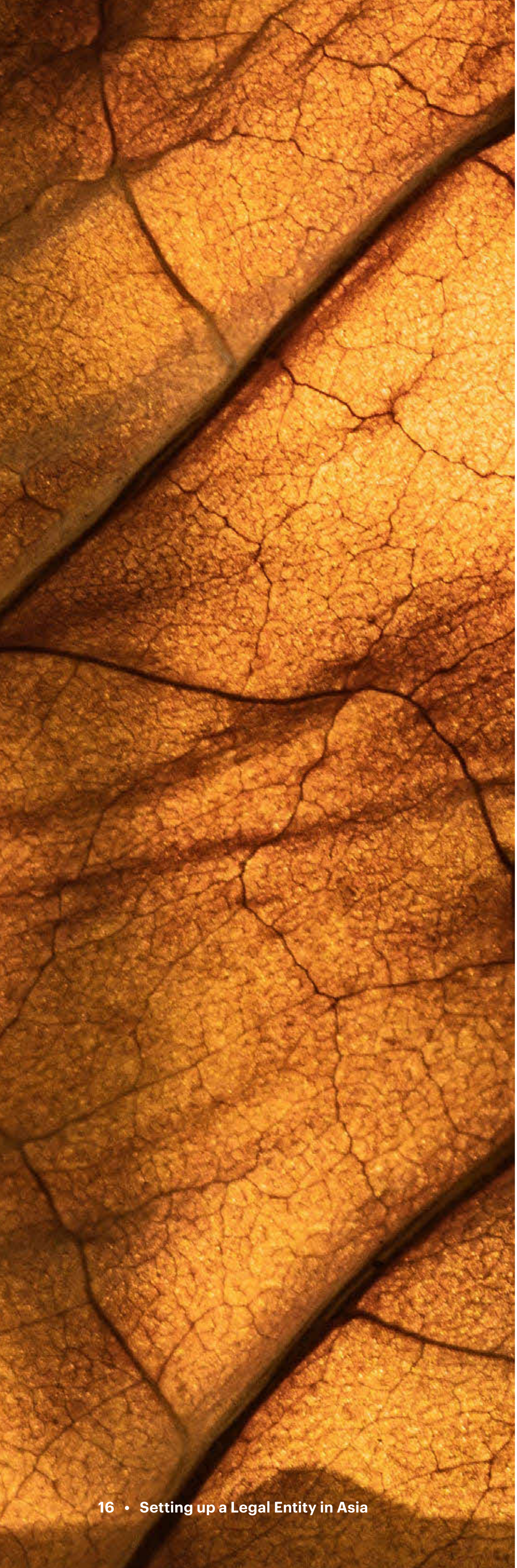

Vietnam

Owned by:

- Single-member Limited Liability Company ("**SMLLC**").
- *Multiple-member Limited Liability Company* ("**MMLLC**"): 2 to 50 corporate and individual members.
- *Joint-stock Company* ("**JSC**"): from 3 shareholders with no limitation on the maximum number of shareholders.
- *Public company*: from 100 shareholders.

Legal Status:

- A separate legal entity from its members/shareholders.
- Members/Shareholders have limited liability to the extent of the capital they have contributed to the company.
- SMLLCs and MMLLCs can issue bonds but cannot issue shares. JSCs are permitted to issue shares, bonds, and other kinds of securities.
- The company can sue or be sued in company's name.
- Members/shareholder shall not be personally liable for debts and losses of the company.

Registration Requirements:

- The foreign investor must obtain the Investment Registration Certificate before setting up a company in Vietnam.
- An Enterprise Registration Certificate must be obtained for the establishment of the company. The Company is incorporated from the issuance date of the Enterprise Registration Certificate.
- A limited liability company or JSC can have one or more legal representatives. One of the legal representatives must reside in Vietnam.

Formalities:

- The members/shareholders must fully contribute the capital they committed to contribute within 90 days from the issuance date of the Enterprise Registration Certificate.
- The FDI company with foreign investors holding more than 51% of company's charter capital must open a Direct Investment Capital Account at a licensed bank or branch of a foreign bank in Vietnam for any transactions regarding foreign direct investment in Vietnam, including the capital contribution.
- Before conducting any conditional business lines in Vietnam, the company must qualify for all requirements, conditions, and sub-licenses.
- The company must register e-invoice information and e-tax account on the e-tax portal of the General Taxation Department.
- After signing the labor contract with an employee, the company must apply to register to participate in social insurance.

Taxes:

- Corporate income tax rate on their worldwide income – Vietnam – 20%.
- Preferential CIT rates may apply to enterprises entitled to certain corporate income tax incentives.

Any tax treaty or free trade agreement with Singapore?

- Trade Agreement between Singapore and Vietnam.
- Agreement between Singapore and Vietnam on the Promotion and Protection of Investments.
- Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion concerning Taxes on Income between Vietnam and Singapore.
- ASEAN Free Trade Area ("**AFTA**"), which includes Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Cambodia, Laos, Myanmar and Vietnam.

Continuity in Law:

- A company will continue in existence until it is dissolved or bankrupted.

Closing the Business:

- Dissolution by the decision of the owners of SMLLC, the Members' Council of MMLLC, or the General Meeting of Shareholders of the JSCs or due to the competent authority revoking the Enterprise Registration Certificate.
- Bankruptcy under Law on Bankruptcy.

Any other comments
(i.e. any proposed structure for a company to be legally or beneficially wholly-owned by a foreign entity?)

- Foreign investors may invest in Vietnam by establishing a new company or acquiring or contributing capital to an existing company in Vietnam.
- For investment in Vietnam, in all cases, foreign investors must qualify for all market access conditions applicable to the business activities that the foreign investors expect to conduct in Vietnam.

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