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How to set up for success – a guide for tech entrepreneurs looking to expand into new markets

Welcome

We know that thinking about the legal aspects of opening or expanding your tech business into a foreign market can seem daunting. Often there is a lot of dense legal information to digest which can feel overwhelming – but not to worry!

We have created this factsheet to help you navigate the main legal aspects you will need to consider before you seek any legal advice. That way you'll be armed with some knowledge when you speak to a professional. It outlines the key things you need to think about when looking to expand into a new market, such as your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. It also provides an insight into topics such as funding, IP, employment, data protection and regulatory issues.

The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in a new jurisdiction. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.



Setting up for success in... **USA** **ENGLAND** **POLAND** **GERMANY** **FRANCE** **SPAIN** **ITALY**

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Setting up for success in **THE UNITED STATES**

Welcome to the US market! The United States is one of the most attractive and competitive markets for tech businesses in the world. Whether you are looking to access capital, talent, customers, partners, or innovation, the US may have something to offer you.

With a large and diverse population, a culture of innovation and entrepreneurship, and a well-developed legal and regulatory framework, the US offers many opportunities for founders who want to expand their business across the Atlantic.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of entering the U.S. market include:

- The US is a global leader in the tech industry, and establishing a presence in the US market can enhance a company's global reputation and influence.
- Access to a large and sophisticated customer base, with high demand for quality products and services, as well as an appetite for new and disruptive solutions.
- Exposure to a competitive and dynamic business environment, where you can learn from best practices, collaborate with industry peers, and leverage strategic partnerships and networks.
- Availability of various sources and types of capital, from angel investors and venture capitalists, to corporate investors and strategic acquirers, as well as government grants and incentives.

However, entering the US market requires preparation and careful planning - there are many factors to consider. This factsheet aims to provide you with some key information and guidance on the main legal aspects of establishing a tech business in the US, focusing on Delaware as the most common choice of jurisdiction for tech businesses. It also provides some useful resources and tips for navigating the US market.

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1. Corporate considerations for setting up a business in the United States

What entity you should use to set up your company

There are a number of entity types in the U.S., but the main entity structures selected by a foreign investor interested in establishing a business in the U.S. are: (i) C-corporations; or (ii) limited liability companies (LLCs). The predominant choice amongst startup founders is the C-corporation, with LLCs being a distant second. Founders often favor C-corporations for their ease in attracting investors and the accompanying tax benefits for shareholders. LLCs do offer increased flexibility and fewer corporate formalities, but these benefits often don't outweigh the advantages to investors of a C-corporation.

The main differences between C-corporations and LLCs are as follows:

	C-Corporation	LLC
Key Considerations	More familiar to venture capital investors and can offer preferential tax benefits for investors, like QSBS treatment (as discussed in Section 8 (below)). Increased familiarity can mean less time and fees spent in diligence and legal processes.	Less familiar to venture investors and do not benefit from QSBS tax treatment.
	More regulated and more recordkeeping requirements than an LLC.	Less regulated and less recordkeeping requirements than a C-corporation.
	Although less flexible than an LLC, there is more certainty with respect to legal requirements and court rulings, with a large body of corporate case law and statutes to rely on.	Although more flexible than a C-corporation, the case law is less robust.

	C-Corporation	LLC
Tax Level	<p>Generally subject to two levels of tax on income:</p> <ul style="list-style-type: none"> — At the entity level, when income is earned. — At the stockholder level, when income is distributed. <p>This is referred to as “double taxation”.</p>	<p>Generally subject only to one level of tax:</p> <ul style="list-style-type: none"> — At the member level, when income is distributed. <p>This is referred to as “flow-through taxation”.</p>
Annual Taxes	Required to file an annual report with the Secretary of State (“SOS”) and pay an annual franchise tax in addition to the state corporate income tax.	Required to pay a flat annual tax to the SOS of \$300.
Liabilities	Unless the certificate of incorporation provides otherwise, directors and stockholders are generally insulated from liability for corporate obligations.	Unless the Delaware Act or operating agreement provides otherwise, members and managers are generally insulated from liability for corporate obligations.
Approvals	<p>Certain major decisions must be approved by the stockholders, including:</p> <ul style="list-style-type: none"> — A merger or consolidation; — A sale, lease, or exchange of all or substantially all of the corporation’s assets; and — Dissolution. 	<p>Certain major decisions typically must be approved by the members but there are less statutory requirements for LLCs, including:</p> <ul style="list-style-type: none"> — Admitting new members; — Amending the operating agreement; and — Dissolution.

S-Corporations

S-Corporations are sometimes intriguing to founders given they can receive the benefit of flow-through taxation but are also still technically corporations. But the perceived benefits of making an “S-corporation election” are almost never worthwhile for a company seeking venture funding due to a number of limitations. S-corporations cannot have more than 100 stockholders and can only have one class of stock, precluding the issuance of preferred stock to investors. Further, S-corporations are automatically disqualified from achieving QSBS treatment, a significant incentive for investment in C-corporations.



2. Branch vs subsidiary – options for group expansion

When expanding internationally, an entity may take one of three approaches: (i) establishing an entirely new legal entity to do business in the U.S., (ii) opening a branch of the existing business, or (iii) forming a subsidiary of the existing entity. For the first of these options, see Section 3 and 4 (below). This section focuses on the relevant considerations between options (i) and (ii), creating a branch or forming a subsidiary.

	Branch	Subsidiary
Legal Distinction	A branch will be treated as an extension of the existing legal entity. This means the parent will be directly liable for any obligations of the branch.	Treated as a separate legal entity and, as such, the parent would be shielded from the liabilities of the subsidiary in most cases.
Tax Implications	Because a subsidiary is a separate legal entity, only the income of the subsidiary will be subject to U.S. corporate tax and only the subsidiary will be required to make tax filings in the U.S. This can provide certainty regarding the ultimate tax impact.	The income of the branch will be subject to U.S. taxes and, since it is the same legal entity as the parent, the foreign parent may be required to file U.S. taxes. Branches are, in most cases, also subject to a 30% “branch profits” tax, which can be higher than the standard corporate tax imposed on a subsidiary.
Control	Though a separate entity, the parent can appoint its management team and directors to maintain close control.	Since a branch is simply an extension of the existing business, full control and oversight is maintained.
Formation	A new entity must be formed and capitalized but, as detailed in Sections 3 and 4 (below), this process is fairly straightforward and affordable in the U.S.	No new entity required, streamlining the process and legal complexity.



3. Incorporation vs acquisition of a company

Most foreign companies setting up a presence in Delaware choose to do so by incorporating a new entity in the state. It is a simple, low cost and straightforward process that can be accomplished directly by the foreign corporation or through an intermediary registered agent. Incorporation will, in almost all cases, be the desired approach as opposed to acquiring an existing entity, as an acquisition is expensive, resource-intensive, and should only be considered in connection with a strategic initiative undertaken by your company. Because such a process requires significant funding and assessment of a wide range of business and strategic factors, this section focuses on the legal steps required to incorporate in Delaware.

Steps to Take	Incorporation
Common preliminary steps	<p>Decide the type of entity you want to create; as detailed more fully in Section 1 (above), a C-corporation is the most common entity choice, with a small minority of founders selecting LLCs.</p> <p>Determine your management team (typically consisting of the company's founders). The board of directors is also primarily composed of the founders initially, with additional members added by a lead investor in connection with a round of fundraising.</p> <p>Obtain a registered agent, which is an entity appointed by your business to receive service of process and legal and tax information. Delaware requires all corporations and LLCs to maintain a registered agent with a physical address (i.e., no P.O. Boxes) in the state of Delaware. A registered agent such as CT Corp can assist with most of the following steps as you set up your Delaware entity.</p>
Step 1. Choose a name	<p>Choose a name. After you decide upon a name for your entity, you must conduct a state name check to confirm whether your desired name is already taken. Further details about naming requirements and procedures are set out in Section 4 below.</p>

Steps to Take	Incorporation
<p>Step 2. File the incorporation paperwork</p>	<p>The following documents, when filed with the State of Delaware, will establish the existence of your company as a legal entity.</p> <p>You will file a Certificate of Incorporation for a corporation (also referred to as a charter); this certificate must include the name of the corporation, the authorized shares and par value of such shares, the name and address of a registered agent, and the name and address of the incorporator. You should also prepare bylaws, which set out the governance procedures of the company, including how board and stockholder meetings are called, and how directors and officers are elected.</p> <p>You will file a Certificate of Formation for an LLC; this certificate contains all information required by statute to form your LLC, including the LLC name and registered agent. Delaware does not require you to submit an Operating Agreement to form your LLC. However, it is important for every LLC to have an Operating Agreement, establishing the rules and structure of the business.</p>
<p>Step 3. Review annual report and franchise tax requirements</p>	<p>Delaware requires corporations to file an Annual Franchise Tax Report. The due date for corporations is March 1. The annual report fee is \$50. The franchise tax is calculated based on the corporation's number of authorized shares and par value. If the number of shares exceeds 5,000, the annual fee may increase. Delaware requires LLCs to file an Annual Franchise Tax Statement by June 1. The fee is \$300.</p>
<p>Step 4. Obtain any required business licenses and/or permits</p>	<p>Your entity may be required to obtain licenses and permits before it can legally operate in Delaware. There are many factors that go into determining which licenses and permits at the federal, state, and local levels are required for your business. For example, if you plan to hire employees, you may need a payroll tax registration and depending on where they are based that could have implications as well. This page provides further information regarding Delaware business licenses and registrations.</p>
<p>Step 5. Obtain a federal tax number</p>	<p>Obtain a federal tax employer identification number (EIN), which is an Internal Revenue Service (IRS) identification number used for businesses and when filing taxes.</p>
<p>Step 6. Register in other states where you will transact business</p>	<p>If you incorporate your business in Delaware but are conducting business in other states, you may need to qualify as a "foreign entity" in those states. LLCs and corporations are considered domestic only in the state of incorporation. In all other states, they are considered "foreign" companies. States require foreign companies that are transacting business there to register. The foreign qualification process is very similar to that of incorporation. A state filing must be made, and applicable state fees paid. States also impose ongoing requirements on foreign-qualified companies, such as annual report filings and fees.</p>



4. Practical steps required to be undertaken when setting up a corporation

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, and lawyers and taking out insurance (both as required by law and as may be prudent for your business activity, there will be a number of other practical steps you need to take. The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity within the United States/Delaware.

Choosing a company name

Formality	Basic Aspects
<p>Check and reserve a distinguishable company name with the Delaware Division of Corporations (DOC).</p>	<p>Conduct a business name search on the DOC website to confirm that your desired company name is not already in use. Check the US Patent and Trademark Office (USPTO) for names with a registered trademark. If the IRS or other United States government agency mistakenly identifies your company for another entity, then you could be named in a lawsuit or a tax lien.</p> <p>Note that Delaware has rules specific to what names can be used for corporations and LLCs. An LLC name must contain the words "Limited Liability Company" or the abbreviation "L.L.C." (or "LLC"). A corporation name must include the word "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited". You can pay \$75.00 and file a Name Reservation Application to reserve the desired name for 120 days. You can renew a name reservation after you've applied for one as well.</p>

Setting up a registered office

Formality	Basic Aspects
Register and file a Trade Name	If you want your company to be recognized as operating under a different name than the legal entity name (called a trade name), you must file a Registration of Trade, Business & Fictitious Name Certificate . The registration certificate must be notarized and show the date in which the business was organized.

Corporate filings – including constitutional and accounting documents where applicable

Formality	Basic Aspects
File the incorporation paperwork	You must file a Certificate of Incorporation (for corporations) or a Certificate of Formation (for LLCs) with the Secretary of State of Delaware.
Review annual report and franchise tax requirements	Corporations must file an Annual Franchise Tax Report (\$50 fee; filing deadline March 1). LLCs must file an Annual Franchise Tax Statement (\$250 fee; filing deadline June 1). If you will sell goods, you must register with the Division of Revenue (DOR) and, if liable, pay the state's gross receipts tax. If you will have employees, you must register with the DOR for employer withholding taxes. You can register for both kinds of taxes online using Delaware One Stop or on paper using Form CRA (Combined Registration Application) .
Obtain a state business license	Every Delaware business is required to get an annual state business license. The license is issued by the DOR. You can register for the license online using Delaware One Stop .
File and report taxes	See Delaware State Business Income Tax for information on state business taxes in Delaware. Your entity may also be liable for state taxes in other states where your entity conducts business. A tax advisor should be consulted to ensure compliance with these requirements.



5. Governance

This section details some of the key governance considerations for the directors and management team of a Delaware corporation. As discussed in Section 1 (above), corporations are by far the most common entity type selected for startup companies, and the governance requirements for LLCs are less prescriptive under Delaware law so a summary here would be less valuable.

Constitutional documents

After your company has been incorporated, the incorporator (i.e., the person who signed the certificate of incorporation) or the board of directors (if initial directors were named by the incorporator) are required to hold a meeting to adopt bylaws, elect directors (if not already done), appoint officers, and take other actions as needed.

A company's bylaws set forth the various rules and procedures governing the corporation. Amongst other things, bylaws can establish the following:

- How directors are elected, how directors can resign or be removed by stockholders, qualifications required for directors, the length of term for directors, the size of the board of directors and how that may be amended;
- The officers the corporation will have, how officers are appointed, the responsibilities of each officer, how officers are replaced;
- Procedures for stockholder meetings, such as how they can be held (e.g., in person or by phone), requirements for notifying stockholders of meetings, and quorum requirements;
- Procedures for board of director meetings, such as how they can be held (e.g., in person or by phone), requirements for notifying directors of meetings, voting requirements for actions, and quorum requirements; and
- The corporation's obligations with respect to indemnification of its directors and officers.

As discussed in Section 3 (above), a corporation's certificate of incorporation (or "charter") typically sets out the following, amongst other things:

- The registered agent of the corporation;
- The number of authorized shares of common stock, and of each class or series thereof;
- The rights, privileges, and preferences of each class or series of stock (including dividends, voting, and other rights);
- Voting procedures for the election of directors; and
- In addition to anything set forth in the bylaws, the corporation's obligations with respect to indemnification of its directors and officers.

Directors and Officers

Under Delaware law, every corporation must have a board of directors and certain officer positions (including President and Secretary). A board must consist of at least one director, and, at inception, this is often comprised solely of the founding team for most startups. The President and Secretary titles are primarily internal designations, with startups most often using Chief Executive Officer, Chief Financial Officer, and similar titles for external purposes.



Board of Directors

Corporations are governed by the board of directors. Typically, the board of directors is responsible for making major business and policy decisions, and they appoint officers to carry out those policies and manage the day-to-day business and decisions of the company. In a startup company, oftentimes the same individuals serve as both directors and officers at inception. As these companies grow, they may add additional officers who do not also serve on the board.

Under Delaware law, directors do not need to be stockholders of the corporation. They are not required to reside in Delaware or the United States or to be United States citizens or permanent residents.

Officers

The Chief Executive Officer is typically also the President and drives operations and the overall strategy of the business. A Chief Financial Officer would typically be responsible for the company's annual budget, projections, and financial strategy. A member of the management team usually serves as the secretary, maintaining the company's corporate books and records, which includes keeping minutes of directors' and stockholders' meetings and the corporation's stock ledger. The secretary, or your legal counsel, will also often send out notices of corporate meetings and keep a register of the names and addresses of the stockholders.

Directors Duties and Liabilities

Importantly, each member of the board of directors owes fiduciary duties to the stockholders to act in the best interests of the corporation and its stockholders.

Directors owe two primary duties in connection with their fiduciary roles:

- **The duty of care:** This duty requires directors to stay informed about corporate developments and to make informed decisions.
- **Duty of loyalty:** This duty mandates that the best interests of the corporation take precedence over any personal interests a director may have. For example, directors cannot compete with the corporation or usurp the corporation's opportunity for personal gain.

Directors are expected to carry out their duties in good faith and in a manner they reasonably believe to be in the best interests of the corporation. Because Delaware corporate law is robust, these duties have been fleshed out in a number of cases, and legal counsel can provide valuable guidance on these topics.

In most cases, company's charter documents provide indemnification of directors to the fullest extent permissible under Delaware law. This generally means that a director is not liable for any action taken as a director, or any failure to take any action if the director performed the duties in compliance with his or her fiduciary duties. However, a director who breaches his or her fiduciary duties can be held liable, to the corporation, for the damages those actions caused.



6. Employment considerations

Employment laws in the United States likely differ significantly from employment laws in your home jurisdiction. Employment in the United States is governed by federal, state, and local laws – and they are highly technical, covering recruiting, interviewing, hiring, background checks, compensation, employee benefits, anti-discrimination, and termination.

Key requirements for employment contracts in the United States/Delaware

In the United States, generally employment is “at-will,” meaning that an employer may discharge an employee at any time with or without notice for any reason or for no reason and, similarly, an employee may terminate employment at any time with or without notice for any reason or for no reason.

An “employment contract” does not always change the at-will nature of employment. Documenting an employment relationship with a written contract does not necessarily change the at-will status of the employment. A contract can help avoid misunderstanding and disputes with employees later, protect the company’s confidential information and intellectual property, and, in some states, restrict competition during and after the employment relationship (though these provisions are falling out of favour in many states). As discussed more fully in Section 9 (below), it is critical that a company’s standard onboarding package includes an assignment of IP and a nondisclosure provision.

Most startup companies do not have formal employment agreements and instead provide an offer letter that the employee signs and returns. The appropriate form(s) of agreement will depend on the needs of the employer and sophistication of the employee. For example, an executive employment agreement may include detailed

terms addressing duties, compensation, benefits, different categories of employment separation (such as termination with or without “cause”, severance, and non-solicitation of employees/customers) and other terms, whereas such terms are typically not detailed in employment agreements for lower-level employees.

Pay and benefits

Worker Classification

New employees must file a W-2, while new contractors must file a 1099. The W-2 is an employee’s Wage and Tax Statement, which is a record of their compensation, benefits, and taxes withheld for a given tax year. W-2s are required for any worker classified as a part-time or full-time employee and who were paid at least \$600 or who the employer withheld taxes from in any given tax year. The 1099-NEC is a tax statement which reflects how much an employer paid a nonemployee, such as an independent contractor.

Many of the requirements related to workers depend on whether a worker is properly characterized as an employee or an independent contractor/consultant. This classification largely turns on the employer’s relationship with the worker and the method of compensation. The IRS lists three dimensions to be aware of when classifying workers, but there is federal and state case law that has also added complexity to this determination, so the below are illustrative considerations:



- **Behavioural:** Does the company control how the worker does the job? The more the employer controls things, such as a worker's work schedule and location, which tools they use and the methods they use to complete tasks, the more likely they are to be classified as an employee;
- **Financial:** Does the company control business aspects of the worker's job, such as how they're paid and whether they can seek other work in the market? If the answer is yes, it's more likely the worker should be considered an employee rather than a contractor.
- **Type of Relationship:** Does the employer provide benefits, such as insurance or paid time off? Is the job expected to last indefinitely? Are the provided services a key aspect of the business? If any of these are true, it's possible a worker should be classified as an employee.

It should be noted that contractual language is not definitive for such a determination. The IRS explicitly flags that a contract stating the worker is an independent contractor and responsible for their own taxes isn't sufficient to consider the worker a contractor. Instead, the agency looks at the reality of your working relationship to determine the classification if it's in question.

Pay

There are a wide number of state and federal employment laws covering pay and related matters. The Fair Labor Standards Act (FLSA), for instance, establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek. Every employers covered by the [Fair Labor Standards Act \(FLSA\)](#) must keep certain records for each covered, non-exempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned.

Companies often use bonuses as a way to increase productivity, improve employee retention, and remain competitive in the hiring market. Bonus practices vary by industry and location.

Equity

As detailed in Section 7 (below), equity compensation can help startup employer's build a team committed to making the business a success, while conserving limited cash resources.

Benefits

Whether or not an employer is subject to the Affordable Care Act mandate, many employers (including startups) choose to offer health and welfare benefits, e.g., dental, vision, group life insurance, and short and long-term disability, as a way of attracting and retaining employees. If other employers in your industry offer such benefits, your company may be at a recruiting disadvantage if you choose not to do so. Most small employers that offer health and welfare benefits do so by contracting with one or more insurance carriers, such as AETNA, BlueCross BlueShield or Humana, through a local insurance broker.

If an employer offers health and welfare benefits, the employer will be subject to and must comply with the requirements of the federal laws governing health and welfare plans, including the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code of 1986 (IRC) and the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#).

There is no legal requirement that private employers offer any form of retirement plan to their employees. If an employer does choose to sponsor a retirement plan, the employer becomes subject to and must comply with the requirements, including annual reporting requirements, applicable to retirement plans under the IRC and ERISA.

Income tax and social security considerations

All employers are required to withhold applicable federal (and, where applicable, state and local) tax withholdings, including income, Social Security, FICA, FUTA and Medicare. For many small employers, complying with payroll laws is most easily accomplished with a third-party payroll provider. In addition, many states have specific requirements regarding how frequently – e.g., bi-weekly – employees are required to be paid.



Although 1099 workers are exempt from payroll taxes and withholding, employers should use caution in classifying workers as independent contractors. Misclassification of workers can be very costly and is considered a hot-button issue for the IRS, the federal and state departments of labor, and plaintiffs' attorneys.

Working conditions

There are a number of federal laws related to workplace conditions, most of which are not likely to be particularly relevant for a traditional startup. The Occupational Safety and Health Act (OSHA) requires employers to protect employees from known dangers in the workplace.

There is no federal law that requires private employers to provide employees paid time off. However, many states, cities, and counties have enacted laws requiring employers to provide employees with paid time off or paid sick time. For example, Massachusetts currently requires most employers to allow employees to accrue up to 40 hours of paid sick leave per year. Separately, most states require employers to provide non-exempt employees with mandated break and/or meal periods, which may be paid or unpaid, depending on the state.

Family-friendly rights

There are significantly fewer family-friendly policies that a U.S. company must heed relative to many countries in the EU. But, particularly in the case of childbirth and medical leave, there are certain requirements. The [Family and Medical Leave Act \(FMLA\)](#) provides up to 12 weeks of unpaid, job-protected leave per year to employees of all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. It also requires that their group health benefits be maintained during the leave. Employees are eligible for FMLA leave for the birth and care of the new-born child of an employee; for placement with the employee of a child for adoption or foster care; for care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or to take medical leave when the employee is unable to work because of a serious health condition.

Termination of employment

Although at-will employment status means that the employer can discharge an individual for any reason or for no reason, there are limitations to the at-will rule. An employer cannot terminate an employee for an unlawful reason. The two most commonly alleged unlawful reasons for termination are discrimination (e.g., race, sex, age and disability) and retaliation.

There is no requirement in the Fair Labor Standards Act (FLSA) for severance pay. Though not wholly uncommon, it is not typical for startups to provide severance packages in ordinary circumstances.

Collective rights/bargaining

Though the U.S. has a set of regulations protecting employees right to unionize, union groups are very uncommon in the technology and science industries. They, therefore, are not relevant for most startups. But there are important industries where unionization is widespread, including construction, manufacturing, and education.

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected activity related to the terms and conditions of employment. Startups employing unionized employees should closely review the NLRA and the specific rules of the applicable labor union with legal counsel.

Training obligations

Startup companies should develop and distribute an employee handbook to each employee upon commencement of employment, obtaining an acknowledgement of receipt from each employee. An employee handbook sets forth company policies and procedures, terms of employment, and reflects the company's culture and goals. An employee handbook provides a roadmap for dealing with common workplace problems. For example, if an employer is accused of discrimination, having a handbook in place with appropriate policies can provide substantial protection for the employer. An employee handbook also can be used to inform employees about certain rights they have under state and local laws, such as paid sick leave or other leave-related rights that may apply to even very small employers. Startup companies should consult with legal counsel to develop the handbook and ensure the handbook includes the appropriate provisions, considering the appropriate state and local ordinances in addition to federal law.



7. Incentivisation of early-stage team and shareholder structure

One common way through which start-ups attract and retain talent is grants of equity. Equity is attractive for both start-ups and their employees for several reasons, not least of which is the fact that the value of equity is tied to the success of the company. Equity grants, therefore, allow a company to align incentives of its employees with its own incentives without sacrificing its limited cash resources. Therefore, many early-stage companies implement so-called “employee equity plans” or “equity incentive plans.”

There are three main types of equity typically awarded through these plans: (a) restricted stock, (b) stock options, and (c) restricted stock units. A summary of these three types of equity follows. Please note that the below summary does not include an in-depth discussion of the tax treatment and consequences of such grants. Such tax treatment is usually one of the key factors in choosing which type of equity to offer, and founders should discuss these options with a tax lawyer.

Type of Equity	Key Considerations
Restricted stock	<p>Restricted stock is the type of equity award most akin to holding shares in a company, with the exception that it carries (as the name implies) certain contractual restrictions. These restrictions typically include:</p> <ul style="list-style-type: none"> — Restrictions on resale or transfer; and — The company’s right to repurchase unvested (and in some cases vested) stock if the employee is terminated. <p>Advantages of restricted stock include that employees can choose to pay income taxes on the restricted stock when it is granted rather than when it vests, meaning that they can (if the stock gains value over time), significantly reduce their tax liability.</p> <p>One disadvantage of restricted stock is that, once the value of the stock starts to become more significant at the time of grant, employees must bear the tax hit at the time of grant.</p>

Type of Equity	Key Considerations
Stock options	<p>Stock options are a contractual right, but not an obligation, granted to employees to purchase up to a specified number of shares at the fair market value of the stock on the date of the grant, regardless of the value of those shares at any point in the future.</p> <p>Advantages of stock options include that they don't trigger taxable income at the time of grant and certain types of stock options can provide the company with a tax deduction.</p> <p>Disadvantages of stock options include certain option award types impose withholding obligations on the company.</p>
Restricted stock units	<p>There is a third and much less common type of equity award called restricted stock units (or RSUs). Not to be confused with restricted stock (discussed above), RSUs are a contractual right to receive either cash or stock from the company.</p> <p>Advantages of RSUs include:</p> <ul style="list-style-type: none"> — The company may choose not to use its cash reserves to pay for the RSUs, or, alternatively, it may choose not to dilute shareholder equity by distributing cash instead of stock. — The company does not need to perform appraisals of its stock. <p>Disadvantages of RSUs include:</p> <ul style="list-style-type: none"> — The employee can't elect when the taxable events occur, which could mean higher tax amounts than other options.



8. Tax incentives / special regimes / grants

There are a number of potentially applicable tax incentives for startups in the U.S. For a detailed understanding of these incentives, you should engage a U.S. qualified accountant.

Research and Development Tax Credit:

The research and development tax credit is a tax incentive that rewards businesses for conducting research and development activities within the U.S. Even unprofitable tech start-ups can use this incentive. This is a federal program, but many state governments offer a corresponding tax incentive program.

Enterprise Zones:

Enterprise zone subsidies encourage businesses to stay, locate, or expand in designated areas. These are typically economically depressed areas that the applicable state or Federal government has determined requires stimulus. Most states have enterprise zones, and each state's enterprise zone program is different. Common enterprise zone subsidies can include things like investment tax credits; property tax abatements; job creation tax credits; sales, franchise, and use tax exemptions or reductions; or a range of other subsidies.

Qualified Small Business Stock (QSBS)

This is a tax incentive that accrues to the benefit of start-up founders and early investors, rather than the business itself. Shares issued by qualifying businesses may be partially or entirely exempt from U.S. capital gains tax upon sale if held for at least five years. This tax benefit is only available to C-corporations that meet certain other requirements (and not to LLCs or S-corporations).

Grants

There are many grant programs from the U.S. Federal government available to small businesses in the United States. The specific eligibility and application requirements can be quite complex and are beyond the scope of this document.

Two potentially helpful resources for grants:

- **Grants.gov:** [Grants.gov](https://www.grants.gov) is a comprehensive database of government small-business grants administered by various federal agencies, such as the departments of Education and Veterans Affairs.
- **Small Business Innovation Research and Small Business Technology Transfer programs:** [The SBIR and the STTR grant programs](#) focus on research and development for technology innovation and scientific research. The programs help connect small businesses with federal grants and contracts from 11 government agencies. In general, an eligible business is required to be majority owned by U.S. citizens or permanent resident aliens and with operations primarily within the U.S.



9. Investors – considerations for capital raising

Successful emerging companies often go through many rounds of funding. This section covers the primary types of funding available to early-stage companies. Because nearly all traditional financial institutions in the U.S. do not approve business loans for startup companies given their risk profile, a venture capital industry has developed over several decades to fill that market need.

Type of Investor	Considerations for Capital Raising
Bootstrapping	A common starting point for early-stage companies is called bootstrapping. This is when the founders invest their own resources to get the business or initial product off the ground. This is an often necessary option for founders, but is usually not sustainable the desired rate of scaling. This method is best used to get the company into an attractive position for outside investors, such as angel investors and incubators.
Incubators	Incubators are institutions that support founders in the early stages of their business, which provide connections and resources for them to begin to achieve scale. Incubators often provide valuable networks, with connections to venture capital firms and vast alumni networks. These programs can be competitive to enter, and the well-established programs receive thousands of applications per year. Y Combinator and Techstars are two of the most well-known of these programs.
State and Federal Grants	There are limited and competitive state and federal grants. These often have specific eligibility requirements regarding the identity of the entrepreneur or the mission of the business. For example, there are grants for women owned businesses or businesses invested in scientific research. Such options typically provided only limited resources and are not a popular route for most startups.



Type of Investor	Considerations for Capital Raising
Family, Friends, and Angel Investors	<p>When a business is still too premature to approach venture capital funds, the first round of outside investment often consists of family, friends, and angel investors. Angel investors are usually wealthy individuals who are willing to invest around six figure sums into early-stage companies. In exchange for their investment, they are given equity in the company, usually in the form of convertible notes or SAFEs (Simple Agreements for Future Equity). These notes become payable with cash or equity at a future date.</p>
Venture Capital Firms	<p>Once the company or a product is more developed (or earlier if the founders have a proven track record), venture capital funds may offer an avenue toward greater resources. Venture capital firms provide cash for the business to operate and grow, but they also can provide a valuable network and guidance to the founders.</p> <p>Many venture capital firms receive thousands of pitch decks each year, so it is a competitive environment and leveraging the founders' networks is critical. Further, venture capital firms often specialize in certain industries and life stages of companies, so founders should investigate which firms would be best suited for their business.</p>



10. IP – protecting the value of your company

Steps to Take	Incorporation
Keep Business Ideas and Trade Secrets Confidential	Before securing intellectual property rights, avoid speaking about or posting your product idea online. If working with business partners, it is important to speak with an attorney and sign tailored non-disclosure agreements.
Document and Compile Product Concepts and Original Content	Compiling detailed product drawings, descriptions, outlines, and any other documentation is important to prove you created a product and are the rightful owner of your trademark, copyright, or patent. In addition, it is important to date your documentation and indicate the first date of product use.
Apply for IP Protection	<p>Copyright, trademark, and patent are three of the most common types of IP protection that grant you exclusive rights to your creations.</p> <p>Copyright applies to the protection of tangible and intangible creative works. You may register your copyright protection online with the U.S. Copyright Office.</p> <p>Trademarks apply to ownership rights of your logos, symbols, and other branding identities.</p> <p>Patents apply if you've invented a unique product, machine, or equipment, and carry legal protection that prevents others from making and distributing your invention without a license. You may register your trademark or patent online with the U.S. Patent and Trademark Office.</p> <p>Trade Secrets. A trade secret is (1) information that has either actual or potential independent economic value by virtue of not being generally known, (2) has value to others who cannot legitimately obtain the information, and (3) is subject to reasonable efforts to maintain its secrecy. The classic example of a trade secret is the recipe for Coca-Cola. Trade secrets do not need to be registered in order to receive protection and can potentially receive protection indefinitely.</p>

Steps to Take	Incorporation
Register your Domain Names	In addition to securing your IP, it is recommended to further protect your interest and identity by registering any domain names.
Create Confidentiality Agreements for Employees and Partners	It is imperative that every employee signs a confidentiality and invention assignment agreement upon date of hire (i.e., as part of the standard onboarding process for new hires). Such agreements assign all rights to any inventions, IP, or competitively sensitive information developed by the employee to the company and impose non-disclosure and non-use outside the employee's scope of work.
Implementing Security Measures to Protect IP	<p>Conducting business today necessarily means the company's IP is connected online or stored in a system that may be vulnerable to hacking or file corruption.</p> <p>Steps should be proactively taken to limit vulnerability by implementing security measures within the IT framework of your company including two-factor authentication for all computer networks, encrypting data and shared files, and using virtual private network access. These best practices and the types of IT risks faced by U.S. companies are not unique to this jurisdiction.</p>
IP Licensing Agreements	If you are allowing third parties to use or access your IP, ensure a license agreement is in place for the duration and scope of the license, as well as control of any derivative works or improvements to your IP as appropriate. Additionally, if a developer has created something for your business, ensure you own or are appropriately licensed to use the IP.
Open Source Software	As is the case across other jurisdictions, it is important to understand the license terms of open-source software (OSS) when leveraging it in your company product or platform. Certain portions of OSS provide that any derivative work created from the open-source software must be provided with equally open licenses to others and, if present in products of your company, may jeopardize your ability to protect your IP.



11. Regulatory – common compliance requirements

Companies in the U.S. must comply with a variety of regulatory requirements at both the state and federal level. At the federal level, regulators focus on protecting national security, ensuring investors are educated about risk, and compliance with the federal tax code. These areas may also be subject to state regulation as well depending on the jurisdiction. Below are a few categories of regulation that will be particularly important as founders look to build their businesses.

This list is not exhaustive – regulatory compliance requires ongoing attention and penalties can be severe. Involve an attorney in your business from the beginning, and as your business evolves ensure your compliance program does as well.

Securities Compliance

The issuance of any security by a U.S. company (including preferred stock sold by a startup) must either (i) be registered with the Securities Exchange Commission, which requires extremely robust disclosures and is only feasible for large, publicly traded companies, or (ii) fall into one of the carved-out exceptions to this disclosure requirement. Though there are a number of carveouts, each with a detailed set of requirements, one common requirement amongst most is that the securities only be sold to “accredited investors”.

There are a number of ways an individual or entity can qualify as a major investor, all of which are based on the goal of ensuring investors do not take on risks they cannot afford or do not understand. For individuals, accreditation is mainly a matter of financial resources, such as a net worth of \$1 million (excluding primary residence) or income greater than \$200,000 (\$300,000 with spouse or partner) for the preceding 2 years. Private funds (such as venture capital funds) are accredited as a function of their employees’ professional qualifications.

There are a vast number of complex rules related to the issuance of securities, both at the federal and state level, and legal counsel should be closely engaged even prior to the solicitation of investors.

Stock Options	<p>Stock options are a popular form of compensation for startup employees, but Section 409A of the Internal Revenue Code (the federal primary federal tax regime in the U.S.) requires that the exercise price (or “strike price”) must equal or exceed the fair market value of the shares on the day the option is granted. A violation can trigger adverse tax consequences for the company and the employee. It is typical for an independent valuation firm to be engaged to provide a 409A valuation report to set the strike price of options. Carta is a popular service provider for such reports and for managing a company’s capitalization table.</p>
Foreign Investment Controls	<p>The federal government has a variety of mechanisms to regulate foreign activity in the US. The most relevant for our purposes is the Committee on Foreign Investment in the United States (CFIUS). CFIUS is a federal interagency committee with the power to block foreign investment in the United States.</p> <p>CFIUS operates by reviewing foreign investments in “covered” transactions to determine whether they pose a risk to national security, for example by enabling foreign control of critical infrastructure. Covered transactions include a wide range of mergers, acquisitions, and other transactions. CFIUS looks at various factors in deciding the risk of a given transaction – most relevant here is the country from which the investment comes. Countries that the government considers more threatening to US interests receive increased attention, and investments from China and Russia receive relatively high scrutiny.</p> <p>CFIUS requires filings for only some transactions (such as those involving a “critical technology”). Nevertheless, founders should carefully assess any foreign investment because CFIUS can initiate an investigation at any time. If it concludes the transaction violates its regulations, it has authority to impose penalties or even “rescind” a transaction and force a company to refund investors.</p> <p>When considering a transaction involving foreign investment, CFIUS allows parties to submit a short-form declaration and potentially receive a “safe harbor” letter that mostly protects them from later scrutiny.</p>
Data Privacy	<p>The U.S. has a variety of federal and state laws regulating various aspects of data privacy, including healthcare data, financial data, or data collected from children. The U.S. data privacy regime operates very distinctly from that in the EU, where there is a comprehensive regulation. The data privacy laws applicable to your company will depend on the specific type of data you collect, where and how it is collected, how that data is used, and where the company and the data are located.</p> <p>As with securities regulations, the restrictions on the collection and use of data is a complex issue and depends on many factors, included those listed above. Working with legal counsel is critical in ensuring compliance with the various regulations.</p>



12. Industry Associations

In the U.S., there are many industry groups that represent, advocate for, and provide resources for companies operating in a variety of industries. Some of these groups include the [Association for the Advancement of Artificial Intelligence](#), the [Biotechnology Industry Organization](#), and [Women in Technology](#).

Additionally, the [National Venture Capital Association](#) is an organization that publishes the industry-standard set of financing documents used in a large percentage of startup fundraising rounds, as well as other informational materials.



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in the US as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.



Setting up for success in **ENGLAND**

Welcome to the UK! If you are looking for a dynamic, diverse, and competitive market to launch your tech business, the UK may be an ideal destination.

The UK is a leading hub for technology, entrepreneurship, and investment in Europe and beyond. It offers a supportive ecosystem for tech businesses of all sizes and stages, from start-ups to scale-ups. It also has a robust and flexible legal system that protects intellectual property, fosters competition, and enables access to capital and talent.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of entering the UK market include:

- A supportive regulatory environment, with a pro-business legal system. The UK has a well-established legal system that provides a strong framework for businesses. The UK government has implemented various initiatives and incentives to foster the growth of the tech sector, including the Seed Enterprise Investment Scheme (SEIS) and the Enterprise Investment Scheme (EIS) for early-stage companies.
- A vibrant and innovative tech ecosystem with London being the leading tech hub in Europe and attracting high volumes of capital funding.
- A strong services sector, providing access to the specialist advisors and support tech businesses need to flourish.
- Strong intellectual property protection: The UK has a robust intellectual property regime, providing early stage businesses with the ability to protect their valuable assets and maintain a competitive advantage.

However, setting up a tech business in the UK is not without its complexities. This factsheet aims to provide you with some key information and guidance on the main legal aspects of establishing a tech business in the UK. It also provides some useful resources for navigating the UK market.

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1. Corporate considerations for setting up a business in England

What entity you should use to set up your company

The main options available to a foreign investor looking to establish a corporate presence in England & Wales are:

	Private Company Limited by Shares	Public Limited Company (PLC)	Limited Liability Partnership (LLP)
Liability of members	Members' liability is limited to the amount of money they have invested in the company/LLP, not debts of a company/LLP.		
Share Capital	Must have an issued share capital consisting of at least one share, not capable of redemption.	Same as private limited company save that PLCs must have share capital with an aggregate nominal value of at least £50,000, or the prescribed euro equivalent in issue.	No share capital, but members will have financial or administrative interests in the LLP linked to their contributions.
Nominal Value	Each issued share must have a fixed nominal value. Does not have to exceed a specified amount.	Each issued share must have a fixed nominal value. Does not have to exceed a specified amount.	No shares issued.
Allotment of Shares	<p>Directors must be given authority to allot shares, save where a company has only one class of shares.</p> <p>Statutory pre-emption rights generally apply, unless they are disapplied either in the company's Articles of Association (in which case commonly there will be non-statutory pre-emption rights in the Articles). These are generally disapplied by a shareholder's resolution (a special resolution requiring 75% majority).</p>	<p>Directors must be given authority to allot shares.</p> <p>May not allot a share unless at least 25% of the nominal value and the whole of any premium on it has been paid up on registration.</p> <p>Pre-emption rights can only be disapplied with respect to up to 10% of the company's issued ordinary share capital on an unrestricted basis.</p> <p>PLCs will also need to comply with other legal requirements, such as the Financial Conduct Authority's (FCA) rules on the issue of new shares to the public.</p>	No shares issued but there may be pre-emptive rights in respect of membership interests contained in a LLP Agreement.

	Private Company Limited by Shares	Public Limited Company (PLC)	Limited Liability Partnership (LLP)
Transfer of Shares	<p>Shares are freely transferable, unless the Company's Articles of Association provide otherwise.</p> <p>A stock transfer form and director approval will usually be required.</p>	<p>Shares are freely transferable, unless the Company's Articles of Association provide otherwise. Shares of a listed company must be freely transferable, unless the Financial Conduct Authority (FCA) agrees to restrictions on the transfer of shares.</p> <p>Shares in public companies are usually transferred over platforms such as CREST.</p>	<p>Transfer of a member's interest will be dictated by the LLP Agreement. There are no statutory provisions for transfer of membership interests.</p>
Directors	<p>At least one director but not required to have a company secretary. A company can have corporate directors but must have at least one natural person as a director.</p>	<p>At least 2 directors (who can also be shareholders) and a company secretary. A company can have corporate directors but must have at least one natural person as a director.</p>	<p>There are no provisions or requirements to appoint directors, however an LLP must have two designated members at all times whose function is akin to directors.</p>
Members	<p>At least one member, there are no restrictions on who can be a shareholder.</p>	<p>At least one member, there are no restrictions on who can be a shareholder. Publicly traded companies will normally have more than one member</p>	<p>LLPs only have members.</p> <p>LLP must have 2 formally appointed members at all times who are commonly referred to as 'partners', however, it will continue to exist even if the membership falls to one.</p>
Constitutional documents	<p>Must have a Memorandum and Articles of Association. It is common for there also to be a shareholders' agreement in place, which is private between the Company and the shareholders.</p>	<p>Must have a Memorandum and Articles of Association.</p>	<p>An LLP Agreement is required which contains similar provisions to those included in a private company articles and/or shareholders' agreement.</p>
Member's Meetings	<p>It is most common that Directors have the power to call a general meeting. There is no obligation to hold an annual general meeting ("AGM").</p> <p>Shareholders can request a general meeting be called.</p>	<p>Obligated to invite all shareholders to an AGM. An AGM must be held in the 6 month period beginning with the day following its accounting reference date (in addition to any other meetings held during that period).</p> <p>Shareholders can request a general meeting be called.</p>	<p>There are no statutory provisions for general meetings, a LLP Agreement will though include provisions around frequency of meetings of the members.</p>

	Private Company Limited by Shares	Public Limited Company (PLC)	Limited Liability Partnership (LLP)
Director's Meetings	<p>There are no statutory minimum number of director meetings that need to be held, but the directors should meet as frequently as required to discharge their duties as directors.</p> <p>Board Meeting Minutes must be kept for a least 10 years and must be available for inspection by shareholders.</p>		<p>There are no requirements for the management of an LLP. There are no statutory provisions for designated member meetings.</p>
Filing Accounts	<p>After the first year, must file accounts, which are publicly available, within 9 months of the end of their financial year.</p>	<p>After the first year, must file accounts, which are publicly available, within 6 months of the end of their financial year.</p>	<p>Annual accounts must be filed at Companies House every year, such accounts being publicly available.</p> <p>LLP members are responsible for preparing and filing Self Assessment tax returns for HMRC and paying their own tax liabilities for their individual share of profits.</p>



2. Branch vs subsidiary – options for group expansion

When expanding internationally, an entity may take one of three approaches: (i) establishing an entirely new legal entity to do business in England, (ii) opening a branch of the existing business, or (iii) forming a subsidiary of the existing entity. This section focuses on the relevant considerations between options (ii) and (iii), creating a branch or forming a subsidiary.

	Branch	Subsidiary
Legal Identity	Does not have its own legal personality (it is the same legal entity as its foreign parent company).	A subsidiary has its own legal personality. It is for all legal purposes a legal entity independent of its foreign parent company. It is subject to the rights and obligations it incurs independently of those incurred by its parent company.
Liability	The liabilities incurred by the branch shall be compulsorily assumed by the foreign parent company without limitation.	Liability limited to the contributions made. The subsidiary is liable for the debts incurred by the subsidiary with its own assets and, in principle, the foreign parent company will not be affected by these debts.
Management	Managed by the foreign parent company board of directors.	Managed by separate board of directors to the parent company.
Financial Reporting	Financial accounts consolidated with the foreign parent company accounts filed at Companies House, which are publicly available.	Must maintain its own financial accounts for filing in the UK, separate to the foreign parent company, which are publicly available.
Corporation Tax	A branch and a subsidiary are each subject to UK corporation tax at between 19% and 25% depending on the amount of profits.	
Value Added Tax (VAT)	A branch/subsidiary may be subject to VAT on its supplies of goods and services at the general rate of 20%. Registration is compulsory for businesses which generate over £85,000 worth of taxable supplies in the UK per annum.	
Liquidation	Automatically closes when the foreign parent company ceases trading in the UK.	Must be liquidated in accordance with UK winding up procedures.



3. Incorporation vs acquisition of a company

Generally incorporating a new company can be completed within 24 hours but can take longer depending on the approach taken. Acquisitions can take much longer from inception. Below is a general guide on the process for each.

Steps to Take	Incorporation	Acquisition
Common preliminary steps	Set up electronic filing on Companies House or if not, paper filing is also an option.	<p>Consider whether a share or asset purchase is most appropriate in acquiring the target company.</p> <p>Consider whether to acquire the target company directly from the home jurisdiction or via an intermediate local holding company or other vehicle.</p> <p>Consider source of funds, i.e. existing resources or additional funding (equity or debt finance).</p>
Step 1.	Choose a company name. This is explained more fully in choosing a company name .	Prepare pre-acquisition agreements including: <ol style="list-style-type: none"> 1. Confidentiality agreements 2. Exclusivity agreements
Step 2.	Provide registered office address, service address and usual residential address.	Most buyers will carry out some degree of legal, financial and accounting due diligence, which involves gathering information on the target company and its business before entering into the definitive transaction documents.



Step 3.	<p>Filing of registration documents at Companies House, including:</p> <ol style="list-style-type: none"> 1. Application to register a company (form IN01) and the fee 2. Memorandum of association 3. Articles of association (unless you adopt model articles in their entirety which is uncommon for a wholly-owned subsidiary) <p>Additional information if your application includes a sensitive word or expression.</p>	<p>Prepare transactional documents, usually a Share Purchase Agreement or Asset Purchase Agreement.</p> <p>Prepare ancillary documents, including but not limited to:</p> <ol style="list-style-type: none"> 1. Disclosure Letter 2. Tax Deed 3. Corporate approvals 4. Share transfer form(s) for a share purchase 5. Agreements to transfer specific classes of assets (if required) for an asset purchase
Step 4.	<p>Details of first directors and secretary (if any) including title, full name and former names, date of birth, country or state of residence, nationality, occupation, service and residential addresses.</p> <p>At this point, also consider if any service contracts need to be entered into with the directors and if there are any other contracts or arrangements with any director or person connected with a director.</p>	<p>Prepare for signing and closing:</p> <ol style="list-style-type: none"> 1. Signing and closing process (either simultaneously or split completion) 2. Agree final form transaction documents
Step 5.	<p>Articles of Association are legally binding on the company and all of its members. The company can either determine their own articles or adopt the standard model articles.</p>	<p>Post-Closing considerations:</p> <ol style="list-style-type: none"> 1. Announcements (i.e., any press releases or public announcements) 2. Filings of any relevant forms at Companies House 3. Payment of stamp duty on the purchase of shares (if required)
Tax Considerations	<p>No immediate tax to pay.</p>	<p>In case of a share acquisition of a UK incorporated company, stamp duty tax at 0.5% of the consideration is payable.</p>



4. Practical steps required to be undertaken when setting up a company

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, and company secretaries and taking out insurance (both as required by law and as may be prudent for your business activity) there will be a number of other practical steps required. The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity in England.

Choosing a company name

Formality	Basic Aspects
Restrictions on choice of registered name	<p>Care should be taken when choosing a company name. There are restrictions on the choice of registered name that a company may adopt.</p> <p>A name must include the appropriate ending (for example, "Limited", "Ltd.", "LLP", "plc"). The Registrar of Companies will refuse registration of any unacceptable name.</p>
Use of the word "Limited"	<p>The name of a public limited company must end with the words "public limited company" or "p.l.c".</p> <p>The names of private limited companies must end in "limited" or "ltd." unless they are exempt.</p>
Availability of name	<p>Your name cannot be the same as another registered company's name. If your name is too similar to another company's name or trade mark you may have to change it if someone makes a complaint.</p> <p>Check the availability of a name using the Companies House register.</p> <p>Check the availability of a trade mark using the Companies House Trade Mark Search.</p> <p>This formality can be conducted remotely.</p>

Setting up a registered office

Formality	Basic Aspects
Rules for company addresses	The registered office must be: <ol style="list-style-type: none"> 1. A physical address in the UK; and 2. In the same country your company is registered in, for example a company registered in England must have registered office address in England.
Standard industrial classification of economic activities (SIC) code	A SIC code provides Companies House with a description of your company's nature of business. A condensed list of SIC codes can be found here .

Corporate filings – including constitutional and accounting documents where applicable

Formality	Basic Aspects
IN01	This is the form which sets out all of the information about a company on incorporation.
Memorandum of Association (for a Limited Company)	<p>This is a legal statement signed by all initial shareholders or guarantors agreeing to form the company.</p> <p>If you register your company online, you don't need to write your own memorandum of association. It will be created automatically as part of your registration.</p> <p>If you register by post, a memorandum of association template can be used.</p> <p>Memorandum cannot be updated (other than the company name) after registration as they are intended to provide a mere "snapshot" of the company at the time of its registration.</p>
Articles of Association	<p>These are written rules governing rights of shareholders and administrative matters.</p> <p>You can either adopt: (1) use standard articles (known as 'model articles'), or (2) write your own and upload or send them when you register your company.</p> <p>Previously submitted Articles may be amended by a special resolution (i.e., holders of at least 75% of the voting shares in a company).</p>

Formality	Basic Aspects
Register of 'people with significant control'	<p>You must also keep a register of 'people with significant control' (PSC). Your PSC register must include details of anyone who:</p> <ul style="list-style-type: none"> — has more than 25% shares or voting rights in your company — can appoint or remove a majority of directors — can influence or control your company or trust <p>You still need to keep a record if there are no people with significant control.</p>
Accounting records	<p>You must keep accounting records that include:</p> <ul style="list-style-type: none"> — all money received and spent by the company, including grants — details of assets owned by the company — debts the company owes or is owed — stock the company owns at the end of the financial year — the stock-takings you used to work out the stock figure — all goods bought and sold — who you bought and sold them to and from (unless you run a retail business) <p>You must also keep any other financial records, information and calculations you need to prepare and file your annual accounts and Company Tax Return. This includes records of:</p> <ul style="list-style-type: none"> — all money spent by the company, for example receipts, petty cash books, orders and delivery notes — all money received by the company, for example invoices, contracts, sales books and till rolls — any other relevant documents, for example bank statements and correspondence

Proceedings for obtaining authorisation to work in the UK

Registering as an employer

You will need to register as an employer with the UK tax authority (HMRC) and set up pay as you earn (PAYE) so you can pay your employees and pay their tax contributions direct to HMRC. PAYE is HMRC's system for collecting income tax and national insurance from employment.

You can register as an employer with HMRC here:

<https://www.gov.uk/register-employer>

After registering with HMRC as an employer you will receive an employer PAYE reference allowing you to set up your payroll and pay employees.

Employee authorisation to work

Your employees will need the right to work in the UK, either by being a British or Irish citizen or otherwise holding the right to work in the UK e.g. via a visa.

In response to the war in Ukraine, the UK government has introduced bespoke visa schemes for Ukrainian nationals. The three schemes in place are:

- **The Ukraine Family Scheme** – this allows Ukrainian nationals to come to the UK to join an immediate or extended family member.
- **The Homes for Ukraine Sponsorship Scheme** – this allows Ukrainian nationals and their immediate family members to come to the UK where they have an approved UK sponsor.
- **The Ukraine Extension Scheme** – this allows Ukrainian nationals and their family members to stay in the UK if they hold any valid UK visa, or held one that expired on or after 1 January 2022.

Ukrainian nationals holding permission under any of the above schemes will be permitted to live and work in the UK.

You can access the UK Government's overall guidance on UK visas and right to work here: <https://www.gov.uk/check-uk-visa>

You can access the UK Government's specific guidance on visa support for Ukrainian nationals here: <https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk>



5. Governance

Constitutional documents

Constitutional documents are the formation and internal documents of a business that govern the rights and obligations of stakeholders, and the entity's management and operation. Constitutional documents vary dependent on the entity's needs and structure. Limited Companies require a Memorandum of Association and Articles of Association at registration. They may also have a shareholder's agreement, or any document or resolution that affects the management or operation of the company. LLP's do not have Memorandum or Articles, but have LLP Agreements.

Private or public company limited by shares:

Memorandum of Association: Please refer to the Corporate Filings section in part 4.

Articles of Association: Please refer to the Corporate Filings section in part 4.

Certificate of Incorporation: After incorporation, Companies House will send a company a Certificate of Incorporation. The certificate serves as evidence the company has been duly registered.

This document contains the company's full name, unique registration number, the date of incorporation, and the Registrar's seal.

Shareholders' Agreement: A shareholders' agreement is not mandatory but is a contract outlining the obligations and responsibilities between shareholders and a company. A shareholders' agreement is not a publicly available document.

Agreements may include how to address shareholder disagreements, protections for minority shareholders, information rights and specify which company decisions must include shareholders.

Where there is overlap between a Shareholders' Agreement and Articles, Shareholders' Agreements often contain a 'supremacy clause' stating if there is a conflict between the two documents, the Shareholders' Agreement will prevail.

Limited liability partnerships:

LLP Agreement: An LLP agreement is a formal, legally binding agreement between the members of a limited liability partnership.

An LLP Agreement can use the default provisions in the Limited Liability Partnership Act 2000 and the Limited Liability Partnerships Regulations 2001, or draft a bespoke document. There is no "model" available from Companies House. Absent a bespoke document, the default provisions will apply.

The Agreement defines the rights and responsibilities of all members, and the rules for running the business. An LLP Agreement can cover how much ownership each member has; the liabilities of members; profit sharing; loss sharing; dispute resolution; the procedure for winding-down the LLP, and other topics.

Directors Duties and Liabilities

Directors duties are owed to the company and are enforced by the members. Where a company enters or it is reasonably foreseeable that it will enter, insolvency however a directors primary duty is to the creditors of the company. Please refer to Annex 1 for a list of directors' general duties.



6. Employment considerations

Key requirements for employment contracts in the UK

The statutory requirements for UK employment contracts are set out in Section 1 of the Employment Rights Act 1996 (ERA). This states that employers must provide a written statement setting out certain minimum prescribed particulars of employment, including details such as: names of employer and worker; job title/description; rates of pay; date of commencement of employment; hours of work; holiday entitlement; remuneration; paid holiday and training entitlement. This statement must be given to employees and most workers on or before their first day of employment.

Employers also have duties stemming from other statutes, such as the Health and Safety Act 1974, and implied by common law, such as the duty of trust and confidence.

The Equality Act 2010 (EqA) also applies to the workplace requires employers to act in a certain way. It provides a legal framework that seeks to protect people from discrimination based on a 'protected characteristic'. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Employers have obligations under EqA which apply throughout the whole employment relationship affecting things such as job adverts, the interview process, time off, working hours, flexible working, training, promotions, dismissal and redundancy.

Employers cannot make changes to the employee's contract without their consent as this will be a breach of contract, entitling the employee to claim damages.

Please refer to Annex 2 for further specific employment considerations.



7. Incentivisation of early-stage team and shareholder structure

Incentivising the workforce when the company is in its early stages can be challenging. Cash resources are typically limited, meaning recruitment of new talent, and retaining and rewarding that talent, can all be difficult. Many companies use share options to help with this.

What is a share option?

A share option is an arrangement under which employees are given a right to acquire shares in the company at a future time (usually an exit or liquidity event) at a price that is set now. This means that employees have an opportunity to buy shares which may be valuable in the future but for a low price. In this way they are motivated to grow the value of the company. In order to acquire the shares, the employee must simply exercise the option and pay the acquisition price.

There will typically be limitations as to when an employee can exercise their option, and often an option can generally only be exercised when there is an exit event for the company (meaning there is an opportunity for the employee to sell the resulting shares).

The acquisition price for the shares is set at the time the option is granted and can be set as at any amount (including as low as the nominal value of a share).

Time-based vesting conditions can also be applied to the option. For example, the employee might need to stay with the company for a minimum number of years in order for the option to vest and become exercisable.

Performance conditions can also be applied. For example, the employee might need to achieve certain milestones, financial or other targets before their option vests and becomes exercisable.

Why should you use share options?

There are various government-backed, tax-advantaged arrangements under which options can be granted. Some of these offer enormous tax savings to both option holders and companies.

By giving your workforce an opportunity to acquire equity in the company, they will feel far more motivated to stay with the company, and to work to their best ability (especially if performance conditions apply to the option). Having the opportunity to become a shareholder in the company will align the interests of your workforce with those of your investors and shareholders, meaning everybody is 'on the same page'. Equity awards give employees a sense of ownership.

You can decide who is given a share option and how much equity they can get. You can apply any vesting terms you would like, so there is a high degree of flexibility when it comes to structuring your share options.

You can use share options in lieu of salary, where cash resources are limited.



Enterprise Management Incentives

The Enterprise Management Incentive (“**EMI**”) scheme is a UK government-supported incentive scheme under which UK companies can grant tax-advantaged share options to UK tax resident employees. The scheme is specifically aimed at small and early-stage companies. Options can also be granted under an EMI plan to employees who are tax resident outside the UK, but they will not benefit from the tax-favoured treatment.

Although there are various requirements that must be satisfied in order for a company to operate an EMI plan, once satisfied, these arrangements can be operated in a very flexible way. For example, restrictions can be placed on the shares that are used under the plan and options can be granted with an exercise price set at a discount to the prevailing market value of the underlying shares on the date of grant.

Tax Treatment of EMI Options

Options granted to UK tax resident employees are usually subject to income tax and National Insurance contributions (“**NICs**”) at exercise (on the amount of the difference between the market value of the shares as at the date of exercise and the exercise price paid for the option). Under EMI, however, there is no income tax or NICs on the gain enjoyed by employees at exercise provided certain conditions are met (broadly, providing there has been no “disqualifying event” and the option has an exercise price equal to or greater than the market value of a share on the date of grant). Instead, the gain is subject to capital gains tax on the eventual sale of the shares acquired from an EMI option.

In circumstances where NICs are payable, it is possible for the employer’s NICs to be transferred to the option holder, which can be a significant financial benefit to the company.

Business asset disposal relief (formerly, “entrepreneurs’ relief”) is potentially available to the holders of shares which were acquired pursuant to the exercise of an EMI option. The usual requirement under business asset disposal relief that an individual has at least 5% of the ordinary share capital and voting rights do not apply to EMI shares. As long as an individual sells his or her EMI shares at least 24 months after the original date of grant of the EMI option and remains an employee/director of the company during this entire period, a 10% rate of capital gains tax will be applied to any gain on disposal of the individual’s EMI shares (up to a lifetime limit of £1 million in respect of all his or her chargeable capital gains).

The Company will also benefit from a statutory deduction to its taxable profits (for corporation tax purposes) of an amount equal to the gain enjoyed by employees on exercise of the EMI options.

These extremely favourable tax advantages for individuals mean that EMI plans represent an attractive and cost-effective way for companies to incentivise and reward their UK-based employees.

Alternatives to EMI Options

Although EMI options are generally the most flexible and tax-efficient method to incentivise your early-stage team with equity, there are some alternatives available. These include “growth shares” and “hurdle shares” (in which the employee only participates in the growth of the company above a certain hurdle), and CSOP options (another UK government-backed share option scheme with advantageous tax treatment). These arrangements do not offer the same tax benefits as EMI but may be suitable if EMI is not available.



8. Tax incentives and special regimes

Below is a brief overview of some of the tax incentives and reliefs available in England.

Tax Scheme	Eligibility	Tax Benefit
Seed Enterprise Investment Scheme (SEIS)	<p>A UK company or a non UK company with a UK branch may issue shares that qualify for SEIS if:</p> <ul style="list-style-type: none"> — the company's shares are unquoted; — it has no more than £350,000 of gross assets; — it has no more than 25 employees; — it is not controlled by another company; and — the shares are held for at least three years. <p>There are other conditions that must be satisfied, e.g., as regards the company, its trade and the investor.</p>	<p>A UK investor can benefit from the following:</p> <ul style="list-style-type: none"> — ability to deduct 50% of the share price from their income tax obligations (up to £200,000 a year); — capital gains on disposal of SEIS shares are exempt from UK CGT; and — capital gains exemption for 50% of any gains realised on the disposal of assets and re-invested (in the same tax year) in shares qualifying for SEIS income tax relief with a maximum exemption of £50,000. <p>A company can raise a maximum of £250,000 through SEIS.</p>
Enterprise Investment Scheme (EIS)	<p>A UK company or a non UK company with a UK branch may issue shares that qualify for EIS if:</p> <ul style="list-style-type: none"> — the company's shares are unquoted; — it has no more than £15 million of gross assets before, and not more than £16 million immediately after, the share issue; — it has no more than 250 employees (or 500 for a "knowledge intensive" company); — it is not controlled by another company; and — the shares are held for at least three years. <p>There are other conditions that must be satisfied, e.g., as regards the company, its trade and the investor.</p>	<p>A UK individual investor can benefit from the following:</p> <ul style="list-style-type: none"> — ability to deduct 30% of the share subscription price from their income tax obligations (up to £1 million a year or £2 million for knowledge intensive companies); and — capital gains on disposal of EIS shares are exempt from UK capital gains tax (CGT). <p>A company can raise up to £5 million per year (or £10 million for knowledge intensive companies), subject to an overall maximum of £12 million (or £20 million for knowledge intensive companies).</p>

Tax Scheme	Eligibility	Tax Benefit
Small and Medium Sized Enterprises Research and Development relief (SME R&D relief)	A UK company or a non UK company with a UK branch may qualify for SME R&D relief if: <ul style="list-style-type: none"> — it is engaged in research & development as part of a project to make an advance in science or technology; — it has made (or is expected to make) a trading loss; — it has no more than 500 employees; and — it has an annual turnover of no more than €100m or a period-end balance sheet under €86m. 	The company can deduct an extra 86% of its research and development costs from its yearly profit on top of the normal 100% deduction, to make a total of 186% deduction. The company can get a 10% (or in some circumstances a 14.5%) tax credit on the research and development part of its trading loss.
Research and Development Tax Credits Scheme (R&E Tax Credits Scheme)	A UK company or a non UK company with a UK branch may qualify for R&D Tax Credits relief if: <ul style="list-style-type: none"> — it is engaged in research & development that is part of a specific project to make an advance in science or technology; — the research and development work is not subcontracted to the company; and — the research and development relates to the company's trade (either an existing one, or one that it intends to start up based on the results of the R&D). 	The company can get a 20% tax credit on the research and development part of its trading loss.
Patent Box Tax Relief Scheme	A UK company or a non UK company with a UK branch may qualify under the Patent Box Scheme if: <ul style="list-style-type: none"> — it owns or exclusively licences intellectual property; — it holds a patent from the UK Intellectual Property Office or the European Patent Office; and — it can prove that a significant amount of its profits from its patented products or services are a result of its own R&D activities or active management. 	The company can apply a 10% corporation tax rate to the profits derived from patented income.



9. Investors – considerations for capital raising

There are a number of ways to raise money in the UK market, from venture capital through to private equity and debt finance, the main ways that early stage companies raise money are as follows:

Business angels/Angel Investors

These are typically high net-worth individuals who choose to invest directly in tech businesses and can provide not only financing, but also vital knowledge and experience to raise further money down the road. There are many angel investor networks such as: (i) Envestors (ii) Cambridge Angels or (iii) 24Haymarket. Typical angels are likely to invest between £50,000 to £150,000 with networks typically investing between £250,00 to £2,000,000. Angels typically subscribe for the same class of share that a founder may hold but sometimes require shares with preferential rights.

Venture capital

Venture Capital is a form of equity investment primarily aimed at early stage, unquoted companies with high potential for growth. Venture Capital firms take a minority stake in a company in exchange for their investment. This stake is supplemented by a limited set of control rights over certain actions the company may take. Venture Capital funding comes in multiple rounds, from early-stage seed/series A funding (which is usually £250,000 to £2,000,000 to later-stage C and D rounds (of £100 million or more). The UK has an active Venture Capital market and the British Venture Capital Association holds many events and training sessions and also produces a set of model investment documents which are market standard in venture capital investments. Using these documents means that there is a widely accepted market position on many terms.

Private equity

Private equity is a type of investment partnership that buy and manage companies before selling them. Private equity firms operate these investment funds on behalf of institutional and accredited investors. Private Equity firms look for profit in companies they acquire, as often a key feature of a PE transaction is debt; for that reason, a PE backed company must show sufficient cashflow to support high levels of leverage. PE firms either buyout a company in full or they acquire a part of a business in a “carve-out”. PE firms look to have substantial control over the companies they buyout. PE firms usually target more advanced stage business that are revenue generating.

Convertible instruments

Convertible loan notes are a form of hybrid financing that tech businesses commonly use in early financing rounds. Convertible instruments differ from a traditional loans in that the terms of the loan agreement will contain a provision that entitles the investor to convert the loan amount to equity, rather than demanding your company pay the amount back at a later date. There will be certain conditions that the investor (note holder) will have to meet to convert the debt to equity. Usually, this will be after a certain period of time. However, it can also be the occurrence of some specific event, the most common is an investment round, where the note holder will usually be issued the same class of share as is being issued to investors in the round, but at a discounted price (often a 20% discount).



Loans

There are many different types of loans availability to companies in the UK including, unsecured business loans, secured business loans, short-term business loans, working capital loans, asset financing and credit lines and government business loans, among others. The terms of the loan vary based on the type of transaction. Whilst the loan may not be convertible into equity, typically a lender will require a right to subscribe for a certain number of shares in a company to be given to them, this is usually under a warrant instrument. In the UK, government business loans are usually offered by British Business Bank-accredited lenders. Sometimes, this will mean that the government, alongside other bodies, has provided a funding pot that the loans will be drawn from. It may also mean that the government has provided a guarantee stating that if the borrower is unable to pay back the sum in full, then it will refund the lender a portion of the outstanding amount. The British Business Bank also offers specific assistance for start-ups (Start Up Loans) or more assistance for businesses looking to scale.

Other less common ways of raising money include, venture debt (i.e., traditional lending with the addition of an equity incentive to the lender often by way of a share warrant) issuing debt in the form of bonds, government grants for specific projects or crowdfunding. Crowdfunding is a growing area of investment and there are well established crowdfunding providers such as Crowdcube or Seedrs. There are specific regulatory requirements and limits that need to be followed in a crowdfunding round.

Financial promotions

The UK, like most mature jurisdictions has stringent rules on how investment is procured. Unless you are an entity regulated by the Financial Services Authority, it is not possible to go to the public and raise funds (crowdfunding is an exception but within specific rules) without an investment prospectus, which is a document that is very costly to produce. Therefore, tech businesses starting up should limit its fundraising from individuals to those who can self-certify that they are either a sophisticated investor or a high-net worth.

Seed Enterprise Investment Scheme (SEIS) /Enterprise Investment Scheme (EIS)

The SEIS and EIS schemes discussed in section 7 are popular among early stage investors. Crowdfunding platforms typically offer EIS investments. There are also specific funds that either make EIS investments or are Venture Capital Trusts.

ESG

ESG investments are growing in popularity in the UK. However, these usually come with quite stringent and non-negotiable information rights and vague ESG targets.

Term sheets

It is critical that you ask a lawyer to review any non-binding term sheet you intend to sign with an investor. Prior to the term sheet being signed there is still the ability to negotiate terms, however, market practice in the UK means that once a term sheet has been signed, changing the terms can be difficult, notwithstanding that a term sheet is a non-legally binding document.



10. IP – protecting the value of your company

For most businesses, intellectual property (IP) is likely to be a valuable asset. Therefore, it is important to consider the different types of intellectual property a business may generate and how it can be protected to maintain a competitive advantage. There are five main key intellectual property rights in the UK: trade marks, copyright, patents, registered designs, and confidential information. Please refer to the table in Annex 3 for a summary of these rights in the UK, how they are protected and some practical tips.



11. Regulatory – common compliance requirements

General corporate filings and statutory registers

Corporate filings are done at Companies House which is the primary companies registry in the UK. Please refer to Annex 4 for further detail on corporate filings and statutory registers.

Data Protection

Data protection law sets out the minimum requirements for businesses which handle the personal data of individuals. Personal data is any information that relates to an identifiable individual. If your organisation is involved in the processing of any personal data (including of employees), you must consider your compliance with data protection law.

The current data protection regime in the UK is mainly set out in the United Kingdom General Data Protection Regulation and the supplemental Data Protection Act 2018, together referred to here as the “**UK GDPR**”.

The UK GDPR applies to organisations with a presence in the UK which process personal data (regardless of whether the processing itself takes place in the UK) and to any organisations that offer goods and services or monitor the behaviour of individuals in the UK. For further information, please see – [Who does the UK GDPR apply to?](#) and [What is personal information?](#)

Principles

The UK GDPR sets out seven key principles that must be followed when processing personal data: fairness, transparency, purpose limitation, minimisation, accuracy, accountability, storage, and security. These principles go to the heart of the purpose

of the UK GDPR, and compliance with the spirit of these principles is fundamental to good data protection practice and compliance with the UK GDPR. For further information, please see - [A guide to the data protection principles](#).

Controllers and Processors

The UK GDPR distinguishes between organisations which act as controllers (which determine the purposes and means of processing personal data), and processors (which are responsible for processing personal data on behalf of a controller). Both controllers and processors have specific legal obligations imposed on them by the UK GDPR. For further information, please see – [Controllers and processors](#) and [Contracts and liabilities between controllers and processors](#).

Conditions for Processing

The UK GDPR provides six bases upon which the processing of personal data can be considered lawful: (i) where the data subject agrees to the processing of their personal data (consent); (ii) where the processing is necessary for the performance of a contract with the data subject (contract); (iii) where the processing is necessary for compliance with a legal obligation (legal obligation); (iv) where the processing is for the purposes of protecting someone’s life (vital interests); (v) where the processing is necessary for the exercise of official functions (public task); and (vi) where the processing is necessary for the legitimate interests of the controller or a third-party (legitimate interests). As a general rule, the processing must be ‘necessary’ for a specific purpose. For further information, please see – [A guide to lawful basis](#).

Special Category & Criminal Offence Data

In addition to the conditions above, when processing special category data (such as health-related data) or criminal offence data, the UK GDPR provides additional conditions for processing. For further information, please see – [Special category data](#) and [Criminal offence data](#).



Data Subject Rights

Data subjects have various rights in relation to their personal data under the UK GDPR, these are the right: (i) to be informed about the collection and use of their personal data; (ii) to access and receive a copy of their personal data; (iii) to rectify inaccurate or incomplete personal data; (iv) to request erasure of their personal data; (v) to restrict processing of their personal data; (vi) to data portability, allowing data subjects to re-use their personal data across various services; and (vii) to object to the processing of their personal data in certain circumstances. The UK GDPR prescribes specific obligations upon businesses for responding to these data subject requests. For further information on what these rights entail and the regulatory requirements when responding to such requests, please see – [A guide to individual rights](#).

When personal data is obtained from a source other than the data subject directly, privacy information must still be provided to the data subject. The [right to be informed](#) is a key transparency requirement under the UK GDPR, and privacy notices are considered best practice to meet this requirement. For further information, please see – [ICO Privacy Notice Checklist](#) and [How to write a privacy notice for SMEs](#).

International Transfers

When personal data is transferred outside of the UK, individuals risk losing the protection of UK data protection laws. Accordingly, the UK GDPR also sets out specific requirements for when personal data can be transferred outside of the UK. An international transfer must be covered either by an adequacy decision, an appropriate safeguard or one of eight other permissible exceptions. In some instances, depending on the nature of the transfer, it will also be necessary to perform a Transfer Risk Assessment. For further information, please see – [A guide to international transfers](#).

Other Considerations

The UK GDPR requires that appropriate technical and organisational measures must be in place to meet the accountability requirement (see “Principles” above). For example, you may need to conduct a [Data Protection Impact Assessment \(DPIA\)](#), employ a [Data Protection Officer \(DPO\)](#), or use an [International Data Transfer Agreement \(IDTA\)](#). For further information, please see – [Guide to accountability and governance](#).

Exemptions

There may be exemptions from the rights and obligations awarded by the UK GDPR. For further information, please see – [A guide to the data protection exemptions](#).

Changes to Data Protection Regime

In March 2023, the UK government introduced the Data Protection and Digital Information (No. 2) Bill to Parliament, which could reform Data Protection Law in the UK. At this stage, it remains unclear when this new Bill will come into effect.

Useful Links:

- [SME web hub – advice for all small organisations](#)
- [SME web hub – find the right resource](#)
- [UK GDPR guidance and resources](#)

Other

Sanctions and money laundering

The UK government has wide powers to impose sanctions. These include financial (i.e., over assets, funds or in relation to continuing commercial relationships with an individual or entity), immigration, trade or trade.

The consequences for breaching sanctions include large fines or imprisonment and can extend to directors of companies where an offence is committed by a company.

Anti-money laundering offences are (a) conceal, disguise, convert or transfer the proceeds of crime, or to remove the proceeds of crime from the jurisdiction of England and Wales (b) enter into, or become concerned in an arrangement, in which the person knows or suspects the retention, use or control of the proceeds of crime and (c) acquire, use or possess the proceeds of crime.

It is the responsibility of entities to perform their own sanctions, money laundering and KYC checks on investors and/or persons they transact with. There are many service providers in the UK that can assist with this. It is also prudent to have in place a sanctions and anti-money laundering policy, to evidence training carried out and to establish good procedures.



Anti-bribery

Bribery offences are governed under the Bribery Act 2010. The Ministry of Justice has provided details guidance (<https://www.gov.uk/government/publications/bribery-act-2010-guidance>) which sets out the relevant offences. A company should have in place an anti-bribery policy and this is usually required by investors.

National Security and Investment Act 2021

The UK's National Security and Investment Act 2021 ("**NSIA**") established a new, standalone statutory regime for government scrutiny of and intervention in acquisitions and investments, for the purpose of protecting national security. A new government authority known as the Investment Security Unit ("**ISU**") is responsible for monitoring transactions and granting approvals under the new regime. The primary concern of the NSIA is acquisitions where a change of control or acquisition of 25% of higher shareholding that would amount to "material influence" of an entity or an acquisition of assets would give rise to a risk to national security.

The Secretary of State also has the power to issue a "call-in" notice if it is reasonably suspected the acquisition has given or may give rise to a risk to national security, or arrangements are in progress or contemplation which may, if carried into effect, give rise to a risk to national security up to six months after being notified of a transaction or up to five years after the transaction occurs, if no notification to the Secretary of State has taken place. Companies in certain sectors are required to where there is a change in control of an entity (including a foreign entity that carries on activities in the UK or supplies goods or service to the UK) in the following sectors: (a) civil nuclear; (b) communications; (c) data infrastructure; (d) defence; (e) energy; (f) transport; (g) artificial intelligence; (h) advanced robotics; (i) computing hardware; (j) cryptographic authentication; (k) advanced materials; (l) quantum technologies; (m) synthetic biology (formerly named engineering biology and renamed in response to the consultation responses); (n) critical suppliers to government; (o) critical suppliers to the emergency services; (p) military and dualuse quantum technologies; and (q) satellite and space technologies.



12. Financial regulation

Regulators

The [Financial Conduct Authority](#) (the “**FCA**”) and the [Bank of England, via the Prudential Regulatory Authority](#) (the “**PRA**”), are the lead financial services regulators in the UK. The FCA is the conduct regulator for financial services firms and financial markets in the UK and is the prudential supervisor for firms not regulated by the PRA. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers, and major investment firms.

Regulatory Overview

On 29 March 2021, the FCA and the PRA published several Policy Statements, Supervisory Statements, Final Rules, and a Joint Statement (collectively the “**Statements**”) on operational resilience and, in the case of the PRA, outsourcing and third party risk management. Certain customers regulated by the FCA and the PRA may be required to comply with these Statements.

Since 31 March 2022, entities regulated by the FCA and/or the Bank of England, including the PRA, (“**Regulated FSIs**”) have had to identify important business services, set maximum impact tolerances, and identify weaknesses within their operational resiliency arrangements. No later than 31 March 2025, Regulated FSIs must have performed mapping and testing so that they are able to remain within impact tolerances for each important business service.

The PRA’s SS2/21 “Supervisory Statement on Outsourcing and third party risk management” is intended to be broadly equivalent to the [European Banking Authority Guidelines on outsourcing arrangements](#) (the “**EBA Guidelines**”). The FCA’s PS21/3 “Building operational resilience” focuses on operational resilience framework requirements.

Firms regulated by the FCA should review the relevant outsourcing requirements recorded in [SYSC 8](#) and [SYSC 13](#) of the FCA Handbook and note the FCA’s [Principles](#) with a focus on Principle 11. Credit institutions, certain investment firms, electronic money institutions and payment institutions should review the EBA Guidelines and, where applicable, the [FCA’s Payment Services and Electronic Money Approach Document](#). Firms regulated by the FCA and that are not subject to the EBA Guidelines (as defined below) should note the FCA’s [FG 16/5 guidance for firms outsourcing to the ‘cloud’ and other third-party IT services](#).

Firms regulated by the PRA, including dual regulated firms (i.e., those regulated by both the FCA and the PRA) should review the Outsourcing and Notifications parts of the [PRA Rulebook](#) and should also note the PRA’s [Fundamental Rules](#) with a focus on Rule 7. Firms should also consider the [PRA’s supervisory statement \(SS19/13\) on resolution planning](#). The [Solvency II regime](#) and the Conditions Governing Business part of the [PRA Rulebook](#) also contain outsourcing requirements that apply to insurance and reinsurance firms in the UK. PRA-regulated firms should also review the PRA’s [supervisory statement \(SS2/21\) on Outsourcing and third party risk management](#), which implements the EBA Guidelines and applies from 31 March 2022.

Firms (depending upon whether these are regulated by the PRA or the FCA or both) should also consider the policy statements from the PRA on [PS6/21 Operational Resilience](#) and from the FCA on [PS21/3 Building operational resilience](#).

The Statements provide guidance to Regulated FSIs and these entities must have in place specific contractual terms, including terms addressing security of data and systems, access and audit rights, suboutsourcing, contingency plans, and exit strategies, with their outsourcing service providers.



Key Considerations for Regulated FSIs Proposing to Outsource to a Third Party

Regulated FSIs that are using or planning to use third party's services or products can take the following steps to better understand their compliance needs:

- (a) Assess the materiality or criticality of the workload(s) under consideration and the relevant categories of data.
- (b) Assess their policies, processes and governance framework in line with the guidance in this paper to meet their regulatory obligations while outsourcing to the third party.
- (c) Notify the relevant UK regulator(s) when the workload is deemed material in accordance with applicable regulatory requirements.

PRA Statements on Outsourcing

In line with Article 31(3) of MODR (banks) and 274(3)(c) of the Solvency II Delegated Regulation (insurers), all outsourcing arrangements must be set out in a written agreement.

Where there is a master service agreement that allows firms to add or remove certain services, each outsourced service should be appropriately documented, although not necessarily in a separate agreement.

Firms should ensure that written agreements for non-material outsourcing arrangements include appropriate contractual safeguards to manage and monitor relevant risks. Moreover, regardless of materiality, firms should ensure that outsourcing agreements do not impede or limit the PRA's ability to effectively supervise the firm or outsourced activity, function, or service.

See Annex 5 for a summary of what written agreements for material outsourcing should set out.

Additional Resources

<https://www.fca.org.uk/firms/outsourcing-and-operational-resilience>



13. Industry Associations

In the UK there are a wide variety of sector based industry associations an example would be [techUK](#) which is the main technology trade association. TechUK is a trade association representing the technology industry in the United Kingdom. It is made up of over 850 member companies, including technology businesses, start-ups, and multinationals, as well as academic institutions and research organisations.

techUK FOR WHAT COMES NEXT

While techUK does not have direct regulatory authority over the tech industry, it plays an important role in shaping policy, influencing government decisions, and facilitating industry collaboration. Here are some ways in which techUK contributes to the regulation of the tech industry:

1. **Policy Development:** techUK engages with policymakers, government bodies, and regulators to provide input on technology-related policies, regulations, and legislation.
2. **Advocacy:** techUK advocates for its members' interests and promotes policies that foster innovation, growth, and competitiveness in the tech sector.
3. **Industry Standards and Best Practices:** techUK collaborates with industry stakeholders, including businesses, academia, and other trade associations, to develop industry standards, codes of conduct, and best practices.
4. **Thought Leadership:** techUK organises events, conferences, and working groups to facilitate knowledge sharing, discussion, and thought leadership within the tech industry.
5. **Regulatory Engagement:** techUK engages with regulatory bodies, such as the Information Commissioner's Office (ICO) and Ofcom (Office of Communications), to provide industry perspectives, feedback, and recommendations on regulatory proposals.



Annex 1: Directors' General Duties

Directors have the general duties to:

1. act within their powers
2. promote the success of the company
3. exercise independent judgment
4. exercise reasonable care, skill and diligence
5. avoid conflicts of interest
6. not accept benefits from third parties
7. declare their interests in proposed transactions or arrangements in the company

Personal liability of the directors may arise in the following circumstances:

1. Wrongful trading
2. Fraudulent trading/credit
3. Breach of directors' duties
4. Tax liabilities – if a company does not pay the correct amount of NICs, HMRC can issue Personal Liability Notices to recover the unpaid NIC plus interest and penalties from a company's directors or any other officers personally.



Annex 2: Employment Considerations

Pay and benefits

As noted above, remuneration rate and intervals at which remuneration is paid should be detailed in the employment contract.

A National Minimum Wage (**NMW**) (which varies by age up to the age of 23) applies for all workers over the minimum school leaving age (currently age 16). Workers aged 23 and over must be paid the National Living Wage (**NLW**) which from 1 April 2023 is £10.42. It is a criminal offence for employers wilfully to refuse to pay the NMW or NLW. Workers who qualify for but are not paid the NMW or NLW can bring a claim in an employment tribunal and enforcement action against the employer may also be taken by the UK tax authority, HM Revenue & Customs.

However, salaries are also based on market forces and the employee's ability. An employer may link a worker's pay to their level of productivity or to the company's performance or profits.

In the UK, it is usual to pay workers weekly or monthly. There is no requirement to make a 'thirteenth month' payment at any time (for example at Christmas time), as there is in some jurisdictions. As in continental Europe, employers in the UK are required to give their workers an itemised payslip. Where the worker is paid on an hourly basis, the payslip must detail the hours worked that month and the hourly pay rate(s).

Under the auto-enrolment regime all employers in the UK are required to automatically enrol 'eligible jobholders' in a workplace pension scheme and pay minimum of 3% of qualifying earnings as contributions into the scheme.

Employees may also be eligible to participate in bonus schemes. Where the employer reserves discretion as to whether or not to pay any bonus or as to the amount of the bonus for a particular year, this discretion must not be exercised perversely or irrationally.

Income tax and social security considerations

UK employers will be required to operate and account for payroll taxes in respect of their employees. Taxes are collected through 'PAYE' and employees salaries will be paid after deduction of income tax and employee national insurance contributions (**NICs**) must be deducted from the employee's salary. These contributions are paid directly to HM Revenue & Customs by the employer. Employer NICs and the apprenticeship levy (**AL**) must be paid by the UK employer. Employers must be registered with HM Revenue & Customs so they can operate PAYE. Those categorised as workers under employment law can be employees for tax purposes, but this should be considered in each case. In the UK deductions from salary other than PAYE will be unlawful unless they are required by or permitted by a statutory or contractual provision, or the worker has given their prior written consent to the deduction.

NICs is to provide funds for the Government from which it can pay certain benefits (e.g. statutory maternity pay), known as 'contributory benefits'. There are different 'classes' of contribution. Class 1 contributions are due on earnings paid to those categorised as employees and office holders under UK tax law. There are two categories of Class 1 contributions: (i) primary contributions payable by employees below pensionable age (although the actual calculation and collection of such payments are made under the PAYE system); and (ii) secondary contributions payable by employers. Under the Employers' Liability (Compulsory Insurance) Act 1969 (as amended), UK employers have an obligation to maintain insurance cover for bodily injury or disease sustained by employees and arising out of, and in the course of, their employment. This insurance must cover liability of at least £5 million in respect of any one occurrence.



The current rates of income tax (to be deducted from an employee's salary):

Band	Taxable income	Tax rate
Personal Allowance	Up to £12,570	0%
Basic rate	£12,571 to £50,270	20%
Higher rate	£50,271 to £125,140	40%
Additional rate	over £125,140	45%

The general rates of employee's NICs (to be deducted from the employee's salary):

Employee Salary	Class 1 National Insurance rate
£242 to £967 a week (£1,048 to £4,189 a month)	12%
Over £967 a week (£4,189 a month)	2%

The general rates of employer NICs (to be paid by the employer):

Employee Salary	Class 1 National Insurance rate
£123 to £175 (£533 to £758 a month)	0%
Over £175.01 (£758.01 a month)	13.8%

The general rates of AL (to be paid by the employer):

Employer Annual Pay Bill	Apprenticeship Levy rate
Under £3 million of entity's annual pay bill	0%
Over £3 million of entity's annual pay bill	0.5%

Working conditions

Below are the minimum working conditions employers have to provide but it is common that employers are able to, and often do, offer enhanced conditions to employees.

Working hours

The Working Time Regulations 1998 sets rules for the maximum weekly working hours and rest during the working day. Employees and workers must not work more than an average of 48 hours a week (over a 17week period). An employee can (but does not have to) 'opt out' of the maximum limit by signing an 'opt out agreement', meaning they agree to work more hours. The employer must not cause the employee detriment because they do not opt out. An employee can cancel an opt out agreement at any time, by giving notice to their employer. The notice period length depends on details in the opt out agreement but can never be more than 3 months. If the agreement says nothing about it, then the statutory notice period is 7 days.

Broadly, all workers are entitled to 11 hours' uninterrupted rest each day and 24 hours' uninterrupted rest (i.e., one day) per 7-day period. They are also entitled to rest breaks of at least 20 uninterrupted minutes away from the workstation (if the worker works in excess of 6 hours) and 'adequate rest breaks' if health and safety may be put at risk. There are exemptions for certain industries and for workers who determine their own working time.

Holiday entitlement

Employees are entitled to 5.6 weeks' (28 days') statutory paid holiday a year. Bank holidays (generally 8 per year in the UK) can be included in this paid holiday. This is the minimum; employers can offer more. The employer can decide whether or not employees have to work on bank holidays.

Sick leave

UK statutory sick pay laws are outlined under the Statutory Sick Pay (General) Regulations 1982 and the Statutory Sick Pay (Medical Evidence) Regulations 1985. Employees will not receive Statutory Sick Pay for the first 3 days they are ill, but from the 4th day of absence they are entitled to it as long as they meet the criteria. The minimum amount of statutory sick pay is £109.40 per week from 6 April 2023. If employees are off work for 7 days or less, they do not need to give their employer a fit note or other proof of sickness from a healthcare professional, however over this period they do.



Family-friendly rights

Below are the minimum family-friendly rights employers have to provide but it is common that employers are able to, and often do, offer enhanced family-friendly rights to employees.

Maternity leave and pay

In the UK all pregnant employees have the right to take up to 52 weeks' maternity leave, regardless of their length of service. The first 26 weeks is known as 'Ordinary Maternity Leave', the last 26 weeks as 'Additional Maternity Leave'. They may also qualify for up to 39 weeks' Statutory Maternity Pay if they have worked for the employer for 26 consecutive weeks by the end of the 15th week before the week in which they expect their baby. This entitles the employee to 6 weeks' pay at a rate of 90% of their normal weekly earnings, followed by 33 weeks at the lower of 90% of their normal weekly earnings or statutory maternity pay, which is currently £172.48 per week.

Paternity leave and pay

Employees eligible for statutory paternity leave are entitled to either one or two weeks' leave paid at the lower of 90% of their normal weekly earnings or the statutory rate, which is currently £172.48 per week. To qualify for Statutory Paternity Leave and pay, the employee must be either the: child's biological father; child's adopter or intended parent (if using a surrogate); or child's mother's husband or partner (including same-sex partners). The employee must have been working for their employer for at least 26 continuous weeks by either the end of the 15th week before the week of the due date or the end of the week that you they are told that they have been matched with a child for adoption.

Adoption leave and pay

The rights employees have for adoption leave and pay are parallel to those for maternity and paternity leave and pay. Adoption pay starts when the employee takes adoption leave. If an employee is adopting as a couple, only one person qualifies for adoption leave.

Parental and shared parental leave

An employer is obliged to give employees with at least one year's continuous service up to 18 weeks' unpaid statutory parental leave per child up until the child's 18th birthday.

Shared parental leave allows new parents (including adoptive parents) to use up to 50 weeks of their statutory maternity or adoption leave entitlement more flexibly within the first year after the birth or placement for adoption. Statutory shared parental leave can be taken in one block or discontinuous blocks with periods of work in between. Eligible employees may also be entitled to statutory shared parental pay.

Time off for dependents

Employees have the right to take a reasonable amount of unpaid time off work for urgent family reasons. The time taken off is unpaid. Dismissing an employee for taking time off for dependants will be automatically unfair.

Flexible and hybrid working

Employees can request flexible working if they have a minimum of 26 weeks' continuous service with their employer. Employers must deal with requests in a 'reasonable manner' (this may include but is not limited to assessing the advantages and disadvantages of the application; holding a meeting to discuss the request with the employee; and offering an appeal process).

Termination of employment

Employees are entitled to a period of notice before their employment terminates. If the employee has been employed for one month or more, this period must be no shorter than the statutory minimum. The statutory minimum is at least one week where an employee gives notice to their employer. Where an employer gives notice to its employee, the period must be at least one week until the employee has completed 2 years' continuous employment, when it then becomes 2 weeks. For each additional completed year of employment after this, an employee is entitled to receive a further one week's notice up to a total maximum of 12 weeks' notice (after 12 or more years' continuous employment). Contractual notice periods may and often do exceed the statutory minimum amounts.

Payment in lieu of notice is permitted under express provisions in an employment contract, but it is worth noting that if there is no express contractual right, a payment in lieu of notice will constitute a breach of contract. The breach may not cause the employee to suffer any financial loss, but the employer will be unable to rely on any contractual terms which place obligations on an employee after their employment has ended (e.g. restrictive covenants).



Under UK employment law, it is relatively easy to dismiss employees. Unlike in some European countries, where a dismissal can be declared void if the employer has infringed the employee's constitutional rights or has acted in a discriminatory manner, under UK law the actual dismissal itself will almost always be effective. Usually the only issues arise in relation to compensation and remedy if the dismissal is found to have been unlawful in some way.

Employees with the requisite continuity of employment may bring unfair dismissal claims if they are dismissed other than for one of the five potentially fair reasons or if the employer does not behave in a fair and reasonable manner in dismissing them. In order for a dismissal to be fair an employer must ensure that: the reason (or, if more than one, the principal reason) for dismissal is one of the potentially fair reasons for dismissal (specifically (i) conduct, (ii) capability, (iii) redundancy, (iv) illegality or (v) some other substantial reason); they acted reasonably in all the circumstances in treating that reason as a sufficient reason for dismissing the employee; and they followed a fair procedure in effecting the dismissal. Employers should follow the [ACAS Code of Practice on disciplinary and grievance procedures](#) when dealing with any disciplinary or grievance issues. Where there has been an unreasonable failure to follow the ACAS Code of Practice, employees may receive increased levels of compensation from employment tribunals (up to 25%) if they win their claim. If a dismissal is found to be unfair, the employment tribunal may order the employer to pay compensation to the employee or to reinstate or re-engage the employee.

Collective rights/bargaining

Trade unions are well-established organisations which regulate relations between workers and employers or employers' associations. Trade union law derives from a wide variety of sources including statute, common law and codes of practice. There are statutory provisions that encourage employers to voluntarily recognise trade unions for collective bargaining purposes. There is also a compulsory procedure for the recognition of trade unions, provided certain conditions are satisfied, which broadly speaking relate to whether enough of the affected workers want the union to be recognised.

Staff councils and other staff associations are also commonplace, more so in larger businesses. For example, employers must consult with their staff when making collective redundancies, when transferring businesses or outsourcing parts of businesses under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the UK legislation implementing the EU Acquired Rights Directive), and when making certain changes to pension provision.

Collective bargaining and industrial action issues are highly regulated and specialist employment advice should be taken where an employer is involved in either.

Training obligations

The training obligations imposed on an employer will depend upon the particular industry in which it operates. Employers must provide health and safety training to employees to the extent relevant to their work. Other training may be common as a matter of practice but is not required under law.

Annex 3: Intellectual Property Rights

	Trade marks
What does it protect?	<p>Signs which are used to distinguish a company's products or services from those of other businesses</p> <p>Trade marks can take many forms. Most commonly, they protect words or logos but they can also potentially protect shapes (such as the shape of a Coca Cola bottle), colours (easyJet's colour orange) and even sounds (MGM's lion's roar).</p> <p>Marks are territorial, so a UK trade mark will only be enforceable in the UK, and apply to specific classes of goods and services.</p>
Is registration possible?	<p>✓ (Yes)</p> <p>If you use a trade mark in relation to your business, you should consider applying to register it with the UK Intellectual Property Office. This makes it easier to enforce your rights than if it is not registered, for example if someone is trying to copy your trade mark or pass their product off as yours. But, you can still enforce an unregistered trade mark under the tort of passing off.</p> <p>There are rules regarding what is registrable and for what classes of goods or services. The more distinctive your brand, the better its prospects of successful registration.</p>
How long does a registration last?	<p>10 years, but it can be renewed. If you renew a registration (every 10 years), a registration can last forever.</p>
What are the costs?	<p>Fees start at £170 but will cost more if, for example, you apply to register a mark against a wider range of goods or services.</p> <p>When renewing a mark, the fee is £200 for the first class of goods or services your trade mark covers, and £50 for each extra class.</p>
What should I look out for?	<p>A company's corporate or product brand may be its most valuable asset. If you are planning on using a trade mark in connection with your business, it is a very good idea to have a "clearance search" carried out. This will show if there are third parties with earlier rights which are similar to your proposed trade mark. A third party with an earlier right could cause an issue for your use and registration of your proposed trade mark so it is far better to find this out before launching your product and avoids a potentially expensive re-branding later on.</p> <p>You should also consider a 'watch service' which checks for any third parties who might seek to register a similar mark in the future to yours. If you have notice of potential applications, you can challenge the application. This can be an important aspect of maintaining control over your brand.</p> <p>Registered trade marks are subject to a 'use it or lose it rule'. If a trade mark is not used for any continuous period of five years after registration, then it could be revoked.</p>

Copyright	
What does it protect?	<p>Original works of authorship or creative works</p> <p>These may be protected by copyright: the layout and content of a website, computer software, books, song lyrics, music, photos, paintings, technical drawings, videos, broadcasts etc.</p> <p>Various international treaties mean that copyright in a work created in the UK can be enforced much more broadly than just the UK.</p>
Is registration possible?	<p>✗ (No)</p> <p>No registration required. Copyright arises automatically in the UK.</p>
How long does a registration last?	<p>For most works, 70 years from the end of the calendar year in which the author dies. There are some exceptions for certain types of work (e.g. sound recordings and broadcasts).</p>
What are the costs?	<p>None</p>
What should I look out for?	<p>Copyright works created by an employee in the course of his employment are automatically owned by the employer. However, the same is not true of contractors. If you commission someone to create a copyright work (e.g. your website), then the person you commission will own the copyright unless you enter into an agreement which states that you own the copyright.</p> <p>If consultants/contractors are engaged to create a copyright work, you should include a written transfer or assignment of the copyright as part of the contract. You should make sure you agree and sign this before or at the time of payment. It can be difficult to obtain copyright ownership after the work is created.</p>

Patents	
What does it protect?	<p>Inventions</p> <p>The invention must be new, it must not have been made public or disclosed to anyone, and it must not be an obvious invention to someone knowledgeable and skilled in the relevant area. Examples include patents granted for pharmaceuticals and Dyson's patents for its bagless vacuum cleaner.</p> <p>Patents are territorial, so a UK patent is only enforceable in the UK.</p>
Is registration possible?	✓ (Yes)
How long does a registration last?	Up to 20 years. Renewals are required yearly from the fourth anniversary of filing the patent.
What are the costs?	<p>At least £310 to file your application and for processing.</p> <p>To have the best chance of getting a patent granted you will usually also need to pay a patent attorney for help and advice. This can cost several thousands of pounds.</p> <p>Renewal costs increase as the patent reaches its 20-year term, starting from £70 and reaching £610.</p>
What should I look out for?	<p>Patents must be confidential to be filed. A single open disclosure of information (where there are no conditions of confidentiality) will destroy the patentability of the invention. It is critical that when discussing the invention with potential partners, you have appropriate confidentiality undertakings in the form of a non-disclosure agreement (NDA).</p> <p>Alternatively, before you make any disclosures of information you can file a patent application covering the invention.</p> <p>In general, if an invention is made within an employee's normal course of duties or specially assigned duties then it will be owned by the employer. However, issues can arise. Make sure to remain aware of employees' evolving duties, document any special projects, and have records of contracts with employees which specify that any inventions are owned by the business.</p>

Registered designs	
What does it protect?	<p>The visual appearance (e.g. the shape, colours and texture) of a product and/or its ornamentation</p> <p>Registered designs can protect a broad range of things, including patterns applied to clothing and the shape of products.</p> <p>A design must be new (it must not have been made public or disclosed to anyone) and the overall impression given by the design must be different from that given by earlier designs.</p>
Is registration possible?	<p>✓ (Yes)</p> <p>Designs can also be unregistered but the protection is more limited than for registered designs.</p>
How long does a registration last?	Up to 25 years with renewals required every 5 years.
What are the costs?	From £50 for one design to £150 for up to 50.
What should I look out for?	Designs can only be registered if they are novel. There is a grace period for registered designs. This means that if, for example, you exhibit the design at a trade fair before filing an application, the design would still be considered new if the applicant files within 12 months of that exhibition. People often file an application only once the product has become popular, but this can sometimes be too late.

Confidential information	
What does it protect?	<p>Business-sensitive information, including know-how and trade secrets</p> <p>Confidential information can include business plans, financial information, statistical information, customer lists and recipes. Well-known examples of trade secrets include the Google search algorithm and the recipe for Coca-Cola.</p> <p>To be considered confidential, information must satisfy three tests: (1) it must be confidential in nature; (2) it must have been shared in circumstances where an obligation of confidence arises; and (3) unauthorised use would be to the detriment of the disclosing person.</p>
Is registration possible?	✗ (No)
How long does a registration last?	In theory, it can be protected indefinitely, so long as it retains its confidential nature.
What are the costs?	None
What should I look out for?	<p>Preventing disclosure is much easier than correcting when it is too late. You should consider:</p> <ul style="list-style-type: none"> — Entering into a written confidentiality agreement (NDA) if disclosing any confidential information to a third party — Restricting access to certain categories of information so only certain individuals can access it — Tagging certain categories of information or files so that IT are alerted if they are sent externally — Increasing staff awareness on use of personal e-mails and have clear policies on home-working — Ensuring employees have company devices and VPN access and carry out regular IT audits (not just on employee exit) — Preventing personal devices from being plugged into company system



Annex 4: Corporate Filings and Statutory Registers

Corporate Filing

Public and Private Limited Companies

Annual Corporate Filings

Confirmation Statement (Form CS01) – the company will need to check that the information Companies House has about the company is correct every year and make a filing accordingly. The purpose of the confirmation statement is to provide an overview of the company's key internal structure on a specific date, known as the 'confirmation date'.

The company can change the confirmation statement online or by post. It costs £13 to file the confirmation statement online, and £40 by post.

The confirmation statement is due usually a year after either:

- the date the company incorporated
- the date the company filed its last confirmation statement

The company can file the confirmation statement up to 14 days after the due date.

The company cannot use the confirmation statement to report changes to:

- the company's officers
- the registered office address
- the address where you keep your records
- people with significant control

but must file those changes separately with Companies House.

Annual Account Filings – directors of the company must deliver for each financial year accounts and reports. Annual accounts must be filed within:

- For a private company, nine months after the end of the relevant accounting reference period, and
- For a public company, six months after the end of that period.

Persons with Significant Control (PSC) Filings

The company must record any changes to the PSC information in the company's PSC register, such as a change of personal details or nature of control. New confirmed information must be entered on an LLP's PSC register within 14 days and filed with Companies House within a further 14 days.

General Companies House Filings

The company must tell Companies House about changes to the company, including:

- directors and company secretaries, for example new appointments (Form AP01), resignations (TM01) or changes to their personal details (Forms CH01 or CH02)
- changing the company name – Form NM01
- changing the registered office address – Form AD01
- changing the accounting reference date – Form AA01
- changes to the 'people with significant control' (PSC) information
- changes to the company's share structure, for example if you issue new shares
- details of any new security it has or security it has paid off

Some of the above changes may need the shareholders to pass a resolution.

The Company may need to get shareholders to vote on the following decisions:

- change the company name
- remove a director
- change the company's articles of association



Limited liability partnerships

Annual Corporate Filings

Confirmation Statement (Form LL CS01) – designated LLP members must prepare and deliver a confirmation statement to Companies House at least once every 12 months. The filing deadline is 14 days after the anniversary of incorporation or the made up date of the previous return. The purpose of the confirmation statement is to provide an overview of the LLP's key internal structure on a specific date, known as the 'confirmation date'. The confirmation statement cannot be used to update LLP details, with the exception of PSC information. Any other changes that take place during the year must be reported to Companies House on the relevant forms, either before or at the same time as delivering the statement.

Annual Accounts – LLPs must prepare annual accounts for each financial year. A copy of these accounts should be given to every member and Companies House. Designated members are responsible for filing an LLPs first accounts with Companies House within 9 months of the accounting reference date (ARD) – the deadline is calculated to the exact day, rather than the end of the month the accounts are due. When filing an LLPs accounts for the first time and those accounts cover a period of more than 1 months, LLPs must deliver them to Companies House either:

- Within 21 months of the date of incorporation
- 3 months from the ARD, whichever is longer

LLPs cannot file accounts online via WebFiling or software filing services. They must be delivered by post to Companies House.

General Company House Filings

Any changes to the registered details of an LLP or its members must be reported to Companies House on the relevant form, for example:

- Appointment of a new member – Form LLAP01 (natural member) / Form LLAP02 (corporate member)
- Change of members' details – Form LLCH01 or LLCH02
- Termination of a member's appointment – Form LLTM01
- Change of registered office – Form LLAD01
- Use of change of SAIL address – Form LLAD02
- Moving statutory records from the registered office to a SAIL address – Form LLAD03
- Change of accounting reference date – Form LLAA01
- Change of LLP name – Form LLNM01

Designated members are responsible for notifying Companies House by completing and filing the relevant form within 14 days of the change. These forms can be delivered by post, or online via WebFiling or Rapid Formations' Client Admin Portal.

Persons with Significant Control (PSC) Filings

LLPs are required to keep the information on their PSC register up-to-date and failing to do so is a criminal offence. New confirmed information must be entered on an LLP's PSC register within 14 days and filed with Companies House within a further 14 days. Companies House Forms LL PSC01 – LL PSC09 should be used to notify Companies House of all changes to PSC information.



Statutory registers

Public and Private Limited Companies

Private limited companies are required to keep the following statutory registers:

- **Register of Members** - must include details of the names and service addresses of members, the date on which each person became a member of the company, and the date on which any person ceased being a member of the company.
- **Register of the Directors and Secretaries** - must contain the following details of each director: their full name, including any former name(s), their service address, their country/ state in which they usually reside, their nationality, their business occupation (if any) and their date of birth.
- **PSC Register** - must include the following details of every person or relevant legal entity with significant control in the company since 6 April 2016: name, date of birth, service address, country/state in which the PSC usually resides, nationality, usual residential address (which is not to be disclosed during public inspection), the date they were entered onto the register, the nature of their control over the company and whether restrictions on using or disclosing any of the person's particulars are in force.

It is not compulsory, but good practice to register:

- The allotment of shares in the company;
- The transfers of shares in the company; and
- The director's interests.

If the company is limited by shares, the register must also contain:

- The quantity and class(es) of shares held;
- The amount paid or agreed to be paid on each share;
- Details of any transfer of shares;
- Details of allotments of new shares;
- Details of any shares held in treasury; and
- Details of any other disposals, such as shares lost as a result of a buy back.

Failure to keep statutory company registers

Directors and secretaries have a legal duty to ensure their companies meet all statutory obligations:

- Both a company and its officers may face penalties if statutory registers are not maintained.
- The consequences – an unlimited fine, an additional daily default fine of up to one-tenth of any fine and damage to their reputation.

As long as the registers are legible, accurate and up to date, the format in which they are maintained is entirely discretionary.

Limited Liability Partnerships

Register of individual members - must include the members name and former name used for business purposes in the past 20 years, a service address, the country or state where the member is resident, their date of birth and whether the member is a designated member. For corporate members or firms, the register of members must contain its corporate or firm name, its registered or principal office and its registered number.

PSC Register - must include the following details of every person or relevant legal entity with significant control in the company since 6 April 2016: name, date of birth, service address, country/state in which the PSC usually resides, nationality, usual residential address (which is not to be disclosed during public inspection), the date they were entered onto the register, the nature of their control over the company and whether restrictions on using or disclosing any of the person's particulars are in force.

Annex 5: Material Outsourcing Agreements

Written agreements for material outsourcing should set out at least:

- 1) a clear description of the outsourced function, including the type of support services to be provided;
- 2) the start date, next renewal date, end date, and notice periods regarding termination for the service provider and the firm;
- 3) the governing law of the agreement;
- 4) the parties' financial obligations;
- 5) whether the sub-outsourcing of a material function or part thereof is permitted and, if so, under which conditions;
- 6) the location(s), i.e. regions or countries, where the material function or service will be provided, and/or where relevant data will be kept, processed, or transferred, including the possible storage location, and a requirement for the service provider to give reasonable notice to the firm in advance if it proposes to change said location(s);
- 7) provisions regarding the accessibility, availability, integrity, confidentiality, privacy, and safety of relevant data;
- 8) the right of the firm to monitor the service provider's performance on an ongoing basis (this may be by reference to KPIs (key performance indicators));
- 9) the agreed service levels, which should include qualitative and quantitative performance criteria and allow for timely monitoring, so that appropriate corrective action can be taken if these service levels are not met;
- 10) the reporting obligations of the service provider to the firm, including a requirement to notify the firm of any development that may have a material or adverse impact on the service provider's ability to effectively perform the material function in line with the agreed service levels and in compliance with applicable laws and regulatory requirements;
- 11) whether the service provider should take out mandatory insurance against certain risks and, if applicable, the level of insurance cover requested;
- 12) the requirements for both parties to implement and test business contingency plans. For the firm, these should take account of their impact tolerances for important business services.
- 13) Where appropriate, both parties should commit to take reasonable steps to support the testing of such plans;
- 14) provisions to ensure that data owned by the firm can be accessed promptly in the case of the insolvency, resolution, or discontinuation of business operations of the service provider;
- 15) the obligation of the service provider to co-operate with the [Bank of England, via the Prudential Regulatory Authority](#) (the "PRA") and the Bank of England (the "Bank"), as resolution authority, including persons appointed to act on their behalf;
- 16) for banks, a clear reference to the Bank's resolution powers, especially under sections 48Z and 70C-D of the Banking Act 2009 (implementing Articles 68 and 71 of Directive 2014/59/EU (BRRD)), and in particular, a description of the 'substantive obligations' of the written agreement in the sense of Article 68 of that Directive);



- 17) the rights of firms and the PRA to inspect and audit the service provider with regard to the material outsourced function;
- 18) if relevant:
 - a) appropriate and proportionate information security related objectives and measures, including requirements such as minimum ICT security requirements, specifications of firms' data lifecycles, and any requirements regarding to data security, network security, and security monitoring processes; and
 - b) operational and security incident handling procedures, including escalation and reporting; and
 - c) termination rights and exit strategies covering both stressed and non-stressed scenarios. As in the case of business contingency plans, both parties should commit to take reasonable steps to support the testing of firms' termination plans. Firms may elect to limit contractual termination rights to situations such as:
 - i. material breaches of law, regulation, or contractual provisions;
 - ii. those that create risks beyond their tolerance; or
 - iii. those that are not adequately notified and remediated in a timely manner.
- 19) If an outsourced service provider in a material outsourcing arrangement is unable or unwilling to contractually facilitate a firm's compliance with its regulatory obligations and expectations, firms should make the PRA aware of this.



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in the UK as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.

Setting up for success in **POLAND**

Welcome to Poland! If you are looking for a dynamic and innovative market to start or grow your tech business, Poland might be the perfect choice.

Poland is one of the fastest-growing and most dynamic economies in the European Union, with a strong domestic market, a skilled workforce, and a strategic location at the crossroads of major trade and transport routes. Poland also offers a favourable environment for tech businesses, with a vibrant startup scene, a supportive regulatory framework, and a range of incentives and funding opportunities.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of entering the Polish market include:

- Access to a large and diverse market: Poland has large pool of highly educated and skilled workers, particularly in the tech industry. Poland is a gateway to the emerging markets of Central and Eastern Europe, which offer largely untapped opportunities for tech businesses.
- Compared to other European countries, the cost of doing business in Poland is relatively low, including lower labour costs and office rental prices.
- Government support: The Polish government offers various incentives and support programs for businesses, including tax incentives and grants for research and development.
- Poland has a large and growing domestic market, with a population of over 38 million people and a growing middle class.

Whether you are planning to set up a new entity, enter into a partnership, hire employees, protect your intellectual property, or raise funds, this factsheet will help you to identify some of the common legal challenges you may encounter along the way.



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1. Corporate considerations for setting up a business in Poland

What entity you should use to set up your company

The main options available to a foreign investor looking to establish a corporate presence in Poland are: (i) to incorporate or acquire a Polish company; or (ii) to incorporate a branch. The main difference between these options is that a company has its own legal personality, while a branch is a part of a foreign investor's parent company and does not have its own legal personality, which means that its activity and legal liability is directly related to the foreign investor's parent company.

The most frequently chosen companies are: a limited liability company (*spółka z ograniczoną odpowiedzialnością*, abbreviated to *sp. z o.o.*) ("**LLC**") and the joint-stock company (*spółka akcyjna*, abbreviated to *S.A.*) ("**JSC**"). The main differences between them are as follows:

	JSC	LLC
Minimum share capital	PLN 100,000 (approx. EUR 22,000)	PLN 5,000 (approx. EUR 1,100)
Payment upon incorporation	At least 25% and any share premium required. Shares taken up in exchange for in-kind contributions → fully paid up no later than one year after the company's registration.	Payment in full required.

	JSC	LLC
In-kind contributions	A report from an independent expert on any in-kind contributions is required, subject to certain exceptions provided for in the Polish Commercial Companies Code (" CCC ").	No report from an independent expert on in-kind contributions is required. However, if the value of the in-kind contribution was overestimated, the shareholder who made such contribution and those management board members who were aware of this and applied for the registration of the company, shall be liable jointly and severally to make up the deficit to the LLC.
Shares	The minimum nominal value of each share is PLN 0.01 (1 grosz) (approx. EUR 0.002)	The minimum nominal value of each share is PLN 50 (approx. EUR 11).
	The shares may be listed and traded publicly on stock exchanges.	The shares cannot be listed and traded publicly on stock exchanges.
	Shares do not have a form of physical certificate.	Shares do not have a form of physical certificate.
Transfer of shares	The shareholders have the pre-emptive right to take up new shares in the increased share capital, in proportion to the shares held.	Unless otherwise provided in the Articles of Association (" AoA "), the shareholders have the pre-emptive right to take up new shares in the increased share capital, in proportion to the shares held.
	Acting in the interest of the company, the general meeting may deprive shareholders, in whole or in part, of their pre-emptive rights (a resolution shall be adopted by a majority of at least four-fifths of votes).	The AoA may provide otherwise, i.e. may exclude such pre-emptive rights.
Amendments to the AoA	A resolution of the shareholders' meeting in a form of a notarial deed shall be adopted.	A resolution of the shareholders' meeting in a form of a notarial deed shall be adopted.
	Such resolution requires a majority of three-fourths of the votes.	Such resolution requires a majority of two-thirds of the votes.
	A resolution on material change in the business activity of the company shall require a majority of two-thirds of votes. The effectiveness of the resolution shall be contingent upon the buyout of the shares held by shareholders who did not agree to the change.	A resolution on material change in the business activity of the company shall require a majority of three-fourths of the votes.

	JSC	LLC
Obligatory corporate bodies	<p>Management Board</p> <p>Shareholder's Meeting</p> <p>Supervisory Board</p>	<p>Management Board</p> <p>Shareholder's Meeting</p> <p>Appointment of a Supervisory Board is obligatory only if (i) the share capital exceeds PLN 500,000 and (ii) the number of shareholders exceeds 25.</p>
Venue for shareholders' meeting	<p>Shareholder' meetings shall be held in the company's registered office unless the AoA provide for a different place within the territory of Poland.</p> <p>Shareholders may participate in meetings by means of electronic communication, unless the AoA provides otherwise.</p>	<p>Shareholders' meetings shall be held at the company's registered office unless the AoA provide for a different place in Poland.</p> <p>Shareholders' meetings may also be held in any other place within the territory of Poland if all shareholders consent thereto in writing.</p> <p>Shareholders may participate in meetings by means of electronic communication, unless the AoA provides otherwise.</p>
Attendance and majorities at shareholders' meetings	<p>As a rule, resolutions shall be adopted by an absolute majority of votes.</p> <p>Depending on the content of the resolutions, some of them require special and/or qualified majorities. These requirements can be additionally increased by the AoA, but not decreased.</p> <p>In general, and unless provided otherwise in the AoA or in the CCC, shareholders' meetings shall be valid irrespective of the number of shares represented thereat (no quorum required).</p>	
Number of members of the management board	No requirements. There may be a sole member of the board of directors.	
Term of the office of the member of the management board	<p>Maximum 5 years.</p> <p>Reappointment is permitted, but not earlier than one year before the end of the current term of office.</p>	<p>May be indefinite.</p> <p>However, the AoA must exclude the expiration of the term after the approval of the financial statement.</p>
Issue of bonds	Bond issues may be used as a means to raise funds. Bonds convertible into shares may be issued or guaranteed.	Bond issues may be used as a means to raise funds.



In addition, since 1 July 2021, a new type of a company is available – simple joint stock company (*prosta spółka akcyjna*, abbreviated to *P.S.A.*) (“**SJSC**”). The reason for creating this new vehicle was to provide a less formalised form of a company as there are fewer formal requirements connected with establishing a SJSC compared both with LLC and JSC.

In practice, the SJSC may be an attractive form for early-stage entrepreneurs given that its minimal share capital can amount to PLN 1 (less than EUR 1). What is more, there are some new solutions, e.g. the possibility of taking up shares in consideration for services or work provided to the company, which is not allowed in the case of LLC and JSC.

Shareholders of the SJSC may choose to adopt a 2-tier board structure (a management board and an optional supervisory board) or a 1-tier board structure, with the board of directors being the only governing body. In the latter case, if there is more than one director appointed, the internal regulations of the SJSC may establish executive (management of the company’s affairs) and non-executive officers (constant supervision over the company’s affairs).

As yet, the SJSC is not a common form of conducting business activity in Poland. However, given that there are some significant advantages and facilitations compared to the LLC and the JSC, it may become an increasingly popular form of business entity in the next few years. Nevertheless, due to its “light form” with low equity requirements, such companies are more risky from the bank’s perspective, which may cause difficulties to obtain an external debt financing.



2. Branch vs subsidiary – options for group expansion

As mentioned, an alternative to incorporating one of the aforementioned companies, i.e. a subsidiary of a foreign parent company, is to incorporate a branch of a foreign company. Below please find main differences between a branch and an LLC as an example of a subsidiary:

	Branch	Subsidiary (LLC)
Legal identity	It is a part of the foreign company and does not have its own legal personality.	It has its own legal personality and is independent of its foreign parent company.
Minimum share capital	No requirements.	PLN 5,000 (approx. EUR 1,100)
Form of the AoA	N/A. The AoA of the foreign company together with a certified translation into Polish should be submitted to the National Court Register.	Notarial deed.
Moment of establishment	Upon registration in the National Court Register.	Upon execution of the AoA. Once incorporated, LLC operates as a company 'in organization'. It gains full legal personality upon registration in the National Court Register.
Management and governing body	Person authorised to represent a foreign company.	Management Board Shareholders' Meeting

	Branch	Subsidiary (LLC)
Liability of the foreign parent company	A foreign company is fully and unlimitedly liable for the branch's activities.	Generally, shareholders are not liable for obligations of the company, the LLC bears liability for obligations with all its assets.
Taxation	<p>The general tax and VAT registrations belong to the foreign company as it is formally registered for tax purposes in Poland.</p> <p>Subject to the below, the branch is only registered for employment related taxes (PIT). This is a separate registration from the foreign parent company registration.</p>	<p>The LLC is a separate taxpayer for both general tax and VAT.</p> <p>Payment of employment related taxes (PIT) is carried out under the same registration as other taxes.</p>
Filing obligations	<p>The financial statements of the Branch are a part of the financial statements of the foreign company.</p> <p>The financial statements of the foreign company must be filed with the National Court Register each year in Poland. This is related with the translation costs.</p>	The LLC prepares its own financial statements and files them with the court register independently from the parent company.



3. Incorporation vs acquisition of a sp. z o.o.

In order to conduct business activity in Poland in a form of the LLC, you may incorporate a new company or acquire an existing one (“**SPV**”). The most significant differences are summarised below:

Steps to Take	Incorporation	Acquisition
Common preliminary steps	<ul style="list-style-type: none"> — Preparation of the power of attorney (“PoA”) for the representative to adopt the AoA; — The PoA must be signed in a form of notarial deed. If such PoA is drafted by a foreign notary, it must be apostilled and then translated into Polish by a sworn translator. 	<ul style="list-style-type: none"> — Preparation of PoA for the representative to sign the SPA. — It can be in bilingual version (one of which is Polish) in order to minimise the translation. — The PoA must be signed in a form with signatures certified by a notary public, apostilled and then the non-Polish parts must be translated into Polish by a sworn translator.
Step 1. Drafting the AoA	The AoA must be adopted by the founders before a Polish notary public in a form of a notarial deed.	If any changes are required (scope of business activity, manner of representation, etc.), a shareholders’ meeting with the notary should be held to adopt relevant resolutions on change of the AoA in a form of a notarial deed.
Step 2. Appointing the management board members	The management board of the LLC in organisation is appointed by a shareholders’ resolution or in the AoA of the company.	The management board members of the SPV will be dismissed on the date of acquisition of shares in the SPV – new management board members shall be appointed.



Steps to Take	Incorporation	Acquisition
Step 3. Bank account	Prior to registration, the LLC has to open a bank account. It is necessary step to transfer the cash contributions towards the limited liability company's share capital and for conducting the LLC's day-to-day operations.	The SPV already has a bank account.
	Banks require filling in forms regarding corporate structure, UBO, scope of business activity, sources of funds, as well as providing certain documents (excerpts from commercial register, copies of IDs/passports of UBOs, etc.).	There are certain requirements related to UBO documentation and KYC procedure. We recommend contacting bank before signing the SPA in order to agree in advance what documents have to be collected and provided in order to complete the KYC procedure.
Step 4. Payment of the registered capital to the bank account for the LLC	Shareholders pay the entire share capital to the LLC's bank account, and/or transfer in-kind contributions to the LLC. The share capital of the SPV must be fully covered prior to filing for the registration of the LLC.	N/A
Step 5. Registration in the National Court Register	The application to the National Court Register must be submitted via electronic system with electronic signature.	The application to the National Court Register must be submitted via electronic system with electronic signature.
	Upon submission of the application, the applicant pays a registration fee (PLN 500 – approx. EUR 110) and a fee for the publication in the Official Court and Commercial Gazette (PLN 100 – approx. EUR 22).	Upon submission of the application, the applicant pays a fee for application regarding data change (PLN 250 – approx. EUR 55) and a fee for the publication in the Official Court and Commercial Gazette (PLN 100 – approx. EUR 22).
Step 6. Registration with the tax office and Central Register of Beneficial Owners	The tax office relevant for the seat of the LLC must be notified with a supplemental application made on the official form (NIP-8), which includes additional data necessary for tax purposes but not included in the application to the registry court (such as bank account, address and expected number of employees).	This step is necessary if the tax registry data is changed in any way as a result of the purchase.
	Separate registration is required in respect of VAT (if applicable).	The application to the Central Register of Beneficial Owners has to be made by the management board members of the LLC (not by the attorney-in-fact).
	The application Central Register of Beneficial Owners has to be made by the management board members of the LLC (not by the attorney-in-fact).	

Steps to Take	Incorporation	Acquisition
Estimated timing and costs	The process of incorporation of the newly established LLC usually takes 2-3 months.	The process of acquisition of the SPV usually takes 3-4 weeks.
	The cost of incorporation of the LLC amounts to the contributions that have to be made to the share capital (a minimum of PLN 5,000), notarisation and registration fees, plus potential costs of legal advisory and the notary fee.	The price for the SPV is approx. EUR 2,500 plus the remuneration for the initial share capital (a minimum of PLN 5,000) - available on the company's bank account on transfer, plus potential costs of legal advisory.
		The purchaser also covers the cost of stamp duty (1% of the transfer price) and the notary fee.





4. Practical steps required to be undertaken when setting up a business in Poland

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, and company secretaries and taking out insurance (both as required by law and as may be prudent for your business activity), there will be several other practical steps you need to take. The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity in Poland.

Choosing a company's name

Formality	Basic Aspects
Procedure of choosing a company's name	<p>A company's name is chosen by including it in the AoA. Then, it should be indicated in the application to the National Court Register.</p> <p>There is no other formal procedure for choosing a company's name.</p>
General rules of choosing a company's name	<p>A company's name:</p> <ul style="list-style-type: none"> — should be sufficiently distinguishable from the business names of other entrepreneurs that conduct activity on the same market; — may not be misleading, in particular as to the identity of the entrepreneur, the subject matter of the entrepreneur's activity, the place of activity, the sources of supply.

Setting up a registered office

Formality	Basic Aspects
Establishing a seat in Poland	Each company is required to have its registered office in Poland. It has to be included in the AoA.
Lease agreement	A company usually signs a lease agreement for its premises in Poland. In practice, a number of companies use so-called virtual offices before they sign a proper lease agreement or acquire an ownership title to the premises.

Corporate filings – including constitutional and accounting documents where applicable

Formality	Basic Aspects
Filings to the National Court Register	<p>Each change of the company's data that are reflected in the National Court Register should be reported once it occurs by way of filling a relevant application to the National Court Register.</p> <p>It has to be filed via the electronic system (link: Portal of the Registry Courts) and may be done by an attorney-in-fact.</p>
Filings to the repository of the financial documents	<p>Each year after approval of (i) the financial statement and (ii) the management board report by the shareholders' meeting, a company has to file such statements, together with the relevant resolutions, to the repository of the financial documents.</p> <p>It has to be filed via the electronic system (link: Repository of financial documents) and may be done by an attorney-in-fact.</p>
Filings to the Central Register of Beneficial Owners	<p>Each company is obliged to submit and then update information about its ultimate beneficial owner(s) (UBO) to the electronic register established for that purpose – Central Register of Beneficial Owners.</p> <p>It has to be filed via the electronic system (link: Central Register of Beneficial Owners) but may not be done by an attorney-in-fact.</p> <p>Thus, members of the management board need to have a qualified electronic signatures, or signatures certified by the ePUAP trusted profiles.</p>



5. Governance

Constitutional documents

In general, in case of both LLC and JSC, the corporate governance is addressed in the AoA. However, in the event of incorporation of a company by more than one shareholder, such incorporation is very often preceded (or done simultaneously) by the conclusion of a so-called investment agreement or a shareholders' agreement ("SHA"). A lot of matters determined in the SHA should be then reflected in the AoA as it is the most significant document specifying the company's rules of operation.

The main difference between provisions that are included in the SHA and those included in the AoA is related to the fact that the AoA, unlike the SHA, would be publicly available (as registration files in the National Court Register are public, i.e. anyone may review them without any specific authorization). Thus, especially some sensitive data should not be disclosed in the AoA.

Provisions that are usually included both in private shareholders' agreements and in the AoA are those related to corporate governance, such as: number of board members, rules of representation, shareholders' reserved matters, etc. In the case of companies in which some more complex rules regarding transfer of shares are established (e.g. tag-along or drag-along right), they are usually also reflected in the AoA. Moreover, some general provisions on financing are very often included in the AoA – e.g. the authorization of the shareholders' meeting to demand additional payments from shareholders, while more complex such as the obligation of shareholders to finance the company in a certain form (e.g., through an increase in share capital) are included only in the SHA.

Despite the fact that the company (if already incorporated) very often is a part of the SHA, in general the SHA should not have a binding effect over the company but should regulate the mutual rights and obligations between its shareholders.

Duties and Liabilities of the members of corporate bodies

A management board member is required to manage the affairs of the company and to represent the company before third parties (i.e., in all court proceedings and out-of-court dealings of the company).

The management board member:

- is obliged to perform his/her actions with a level of due care that corresponds to the professional character of his/her function;
- cannot, without the consent of the company, be involved in any entity which competes with the company;
- is obliged to avoid conflicts of interest; and
- should act in the best interest of the company.

As a rule, each management board member may manage the company individually within the ordinary course of the company's business. For acts exceeding this scope, a management board resolution is required. What is more, certain decisions should be authorised either by supervisory board resolution or shareholders' resolution. However, the AoA of the Company may modify these rules.

Liability of a management board member

A management board member may be liable for the performance of his/her duties under civil, criminal and organisational liability.

Civil liability is liability for damage. A management board member is liable towards the company, and may be liable towards shareholders and third parties (in particular the company's creditors), as the case may be, under:

- general rules on liability (i.e., a person who culpably causes damage is obliged to compensate for such loss); and



- rules on liability set out in the Commercial Companies Code (i.a. the following conditions must be met: (i) the company must suffer damage, (ii) the damage must result from an act or omission of the management board member that breached either the law or the AoA, and (iii) the management board member's act must be culpable and he/she must have failed to maintain the standard of due professional diligence).

In case of the LLC, the management board members may be held jointly and severally liable with the company for its obligations if enforcement against the company proves to be ineffective, provided that they did not, in appropriate time, file a petition for bankruptcy or show that at that time, a ruling on the opening of restructuring proceedings or on the approval of an arrangement in the proceedings in the matter of approving the arrangement was issued. However, they can be exempted from this liability if they prove that a petition was filed in due time, or that they were not at fault, or that the creditor did not sustain any damage despite the fact that the petition was not filed or no ruling on the opening of restructuring proceedings was issued or no arrangement was approved in the proceedings in the matter of approving the arrangement.

A management board member may be criminally liable for various intentional acts or omissions. An offence is committed with intent if action or omission is done with the will to commit it, that is, a person is willing to commit the offence or, foreseeing the possibility of perpetrating it, chooses to do so. However, Polish law also penalises certain situations where an offence is committed unintentionally.

Organisational liability of a management board member means that a management board member can be dismissed from his/her position at any time.



6. Employment considerations

Employment contract

An employee is a person who works under the supervision of the employer, in the place and time specified by the employer. An employment contract is suitable for staff who are under the solid, actual (or potential) supervision of the employer.

Before starting work, each new employee must sign an employment contract, undergo a medical examination, and complete initial H&S training. The newcomer should also deliver the work certificate from his/her previous workplace(s). In addition, the employer must fulfil further administrative duties, such as registering the employees at the Social Security Institution (“ZUS”), signing an agreement with the occupational health service provider, and run the employees’ personnel files and employee documentation. In addition, an employer must register itself at PUE (electronic services platform for social security purposes). Usually, payroll providers can help in handling the majority of those administrative duties.

In Poland there are 3 basic types of an employment contract:

- for a probation period,
- fixed-term contract, or
- open-ended contract.

Each contract is legally separate and a standalone agreement. So, a probation clause must be a separate agreement and not a clause in another type of a contract.

Please refer to Annex 1 for more detailed employment requirements.



7. Tax incentives / special regimes / grants

Lower CIT rate for small business

The general CIT rate in Poland is 19%. However, businesses which in a given tax year have a gross revenue below the PLN equivalent of EUR 2 million (calculated using the average EUR exchange rate published by the National Bank of Poland on the first working day of the tax year and rounded to PLN 1,000) can use a preferential 9% CIT rate.

Please note that this preferential CIT rate does not apply to capital gains.

Lamp-sum corporate taxation regime

Stock companies, limited liability companies, limited liability partnerships, partnerships limited by shares and simplified stock companies may opt for lamp-sum CIT taxation.

In order to qualify for lamp-sum CIT taxation the company in question must:

- employ at least 3 persons for a period of at least 300 days in a tax year under an employment contract or under a different type of contract if their remuneration is 3-times higher than the average salary and the company is required to pay PIT advances and social security contributions on these payments;
- less than 50% of the revenue of the company is sourced from receivables, interest, loans, lease payments, sureties, guarantees, copyrights, industrial property rights, from the sale of financial instruments or from transactions with related entities;
- only natural persons are shareholders of the company in question;
- the shareholders do not hold shares in another company or participation titles in an investment fund or collective investment institution or rights and obligations in another partnership;
- not prepare financial statements with the use of International Accounting Standards;
- submit a notification of the choice of lump sum taxation to the competent office.

In case the company uses lamp-sum CIT taxation it is not obligated to keep complete tax accounting, CIT advances are not paid every month but only when the Company pays dividend to its shareholders.

The lamp-sum CIT rate for small taxpayers is 10%. In case of other (larger) taxpayers the lamp-sum CIT rate is 20%. However, at the same time the lamp-sum CIT regime allows, due to available deductions, to achieve a lower effective tax rate than the standard CIT rate (this generally requires a case-by-case analysis).

R&D relief

Pursuant to the R&D relief taxpayers may deduct specific costs of R&D activity (qualified costs) from the CIT taxbase (income). The amount of the deduction in a given tax year may not exceed the amount of income earned by the taxpayer from revenues other than revenues from capital gains.

Examples of qualified costs include:

- salaries paid to employees and social security contributions paid for by the employer in the part in which the time devoted to the implementation of research and development activities remains in the employee's total working time in a given month;
- purchase of materials directly related to the conducted research and development activities;
- purchase of non-fixed assets specialist equipment used directly in the conducted research and development activities;
- certain costs of obtaining and maintaining a patent, utility model protection right, industrial design registration right (e.g. cost of preparing application documentation and submission of the application to the patent office; costs of proceedings before the patent office; periodic fees, renewal fees).

The research and development activity must be creative at least at the scale of the enterprise, i.e. it is enough for the business to develop new or improved products, processes, services, even if a similar solution has already been developed by another entity. The activities must also be undertaken in a systematic manner.

IP-Box regime

The IP-Box regime is a lower 5% PIT or CIT rate applicable to income from qualified intellectual property rights. The list of qualified intellectual property rights includes:

- patents;
- rights from registration of industrial designs;
- utility model protection rights;
- rights in registration of integrated circuit topography;
- additional protection right for a patent for a medicinal product or a plant protection product;
- protected right to plant varieties;
- rights from the registration of a medicinal product and a veterinary medicinal product authorized for distribution;
- copyright to a computer program.

The formal condition for the use of the IP-Box regime is keeping appropriate internal accounting records (separate from the records required in accordance with general tax rules) which should ensure the separation of each qualified intellectual property right and the determination of revenues, tax deductible costs and income (loss) attributable to each qualified intellectual property right.

In case of the IP Box the tax base is the sum of qualified income from the qualified intellectual property rights achieved in a given tax year. The amount of qualified income from the qualified intellectual property right is determined as the product of the income from the qualified intellectual property right achieved in the tax year and the index calculated according to a nexus formula which in general provides what part of the income will be subject to the IP Box relief.



8. IP – protecting the value of your company

General

The greatest value of expanding tech businesses lies in their innovative and creative solutions. Tech businesses should take great care to protect their technology, processes, patents and other elements that give them a leading position on the market. Elements of visual identity such as a brand, logo, domain name or slogan are also protected.

Legal protection in this respect is provided in Poland by the Intellectual Property Protection System.

Intellectual property rights in Poland are established and protected by a number of acts, including:

- the Industrial Property Act of 2000,
- the Copyright Act of 1994,
- the Database Protection Act of 2002.

The creative efforts of a business entity are also protected under the Combating Unfair Competition Act of 1993 – for example, a business entity can request that a competitor cease the unfair practice of building a market position on the recognisability of that business entity's products or services.

Poland is also a party to the main international treaties in the field of intellectual and industrial property protection, including the Berne Convention, the Paris Convention, the Madrid Protocol, the European Patent Convention, and TRIPS.

Importantly, Poland is also a member of the European Union. Therefore, business entities that intend to operate on the Polish market can also benefit in particular from the registration of Community designs (EU Regulation 6/2002) or European Union

trademarks (EU Regulation 2017/1001), which have the effect of granting protection to their owners throughout the European Union.

Infringements of intellectual property rights can lead to both civil and criminal proceedings. Criminal sanctions include fines and imprisonment for up to five years for infringements committed for profit or personal gain. The court may also order the confiscation of the infringing goods and the means (including materials and tools) used to commit the offence, even if they do not belong to the perpetrator.

Copyright and related rights

The Polish Copyright Act of 1994 is aimed at protecting all individual creative works, embodied in any form, regardless of their value, designation, or medium of expression (work). This includes works expressed in words, mathematical symbols or graphics, artistic works or audio-visual works.

The Copyright Act also protects related rights to:

- artistic performances;
- phonograms and video grams (which are owned by producers);
- programme broadcasts (which belong to radio and TV stations);
- the right to first editions (which belong to publishers); and
- the right to first critical or scientific editions (which belong to publishers).

The copyright holder has the exclusive right to use his or her work by any means. Registration is not required. The term of copyright protection for most works is generally 70 years from the date of the author's death.



A business entity that intends to operate on the Polish market should be aware that Polish law contains a number of formalistic rules that must be followed in order to ensure the valid acquisition of intellectual property rights (in particular copyrights) to the extent required by the business entity. This includes an obligation to conclude the agreement in writing and to list the so-called fields of use (in simple terms, different ways of using the copyrightable works that describe the actual scope of the rights that will be acquired by the business entity).

The Act provides for civil and criminal law sanctions for infringements of copyright and related rights.

Those whose copyright or related rights have been infringed (specifically, used without the copyright owner's authorisation) may, in particular, demand:

- cessation of the infringement;
- compensation;
- payment of double the remuneration that would have been due for use of the copyright (depending on whether the infringement was caused by fault or negligence);

Patents and utility models

The Industrial Property Act of 2000 protects and regulates patents in Poland. The Polish Patent Office keeps a register of patents. Patentable inventions are those which are new, involve an inventive step, and are capable of industrial use. The registered patent holder is entitled to use the patented invention exclusively for commercial and professional purposes in Poland. A patent is valid for 20 years from the date of the patent filing.

According to the European Patent Convention and the Act on the Filing of European Patent Applications and the Effects of a European Patent in the Republic of Poland of 2003, Poland also recognises European patents designated for Poland, provided that they are translated into Polish within three months of the publication of the notice of grant of the patent by the European Patent Office (and the translation is filed with the Polish Patent Office).

The Industrial Property Act also protects utility models, which are new solutions of a technical nature ready for industrial use, relating to the shape or structure of a product or a product composed of functionally related components. In practice, utility models are mini-patents, with less stringent eligibility criteria and a shorter period of validity (10 years from filing).

Trademarks

The Industrial Property Act of 2000 also regulates trademark protection. The Polish Patent Office keeps a register of trademarks. A trademark can be any sign capable of distinguishing the goods or services of one undertaking from those of another undertaking. The trademark should be capable of being represented in the trademark register in such a way as to identify clearly and precisely the subject matter of the protection granted. The trademarks can consist, among other things, of words, slogans, logotypes, designs of packaging, and sounds. The holder of a registered trademark is entitled to use the trademark exclusively for commercial and professional purposes in Poland. Certain unregistered trademarks, including well-known trademarks, also enjoy some protection. A registered trademark is valid for 10 years from the date of filing and can be renewed indefinitely for successive 10-year periods.

A business entity that intends to operate on the Polish market can also decide to avail of the international registration of trademarks through WIPO (under the Madrid system) or the EU trademark registration (under EU Regulation 2017/1001), which allows for the registration of a single and unitary trademark in the European Union Intellectual Property Office, throughout the EU. Such a registered trademark is valid for 10 years from the date of the trademark application and can be renewed for successive 10-year periods.

Industrial designs

The Industrial Property Act of 2000 provides also for the protection of industrial designs in Poland. The Polish Patent Office keeps a register of registered industrial designs. A design can be protected if it is new and has an individual character, particularly as regards the features of lines, contours, shapes, colours, product



structure or material, and by its ornamentation. The registered holder has the right to use the design exclusively for profit or professional purposes in Poland. Protection can last for a period of 25 years from the date of filing the application for the registration of the industrial design.

A business entity that intends to operate on the Polish market can also decide to take advantage of community design registration (under EU Regulation 6/2002), which allows for the registration of a single and unitary design with the European Union Intellectual Property Office throughout the EU. The protection may last for a period of 25 years from the date of filing the application for the registration of the industrial design.

A set of general principles for the protection of Intellectual Property within the company is available at this link [available in PL]: [Jak chronić dorobek firmy | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy.](#)



9. Regulatory – common compliance requirements

Statutory registers

The following registers must be maintained depending on the type of a company:

- In the case of a LLC: the management board has to maintain a register of shares; it is non-public, however each time a change has been registered, the management board shall file a new list of shareholders with the registry court;
- In the case of a JSC: its shares shall be subject to registration in the shareholders' register, that is kept in electronic form by an entity which is authorized to keep securities accounts;
- In the case of a SJSC: its shares shall be subject to registration in the shareholders' register, that is kept in electronic form by (i) an entity which is authorized to keep securities accounts, or (ii) by a notary running a notarial office in the Republic of Poland.

Data Protection

As well as developing typical business issues, such as working on a product, choosing the right operating model or obtaining funding, the appropriate design of personal data processing processes in a business is also important. Doing business in Poland requires compliance with data protection obligations.

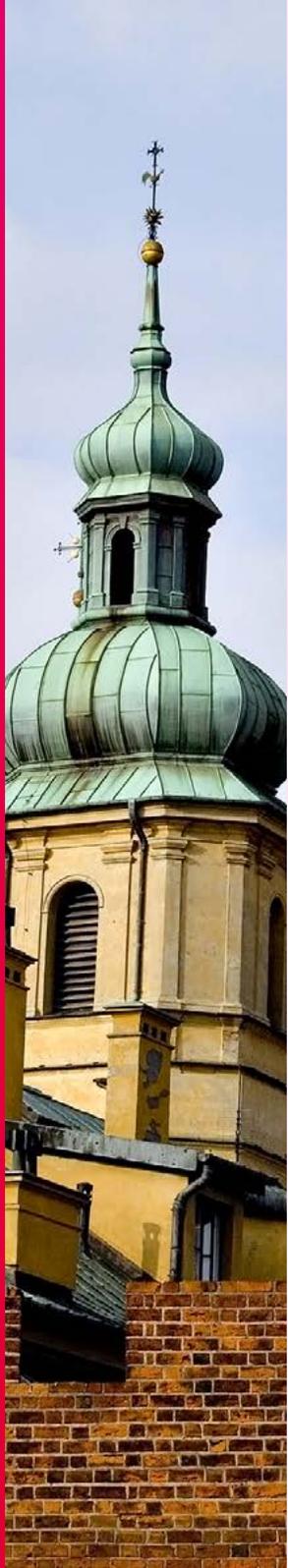
From 2018 the General Data Protection Regulation (“**GDPR**”) is a key piece of legislation for the protection of personal data in European Union countries, and to some extent in non-European Union countries. It applies to all business entities that process personal data (such as name, home address, email address and even IP

address) in relation to their business. Processing of personal data means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as: collecting, recording, organising, structuring, storing and even browsing.

The GDPR has not only significantly raised data protection standards, but also the awareness of society. It seems, therefore, that the main obligation of a data controller is to implement information obligations with respect to those data subjects whose personal data it processes (e.g. through information clauses/privacy policies). However, the GDPR also imposes a number of other obligations on the controller, such as the obligation to keep a register of data processing activities, to keep a register of data breaches, and to notify the supervisory authority about personal data breaches. Also important is the process of enabling data subjects to exercise their rights (e.g. right of access to data; right to erasure), which can be the source of a complaint by a data subject and, further, the cause of a fine. Moreover, during the process of implementing and applying the GDPR, the data controller should comply with the principles related to processing personal data (e.g. the principle of transparency, data minimisation, and storage limitation).

In Poland, the Personal Data Protection Act of 2018 (“**DPA**”) is also in force. It mainly concerns procedural aspects such as proceedings before the Polish data protection authority (the President of the Personal Data Protection Office - PUODO) or the rules for conducting its audits.

Additional sectoral provisions concerning data protection are covered by the Act amending certain acts in connection with the GDPR. This Act has amended over 160 Polish sectoral acts to bring them into line with the GDPR. Several other Polish laws apply to the processing of personal data, including those related to telecommunications, banking, and insurance. For example, the Telecommunications



Act of 2004 requires separate consent to call the recipient's equipment for the purpose of direct marketing. It also prohibits the sending of unsolicited commercial communications by electronic means, in particular by e-mail, to a designated recipient who is a natural person.

Infringement of the GDPR may result in severe financial sanctions, which could amount to as much as EUR 20,000,000 or 4% of the total worldwide annual turnover for the preceding financial year. The requirements, the infringement of which may give rise to such sanctions, include, for example, a failure to ensure the ability to demonstrate that a data subject has consented to the processing of his or her personal data. Even a warning penalty imposed by PUODO means that the controller has been penalised, which opens the way to further consequences, such as claims by the data subject for damages or the risk of more serious penalties (including financial) in the event of further non-compliance and a possible inspection. Notwithstanding the above, under the DPA a breach of data processing rules may also lead to criminal liability for the responsible individuals (up to three years' imprisonment) or civil liability of the data controller.

PUODO's decision-making practice has shown an increase in its activity in the area of imposing fines for infringements consisting in insufficient technical and organisational measures to ensure information security and insufficient fulfilment of data breach notification obligations. In light of this trend, companies should consider reviewing their implemented security measures (including verifying processors through effective audits) and internal processes concerning personal data breaches.

A set of general principles for the processing of personal data according to RODO is available at this link [available in PL]: [Zasady ogólne przetwarzania danych osobowych wg RODO | Biznes.gov.pl - Serwis informacyjno-usługowy dla przedsiębiorcy](#)

Other

The following regulations may be relevant depending on the type of the entity that would be chosen and the sector in which it would operate:

- Anti-bribery and corruption law: i.a. Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing;
- Public offering law: i.a. Act of 29 July 2005 on Public Offering, the Conditions Governing the Introduction of Financial Instruments to Organised Trading, and on Public Companies;
- Securities trading law: i.a. Act of 29 July 2005 - Financial Instruments Trading Act;
- Consumer and competition protection law: i.a. Act of 16 February 2007 - Competition and Consumer Protection Act;
- Foreign investment law: i.a. Act of 24 July 2015 on Control of Certain Investments.



10. Industry Associations

There are several different and independent associations such as:

- [Startup Founders](#) - an association that unites startup founders (MISSING LINK)
- [ITCorner](#) - an association of technology companies from Poland



**STARTUP
POLAND**



ITCORNER

Annex 1 : Employment Considerations

Key requirements for employment contracts in Poland

	Contract for a probation period	Fixed-term contract	Open-ended contract
Minimum contract duration	There is no minimum contract duration	There is no minimum contract duration	There is no minimum contract duration
Maximum contract duration	<p>The period for which it can be concluded (maximum 3 months) depends on what kind of contract and for what duration the employer intends to conclude with the employee after the probation period.</p> <p>Generally, it is not possible to conclude another probation contract, unless the employee is to perform different job on it.</p>	<p>An employer can hire, with a few exceptions, a single employee on a maximum of three fixed-term contracts in total, and in any event, the combined duration of those contracts cannot be longer than 33 months. Otherwise, the contract will automatically reclassify into an open-ended employment.</p>	There is no maximum contract duration.
Employee rights	The employee acquires all labour rights.	The employee acquires all labour rights.	The employee acquires all labour rights.

Other duties

An employment contract must be in writing. A verbal agreement is enforceable, but the employer must confirm it in writing. Otherwise, the latter may face a penalty for the lack of written form.

All employment-related documents must be prepared in the Polish language. Bilingual versions are allowed, but the Polish version prevails if there are any discrepancies between the language versions.

Apart from an employment contract, the employer must hand over to an employee, within 7 days after starting employment, a separate document called “particulars of work” specifying the core terms of employment such as the length of holiday entitlement, applicable notice periods, etc.

The parties are free to choose a law governing the employment contract but due to EU-wide rules such a choice will have a limited effect. Polish law will still apply if: (i) the employee is habitually working in Poland, and (ii) Polish mandatory rules are more favourable than the law chosen by the parties.

The parties to an employment contract may not exclude the jurisdiction of the Polish courts by choosing foreign courts or an arbitration court.



Reclassification

In Poland, it is also possible to employ a worker under civil law, e.g. a contract of mandate. Although a contractor arrangement is generally legal, a set of protective measures aim at preventing abuse. First, Polish employment law prohibits “hidden employment” i.e. a situation when a given person is formally a contractor but in fact works like a subordinated employee. In such a case, a disguised contractor will be treated as an employee despite the title and terms and conditions of his/her service contract.

Second, the tax law aims at eliminating fake independent contractors i.e. persons who formally are registered as entrepreneurs but in fact act like employees or dependent contractors. To this end, the tax law sets out a test for independent business activity. A contractor who fails this test will lose his/her status and will be classified as an employee. This will happen if the following criteria are jointly met: (1) the contractor performs his/her services under supervision and at a place and time determined by the principal; and (2) the principal is liable towards third parties for the contractor’s activities; and (3) the contractor does not incur the economic risk related to his/her activity.

If an individual’s contract is reclassified into a regular employment contract, it would lead to several consequences for both the individual and the company.

Remote work

In 2023, Poland introduced a comprehensive regulation of remote work. An employer who wants its employees to work remotely (either fully or hybrid) must introduce an appropriate policy or individually agree with the single employee on his/her working conditions.

For remote work, the employee is eligible for monetary compensation for, e.g., increased energy costs.

Irrespective of the individual arrangement, the employee is eligible for up to 24 days of occasional remote work each calendar year. An employer may only refuse an employee this type of remote work due to special circumstances or when the nature of the work makes it impossible to perform remotely.

Pay and benefits

General

The employer must set out a base salary in a manner corresponding to the type of work and qualifications required for its performance. It must also consider the quantity and quality of the work. The base salary is typically either a fixed monthly amount or an hourly wage.

Employees hired in the same job positions or performing work of the same value should receive the same remuneration. Equal pay relates to the basic salary as well as other payments, bonuses, allowances, and in-kind benefits.

An employee may not waive his/her right to remuneration (e.g., overtime or bonuses) or transfer this right to another person.

The parties are free to agree the amount of the salary. However, a full-time employee must get a base monthly salary not lower than PLN 3,600 gross, which is the minimum monthly national wage from 1st July 2023. The minimum hourly wage for contractors (individuals engaged under civil law contracts) from 1st July 2023 amounts to PLN 23,50 gross per hour.

Bonuses

Polish case law recognizes two types of bonuses: discretionary and guaranteed. The nature of the bonus determines the employee’s entitlement for payment:

- a bonus is discretionary when the conditions that must be met by the employee are of a general nature e.g. faultless work, outstanding achievements. If this is the case, the employer, at its own discretion, can decide to grant the bonus or not;
- a bonus is regarded as guaranteed, regardless of its name, when the bonus regulations provide for specific and verifiable requirements/objectives that must be met by the employee and/or the employer in order for the bonus to be granted, e.g. by developing a certain target. It means that it must be paid if the targets are met.

Benefits

It is very common in Poland to grant to the employee such benefits as: private healthcare, sports card, or life insurance. Sometimes the companies pay the full amount of the benefit and sometimes it is co-financed by the employee.



Pension

As a rule, an employee is entitled to a pension upon reaching retirement age, which is 60 for women and 65 for men. Reaching the retirement age cannot serve as the sole reason for termination of employment. An employee can continue to work after reaching the retirement age.

Additionally, the employee is protected against termination with notice in the pre-retirement period, which starts 4 years before reaching the retirement age. Generally, the protection would start for women at the age of 56 and for men at the age of 61.

Income tax and social security

Tax

An employee's remuneration is subject to a progressive tax scale – 12% and 32%. The employer must calculate and withhold monthly tax advances on the employee's income.

Social security

The employer must register each employee with the Polish Social Security Institution ("ZUS") within 7 days of the hiring date.

As a rule, all employees are mandatorily covered by the Polish social insurance system, which includes pension, disability, sickness, and work accident insurance. Employees are also subject to national health insurance.

Type of insurance	Financing by the employer in %	Financing by the employee in %	Total amount in %
Pension insurance	9,76	9,76	19,52
Disability insurance	6,50	1,50	8
Sickness insurance	-	2,45	2,45
Accident insurance	0,67-3,33	-	0,67-3,33
	depending on number of employees, occupational risks and accident rate		
Health insurance	-	9	9
Total	16,93-19,59	22,71	39,64-42,3

Most social security contributions are deducted from remuneration monthly, until the total annual remuneration exceeds PLN 208,050.00 in the current calendar year.

Employee Capital Schemes Pension

In addition to the ZUS pension contributions, the employees are entitled to participate in the Employee Capital Schemes Pension ("PPK"). The PPK is mandatory for the employer but voluntary for employees.

The employer must establish a PPK. In practice, it must (a) select staff representatives (at least 2 people) who will participate in the selection process of a financial institution which will run the scheme and (b) conclude with a financial institution two separate contracts relating to PPK, i.e. management (PL: *umowa o zarządzenie*) and operating agreements (PL: *umowa o prowadzenie*).



A financial institution selected by the employer runs the PPK. The employer's monthly contribution is 1.5% of the employee's remuneration with the possibility of an additional voluntary contribution of 2.5%. The employee's monthly contribution is 2% of the employee's remuneration with the possibility of an additional voluntary contribution of 2%.

Other compulsory withholdings

An employer must calculate and withhold from the employee's salary, except social insurance contributions, contributions to the Labour Fund amounting to 2.45% of the calculation basis (including to the Solidarity Fund of 1.45% of the calculation basis), and to the Guaranteed Employee Benefits Fund of 0.10% of the calculation basis (these contributions are paid by the employer on top of the gross salary).

Working conditions

Each employer is obliged by the labour law to provide employees with appropriate working conditions and inform these employees about them within 7 days from the date of admitting the employee to work.

Working time

The normal working time system is by default applicable to all employees – an individual must work 8 hours a day (fixed) and on average 40 hours a week, in a 5-day working week.

An employee must have an uninterrupted rest for at least 11 hours in each 24-hour period and for at least 35 hours every week. Exceptions relate only to rescue operations and top managers.

The employer may introduce flexible working hours. For example, the employee can have a choice to start / finish work during prescribed time frames. To enforce flexible working hours the company must reach an agreement with staff representatives. Otherwise, each employee will need to apply for flexible working hours individually.

An employer must keep track of each employee's working time, i.e. it must record days at work, absences and working hours. However, the employer does not have to

record exact working hours in relation to e.g.: board-level managers, or staff working in a task-based working time system.

Overtime

Overtime occurs if an employee works in excess of standard daily working hours or average weekly working hours in a reference period (e.g. s/he works on a regular day off). The overall working time (including overtime) in a reference period must not exceed (on average) 48 hours per week.

Overtime is only permissible in the case of:

- a need to carry out rescue operations for the protection of human life or health; for the protection of property or the environment or for a need to repair a breakdown;
- special needs of an employer.

An employee cannot work more than 150 overtime hours in a calendar year unless the employer increases this limit. The upper limit is 416 hours.

The employer must compensate overtime with regular remuneration and a special allowance or free time. The allowance amounts to 50% or 100% of the hourly rate, depending on when the overtime occurred and whether the daily or weekly working hours were exceeded.

Absences

Holiday leave

Every employee is entitled to holiday leave. Its length is:

- 20 working days if an employee's total length of service is shorter than 10 years; or
- 26 working days if the total length of service is at least 10 years.

Sick leave

The maximum period that an employee may receive for treatment with sickness benefit is 6 months counted as 182 days. The exceptions are pregnancy and tuberculosis, which extend the allowed period of continuous sick leave to 270 days.

Family friendly rights

Polish labour law provides for rights related to pregnancy and parenthood:

- the employer has to grant pregnant employees time-off from work (with the right to remuneration) for a medical examinations if these examinations cannot be carried out outside her working hours,
- pregnant and breastfeeding employees cannot work in harmful conditions,
- pregnant employees and employees taking parental leave cannot be terminated for exercising parental leaves.

There are several types of leave related to parenthood. During these leaves (except childcare leave), the employee receives an allowance from the social security. The employer cannot prepare to terminate these categories of employees from the moment they apply for any of the above leaves. Slightly different rules apply to childcare leave.

Type of leave	Amount of leave	Amount of allowance
Maternity leave	20 to 37 weeks (depends on number of children born in one birth) The mother can take 6 weeks before the planned date of birth.	100% or 81.5% if the mother submits an appropriate application within 21 days from the date of birth
Parental leave	From 41 to 43 weeks (depends on number of children born in one birth) until the end of the calendar year in which the child reaches 6 years of age 9 weeks exclusively for each parent.	70% or 81.5% if the mother submits an appropriate application within 21 days from the date of birth 70% during the exclusive 9 weeks.
Paternity leave	2 weeks up to the child's 12 month of age	100%
Childcare leave	36 months until the end of the calendar year in which the child reaches 6 years of age	Unpaid leave

Extra family-friendly rights:

- A pregnant employee cannot work overtime or night time.
- An employee raising a child under 8 years cannot work overtime or night time without his/her consent.
- 2 days (or 16 hours) off work for taking care of child under the age of 14.
- Extra rights connected with flexible working arrangements for parents raising children under 8 years.
- Two 30 minutes long breaks for breastfeeding.



Termination of employment

An employment contract terminates:

- by mutual consent of the parties;
- upon a termination letter by one of the parties observing the period of notice (termination with notice);
- upon a termination letter by one of the parties without observing the period of notice (termination without notice);
- after the lapse of the period for which it has been concluded.

The party that terminates the contract unilaterally either with or without notice, must issue a termination letter in writing.

Termination with notice

To terminate an open-ended or fixed-term contract with notice, the employer must have a justified reason. The reason for termination can either relate to the employee (e.g. underperformance) or to the employer (e.g. redundancy, liquidation of a work position). The employer must indicate the reason for termination in termination letter. The employer's termination letter must also set out info on the employee's right to appeal to a labour court.

Termination without notice (employee's fault)

An employer can immediately dismiss an employee only if s/he:

- grossly violates his/her basic employee duties,
- commits a crime while under an employment contract which prevents further employment in the occupied position and the crime is obvious or has been proven by a valid court sentence, and
- through his/her fault, loses a license required to perform work in the occupied job position.

An employer can terminate the contract only within 1 month of learning about the above circumstances.

Termination without notice (no fault of an employee)

The employer can end an employment contract immediately if the employee's incapacity to work due to illness lasts for the periods set out in law, e.g. if the employee's absence lasts longer than the joint period of receiving sick pay from the

employer, statutory sickness benefit and rehabilitation benefit for the first 3 months (in total approx. 9 months). The right to terminate without notice also arises if an employee's justified absence from work for other reasons not related to sickness lasts longer than 1 month.

The employer cannot carry out such termination without notice if the employee returns to work after his/her absence.

Termination by an employee without notice

An employee may terminate a contract of employment without notice for health reasons if a medical certificate is issued stating that the work performed by the employee constitutes a health hazard and the employer does not transfer him/her within the time period specified in the certificate to another work position appropriate to his/her health condition and qualifications.

Furthermore, an employee may terminate a contract without notice if the employer seriously violates its basic duties towards the employee. In such case, the employee has the right to compensation equal to the remuneration for the notice period.

Collective rights/bargaining

Trade unions

A trade union may be established by at least ten individuals. Employees have a right to establish a separate trade union (or an organisational structure of a nationwide trade union), and the employer does not have any legal means of preventing it. Employees may also join an inter-company trade union. There is also no statutory limit on the number of trade union organisations that may operate within one employer.

A union is entitled to give opinions on matters of individual and common interest to the employees, to supervise the proper execution of the labour law at the workplace, and to demand the information required to perform union activity. They must be informed of and consulted on a wide range of issues, including the individual dismissal of trade union members or persons whose rights the trade union has agreed to protect, social fund issues, and collective redundancies. An employer must consult trade unions on the introduction of or changes to internal bylaws such as: workplace regulations, salary regulations, bonus regulations, social fund regulations, collective bargaining agreements.



Trade union officers are protected against dismissal during their term of office and after its expiry for a period corresponding to half the term of office.

Employee representatives

Ad-hoc representatives are elected among the employees when the law requires obtaining the employees' consent for some actions (e.g. establishing the social fund, introducing flexi time) and there are no trade unions in the employer. There are no strict rules regarding the election process, so the employer can rather freely decide on its terms and conditions. Ad-hoc representatives are not protected against termination.

Collective bargaining agreements

In Poland there are two types of collective bargaining agreements (CBA).

The first type is a "employer level" CBA:

- it regulates issues relating only to the given employer;
- it is concluded between a single employer and the trade unions operating at the employer.
- if there are no trade unions, then no CBA can be enacted;
- it is not obligatory. The employer must enact it only if the trade unions request it.

The second type is "nation-wide" CBAs:

- they are sector specific;
- they are concluded between nation-wide trade unions and industrial associations. To be covered by a given nation-wide CBA, the employer would need to become a member of an industrial association that is a party to such an agreement.

In Poland, employers rarely enter into collective bargaining agreements. Only companies from specific business sectors, e.g. mining, are covered by industry collective bargain agreements (i.e., multi-establishment agreements) if they are part of an organization that has concluded such an agreement.

Health and Safety and Training obligations

Health and Safety

The employer is responsible for H&S in the workplace. It must protect the health and life of the employees by ensuring appropriate H&S conditions. Specific H&S regulations and requirements may apply depending on the employees' type of work. The employer must inform its staff about the dangers to health and life in the workplace relevant to their job positions.

The employer must carry out the health and safety risk assessment and apply measures to reduce the identified risks. The employer must inform the staff (e.g. during initial H&S training) about the identified risks and protection measures.

Training obligations

The employer has to provide employees with initial and periodic training in occupational health and safety at given position.

An employee may also improve his professional qualifications at the employer's initiative or with the employer's consent. An employee improving his professional qualifications is eligible for training leave or exemption from all or part of the working day.

Immigration requirements for non-EU or non-Schengen employees

An employer who would like to employ an employee from outside the EU must legalize his/her work. There are several possibilities. Please note that the duration of the procedure may take longer if there are doubts in a particular case.

Options	Description	Length of the permit	Length of the procedure
1. Statement on entrusting work to a foreigner	<p>In this simplified process an employer can legalise work for the employees from Moldova, Georgia, Armenia, Belarus and Ukraine.</p> <p>A foreigner must also have a legalized stay (visa) and cannot perform seasonal work e.g. in agriculture, hotels, restaurants.</p>	Max. 24 months	as a rule, 7 days
2. Work permit	This is a standard process for all non-EU foreigners. Apart from work permit the foreigner must have a visa or be able to stay in Poland under the visa-free regime.	Max. 3 years	as a rule, 1 month
3. Temporary residence and work permit	This is a unified process in which a foreigner applies for a joint stay/work permit document. An employer must provide the employee with an attachment to the application, which will indicate e.g. the type and place of work performed.	Max. 3 years	as a rule, 1 month
4. Special rules for Ukrainian citizens	<p>Ukraine citizens may work in Poland if they have legally arrived in Poland since 24 February 2022 from Ukraine and declared their intention to stay here.</p> <p>These rules also apply to the spouse of a Ukrainian citizen who does not have Ukrainian citizenship, a member of the immediate family of a citizen of Ukraine who has a Pole's Card, as long as his/her stay in the territory is legal.</p> <p>The employer has to notify the District (PL: <i>Powiatowy</i>) Labour Office that a Ukrainian citizen has taken up employment. The notification process is online, and the employer has to submit it within 14 days of starting work. A change in job position or working hours requires the submission of a new notification to the labour office.</p>	Their stay in Poland is legal until 4 March 2024 but may be extended.	-

In the second and third scenario, with some exceptions, it may be necessary to carry out a "labour market test" prior to employing a foreigner. In this process the District Governor (PL: *Starosta*) checks whether there are no unemployed Polish citizens in the employer's area of operation who could be employed instead of the foreigners. If there are such, it may not be possible to employ a foreigner.



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in the UK as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.

A long-exposure photograph of the Brandenburg Gate in Berlin at night. The monument is illuminated with warm yellow lights, and the top quadriga is lit with a vibrant blue. The foreground shows light trails from cars on a wet street, reflecting the city lights. A traffic light and a yellow sign are visible on the right side of the frame.

Setting up for success in **GERMANY**

Welcome to Germany! If you are looking for a new European destination to grow your tech business, you may want to consider Germany.

Germany is one of Europe's largest and most innovative markets and offers huge potential for growth and expansion. It's also home to a vibrant and diverse tech scene, with innovation hubs in Berlin, Munich, Hamburg, Frankfurt, and Cologne.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of expanding into the German market include:

- Innovation and R&D: Germany is a leader in innovation and research and development, with a strong focus on technology and engineering. The government provides support for R&D activities, making it an attractive location for tech businesses.
- A supportive and stable regulatory environment: Germany has a strong legal system that protects intellectual property rights, data privacy, consumer protection, and fair competition.
- Germany has well-developed infrastructure, including transportation, communication, and energy networks, making it easy for businesses to operate and expand.
- Strong economy: Germany has the largest economy in Europe, providing a stable and secure environment for businesses.

Germany has a favourable business environment but expanding your tech business involves some challenges and risks that need to be carefully assessed. This factsheet will outline some of the key legal issues that you should consider before making the move into the German market.



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1. Corporate considerations for setting up a business in Germany

What entity you should use to set up your company

The main options available to a foreign investor looking to establish a corporate presence in Germany are: (i) to incorporate a German company with its own legal personality; or (ii) to incorporate a branch. The main difference between these options is that a branch does not have its own legal personality, which means that its activity and legal liability will at all times be directly related to the foreign investor's parent company.

German law provides a variety of vehicles that can be used by foreign companies or individuals investing in Germany. The most common forms used are the stock corporation (AG) and the limited liability company (GmbH). The main differences between AG and GmbH are as follows:

Key Characteristics	AG	GmbH
Minimum share capital	EUR 50,000	EUR 25,000
Payment upon incorporation	At least 25 % of the nominal amount of a share and any share premium.	At least 25 % of the nominal amount of a share and in total half of the minimum share capital (EUR 12,500).
Contributions	The contribution in kind must be specified in the articles of association. An audit is to be performed by one or several formation auditors. Contributions in kind must be made in full upon incorporation. If a contribution in kind is not sufficiently valuable, the shareholder is liable for the difference.	The contribution in kind must be specified in the articles of association. The shareholders must prepare a report on company formation on the basis of contributions in kind. Contributions in kind must be made in full upon incorporation. If a contribution in kind is not sufficiently valuable, the shareholder is liable for the difference.
Shares	They are marketable securities. Debentures and other securities that recognise or create a debt, even bonds convertible into shares, can be issued.	They are not marketable securities. Shares can be structured as preferred shares. Dividend coupons and participation certificates may be issued.

Key Characteristics	AG	GmbH
Transfer of shares	Depends on their nature (registered or bearer shares) and the type of custody they are held in. In principle, they may be freely transferred, unless the articles of association provide otherwise.	Shares can generally be transferred freely. An agreement concluded in notarial form is required for the transfer of shares. Further restrictions, such as the consent of the shareholders, can be provided for in the articles of association. The transferee must be entered in the shareholder list and the updated list shall be submitted to the Commercial Register.
Amendments to the articles of association	Any amendment of the articles of association requires a resolution to be adopted by the general meeting. The resolution adopted by the general meeting requires a majority of at least three quarters of the share capital represented at the time such resolution is adopted.	Any amendment to the articles of association requires a shareholders' resolution. The resolution must be recorded by a notary and requires the majority of three quarters of the votes cast.
Venue for shareholders' meeting	As indicated in the articles of association, or in the absence of such a regulation at the registered office of the company.	As indicated in the articles of association, or in the absence of such a regulation at the registered office of the company.
Attendance and majorities at shareholders' meetings	Different quorums and majorities are stipulated depending on the content of the resolutions. These can be increased by the articles of association. The general rule is a simple majority of the votes cast.	Different majorities are stipulated depending on the content of the resolutions. The majority requirements can be increased by the articles of association. The general rule is a simple majority of the votes cast.
Right to attend shareholders' meetings	Each shareholder has the right to attend. This right cannot be restricted.	Each shareholder has the right to attend. This right cannot be restricted.
Number of members of the governing body	At least one member of the management board (two in the case of companies having a share capital of more than EUR 3,000,000)	Minimum one managing director.
Term of the member of management board/ director	Maximum five years. They may be re-elected for periods of the same maximum duration.	May be indefinite.
Supervisory board	Minimum: three members. The supervisory board consists of members representing the shareholders and the employees. The ratio depends on the number of employees. Maximum depends on the share capital and number of employees, maximum 21.	Can be established by the articles of association (must be formed if the GmbH has more than 500 employees).
Issue of bonds	Bond issues may be used as a means to raise funds. Bonds convertible into shares, bonds with warrants, participating bonds and profit participation rights may be issued.	Although the issuance of debt securities is permitted, the GmbH does not have capital market capacity and therefore essentially relies on its shareholders to raise funds. (shareholder) loan, profit participation right and silent participation are usually used to raise funds.



2. Branch vs subsidiary – options for group expansion

A branch and a subsidiary go through a similar formation procedure in some respects (both require the registration in the German Commercial Register), but there are differences in other aspects of the formation procedure (notarial certification is only required for the subsidiary). The most significant differences are summarised in the following chart:

	Branch	Subsidiary
Legal identity	It does not have its own legal personality (it is part of the corporate entity).	The subsidiary has its own legal personality. It is for all legal purposes a legal entity independent of its foreign parent company. It is subject to the rights and obligations it incurs independently of those incurred by its parent company.
Minimum share capital	It does not require a minimum capital stock or economic allocation at the time of its incorporation. The branch has no legally independent assets. The foreign parent company may decide on the allocation of the capital it deems appropriate for its branch.	The minimum share capital required is EUR 25,000 or 50,000, depending on whether a limited liability company (GmbH) or a public limited company (AG) is incorporated, respectively.
Management and governing body	The branch office must have a manager with authority to act independently in not entirely insignificant matters (e.g. holder of commercial power of attorney).	General Meeting of Shareholders and the corresponding management body depending on whether a limited liability company (GmbH) or a public limited company (AG) is incorporated, respectively. GmbH: managing director AG: management board and supervisory board



	Branch	Subsidiary
Liability of the foreign parent company	As the branch is not a legal entity in its own right, the actions of the branch are attributed to the entity, which alone is obligated and entitled from legal transactions. Therefore, the liabilities incurred by the branch must be assumed by the foreign parent company without limitation. The entity can sue and be sued under the name of its branch.	The subsidiary is liable for the liabilities it incurs with its own assets, and, in principle, the foreign parent company will not be affected by these debts. Liability is limited to the company assets.
Taxation	When a foreign company operates a branch in Germany, the profits of the branch must be taxed in Germany. For further information, please also see the double taxation agreement between Germany and Ukraine.	The subsidiary is a legally independent company that is subject to the provisions of German tax law.



3. Incorporation vs acquisition of a GmbH to conduct business in Germany

In order to become a shareholder of a GmbH, two options should be considered: whether to incorporate a new GmbH company or to acquire an existing one. The most significant differences are summarised in the following illustrative chart:

Steps to Take	Incorporation	Acquisition
<p>Common preliminary steps</p>	<p>The GmbH can be incorporated by an individual or by another company and has legal capacity. It is the type of company most commonly used in Germany because of its flexibility and the fact that the liability of the members is only limited to the amount of invested capital.</p> <p>Preliminary steps would be to decide who the shareholders will be and how much share capital they are going to invest, decide the purpose of the company, identify a managing director of the company, and decide the location in Germany where the company will be formed and registered.</p>	<p>There are two main options to acquire a GmbH in Germany: 1) buying a company which is already trading or 2) buying a shelf company.</p> <p>Existing trading company: an existing trading company already has some history of trading, a foothold in the market, some customers and employees and assets which can be helpful to run the intended business. However, the buyer must evaluate the assets of the company and carry out full due diligence into its debts, employees, any infringement or disputes and the existing customer and supplier contracts. This takes longer and costs more in legal and other due diligence associated fees, so it is logical to purchase a trading company where the buyer is interested in acquiring the target company's developed assets including market presence or existing employees' expertise.</p> <p>Shelf company: an already established and registered 'clean' GmbH, optionally with an open bank account where share capital can be deposited, with an opening balance sheet, tax number and with a registered address. This option saves time on the process of creation and registration of the company. It would have no assets to value or previous trading history to evaluate, it is free from encumbrances such as debt or other liabilities (it is recommended for the buyer to verify that the shelf company has not active business history or existing liabilities), free from existing obligations to employees, customers and other counterparties. Therefore, the process to acquire a shelf company and to customize it for the intended business activity tends to be quicker.</p>



Steps to Take	Incorporation	Acquisition
<p>Step 1.</p>	<p>The deed of incorporation initially involves the agreement of the founders to establish a limited liability company, to join it and to make the required contributions.</p>	<p>Existing trading company: The first step is to find a suitable company to acquire, either independently or through the use of intermediaries, such as M&A consultants.</p> <p>Once a suitable company is found, a non-disclosure agreement (NDA) is signed between the seller and the buyer to enable the seller to share confidential documents and information about the company.</p> <p>A letter of intent is usually drawn up as a non-binding declaration of intent to buy and sell the company. In addition, the seller can countersign creating a joint declaration of intent which can also be called a Memorandum of Understanding. A Letter of Intent or Memorandum of Understanding indicates the structure of the company acquisition and a purchase price can be indicated.</p> <p>This step does not apply to the acquisition of a shelf company.</p>
<p>Step 2.</p>	<p>A draft of the articles of incorporation needs to be prepared. The minimum content of every GmbH's articles of incorporation is: the company's name, the company's registered office address, the purpose of the company, the amount of the share capital, the number and nominal amounts of the shares that each shareholder takes over in return for a contribution to the share capital and the names of the founding shareholders.</p>	<p>Existing trading company: The seller in Germany is then provided with a due diligence checklist containing information and documents that the buyer considers necessary for a review of the company.</p> <p>The buyer will conduct due diligence and evaluation of the target company from a legal, tax, economical financial, and technical perspective, which includes identification of any existing risks.</p> <p>This step does not apply to the acquisition of a shelf company.</p>
<p>Step 3.</p>	<p>Notarisation of the deed of incorporation (the establishment of the articles of incorporation and appointment of the directors annexed). Each founder must sign the deed of incorporation before the notary public.</p>	<p>Existing trading company: Buyer and seller sign a share-purchase agreement including the ancillary agreements in front of a notary.</p> <p>Shelf company: a takeover (purchase of the GmbH shelf company through a purchase and assignment agreement) is formalised with a notary in Germany. At the notary appointment, the following is established: the new company name, the business purpose, appointment of new directors, and a registered address for the company.</p>

Steps to Take	Incorporation	Acquisition
Step 4.	Signing of the employment contracts with the managing directors.	<p>Existing trading company: The new shareholder(s) may adopt certain decisions such as appointing new director(s) and amending the articles of association (change of the company name, registered office etc.). The resolution to amend the articles of association must be notarised.</p> <p>Shelf company: This step is usually not necessary for the shelf company, as the changes have already been made in the previous step.</p>
Step 5.	Opening of the bank account of the GmbH and payment of the contribution to the shares by the shareholders. The amount shall be transferred at the free disposal of the company to an account in the name of the company.	<p>Existing trading company: Further actions such as the change of the company's bank account and the payment of the share capital contributions into the bank account may be required.</p> <p>Shelf company: If no bank account is taken over, a new account must be opened.</p>
Step 6.	Signing of the commercial register application by all managing directors and signature of the shareholder list by all managing directors.	<p>Existing trading company: Signing of the commercial register application by a managing director authorised to represent the company.</p> <p>Shelf company: The commercial register application must be signed by all managing directors.</p>
Step 7.	<p>Submission of the commercial register application:</p> <p>The following must be enclosed with the application for registration: the articles of association, the directors' legitimation, a list of shareholders and, if applicable, special documents in the case of contributions in kind.</p> <p>Entry of the GmbH in the commercial register:</p> <p>After an examination by the registry court, the GmbH is registered. With the entry in the commercial register, the formation is completed and the GmbH as such comes into existence.</p>	<p>Existing trading company: The commercial register application must be submitted. The updated list of shareholders, amendments to the articles of association and changes in the management must be enclosed.</p> <p>Shelf company: The commercial register application must be submitted. The amendments to the articles of association (corporate purpose, registered office), the new directors and a renewed assurance by all directors that the payments to be made on the shares have been made and that the object of these payments is at their free disposal must be enclosed.</p>



Steps to Take	Incorporation	Acquisition
Estimated timing and costs	<p>The costs of incorporating a GmbH shall amount to the disbursement made as share capital (a minimum of EUR 25,000 plus an additional amount, if necessary, to ensure the company is sufficiently capitalised to perform its business), notarisaton and registration fees.</p>	<p>Existing trading company: Expect it to take longer due to the required search, due diligence and negotiation of the purchase. Estimated cost is the purchase price of the company (depending on its market value) and additional advisor costs, notary fees and legal costs (for registration).</p> <p>Shelf company: Acquiring a shelf company can be a quick process and timing depends on the notary appointment and bank account registration or transfer. An estimate would be several weeks.</p> <p>Estimated cost is several thousand Euros which would be the purchase cost (services fees of provider) and additional advisor costs, notary fees and legal costs (for registration) in formalising the transfer of ownership + a minimum share capital of EUR 25,000 to be held in the corporate bank account.</p>



4. Practical steps required to be undertaken when setting up a German company

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, notary public and company secretaries and taking out insurance (both as required by law and as may be prudent for your business activity), there will be a number of other practical steps you need to take. Please refer to Annex 1 for a summary of some of the principal considerations businesses need to address when establishing a new entity in Germany.

Business registration

German tech businesses / start-ups are legally obliged to file a business registration with the authorities competent at their respective registered seat when starting their business (usually immediately after incorporation). The business registration typically is no prerequisite for starting operative business (with the exception of certain regulated businesses), however failing to timely file the business registration is considered an administrative offence and may be punished with a fine. The authorities typically offer a remote registration process (information to be found at the competent authority's website).

Application for reporting number at German Federal Bank (Bundesbank)

German domestic companies are required to report to Bundesbank payments made to or received by foreigners (e.g. its Ukrainian holding company) which amount to more than EUR 12,500 in the individual case. Payments need to be reported by German tech businesses / start-ups on a monthly basis via Bundesbank's reporting platform. This process requires prior application for a reporting number at Bundesbank which can be made on Bundesbank's website (<https://www.bundesbank.de/en/service/reporting-systems/external-sector/electronic-submission/-/reporting-number-619944>).



5. Governance

Constitutional documents

Articles of Association

The Articles of Association is a mandatory constitutional document and contains the main rules of cooperation in the company. They require notarization (section 2 (1) GmbHG).

Mandatory content according to section 3 (1) GmbHG:

1. **Company's name and registered office**
2. **Object of the company:** Designation of the business activities the company will carry out
3. **Share capital:** The capital to be contributed by the shareholders (required for the formation of a GmbH is in general a minimum amount of EUR 25.000)
4. **Number and nominal amount of shares that each shareholder contributes to**

Rules of Procedure for the Management Board

The Rules of Procedure of the Management Board are not mandatory but common for corporate governance reasons. They supplement the Articles of Association by regulating the competences of the management and between the managing directors in case more than one managing director has been appointed for the company. Typically, they contain the following:

1. **Business distribution plan:** Distribution of responsibilities between the managing directors
2. **Consent catalogues:** Certain business activities of the management can require the consent of the shareholders' meeting (or the advisory board), in particular transactions and measures that exceed the normal course of business
3. **Reporting:** Information rights and reporting obligations on the status quo and corporate planning



Constitutional documents

Shareholders' agreement

A shareholders' agreement is a not mandatory but, especially in the context of Venture Capital, common contract between the shareholders of the company. It regulates the rights and obligations between the shareholders and serves to avoid possible conflicts and ambiguities. In general, notarial certification is not required. The shareholders' agreement must not be submitted to the commercial register and is therefore not accessible to the public. Possible provisions are the following:

1. **Capital and profit distribution**
2. **Accession of shareholders:** A shareholders' agreement is legally binding only between its respective parties. It typically contains provisions ensuring the accession of future shareholders.
3. **Exit of shareholders:** In case of an exit of one shareholder, the leaving shareholder will no longer be party of the shareholders' agreement.
4. **Non-competition clause**
5. **Liquidation and sale proceeds preference:** In case of liquidation or sale of shares, the proceeds are distributed between the shareholders (and investors) applying specific preferences. In case of Venture Capital investors, this is a possibility to get back the investment amount on a priority basis.
6. **Information and consent rights:** Especially investors rely on information and consent rights to properly evaluate the risk of their investment.
7. **Consent requirements for the transfer of shares**
8. **Founder lock-up:** Provisions that intend to prevent a founder's exit for a specific period of time
9. **Rights of first refusal:** In the event of an exit of one shareholder, the remaining shareholders have the right to acquire the shares of the leaving shareholder.
10. **Co-sale rights:** In the event one shareholder intends to sell their shares, the remaining shareholders are entitled to sell their shares at the same terms and conditions.
11. **Drag-along rights:** In the event one shareholder/investor intends to sell their shares, they have the right to demand the remaining shareholders to sell their shares at the same terms and conditions (especially Venture Capital investors rely on drag-along rights if they want to achieve a certain rate of return after a specific period of time).

Please see Annex 2 for Rules of Procedure for the Advisory Board.

Directors Duties and Liabilities

The managing directors (“**Directors**”) are the statutory representatives of a GmbH. The office of a Director carries both the external function of representing the company to third parties and the internal function of managing the company’s business. The appointment of the Directors and their scope of representation right must be registered with the Commercial Register, i.e. whether they have a sole or joint power of representation and – which is common practice in Germany – if they have been released from the prohibition of section 181 German Civil Code (self-dealing restrictions).

While the scope of the Director’s internal function of managing the company’s business can be restricted by the Articles of Association or subject to the prior consent of the shareholders, these internal restrictions do not have any effect towards third parties. Thus, acts for the company by a Director disregarding internal restrictions are in general valid towards third parties, unless the third party is aware of the internal restrictions and co-operates with the Director to the detriment of the company.

	Duties
General duty of care	Acting with “the due care of a prudent businessman” (section 43 (1) GmbHG) and in the interests of the company. Keeping themselves fully informed on the company’s affairs.
Commercial Register	Ensuring that the company complies with registration requirements. Signing commercial register application in notarially certified form.
Finance	Ensuring proper account-keeping, accounting and preparation of annual accounts of the company.
Employees	Hiring, training and supervision of employees.
Shareholders’ meeting	Convening of the annual shareholders’ meeting. Convening of an extraordinary shareholders’ meeting in certain circumstances.
Fiscal Obligations	Ensuring that the company files its tax return and pays all taxes due.
Social Security Obligations	Ensuring that the social security contributions of the company are paid in time and in full to the respective collecting agency.
Insolvency	The Directors must, without undue delay but no later than three weeks after the company is overly indebted or illiquid, apply for the commencement of bankruptcy proceedings.



Liabilities

	The Director is personally liable for damages he/she causes by culpably violating his/her duties (i) under certain circumstances towards third parties and (ii) towards the company. If the misconduct is attributed to several Directors, they are liable on a joint and several basis. This means in particular:
Fiscal Obligations	If the company fails to fulfil its fiscal obligations, the Directors may be held personally liable towards the tax authorities.
Social Security Obligations	If the Director fails to ensure that the social security contributions are paid in time and in full, he/she may be held personally liable.
Criminal Activities	The Directors are held liable for any criminal activities of the company.
Insolvency	If the Director delays the commencement of insolvency proceedings, he/she may be liable for improper payments made after the company is determined to be overly indebted or unable to pay its debts. The Director is liable towards any creditors of the company who suffer losses as a result of not applying for commencement of insolvency proceedings in time.



6. Employment considerations

Key requirements for employment contracts in Germany

Employers' Pre-contractual Duties

Even before concluding an employment contract, employers must observe numerous requirements. For example, the job advertisement must comply with the requirements of the German General Act on Equal Treatment (AGG) i.e. it must be designed in such a way that it does not discriminate against any applicant on the grounds of gender, racial or ethnic origin, disability, religion or belief, sexual identity or age. Exceptions are only permitted if the aforementioned characteristic (or its absence) constitutes an essential and decisive occupational requirement for the job itself or the conditions of its performance. There are limits to the employer's right to ask questions during job interviews. There is only a right to ask questions during recruitment negotiations to the extent that the employer has a legitimate interest worthy of protection in their question being answered for the employment relationship. Therefore, only questions that are job-related and do not violate the applicant's privacy are permissible. The requirements of the German General Act on Equal Treatment (AGG) must also be observed here.

German Act on Information about the Conditions Governing an Employment Relationship (Nachweisgesetz)

To be considered are in particular the requirements under the German Act on Information about the Conditions Governing an Employment Relationship (Nachweisgesetz).

In general:

- Substantially stricter regulations in respect to details of the employment contract to be given to the employee under the NachwG as of 1 August 2022.
- Violation of the obligations can be an administrative offence (fines of up to EUR 2,000.00).
- For more details on the essential contractual terms, please see Annex 3.

Most important practical consequences for the employer are:

- **New hires:** Employer must provide the employee with a written document containing the essential details of the employment relationship on the first day of work (signed wet ink).
- **Existing contracts:** action is only required upon employees' request – this triggers deadline of 7 days / 1 month (e.g. training / recreational leave) and written documentation requirements.
- **Amendments to essential working conditions during the employment:** Employer must inform in writing of any changes (e.g. salary increase, promotion or change of place of work) at the latest on the day on which it takes effect; no request by the employee is required.

Fixed-Term Employment

Employment contracts can be entered into for an indefinite period in which case they can be terminated with a notice period, or they can be agreed for a fixed term. It is therefore important to note that the fixed term must be stipulated in writing to be effective. To meet this requirement, the relevant employment contract must generally be signed by both parties before the employee starts working.

Furthermore, the fixed term is only valid if it is either justified on objective grounds (e.g. fixed term contract to cover an employee on parental leave or sick leave) or if statutory provisions (German Act on Part-Time and Fixed-Term Employment (TzBfG)) specifically allow for a fixed term to be agreed without such grounds.

This is permitted, for example, if:

- the parties had no previous employment relationship prior to the fixed term
- the fixed-term agreement, or a maximum of three renewals, do not exceed a total period of two years.
- This does not apply to new business start-ups.



If these restrictions are not complied with, the employment contract runs for an indefinite period of time and may only be terminated by serving notice (subject to the provisions of the German Act Against Unfair Dismissal (KSchG)). The same applies if the employee continues to work beyond the expiry date and the employer does not object within a reasonable period of time. With regard to working conditions, it is impermissible to treat a fixed-term employee less favourably than a comparable permanent employee who does similar work.

Part-Time Work

Part-time work is possible in many variants: For example, employees can work half days from Monday to Friday, or they can work full days and have certain days off. It is important to note that a part-time employee should not be treated less favourably than a comparable fulltime employee just because they only work part-time. A part-time employee is entitled to all of the benefits received by a comparable full-time employee, but on a pro rata basis.

A mutually agreed reduction in working hours is possible at any time.

Under certain conditions, however, employees are also entitled to a reduction in working hours. Firstly, there is an entitlement to a permanent reduction in working hours. Secondly, the law now also provides for an entitlement to a reduction in working hours that is limited in time from the outset. At the end of this period, the previous working hours automatically apply again. Neither regulation is linked to specific working hours, so they both apply not only when an employee switches from full-time to part-time, but also to part-time employees who wish to reduce their working hours further.

Please refer to Annex 3 for further employment considerations.



7. Incentivisation of early-stage team and shareholder structure

While the founders of a German tech business / start-up typically establish its corporate entity and therefore directly or indirectly (via their own investment entities) hold shares in it, other key employees, e.g. non-founder management, (in particular if they join the tech business / start-up at a later stage) often do not initially hold actual shares.

Since start-ups have limited liquidity and cannot offer salaries comparable to well-established companies, they offer incentivisation programs which enable key employees to economically participate in a successful exit transaction. In Anglo-American jurisdictions key employees are commonly offered actual shares in a start-up (which often times can even be sold prior to an exit transaction). In Germany, due to applicable corporate and tax laws, the common incentivisation form is virtual shares under virtual stock option plans (similar to phantom stock plans) which merely simulate the economic benefit of shares, without actually providing them, and which grant beneficiaries payment claims with regards to the proceeds of an exit transaction.

The common forms of incentivisation for key employees of German start-ups summarised in Annex 4.





8. Tax incentives / special regimes / grants

In Germany there are no special tax incentives focused on tech start-ups apart from administrative simplifications available to all small companies. However, there are many national and regional funding programs for start-ups. These include consulting subsidies, loans, special start-up grants, guarantees/warranties and equity investments. It is important to note that funding applications must usually be submitted before the company is established.

Although each funding program has its own guidelines and specific conditions and requirements, usually the following general requirements have to be fulfilled by the applicants:

- The applicant must demonstrate proper economic circumstances.
- The applicant must have sufficient professional and usually also commercial qualifications.
- The project must have positive future prospects. Reorganization cases as well as refinancing and debt rescheduling are generally not supported within the scope of start-up funding.
- The founder or founders should be involved in their own company and be able to exercise entrepreneurial influence.
- If state subsidies are used, there must be a connection to the respective federal state, e.g. the founder's residence or the company's headquarters or the location of the investment must be in the respective federal state – or there must be a positive effect for the federal state in some other way.
- In most cases it should be a small or medium sized company, founded not longer than 5 years ago.

Please refer to Annex 5 for some examples of national funding programmes and federal state funding programmes. In summation, there are many different funding programs for start-ups in Germany. The ones best suited for the individual start-up must be determined based on the specific needs of the start-up, the specific funding requirements and on location of the start-up.



8. Investors – considerations for capital raising

German Venture Capital Landscape

According to the statistics of the German Private Equity and Venture Capital Association (BVK), in 2021, Germany ranked second among European countries based on total amounts of venture capital investments made. In 2022, total venture capital investments in Germany amounted to EUR 3.4 billion, making it the second-best investment year in Germany. In total, 625 German start-ups received venture capital funding in 2022 and despite the macroeconomic headwind, several German start-ups received venture capital funding in the three-digit million range (e.g. Trade Republic, Personio, Taxfix, Celonis, Wefox, Razor Group, 1Komma5 and Forto). Business angels are active in the German start-up eco-system, covering 76 % of investment amounts in initial financing rounds in 2022.

State Support

Equity Capital

State support and state backed support of venture capital financings is available in Germany. Equity funding can be received indirectly via the ERP-EIF Facility, a partnership between the German Federal Government and the European Investment Fund (EIF), which invests as a fund-of-funds and covers all technology areas including ICT, life sciences, energy related innovations, as well as emerging and converging technologies, or via the ERP Venture Capital Fund, a partnership between German public development bank Kreditanstalt für Wiederaufbau (KfW) and the Federal Ministry for Economic Affairs and Energy, which supports selected private funds. Direct equity funding can be received from public funds, such as High-Tech Gründerfonds (HTGF) or coparion which co-invest in German start-ups provided that significant private funds are invested.

Debt Capital / Subsidies

Debt capital is made available to German start-ups and growing tech companies under various programs by European Investment Bank (EIB), e.g. via its innovation program InnovFin, the German Federal Government and KfW, e.g. via the programs “ERP-Gründerkredit – StartGeld” (up to EUR 100,000) or “ERP Digitalisierungs- und Innovationskredit” (up to EUR 25 million), and the development banks of German federate states, e.g. by L-Bank via its program “Start-up BW Pre-Seed” (usually between EUR 50,000 and EUR 200,000) or by NRW.Bank via its convertible loan program “NRW.SeedCon” (up to EUR 200,000).

Also, subsidies are available, both on a EU-level (e.g. “Horizon Europe”, the EU’s key funding program for research and innovation) and on a German national level (e.g. at the development banks of German federate states).

Application for State Support

There is no central application office, German companies have to apply for the various programs at the relevant institution. However, most programs offer free advice to applicants.

Regulatory Approvals

Venture capital investments in German companies may require regulatory approvals, e.g. foreign investors may require foreign trade clearance from the German Ministry for Economic Affairs and Climate Action under the German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung; AWV) if the company operates in a sensitive industry sector (e.g. defense or artificial intelligence). Also, merger clearance from the German Federal Cartel Office may be required under the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB), in particular if strategic investors provide equity financing. Clearance requirements need to be assessed in more detail in connection with the investment but will generally require an investor to acquire a participation of 10 % or more in the share capital of a German company or to have veto-rights with regards to operational decisions (e.g. business plan, budget etc.).

Forms of Investment

Due to the lack of assets which could serve as loan security, (apart from state supported debt financing options) start-ups in Germany are usually funded via equity financings or hybrid forms between debt and equity financings. Start-up financing can be obtained mainly from strategic investors (corporate venture capital, e.g. BMW i Ventures, EnBW New Ventures, Porsche Ventures), venture capital funds (e.g. UVC Partners, Bayern Kapital, Early Bird) or Business Angels (e.g. Verena Pausder, Christian Vollmann). Venture debt financings are offered by banks and specialized funds (e.g. Kreos Capital) to later stage start-ups. Annex 6 summarises the most common forms of financings in connection with startup capital raises in Germany.





10. IP – protecting the value of your company

There are three main ways to protect the value of your company in Germany: through trademarks, copyright and patents. Annex 7 summarises the law on each of these.



11. Regulatory – common compliance requirements

General corporate filings

Annual Financial Statements

Managing directors of German tech businesses / start-ups incorporated as GmbH need to file annual financial statements (as determined by resolution of their respective Shareholders' Meeting) with the German Federal Gazette (Bundesanzeiger) on an annual basis, within twelve months after the respective balance sheet date (Abschlussstichtag). Start-ups typically don't require audited annual financial statements by law as they are usually classified as small sized companies within the meaning of § 267 para. (1) German Commercial Code (HGB) (i.e., companies which do not exceed two of the following three criteria: (i) balance sheet total of EUR 6 million., (ii) annual revenue of EUR 12 million. or (iii) more than 50 employees).

Commercial Register Filings

German companies need to keep corporate information (current business address, information on currently appointed managing directors and list of current shareholders) which is registered with the Commercial Register up to date.

Similarly, the company's articles of association, including company name, business object and statutory seat, must be kept up to date. Amendments to the articles of association require notarization and must be registered with the Commercial Register by the acting notary public.

Transparency Register

In order to fulfill its obligations under statutory anti-money laundering provisions (German Money Laundering Act, GWG), German companies need to register their ultimate beneficial owners with the transparency register. If there is no beneficial owner (i.e., a natural person (directly or indirectly) holding more than 25 % of the shares or voting rights, the company will need to register all of its legal representatives (i.e., in a GmbH this would be the Managing Directors and in a stock corporation this would be the Executive Directors) with the transparency register. German companies need to keep their transparency register filings up to date at all times.

Data Protection

Data protection law is largely determined by the European General Data Protection Regulation (GDPR). The GDPR creates a harmonized data protection standard throughout the EU. The GDPR is directly applicable law in the EU member states and its regulations have precedence over national data protection regulations. This means that the Federal Data Protection Act (BDSG) and the sector-specific data protection regulations in Germany only apply as a supplement to the extent permitted by the GDPR.

An overview of the main national data protection regulations is provided in Annex 8.



12. Industry Associations

Federal Ministry for Economic Affairs and Climate Action	<ul style="list-style-type: none"> — The Federal Ministry for Economic Affairs and Climate Action compiled a List of contacts for startups at the federal and state level (only in German). — Website of the Federal Ministry for Economic Affairs and Climate Action containing information on current funded technology programs, strategic stand-alone projects and international cooperation projects
German Startups Association	<p>The German Startups Association supports founders by representing their interests in the world of politics and business, as well as in the wider public. It organizes events such as the German Startup Award, the Angel Pitch Night and regional networking meetings and offers a membership program.</p>
Bitkom	<p>Bitkom is one of Germany's digital association and represents more than 2,200 companies of the digital economy. Its goal is to advocate the digitization of the economy, society and public administration and is therefore "dedicated to a founder-friendly environment".</p>
German Association for the Digital Economy (BVDW)	<p>The German Association for the Digital Economy also represents the interests of companies that operate digital business models or whose value creation is based on the use of digital technologies. It has around 650 members and organizes among others the Digital Marketing Expo & Conference (DMEXCO), the German Digital Award as well as a multitude of other professional events.</p>
German Chamber of Commerce and Industry – DIHK	<p>The German Chamber of Commerce and Industry represents commercial and industrial enterprises and those belonging to the service sector vis-à-vis politicians, administrators and the public. It represents the general interest of the commercial sector at federal and European level. These interests are conveyed to it by the 79 local Chambers of Commerce and Industry across Germany.</p>



Annex 1: Setting up a new entity in Germany

The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity in Germany.

Preliminary steps and deliberations

Basic Aspects

Whether by incorporation or acquisition, the following preliminary steps and deliberations should be undertaken when setting up a company with limited liability under German law (GmbH):

- **Choosing a registered seat located in Germany:** This has to be indicated in the articles of association of the GmbH and has inter alia implications on competent courts of jurisdiction. The registered seat needs to be located at a German municipality.
- **Choosing a business address located in Germany:** This has to be indicated in the Commercial Register application of the GmbH and may differ from the registered seat. The business address enables third parties (in part. creditors) to effectively deliver notifications to the GmbH. The business address may be identical to the residential address of (one of) its Managing Director(s) but needs to be located in Germany.
- **Choosing one or more Managing Director(s):** The GmbH requires one or more natural persons who act as Managing Director(s) and legal representative(s) and who have to be indicated in the Commercial Register application of the GmbH (registration of full name, date of birth, residential address). Also it should be agreed whether the Managing Director(s) receive compensation for their services.
- **Funding of the GmbH:** Consider how the GmbH will be funded after its incorporation, e.g. via shareholder loans (inter-company loans in case a Ukrainian holding company exists) or additional contributions into the capital reserves of the GmbH (meaning funding in addition to the minimum statutory nominal amount of EUR 25,000).
- **Technology transfer:** If the GmbH is intended to use existing intellectual property (if any), the legal basis for such use should be considered, e.g. use based on license agreement or based on contribution of intellectual property into the GmbH.
- **Assessment of regulatory approvals:** Depending on the GmbH's intended business, regulatory approvals may be required and potentially need to be obtained even before the incorporation of the GmbH can be completed (in part. FinTech businesses / start-ups may require prior approval by the German Federal Financial Supervisory Authority (BaFin)).

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Preliminary steps and deliberations

(continued)

Basic Aspects

- **Attendance at incorporation:** The founding shareholder(s) or their (legal or authorized) representatives are required to attend a notary appointment at the premises of a German notary public in person and provide a valid passport or similar identification document. It should be assessed whether the founding shareholder(s) will attend themselves or be represented by a third party (e.g. a lawyer or (if applicable) shelf company provider). In case of representation, the founding shareholder(s) need to provide to the German notary public the original of a notarized and apostilled power of attorney indicating the attending representative, latest at the day of the notary appointment.
- **Draft constitutional documents:** The GmbH requires articles of association. The articles of association need to be drafted and provided to the German notary public before the notary appointment. Intended corporate governance should be assessed, in part. if an advisory board should be implemented and how the managing director(s) will be supervised by the shareholders of the GmbH (the implementation of rules of procedure for the management including shareholder's approval requirements with regards to certain actions and measures of the Managing Director(s) often times makes sense – if this is intended, then rules of procedure should be drafted).
- **Provide KYC questionnaire:** In case of the founding shareholder(s) being legal entity (entities), the German notary public will request a completed and signed KYC questionnaire indicating the ultimate beneficial owners (UBO) of such entity (entities). The UBO is/are natural person(s) who (directly or indirectly) hold more than 25 % of the shares or voting rights in such legal entity (entities). If there are no such natural persons, the legal representatives of the founding shareholder(s) need to be indicated.



Incorporation / Acquisition

Basic Aspects

The following steps need to be undertaken for the actual process of incorporation:

- **Notarization of constitutional documents:** At the notary appointment with the German notary public, in case of an incorporation, a certificate of incorporation and the articles of association of the GmbH will be notarized and a corresponding notary deed will be signed. In case of the acquisition of a shelf company, the share purchase agreement and a shareholders' meeting on the amendment and restatement of the shelf company's articles of association will be notarized instead.
- **Payment of nominal amounts:** After the notarization, in case of an incorporation, the nominal amounts towards the share capital (minimum EUR 25,000) need to be transferred to the GmbH's bank account (the GmbH is capable of having a bank account while under incorporation). In case of the acquisition of a shelf company, the purchase price needs to be wired to the shelf company provider (the shelf company usually has an existing bank account including the nominal share capital).
- **Commercial Register application:** After the nominal amounts towards the GmbH's share capital have been transferred to its bank account (in case of an incorporation), a Commercial Register application has to be signed by all Managing Directors of the GmbH, notarized by a German notary public and submitted to the competent Commercial Register. In the Commercial Register application, the Managing Directors have to make certain statements (e.g. absence of certain criminal convictions in the past) in person (representation excluded). In case the Managing Directors are situated outside of Germany, such statements can be made before an official at a German embassy.
- **Registration process:** After submission of the Commercial Register application, the GmbH will be registered with the Commercial Register. This process usually takes seven to ten business days. After registration with the Commercial Register, the incorporation/ acquisition process is completed.



Basic Aspects

Post-Incorporation

After the incorporation of the GmbH, the following post-incorporation steps have to be undertaken:

- **Business registration:** The GmbH is legally obliged to file a business registration with the authorities competent at its registered seat when starting its business (usually immediately after incorporation). The business registration typically is no prerequisite for starting the GmbH's operative business (with the exception of certain regulated businesses), however failing to timely file the business registration is considered an administrative offence and may be punished with a fine. The authorities typically offer a remote registration process (information to be found at the competent authority's website).
- **Transparency register filings:** After incorporation, the GmbH is legally obliged to register its UBO's (as defined above) with the transparency register. The process can be completed remotely on the transparency register's website (<https://www.transparenzregister.de/treg/en/start?0>).
- **Application for tax number:** The GmbH also needs to apply for a tax number with the competent tax authorities. The GmbH's accountants typically provide support with the application process.
- **Application for reporting number at German Federal Bank (Bundesbank):** German domestic companies are required to report to Bundesbank payments made to or received by foreigners (e.g. its Ukrainian holding company) which amount to more than EUR 12,500 in the individual case. Payments need to be reported by the GmbH on a monthly basis via Bundesbank's reporting platform. This process requires prior application for a reporting number at Bundesbank which can be made on Bundesbank's website (<https://www.bundesbank.de/en/service/reporting-systems/external-sector/electronic-submission/-/reporting-number-619944>).
- **Lease agreement:** After incorporation or acquisition of a shelf company, the GmbH will typically enter into a lease agreement for its premises at its business address.
- **Managing Director service agreement:** Depending on the agreements between the founding shareholders, the Managing Director(s) will receive a compensation for the provision of their services to the Company. This and further details should be recorded in a managing director service agreement signed by the GmbH's shareholder(s) and the respective Managing Director.



Proceedings for obtaining authorisation to work in Germany

After incorporation/acquisition of a shelf company, before employing staff, German tech businesses / start-ups have to apply for a company number (Betriebsnummer) at the Federal Employment Agency (Bundesagentur für Arbeit (BA)). The company number is required to make the obligatory registration of new employees with the German social security carriers (Sozialversicherungsträger) and the German health insurance organizations (Krankenkassen).

When hiring employees which come from outside of the European Union (and who are not from Iceland, Norway, Liechtenstein or Switzerland), tech businesses / start-ups need to consider that such employees may require a working permit (Arbeitserlaubnis) (§ 4a para. (5) sentence 1 AufenthG) for access to the German labour market and that employing so-called third country nationals without a working permit is prohibited.

Access to the German labour market is determined by the provisions of the German Residence Act (AufenthG). For a residence for the purpose of employment, approval by the BA is required. This approval can be obtained in an internal procedure from the German agency abroad in the country of origin (visa centre), currently, Ukrainian residents can also obtain approval at the German visa centres in neighbour states of Ukraine, or the responsible local immigration authority in Germany. The working permit is awarded along with the residence title.

For approval, it is generally required that a legislative provision grants access to the German labour market, a job offer and that there are no preferential workers available for the specific job and the conditions of employment are comparable with those of domestic employees (labour market test). Currently, Ukrainian refugees will likely apply for a visa/working permit pursuant to § 24 AufenthG.



Annex 2: Governance

Rules of Procedure for the Advisory Board

Rules of Procedure for the Advisory Board are required in case the company has an advisory board, which is not mandatory for a GmbH. Typically, they contain the following:

1. **Rules on meetings and decision-making** (i.e., number of Advisory Board members, chairman of the Advisory Board, election of the chairman, distribution of voting rights, meetings of the Advisory Board, rules on the passing of resolutions)
2. **Duty of confidentiality**
3. **Right of participation of outside persons (observer).** In the context of financing rounds, certain investors may only be granted the right to send a representative to the advisory board as an observer. These observers may then be present at meetings of the advisory board but may not participate in the voting (non-voting observer).



Annex 3: Employment Considerations

German Act on Information about the Conditions Governing an Employment Relationship (Nachweisgesetz)

Essential Contractual Terms

- Essential contractual terms are defined that must be provided to the employee in writing. These essential contractual terms are, in particular:
 - Name and address of the contracting parties
 - Date of commencement of the employment relationship
 - In the case of fixed-term employment: the end date or the foreseeable duration of the employment relationship
 - Place of work or, if the employee is not to work at only one specific place of work, an indication that the employee can be employed at different places or can freely choose his place of work
 - Brief characterization or description of the activity to be performed by the employee
 - Duration of the probationary period
 - Composition and amount of remuneration, including overtime pay, bonuses, allowances, premiums and special payments, as well as other components of remuneration, each of which shall be stated separately, and their due date and method of payment
 - Agreed working time, agreed rest breaks and rest periods and, in the case of agreed shift work, the shift system, shift rhythm and conditions for shift changes
 - Work on call according to § 12 of the Part-Time and Fixed-term Employment Act
 - Possibility of ordering overtime and its preconditions
 - Duration of the annual recuperation leave
 - Entitlement to training provided by the employer
 - The name and address of the pension provider who has agreed to provide occupational pensions through a pension provider.
 - Procedure for terminating your employment relationship
 - Collective agreements, works or service agreements applicable to the employment relationship

- The Act provides for a strict written form requirement (“wet inc”); electronic form is expressly excluded.
- Certain terms need to be described in detail – even in case of reference to a collective bargaining agreement.

Pay and benefits / Minimum working conditions

- Employers based in Germany or abroad who render services in Germany must grant their employees for the duration of their work in Germany minimum working conditions:
- Any employee / worker working in Germany – including any worker being sent from abroad to work in Germany – must not be paid less than the minimum wage.
 - Depending on the industry, different minimum wages apply. For details see Customs online – Industries with minimum wage pursuant to the AEntG, wage floors pursuant to the AÜG – Overview of sector-specific minimum wages (zoll.de). Where there is no special regulation for an industry, the general statutory minimum wage applies. Since 1 October 2022, general statutory minimum wage is EUR 12.00 (gross) per hour worked.
 - Depending on the industry Employers rendering services in Germany must grant additional mandatory remuneration elements in addition to the minimum wage to their employees working in Germany. For details see Customs online – Further remuneration components beyond the minimum wage – Remuneration elements in addition to the minimum wage (zoll.de).
 - Employers must grant and comply with the regulations regarding length of holidays, holiday pay, vacation allowance. For details see Customs online – Minimum conditions of employment (zoll.de).
 - Employers (domiciled in Germany or abroad) who render services in the construction sector in Germany must register at and pay contributions to the holiday fund (“SOKA-BAU”). Contributions to SOKA-BAU are proportional contributions serving to secure holiday entitlements. They do not constitute social security contributions. Amount for blue collar workers: 15,2 % of the gross salary.



Social security considerations

German social security law – which includes health insurance, nursing care insurance, unemployment insurance and pension plans for employees – is mandatory for employers and employees. The contributions to health insurance, nursing care insurance, unemployment insurance and pension plans are generally divided equally between the employer and employee. There are some exceptions which will not be addressed here. The contributions are calculated based on the employee's gross remuneration. The employee's share is deducted from the gross remuneration and paid by the employer to the social security institution. The employer pays the employee's share in addition to the employee's remuneration. The contribution rate varies every year. The figures below refer to 2023. The basis for calculation – i.e. the employee's gross remuneration – is limited to a maximum which also varies annually. The maximum rates each month (payable 50 % by the employee and 50 % by the employer) for 2023 are:

Insurance	Percentage	Basis	Maximum contribution	Employer's costs
Pension	18,6 %	Gross remuneration, maximum EUR 7.100,00 gross/month	EUR 1.357,80	EUR 678,90
Unemployment	2,4 %	Gross remuneration, maximum EUR 7.100,00 gross/month	EUR 189,80	EUR 94,90
Health	14,6 % + X*	Gross remuneration, maximum EUR 4.873,50 gross/month	EUR 728,18	EUR 364,09
Nursing care	3,05 %	Gross remuneration, maximum EUR 4.873,50 gross/month	EUR 152,12	EUR 76,06
Total contribution			EUR 2.427,90	EUR 1.213,95

*14.6 % contribution rate financed on a parity basis + additional contribution rate of X %, also to be borne equally by employer and employee.



German Employee Protection

In German employment law, there are employee protection rights that are required by law and cannot be contractually changed to the disadvantage of the employee.

These include the following:

Leave

Under the German Federal Paid Leave Act (BUrlG), the employee has a right to at least 20 working days (for a five-day week) or 24 working days (for a six-day week) of paid leave.

Continued Payment of Remuneration in Case of Illness

If employees are prevented from working due to illness, they are entitled to continued payment of remuneration by the employer for up to six weeks. The limitation of six weeks means that the employee can request continued payment for the same illness for a total of six weeks. However, if they fall ill for various reasons during the course of a year, they must be paid remuneration for up to six weeks in each case.

Remuneration on Bank Holidays

If the working time is interrupted due to a bank holiday, the employer must still continue to pay the employee.

Working Time

In principle, the employees' daily working hours (Monday to Saturday) may not exceed eight hours. The daily working hours can be extended to up to ten hours as long as an average of eight hours per day is not exceeded over six calendar months. Employees may not generally be required to work on Sundays and public holidays – except in the situations permitted by law. After working six hours, a break of 30 minutes must be granted; after working nine hours, the break must be 45 minutes. There must be a rest period of eleven hours between two working days.

Maternity Protection and Parental Leave

Pregnant women benefit from special protection against dismissal and may only be dismissed during the pregnancy and up to four months after giving birth with the approval of a public authority. In the last six weeks prior to giving birth and up to eight weeks after giving birth, mothers may not be required to work, but still receive their full pay during this time. The child's mother and father both have a right to parental leave

until the child reaches age three. However, up to 24 months can also be taken between the child's third and eighth birthdays. State parental allowances are available – depending on the specific case – for a duration of twelve to 24 months. Many parents in Germany therefore take advantage of this option. The employment relationship is suspended during parental leave, meaning the employee does not work and the employer does not pay remuneration. When the parental leave period ends, the employee must be allocated a job which corresponds to their previous position. The job is therefore retained during parental leave. During parental leave, the employment relationship may only be terminated subject to particular conditions with the consent of a public authority.

Post-Contractual Prohibition on Competition

If an employee is prohibited from engaging in competition after the employment relationship has been terminated, a compensation payment of at least 50 % of the contractual remuneration for the duration of the non-competition period must be made at the same time. Otherwise, the prohibition on competition is invalid.

Protection against Discrimination

The German General Act on Equal Treatment (AGG) was created to implement various European directives aimed at protecting against discrimination. The act contains provisions on the corresponding rights and obligations of employers and employees. The German General Act on Equal Treatment (AGG) prohibits discrimination on the following grounds: race or ethnic origin • gender • religion or world view • disability • age • sexual identity.

Temporary Agency Workers

Temporary workers must be provided by a licenced temporary work agency; such licences are issued by the German Federal Employment Agency (Bundesagentur für Arbeit). As a rule, it is not permissible to provide temporary workers to construction firms. There are certain cases stipulated by the German Temporary Employment Act (AÜG) in which the temporary work agency does not need a licence, e.g. when staff are provided within companies belonging to a single group.

The maximum period for an individual employee to be provided as a temporary worker to the hiring company is 18 months. Collective bargaining agreements for the sector in which the temporary worker is employed or works agreements based on such a collective bargaining agreement may provide for longer or shorter periods.



In principle, temporary workers are entitled to equal treatment and equal pay from the first day of employment in the hiring company. This means that they are entitled to the essential working conditions, including remuneration, which apply to the hirer's employees in a similar position at the hiring company. However, this entitlement may be waived for nine months if the collective bargaining agreements for temporary workers apply to the employment relationship. This may be the case if the temporary worker and their employer are both bound by a collective agreement or if the employment contract refers to the collective agreements for temporary employment. As of the ninth month of temporary agency work, the temporary work agency is required to ensure the essential working conditions, including remuneration, which apply to the hiring company's employees in similar positions. It is only possible to deviate from this principle for a total period of up to 15 months if there are collective bargaining agreements on sector allowance (Branchenzuschlagstarifverträge) in place to this effect.

If the temporary work agency does not have a licence, the law assumes that there is an employment relationship between the hiring company and the temporary worker (thus that the worker has the status of an employee), with all the associated consequences (e.g. protection against unfair dismissal, risk of considerable back payments under tax law and social security law).

Violations of the rules set out in the German Temporary Employment Act (AÜG) are punishable as administrative offences. Fines between EUR 1,000.00 and up to EUR 500,000.00 can be imposed.

Termination of employment / Protection Against Unfair Dismissal

If the employer wishes to dismiss an employee under German law, there are a number of restrictions.

Form of Dismissal Notice

The dismissal must be in writing. That means the employee must receive a duly signed original ("wet ink") copy of the dismissal notice.

Notice Period

If the employer wishes to terminate the employment relationship, they must generally comply with mandatory minimum notice periods, which are staggered according to the length of the employee's service (termination with notice). The employment relationship can only be dissolved with immediate effect in the event of good cause which justifies termination without notice – which is very rare. The statutory notice periods are staggered as follows:

- Service of up to two years four weeks to the fifteenth or to the end of a calendar month
- Service of two years one month to the end of a calendar month
- Service of five years two months to the end of a calendar month
- Service of eight years three months to the end of a calendar month
- Service of ten years four months to the end of a calendar month
- Service of twelve years five months to the end of a calendar month
- Service of 15 years six months to the end of a calendar month
- Service of 20 years seven months to the end of a calendar month

Unless otherwise agreed (e.g. in the employment contract), the employee can always terminate the employment relationship with four weeks' notice to the 15th or end of a calendar month.

However, within the first six months of an employment relationship, a probation period can be agreed on during which the termination period can be reduced to two weeks.

Grounds for Termination

If an employment relationship lasts longer than six months and more than ten employees are regularly employed in the establishment, termination by the employer is only valid if there are grounds for the termination relating to the person, conduct, or business. In the event of a dispute, the courts determine whether such grounds for termination exist. Except in clear cases (closure of business, a crime committed by an employee, etc.), there is always a risk that a court will not accept the grounds for termination indicated. This is why many employees bring an action before the labour court after receiving notice of termination. Based on the associated risk, 90 % of such legal disputes end in a settlement, whereby the employer agrees to make a severance payment. However, there is no entitlement to such severance payment. If the employee prevails with their action, the termination is regarded as invalid and the employee may return to their job. The German Act Against Unfair Dismissal (KSchG) is



mandatory and cannot be circumvented by contractual clauses. The only cases where it doesn't apply is if the company does not have more than ten employees or if the employee is dismissed during the first six months of the employment relationship.

Special Protection Against Dismissal

Here are special regulations for protection against dismissal for specific groups of employees, e. g. for pregnant women, severely disabled persons, members of the works council, etc. These employees can only be dismissed in exceptional cases, and in some cases the consent of a public authority is required.

Hearing of the Works Council

If the establishment has a works council, it must be heard before each dismissal. If notice of dismissal is issued without hearing the works council, it is invalid. The consent of the works council is not required, but it is necessary to adhere to a formal procedure for a works council hearing in this respect. All these employee protection laws are mandatory and cannot be circumvented by contractual clauses.

Collective rights / bargaining

Works Council / Codetermination

Works councils are quite common in Germany. In 2020, 42 % of employees in western Germany were working in companies with works councils, and 35 % in eastern Germany.

Employees in a company with at least five employees are generally entitled to elect a works council. The number of works council members depends on the number of employees entitled to vote in such elections.

Under German law, the rights of the works council can be divided into different groups:

- Right to be informed
- Right to be heard
- Codetermination right
- Approval rights

The German Works Constitution Act (BetrVG) requires both employers and works councils to work together.

The general tasks of works councils are listed in the German Works Constitution Act (BetrVG) and can be classified as supervisory tasks, e.g. compliance with laws, the right to make proposals and other general tasks, such as enforcing equal treatment of men and women.

Under the German Works Constitution Act (BetrVG), the most important rights of the works council are:

- Codetermination right
- Right to be informed and to be heard with regard to occupational and corporate environmental protection
- Right to be informed and to be heard with regard to personnel planning
- Approval requirements for individual measures against individual employees, e.g. employment or transfer
- Right to be heard with regard to dismissals
- Right to be informed and to be heard with regard to operational changes, e.g. to be heard with regard to a reconciliation of interests
- Conclusion of works agreements, e.g. for mobile work or for the introduction of certain IT systems

Unions and Employers' Associations

Trade unions are committed to asserting workers' interests in dealings with employers and in politics. For example, they negotiate collective bargaining agreements and dispute with employers' associations to obtain better working conditions such as higher wages, shorter working hours or more holidays.

They sometimes call strikes to press their demands. But there is a limited scope of purposes of a legitimate industrial action. In Germany strikes do not take place as frequently as in many other countries, e.g. France. Workers who take part cannot be held accountable for not fulfilling their contractual obligations. However, they cannot claim remuneration during the strike. The financial loss is cushioned if they belong to a trade union. The union pays them strike pay during the work stoppage.

A trade union's tasks also include advising workers on labour law issues. Employers pursue their own interests in "employers' associations". These associations provide information and support structures for member companies. Umbrella organisations of employers' associations can also conclude collective agreements on behalf of their affiliated associations if they have a corresponding power of attorney.

Annex 4: Incentivisation for Key Employees

Type	Detail	Considerations
Real Shares	<p>If a German tech business / start-up offers real shares to key employees, this usually occurs in connection with its incorporation or in very early stages, when its valuation is still low. The issuance and/or sale of real shares to key employees requires notarization which triggers considerable costs and legal fees. Real shares are typically subject to vesting provisions, related call options in favour of the tech business / start-up and/or its other shareholders in case the key employee leaves the tech business / start-up as well as lock-up provisions which restrict the ability to transfer shares. Key employees which hold real shares in a tech business / start-up hold certain indispensable (minority) shareholder rights. When real shares are granted for free or at a discount on the tech business / start-up's valuation, the difference between the consideration paid for the real shares and their actual share value is subject to income tax. Such income tax is generally payable at the time of the acquisition of real shares (dry income taxation), however key employees may opt for a tax deferral for up to twelve years under certain conditions. Dry income taxation can further be avoided by contractually implementing a valuation hurdle which restricts the key employee's economic participation derived from the real shares up to an amount which equals the discount granted (similar to growth/hurdle shares in other jurisdictions, however there are no regulatory schemes for growth or hurdle shares in Germany). This typically requires a valuation report by an auditor and triggers additional costs. When real shares are sold by the key employee (usually in an exit transaction), proceeds are subject to capital gains tax (which is favourable compared to income tax).</p>	<ul style="list-style-type: none"> — High cost/legal fees — Grants minority shareholder rights to beneficiaries — Potentially higher incentivisation of international employees due to expectations from incentivisation forms under other jurisdictions — Exit proceeds from a sale of real shares are subject to favourable capital gains tax

Type	Detail	Considerations
Share Options	<p>Instead of a direct participation, the tech business / start-up could offer their employees only options to acquire shares in the company at a later time or after certain conditions are met. Such participation is often structured by means of an Employee Share Option Plan (ESOP). This plan usually specifies the terms and conditions under which the employee receives the stock options, when the options can be exercised and at what share price. Often, the ESOP is structured as a long-term participation program in which the employee repeatedly receives stock options over time and is thus incentivized to stay with the company. However, the ESOP can be structured in a variety of ways to fit the company's needs, always in accordance with statutory regulations. Share options are typically secured by an authorized capital or a voting agreement with the shareholders which provide for high cost/legal fees for the implementation of a related program.</p> <p>From a tax point of view the mere option to acquire shares is no taxable income in Germany. However, when the option is exercised, the difference between the value of the shares and the price paid for these shares will be taxed with the personal income tax rate of the employee.</p>	<ul style="list-style-type: none"> — High cost/legal fees — Grants minority shareholder rights to beneficiaries — Potentially higher incentivisation of international employees due to expectations from incentivisation forms under other jurisdictions — Exit proceeds from a sale of real shares are subject to favourable capital gains tax — Difference between the value of the shares and the price paid at the exercise of the share option will be taxed with unfavourable income tax



Type	Detail	Considerations
Virtual Stock Options	<p>Instead of a real participation, tech business / start-up may grant to their employees virtual shares. Virtual shares do not lead to a direct participation in the share capital of a tech business / start-up but merely simulate the economic benefit of shares, without actually providing them, and grant beneficiaries payment claims with regards to the proceeds of an exit transaction. This virtual participation is often structured by means of a Virtual Stock Option Plan (VSOP), which specifies the terms and conditions under which the virtual shares are granted (in particular vesting provisions including good and bad leaver provisions as well as the parameters for calculating the beneficiary's payment claim in the event of an exit transaction). Certain terms and conditions of the virtual shares, such as the strike price for the exercise of the virtual shares by the beneficiary and the vesting period are typically individualized in a grant letter for the individual beneficiary. The cost of/legal fees for the implementation of a virtual stock option program are low compared to the issuance of real shares.</p> <p>From a tax point of view payments received from the exercise of virtual shares are only taxed at the time the employee actually receives the payments and therefore prevents a dry income taxation. However, payments received from the exercise of virtual shares are subject to unfavourable income tax.</p>	<ul style="list-style-type: none"> — Low cost/legal fees — No dry income taxation — Unfavourable income taxation of payments received in the event of an exit

Please note that due to ongoing legislation (so called "Zukunftsförderungsgesetz") there might be positive changes regarding the tax laws governing the participation in start-ups.

Annex 5: Funding Programmes

While the first table below lists some examples of national funding programs the second table list some examples of funding programs on the federal state level.

Examples of National Funding Programs

Name of the program	Type of funding	Scope	Special requirements
ERP-Gründerkredit – StartGeld (ERP Start-up Loan)	Credit	<ul style="list-style-type: none"> — The “ERP Start-up Loan – StartGeld” supports small-volume start-ups with debt financing requirements of a maximum of EUR 100,000. — The “ERP Start-up Loan – Universell” is aimed at larger start-up projects with a maximum loan amount of EUR 25 million. 	
Förderung von Unternehmensberatungen für KMU (Promotion of business consulting for SME)	Subsidy for start-up consultation	<ul style="list-style-type: none"> — Financial subsidies for the costs of a business start-up consultation. — The amount of the grant depends on the region and can be either 50 % of the consulting costs (up to EUR 1,750) or 80 % (up to EUR 2,800). — Companies can receive funding for two consultations per year. 	<ul style="list-style-type: none"> — The specific requirements depend on the region in which the company is located.



Examples of Federal State Funding Programs

State	Name of the program	Type of funding	Scope	Special requirements
Baden-Württemberg	EXI-Gründungsgutscheine (EXI Start-up Vouchers)	Subsidy for start-up consultation	<ul style="list-style-type: none"> — Offers support to independent and commercial start-ups for subsidized start-up consulting. — Up to 80 % of the consulting costs are covered. 	No application submission necessary. Instead, you can directly approach the contact persons at the providers and their cooperation partners. These can be found on the EXI start-up vouchers website.
	Innovationsgutschein B Hightech (Innovation Voucher B Hightech)	Grant	<p>The grant is up to EUR 20,000 and covers up to a maximum of 50 % of the expenses charged to the company.</p> <p>Eligible expenses are costs of external research and development facilities. In addition, material costs incurred as part of in-house development services, e.g. prototype construction, are eligible. In this case, a cost estimate (type and scope of material costs) must be provided when submitting the application.</p>	<ul style="list-style-type: none"> — Funding is provided exclusively for projects in the following fields: — Digitalization, — Sustainable mobility, — Bio-, MedTech and Pharma <p>and</p> <ul style="list-style-type: none"> — Environmental technology — The Foundation was less than five years ago but must have formally taken place by the time the grant is settled. — Evidence of at least EUR 40,000 (net) in eligible expenses.



State	Name of the program	Type of funding	Scope	Special requirements
Bavaria	Vorgründungscoaching (Pre-foundation coaching)	Subsidy for start-up consultation	Up to 70 % of the consulting costs are covered.	
	Bayerisches Technologieförderungs-Programm (Bavarian Technology Promotion Program)	Loans and grants	<ul style="list-style-type: none"> — Low-interest loans for up to 100 % of eligible expenses — Grants up to a maximum of 70 % of eligible expenses 	<ul style="list-style-type: none"> — The project must focus on the development of technologically new or significantly improved products, production processes and knowledge-based services or focus on the application of new technologies in the company — The project must involve a significant technical and economic risk
	Bayerisches Programm zur Förderung technologieorientierter Unternehmensgründung (Bavarian program for the promotion of technology-oriented business start-ups)	Grants	<ul style="list-style-type: none"> — Grants are awarded at a funding rate of up to 45 % of the eligible costs (max. grant of up to EUR 150,000). — in the case of concept projects, a grant of up to 35 percent of the eligible costs, up to a maximum of EUR 26,000, can be obtained 	<ul style="list-style-type: none"> — High level innovation — The project must involve a significant technical and economic risk — Foundation not longer than 6 years ago — Less than 10 employees — Funding is provided for concept development and foundation as well as for the implementation of the development project up to the prototype.

State	Name of the program	Type of funding	Scope	Special requirements
Berlin	Regionale Lotsendienste (Regional services)	Subsidy for start-up consultation	No set funding rate, but in most cases, pre-foundation consulting is covered in full.	
	Mikrokredite, Gründungs- und Wachstumsdarlehen aus dem KMU-Fonds (Microloans, start-up and growth loans from the SME Fund)	Loans	<ul style="list-style-type: none"> — Direct loans up to a maximum of EUR 250,000 — Growth loans up to EUR 10 million — Syndicated loan (Konsortialkredit) up to EUR 25,000 	
Hesse	xistenzgründungsberatung, Unternehmensberatung, Coaching und Check-Ups (Business start-up consulting, management consulting, coaching and check-ups)	Subsidy for start-up consultation	<ul style="list-style-type: none"> — Up to 60 % of the consulting costs can be covered, in individual cases up to 75 %. 	
	Innovationsförderung – innovative unternehmensneugründungen (Innovation promotion – innovative business start-ups)	Grants and open or silent participations	<ul style="list-style-type: none"> — The founding includes expenses for further technical development, property rights, rents, personnel, marketing, investments and more — In the case of high-technology-based start-ups in special facilities, it is possible to receive a grant of up to 50 % of the expenses for a maximum of 2 years — The participation can be up to EUR 800,000, while a higher amount of up to EUR 1.2 million is possible when the company is located in special funding regions 	<ul style="list-style-type: none"> — Small innovative commercial companies — If your company is a high-technology-based company, the thematic-technological support by the founding institution must be ensured during the funding period.

State	Name of the program	Type of funding	Scope	Special requirements
North Rhine-Westphalia	Beratungsprogramm Wirtschaft NRW (NRW Business Consulting Program)	Subsidy for start-up consultation	<ul style="list-style-type: none"> — The subsidy amounts to 50 % of a per day rate, up to a maximum of EUR 400 per day rate. — Under certain conditions, the subsidy can be increased to 80 % for certain target groups like university graduates. — In the case of circle consultations, up to 90 % of the daily rate can be subsidized, up to a maximum of EUR 720. 	
	Gründungsstipendium NRW (Start-up scholarship NRW)	Funding and consultation	<ul style="list-style-type: none"> — EUR 1,000 per month and person for a maximum of one year. — In addition to the funding, the scholarship holders have access to a network and thus also to coaches. These advise the founders individually. 	<ul style="list-style-type: none"> — Prospective founders and teams of up to three people — It is required that the applicant either intends to become self-employed with a business in NRW within the next twelve months or that the business has already been founded within the past twelve months

Annex 6: Financing options in Germany

Form	Detail	Considerations
Equity financing	<p>The classic form of start up investment is the equity financing. Companies at different stages may also receive an equity financing but may have better options such as debt financing (especially at later stages when the company has assets which could serve as sufficient debt security).The shareholders of a company will resolve on a share capital increase and issue new preference shares to investors against payment of nominal amounts per newly issued share (commonly EUR 1.00 per share) and additional payments into the capital reserves of the companybased on the company's valuation. The company, its founding shareholders, other existing shareholders, management and investors will typically enter into an investment and shareholders' agreement (including, in particular, provisions on investor's proceeds and liquidation preferences, investor down round protection, drag- and tag-along rights and founder vesting) which, along with the share capital increase and the necessary amendment of the company'sarticles of association, require notarization by a German notary public, registration of the share capital increase with the commercial register and may entail significant cost/legal fees (often times, depending on the size of the financing round, related cost/legal fees in connection with Seed financing rounds will range between EUR 20,000 and EUR 50,000).</p>	<ul style="list-style-type: none"> — Typically high cost/legal fees — Complex implementation process — Typically demanded by investors in larger financing rounds



Form	Detail	Considerations
Convertible loan	<p>As an alternative to the conclusion of an equity financing round, investors often grant loans to a start-up or growing company which (including any accrued interest) are convertible into preferred shares of the most senior class of shares (i.e., including the proceeds and liquidation preference, investor down round protection etc.) issued in a future financing round and/or existing immediately prior to an exit and/or upon maturity of the loan. Investors typically receive a discount on their conversion share price which is the basis for determining the number of shares issued to the investor/lender in a conversion event. In order for the company to benefit from the convertible loan from an insolvency perspective, the investor/lender will typically enter into a qualified subordination agreement with regards to the claims of other creditors. A valuation of the company is not required for the conclusion of the convertible loan agreement and, as the share capital increase under which conversion shares are issued to the investor/lender will only occur at the time of a future conversion event, no amendment of the constitutional documents of the company is required and no investment and shareholders' agreement is required upon conclusion of the convertible loan agreement. This makes for a less complex and more cost effective implementation of a financing via convertible loans. Convertible loans are frequently used as financing for start-ups in Germany and therefore provide for a high degree of standardisation.</p>	<ul style="list-style-type: none"> — Lower cost/fees compared to equity financings — Less complex implementation process compared to equity financings — Interest payable on the funds and pre-defined term — No valuation of the company required — High degree of standardisation — More likely to be used by a start-up as opposed to an established tech company.



Form	Detail	Considerations
Simple agreement for future equity (SAFE)	<p>The simple agreement for future equity (SAFE) is a form of equity financing typically used for early stage start-up financing in the US. First introduced by start-up accelerator Y Combinator, under the SAFE, investors provide equity funds to a start-up against the granting of subscription rights for preferred shares issued in a future financing round. While the SAFE is in some ways similar to convertible loans (no start-up valuation is required at the time of funding), there is no interest payable on the equity funds provided by the investor and it has no pre-defined term. For this, equity funds provided under a SAFE may be classified as equity position in the start-up's balance sheet. Whether a classification as equity is legitimate will depend on the individual terms of the SAFE (in particular, this will require a qualified subordination with regards to the claims of the investor behind other creditors). In the event of a future financing round, the investor under the SAFE is entitled to convert the equity funds provided to the start-up into preferred shares of such financing round. Besides the named subscription rights, investors under the SAFE will receive a proceeds and liquidation preference and often times a discount on the share price of the future financing round which is the basis for the conversion of the equity funds provided under the SAFE. As the shareholders of the start-up will have to enter as parties to the SAFE, compared to the convertible loan agreement, the SAFE does not provide for a less complex implementation process. For this, convertible loan agreements which have a high degree of standardisation in Germany will likely remain the preferred choice of financing form besides the classic equity financings. However, the number of clients demanding legal advice in connection with SAFEs is increasing in Germany.</p>	<ul style="list-style-type: none"> — Lower cost/fees compared to equity financings — Less complex implementation process compared to equity financings — No interest payable on the funds and no pre-defined term — No valuation of the start-up required — Potential balance sheet classification of funds as equity compared to funds provided under convertible loans which classify as debt — Not yet a standard in Germany, convertible loan agreements remain the main form of financing besides equity financings

Form	Detail	Considerations
Venture loan	<p>Venture loans are loans provided by banks and specialized funds to later stage tech businesses / start-ups which typically already have a sufficient cash flow to cover repayment amounts and interest which is typically high (often times between 10 and 15 % p.a.). Loan amounts under venture debt financings typically range between EUR 1 mill. and EUR 5 mill., lower amounts are rare as the related cost/legal fees are high. Venture debt lenders typically receive, in addition to their claims for repayment and interest, subscription rights for shares in future financing rounds, often times with a discount on the share price of the relevant future financing round. Venture debt lenders will demand covenants with regards to the operative business of the start-up as well as loan security (e.g. a pledge of bank accounts and IP rights and possibly a pledge of shares in the start-up's subsidiaries (if any)).</p>	<ul style="list-style-type: none"> — High cost/legal fees — High interest rates — Suitable for later stage tech businesses / start-ups with sufficient cash flow to cover repayment amounts and interest — Unlikely to be used by established companies as this method of funding is expensive — Lenders will demand loan security and operative covenants

Other than the above financing forms, start-ups and other tech businesses may rely on other forms of financings, such as silent partnerships or profit participation rights, which are used less frequently.

Annex 7: IP – protecting the value of your company

Trademark law

Trademark law	
Subject of protection	<p>The German Trademark Act (Markengesetz, MarkenG) contains regulations on the protection of trademarks, business designations and geographical origin data.</p> <ul style="list-style-type: none"> — Trademarks are all signs, designs or presentations which are capable of distinguishing the goods or services (products) of one company from those of other companies, Sec. 3 (1) MarkenG. — Business designations are understood to be company trademarks and work titles, Sec. 5 MarkenG. <ul style="list-style-type: none"> • Company trademarks are identifications of the company or a special business operation as well as business insignia. • Work titles are designations of printed matter, films, stage works, etc. — Geographical indications are designations of products which document their origin from specific places or regions, Sec. 126 et seq. MarkenG.
Owner	<p>Owners of protected signs can be:</p> <ul style="list-style-type: none"> — Natural persons — Legal entities (e.g. stock corporation (AG), limited liability company (GmbH), partnership limited by shares (KGaA)) — Partnerships (general partnership (OHG), limited partnership (KG), civil partnership (GbR))



Trademark law

Emergence of protection

Brands

Trademark protection generally arises through the registration of a sign as a trademark in the register kept by the German Patent and Trademark Office (DPMA), Sec. 4 no. 1 MarkenG. This requires an application to be filed with the DPMA.

The application can be filed either in paper form (the form and related instructions (each in German) are available on the [DPMA website](#)) or electronically [via DPMAdirektWeb](#).

- The DPMA then examines the protectability of the trademark. The requirements for this are set out in Sec. 8 MarkenG.
- The mark must be capable of being represented graphically, Sec. 8 (1) MarkenG.
- The trademark must have distinctive character, Sec. 8 (2) no. 1 MarkenG.
- The trademark may not be merely descriptive, i.e. it may not designate only certain product features, Sec. 8 (2) no. 2 MarkenG.
- The trademark may not consist of so-called generic designations, i.e. such signs/indications which have become customary to designate the product as such, Sec. 8 (2) no. 3 MarkenG.
- The trademark must not be capable of deceiving the public, for example, about the nature, quality or origin of the product, Sec. 8 (2) no. 4 MarkenG.
- Public interests and concerns may prevent registration under the conditions of Sec. 8 (2) no. 5 to no. 9 MarkenG as absolute grounds for refusal.

Without registration, a trademark may enjoy protection if it is used in the course of trade and has acquired a reputation within the relevant public, Sec. 4 no. 2 MarkenG.

Registration is also not required if the trademark is a well-known trademark, Sec. 4 no. 3 MarkenG. This includes all “world brands”, such as Coca-Cola.

Business designations and geographical origin data

The protection of business designations and geographical origin data arises solely from their use in business transactions.



Trademark law

Protective effects

Trademark protection means that the owner has an exclusive right to the sign. This protection is stipulated in Sec. 14 and 15 MarkenG. It entitles the owner to assert claims against the infringer in the event of infringement. The possible claims are outlined below:

Entitlement to deletion

When a trademark application is filed, the DPMA does not check whether it is compatible with earlier and already registered rights. Therefore, collisions may occur. Here, the principle applies that the older trademark takes precedence over the younger trademark. Deletion of the younger trademark may be considered in the following cases:

- **Protection of identity:** The younger trademark is identical to the older trademark and the products belonging to the trademarks are also identical, Sec. 9 (1) no. 1 MarkenG.
 - **Protection against confusion:** The younger mark and the older trademark are identical or similar, the products belonging to the trademarks are identical or similar and there is a likelihood of confusion, Sec. 9 (1) no. 2 MarkenG.
 - **Protection of reputation:** The trademarks are identical or similar, but not the associated products and the older trademark is known, and the younger trademark takes unfair advantage of this reputation and esteem (exploitation of reputation) or impairs it (dilution), Sec. 9 (3) MarkenG.
- **Enforcement:** Cancellation is generally requested by means of an action for cancellation. In the cases of Sec. 9 (1) no. 1 and no. 2 MarkenG, an opposition before the DPMA is sufficient.

Furthermore, the deletion of a younger trademark can be requested in case of collision with an older, non-registered trademark, business designation or other right (for example, right to a name, copyright, geographical origin data) under the conditions of Sec. 12 and 13 MarkenG.

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Trademark law

Protective effects (continued)

Right to injunctive relief

This claim becomes particularly important when conflicting signs are not registered. A claim for injunctive relief may be considered in the following cases:

- **Protection of identity:** Sec. 14 (2) no. 1, (5) MarkenG.
- **Protection against confusion:** Sec. 14 (2) no. 2, (5) MarkenG
- **Protection of reputation:** Sec. 14 (2) no. 3, (5) MarkenG

For business designations, the owner is entitled to injunctive relief under comparable conditions pursuant to Sec. 15 (2), (3), (4) MarkenG. The same applies to misleading, deceptive, reputation exploiting or diluting uses of geographical indications of source pursuant to Sec. 127, 128 (1) MarkenG.

Claim for damages

Claims for damages exist under the same conditions that apply to the claim for injunctive relief. In addition, the infringement must have been culpably committed. Either the actual damage incurred, the payment of an appropriate license fee or the surrender of the profit made by the infringer can then be demanded.

Right to information and destruction

In order to enforce claims for injunctive relief and damages, there are also claims for information and destruction (for example, with regard to illegally marked items).



Trademark law

Protection limitation

The claims just mentioned are subject to certain limitations, which are listed below by way of overview:

Limitation of time

The above-mentioned claims are generally subject to a limitation period of three years from the end of the year in which the claim arose and the claimant became aware of it or should have become aware of it without gross negligence.

Forfeiture

The claimant forfeits his claim if he tolerates the use of the sign conflicting with his own protected sign for five consecutive years while being aware of the use, Sec. 21 MarkenG.

Constancy of a younger trademark

The owner of an older trademark or business designation cannot assert claims against the owner of a registered younger trademark if he invokes reputation protection but his sign was not yet known at the time of registration of the later trademark, Sec. 22 (1) no. 1 MarkenG.

Likewise, the owner of a registered older trademark is not entitled to any claims against the owner of a registered younger trademark if his trademark could have been cancelled at the time of registration of the later trademark, Sec. 22 (1) no. 2 MarkenG.

Exhaustion

According to Sec. 24 MarkenG, the owner of a trademark or a business designation may in principle not prohibit a third party from using the sign in the German domestic market for such goods which have previously been put on the market by him (or with his consent) in the EU or the EEA (so-called exhaustion).

If, for example, a German producer of perfume places its product on the market in the EU and the perfume is purchased by a French distributor who resells it in France and Germany, he cannot prohibit the distributor from selling the perfume in Germany.

Lack of use

The owner may also not rely on the claims described above if the registered trademark has not been used within the last five years, Sec. 25 MarkenG.



Transfer of rights/ licensing

Trademark law

The trademark can be transferred by the owner to a third party. There are two possibilities for this: an unrestricted transfer of the trademark and a restricted transfer of the trademark (this is referred to as licency). The same applies to business designations. Geographical origin data, on the other hand, cannot be transferred.

Unrestricted trademark transfer

A trademark can be transferred to another person without restriction, Sec. 27 MarkenG. This is done by means of an assignment. It is also possible to make only a partial transfer.

License

With a license, the trademark owner grants another person the use of the trademark on the basis of a license agreement, Sec. 30 MarkenG. The license can be granted as a simple or exclusive right of use.

- In the case of a simple right of use, the licensee receives only a right of joint use. The trademark owner can therefore continue to use his trademark.
- In the case of an exclusive right of use, the licensee can use the trademark to the exclusion of all other persons, including the trademark owner.

Transfer of rights by general terms and conditions

In addition, it should be noted that the licensing can also be regulated by general terms and conditions for the purpose of the unification, standardization and simplification of the transfer of rights.



Trademark law

End of protection

Non-renewal

The protection of a registered trademark ends ten years after its application, Sec. 47 (1) MarkenG. However, it may be renewed at any time before expiry. Renewal is possible as often as desired.

Waiver

The owner of a trademark may at any time renounce the registration of the trademark, Sec. 48 (1) MarkenG.

Expiry and cancellation

Upon request, the trademark shall be cancelled if

- it is not used within five years after its registration (so-called revocation), Sec. 49 (1) MarkenG.
- it has become a generic designation, i.e. a common designation for the products concerned, Sec. 49 (2) no. 1 MarkenG.
- the owner has lost the capacity to exercise trademark rights, Sec. 49 (2) no. 3 MarkenG.

Invalidity

Pursuant to Sec. 50 MarkenG, the trademark shall be cancelled upon request due to invalidity if

- the sign was not a trademark at all within the meaning of Sec. 3 MarkenG when it was registered as a trademark,
- the owner was not capable of holding trademark rights within the meaning of Sec. 7 MarkenG at the time of registration,
- the trademark was registered despite the existence of an absolute ground for refusal, or
- the applicant was acting in bad faith when filing the application.

Fees for trademark protection rights

The DPMA charges fees for the steps and procedures to be taken at and by it. The most important types of fees are described below:

Registration fee	EUR 300
Application fee for electronic application	EUR 290
Renewal fee	EUR 750
Opposition proceedings basic amount for an opposition mark	EUR 250
Opposition proceedings fee for each additional opposition sign	EUR 50

A fee listing of the DPMA, which contains further details and types of fees, is available [here](#).



Trademark law

Forms

The DPMA provides forms on its website for, among other things, the trademark application or the request for registration of a trademark, the renewal, the opposition filing and the cancellation request. The forms can be found here (only available in German).

Patent law

Patent law

Subject of protection

The German Patent Act (Patentgesetz, PatG) regulates the protection of patents. Patents are granted for inventions which are new, based on an inventive step and industrially applicable, Sec. 1 (1) PatG.

— An invention initially presupposes a human, creative act and means that something is invented that has not been there before. There can be a connection with something that is already known. A distinction is made between two types of inventions:

- Invention of a product or subject matter (for example: machines, electronic circuits, chemical substances, pharmaceuticals)

→ **Product patent**

- Invention of a process (for example: Manufacturing process, working process, use of a product for a specific purpose)

→ **Process patent**

— An invention is new if it does not belong to the prior state of the art. Prior state of the art is deemed to be all knowledge which has been made available to the public before the filing date, Sec. 3 PatG.

— The criterion of inventive step means that the invention must not be obvious from the prior state of the art, Sec. 4 PatG.

— In principle, all inventions which can be produced or used in any industrial field are industrially applicable, Sec. 5 PatG.

Side note: Computer programs as such are not patentable. According to Sec. 1 (3) no. 3 PatG, programs for data processing equipment are not considered to be inventions within the meaning of patent law. A program for data processing is understood to be the unit of hardware and software components of a computer.

In contrast, individual ideas and principles underlying the program as such may be protected by patent law. Software may be patentable if it has a further technical function in addition to controlling the hardware, in particular if it has a direct technical effect. This is affirmed, for example, for application programs that process technical measurement results or monitor the operation of technical equipment.



Patent law

Owner

In principle, the right to the patent belongs to the inventor, Sec. 6 PatG.

Legal difficulties arise when employees make inventions within the scope of the employment relationship. This is where the Employee Inventions Act (ArbEG) comes into play. Based on the inventor principle, the employee as inventor is generally entitled to the rights to the invention. However, he is obliged to notify the employer of his invention, Sec. 5 ArbEG. The employer may claim the rights to the invention and transfer them to himself, Sec. 6, 7 ArbEG. In return, the employee is entitled to appropriate remuneration in addition to his wages, Sec. 9 ArbEG.

Emergence of protection

Patent protection comes into effect with the publication of the granted patent and the patent specification in the Patent Gazette, Sec. 58 (1), sent. 3, PatG.

Application for the grant of a patent

The first step is to file an application for the grant of a patent at the German Patent and Trademark Office (DPMA), Sec. 34 PatG. The request must be in German. If the request is filed in English or French, a German translation must be filed subsequently within twelve months.

The application can be filed in paper form or electronically. For an electronic application, however, the DPMAdirektPro software is required as well as a signature card with an appropriate card reader.

The DPMA provides on its website (in German language) a form for the application as well as leaflets for it. Due to the complexity of the application, it is generally recommended to seek advice from a patent attorney. Legal advice is mandatory if the applicant is not domiciled in Germany.

Request for examination

The request for grant of a patent does not yet lead to the DPMA examining the application for novelty and inventive step. A separate request for examination is required for this purpose, Sec. 44 PatG. This request must be filed within seven years of the patent application but may also be combined with the request for grant of the patent.

Advanced research

Before the above applications are filed with the DPMA, a preliminary search may be commissioned at the DPMA with the aim of obtaining an impression of the patentability, Sec. 43 PatG.

Publication of the patent

Provided that the patent has been granted by the DPMA, it is subsequently published in the Patent Gazette.



Patent law

Protective effects

The patent grants the patentee the exclusive right to use the patented invention, Sec. 9 sent. 1 PatG.

- The effect of a product patent is that it is forbidden for any third party, without the consent of the patent owner, to place on the market, to use, to either import or to use for the aforementioned purposes a product which is the subject matter of this patent, Sec. 9 sent. 2 no. 1 PatG.
- The consequence of a process patent is that it is forbidden for any third party, without the consent of the patent owner, to apply or, if the third party knows or it is obvious from the circumstances that the application of the process is forbidden without the consent of the patent proprietor, to offer it for application, Sec. 9 sent. 2 no. 2 PatG.
- A further consequence of a process patent is that it is forbidden for any third party, without the consent of the patent owner, to offer, put on the market or use the product directly produced by a process which is the subject matter of the patent and either to import or possess it for the aforementioned purposes, Sec. 9 sent. 2 no. 3 PatG.
- Indirect use is also prohibited. This means that the patent results in the prohibition of any third party from offering or supplying means relating to an essential element of the invention for the use of the invention to persons other than those entitled to use the patented invention, without the consent of the patent owner, if the third party knows or it is obvious from the circumstances that these means are suitable and intended to be used for the use of the invention, Sec. 10 (1) PatG. The situation is different if the means are products generally available in commerce, Sec. 10 (2) PatG.

If a third party infringes the patent, the patent owner is entitled to claims against them. The most important of these are briefly described below:

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Patent law

Protective effects

(continued)

Right to injunctive relief

The patent owner is entitled to injunctive relief against anyone who uses a patented invention in contravention of Sec. 9 to 13 PatG, Sec. 139 (1) PatG. It is sufficient if a patent infringement is imminent (so-called risk of first infringement). If a patent infringement has already occurred, a risk of repetition must be assumed.

Claim for damages

If the third party infringes the patent intentionally or negligently, the patent owner is entitled to compensation for the resulting damage, Sec. 139 (2) PatG. With regard to fault, it is generally assumed that a company must inform itself comprehensively about the property right situation, irrespective of whether the manufacture and/or distribution of products is involved.

By means of the claim for damages, the compensation for the actual damage incurred, the payment of an appropriate license fee or the surrender of the profit made by the infringer can be demanded.

Claim for compensation for inventions filed

From the date of disclosure of the patent application (Sec. 32 (5) PatG), the applicant may claim compensation from the person who has used the subject-matter of the application, although he knew or should have known that the invention used by him was the subject-matter of the application, Sec. 33 (1) PatG.

Right to information

In order to enforce claims for injunctive relief and damages, there is a right to information about the origin and distribution channel of the product used, Sec. 140b (1) PatG.

In addition, there is a claim for submitting of accounts, which serves to enable the quantification of a claim for damages, Sec. 140d PatG.

Claim for destruction, recall and removal

If a claim under Sec. 139 PatG is to be affirmed, the patent owner may also demand the destruction of products which are the subject of the patent infringement under Sec. 140a PatG. Furthermore, there is a claim to recall the products already put on the market by the infringer but still in the downstream distribution chain or to remove them permanently from the market, Sec. 130a (3) PatG.



Restrictions on patent protection

Patent law

The claims just mentioned are subject to certain limitations, which are listed below by way of overview and are not exhaustive:

Non-commercial acts of use

The patent does not protect against acts performed in the private sphere for non-commercial purposes, Sec. 11 no. 1 PatG.

Testing privilege

The patent shall also not preclude acts relating to the subject matter of the patented invention for experimental purposes, Sec. 11 no. 2 PatG.

Compulsory license

If the permission of use of the patented invention by a third party is required in the public interest, the third party has the possibility to demand the use from the patent owner, Sec. 24 (1) PatG.

Right of first use

The effect of the patent does not apply to a person who, at the time of the application, has already made commercial use of the invention in Germany or has taken the necessary steps to do so, Sec. 12 PatG. The invention may then be used by the third party for the needs of his own business in his own or a third party's workshops.

Dependent patent

A dependent patent exists if the subject matter of a patent application makes use of the subject matter of an earlier patent application or patent. This is particularly the case with improvement inventions. Although these are based on the old prior state of the art, their effect no longer extends to this, but only to the new prior state of the art. At the same time, the owner of the more recent patent requires the consent of the owner of the older patent for the use of his invention. Under the conditions of Sec. 24 (2) PatG, a compulsory license is also possible under certain circumstances.

Exhaustion

The patent owner may not oppose patent protection to third parties who perform acts of use in Germany if he has placed the patented counterpart on the market in the EU or EEA himself or through a third party with his express consent (so-called exhaustion).

If, for example, a manufacturer has placed a drug protected by a patent in Germany on the market in the EU or EEA, it cannot further control the further use and distribution of this drug in Germany. In this respect, patent law only allows him to control the first sale.

Limitation of time

Claims for patent infringement are generally subject to a limitation period of three years from the end of the year in which the claim arose and the claimant became aware of it or should have become aware of it without gross negligence.



Patent law

Transfer of rights/ licensing

The patent owner may grant a third party the right to use the patent, Sec. 15 (2) PatG. A distinction must be made here between patent licenses and know-how licenses.

- With a patent license, the third party is granted a positive right to use the patent.
- With a know-how license, secret technologies are disclosed to the licensee. As a consequence, these are characterized by secrecy obligations, transfer of the know-how and instruction of the licensee. Since with a patent the content is known as a result of publication, this is not necessary with a patent license. Nevertheless, patent and know-how licenses can also be combined.

Furthermore, a differentiation must be made as to which rights are transferred to the licensee. In this respect, a distinction must be made between simple and exclusive licenses.

- In the case of a simple license, the patent owner is still entitled to use the patent alongside the licensee.
- In the case of an exclusive license, the licensee alone has the right to use the patent.

Lastly, a distinction must be made between the types of use granted with the license:

- use license,
- pure manufacturing license,
- pure distribution license and
- manufacturing and distribution licenses.

In addition, it should be noted that the transfer of licenses can also be regulated by general terms and conditions for the purpose of the unification, standardization and simplification of the licensing process.



Patent law

End of patent protection

Maximum protection duration

According to the law, a patent is protected for a maximum period of twenty years, starting from the day following the filing of the application for the invention, Sec. 16 PatG.

Waiver

The owner of a patent may surrender the patent at any time by written declaration to the DPMA, Sec. 20 (1) no. 1 PatG.

No payment of the annual fee

From the third year onwards, the maintenance of patent protection is linked to the payment of a steadily increasing renewal fee (for the costs, see below), Sec. 17 PatG. Thus, the patent expires if the renewal fee is not paid or not paid in due time, Sec. 20 (1) no. 2 PatG.

Revocation

Under the conditions of Sec. 21 PatG, a granted patent may be revoked. The revocation can be asserted either in opposition proceedings (Sec. 59 et seq. PatG) or in nullity proceedings before a court (Sec. 81 PatG). The grounds for revocation are summarized below:

- The subject-matter of the patent was not patentable under Sec. 1 to 5 PatG, Sec. 21 (1) no. 1 PatG.
- The invention is not disclosed in such a clear and complete manner as to enable a person skilled in the art to carry it out, Sec. 21 (1), (2) PatG.
- The essential content of a patent has been taken from the descriptions, drawings, models, apparatus or equipment of another without his consent, Sec. 21 (1) no. 3 PatG.
- The subject-matter of the patent goes beyond the content of the application in which it was originally filed. No patent protection can apply to the part added later, Sec. 21 (1) no. 4 PatG.



Patent law

Costs

Registration fee

Electronic registration with up to 10 claims	EUR 40
<i>– Increase for each further patent claim by</i>	EUR 20
Registration in paper form with up to 10 claims	EUR 60
<i>– Increase for each further patent claim by</i>	EUR 30
Advance search without examination	EUR 300
Examination procedure after early search	EUR 150
Examination procedure without preliminary search	EUR 350

Annual fee

Increasing renewal fees are charged to maintain a patent or application:

for the 3rd patent year	EUR 70
for the 4th patent year	EUR 70
for the 5th patent year	EUR 100
for the 6th patent year	EUR 150
for the 7th patent year	EUR 210
for the 8th patent year	EUR 280
for the 9th patent year	EUR 350
for the 10th patent year	EUR 430
for the 11th patent year	EUR 540
for the 12th patent year	EUR 680
for the 13th patent year	EUR 830
for the 14th patent year	EUR 980
for the 15th patent year	EUR 1.130
for the 16th patent year	EUR 1.310
for the 17th patent year	EUR 1.490
for the 18th patent year	EUR 1.670
for the 19th patent year	EUR 1.840
for the 20th patent year	EUR 2.030



Patent law

Forms

On its website, the DPMA provides forms for patent applications, among other things, as well as information sheets. These can be found here; please note that the documents are only available in German.

Copyright

Copyright

Subject of protection

The German Copyright Act (Urhebergesetz, UrhG) contains regulations for the protection of the author of works on the one hand and for the protection of so-called performance rights on the other.

Copyright

An exemplary list of protected works is contained in Sec. 2 (1) UrhG:

- Written works (e.g. books, articles in journals)
- Speech works (e.g. speeches)
- Computer programs
- Works of music,
- pantomime works, works of dance art
- Works of fine arts and building arts (e.g. architecture)
- Photographic works
- Film works
- Representations of a scientific and technical nature (including drawings, plans, maps, sketches, tables)

However, this list is not exhaustive, so that other types of works may also fall under copyright protection, such as websites.

For copyright protection, the following conditions must always be met in any case:

- It must be a personal intellectual creation, Sec. 2 (2) UrhG.
- The creation must meet a level of originality – in other words: simple everyday creations are not protected.
- The work must be embodied/perceptible/realized.

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Copyright

Subject of protection (continued)

Performance protection rights

Performance protection rights are characterized by the fact that the products protected by them have no or a lower creative quality and are therefore not regarded as works within the meaning of copyright law, but they are nevertheless entitled to copyright protection. Differences to the copyrights arise in particular with regard to the duration of protection. The law provides for the following performance protection rights:

- Protection of scientific editions, Sec. 70 UrhG
- Protection of left-behind works, Sec. 71 UrhG
- Protection of photographs, Sec. 72 UrhG
- Protection of the Performing Artist and the Theater and Concert Organizer, Sec. 73 et seq. UrhG
- Protection of the producer of sound carriers, Sec. 85, 86 UrhG
- Protection of the broadcasting organization, Sec. 87 UrhG
- Protection of the database producer, Sec. 87a et seq. UrhG
- Protection of the press publisher, Sec. 87f UrhG

Side note: Software

Software is protected as a computer program (Sec. 2 (1) no. 1 UrhG). Protection extends from the design of the software, through its development, to its completion.

Protected can be for example:

- Application software
- System software
- Individual and standard software
- The object and source code
- The data flow and program flow chart
- Program modules

Not protected are however for example:

- The idea behind the software
- Algorithms
- The programming language
- Development and programming methods



Copyright

Owner

Copyright

The copyright belongs to the author of the work. If several persons have created a work jointly, this is referred to as co-authorship.

This also applies in principle in the employment relationship and in the case of commissioned works. Thus, if the employee creates a work in the course of his work, he is the author. Separately from this, it must be clarified whether and to what extent the employer is entitled to use the created work.

a) Usage agreement

The employer's right of use may result from an expressly concluded agreement on use. The law provides that uses may be granted, see below. However, care should be taken to ensure that the type and scope of use is clearly described (see also below) in order to avoid ambiguities and any subsequent disputes.

b) Intervention of special legal regulations

On the other hand, the employer's right of use may also follow from the employment contract itself, Sec. 43 UrhG. This is the case under the following conditions:

- There is an employment relationship.
- The work was created within the scope of the employment relationship.
- The work was created in fulfillment of an obligation arising from the employment relationship.

However, on the basis of Sec. 43 UrhG, the employer then acquires the rights of use only to the extent that they are required for business purposes. If more extensive use is intended, it is advisable to conclude corresponding usage agreements.

Note: Sec. 69b UrhG represents a special rule to Sec. 43 UrhG. According to this, the employer acquires all proprietary rights to the software based on the employee's programming services, unless there is a deviating contractual provision.

Performance right

Owner of the performance rights are:

- The author of the scientific editions, Sec. 70 (2) UrhG
- The publisher of the left-behind work, Sec. 71 UrhG
- The photographer of the photograph, Sec. 72 (2) UrhG
- The performing artist or the organizer of the theater and concert, Sec. 73 et seq. UrhG
- The producer of a sound carrier, Sec. 85, 86 UrhG
- The broadcasting organization, Sec. 87 UrhG
- The database producer, Sec. 87a et seq. UrhG
- The press publisher, Sec. 87f UrhG



Copyright

Emergence of protection

Copyright protection arises with the act of creation, i.e. with the creation of the work. An application or registration is not required. A copyright register does not exist. Also, the work does not have to be published for copyright protection.

Protective effects

With regard to the protective effects, a decisive distinction must be made between so-called moral rights of the author and rights of use/utilization:

Moral rights of the author

The moral right is inseparably linked to the person of the author and cannot be transferred to third parties, Sec. 29 (1) UrhG. It includes in particular:

- Right of first publication, Sec. 12 UrhG
- Right to recognition of authorship, Sec. 13 UrhG
- right to determine the author's name (real name, pseudonym, anonymous), Sec. 13 UrhG
- Right to prohibit distortion of the work, Sec. 14 UrhG

Rights of use and utilization

In addition, the author is entitled to a variety of exclusive rights with respect to the utilization of his work. These rights can be transferred to other persons by means of license agreements. The author is entitled to the following use/utilization rights:

- Reproduction right, Sec. 16 UrhG
- Right of distribution, Sec. 17 UrhG
- Exhibition right, Sec. 18 UrhG
- Lecture, performance and broadcasting rights, Sec. 19 UrhG
- Right to make the work available to the public, Sec. 19a UrhG
- Right of reproduction by image and sound carriers, Sec. 21 UrhG
- Right of reproduction of radio broadcasts and making available to the public, Sec. 22 UrhG

If these copyrights are infringed, the author is entitled to the following rights:

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Copyright

Protective effects (continued)

Right to injunctive relief

The right to injunctive relief can be used to prevent future infringements, Sec. 97 UrhG. In this respect, it presupposes a risk of repetition, which is presumed if an infringement has already occurred.

Claim for damages

If the infringement was committed intentionally or negligently, the infringed party is entitled to claim damages, Sec. 97 UrhG. Hereby, he can either demand compensation for the actual damage incurred, the payment of an appropriate license fee or the surrender of the profit made by the infringer.

It should be noted that in the case of infringement of personal rights of the author, monetary compensation can only be claimed in the event of a serious and sustained infringement and if the infringer is substantially at fault.

Right to information

In order to prepare his claims, the injured party shall have a right to information

- on the origin and the distribution channel of the infringing copies, Sec. 101 UrhG.
- directed to the submitting of a document or inspection of an object, Sec. 101a UrhG.
- directed to the submitting of banking, financial and commercial documents, Sec. 101b UrhG.

Claim for destruction and recall

The infringed party is entitled to demand the destruction of the unlawfully produced copies, Sec. 98 UrhG. The infringed party may also demand the recall of the unlawfully produced and distributed copies by the infringer. The infringer may avert the claims for destruction and recall by paying reasonable compensation if the fulfillment of the claims would cause him disproportionately great damage and the infringed party can be reasonably expected to pay compensation in money.



Copyright

Protection limitations

Use of work without permission of the author

Copyright protection is interrupted in cases regulated by law and the use of the work is permitted even without the author's permission. The most important exceptions are briefly described below:

- Permitted is temporary reproduction in the interest of rapid transmission of information that is ephemeral or incidental and constitutes an integral and essential part of a technical process, Sec. 44a UrhG.
- Permitted is the reproduction or making available to the public of works for general informational and educational purposes, for example, for:
 - free information to the general public on matters of the day, Sec. 48 et seq. UrhG.
 - the use for teaching and science.
- Reproduction of the work for private and other personal use is permitted, Sec. 53 UrhG.
- Also, the work may be copied, distributed, or reproduced if the use is within the quotation rights of Sec. 51 UrhG.

Exhaustion

Furthermore, the author cannot prevent further distribution of the work has been put into circulation by sale with his consent or by another authorized person (so-called exhaustion of the distribution right).

For example, the author of a book, having placed the book on the market, cannot prevent a third party who has purchased the book from subsequently reselling it.

Limitation of time

Claims for copyright infringement are generally subject to a limitation period of three years from the end of the year in which the claim arose and the claimant became aware of it or should have become aware of it without gross negligence.



Copyright

Transfer of rights/ licensing

Since the moral right is not transferable, a third party can **only acquire the right of use/utilization** from the author.

According to Sec 31 (1) UrhG, the author can therefore grant a third party the right to use the work for a specific or all types of use (see the list above). The use can be limited in terms of space, time and content. For this purpose, a license agreement is concluded between the author and the third party.

The right of use can be granted as a simple or exclusive right of use.

- **A simple right of use** entitles to use the author's work in the manner granted; however, the acquirer must tolerate that besides him also any other person who has acquired the right of use utilizes the work, Sec. 31 (2) UrhG.
- In contrast, the holder of an exclusive right of use has the right to use the work in the manner permitted to him, to the exclusion of all other persons including the author, Sec. 31 (3) UrhG.

If it is not clear from the license agreement what type of right of use has been granted and to what extent, the so-called **purpose transfer doctrine** applies. According to this doctrine, the type and scope of the transferred purpose of use is limited to the contractual purpose underlying the respective license agreement.

License agreements are usually concluded against the background that authors regularly rely on so-called **intermediaries** for the utilization of their rights. These are, for example, publishers, sound carrier and film producers, internet providers and broadcasting companies.

As a result of the license agreement, the author is entitled to the contractually agreed remuneration for the granted use of the work, Sec. 32 UrhG.

In addition, it should be noted that the transfer of licenses can also be regulated **by general terms and conditions** for the purpose of the unification, standardization and simplification of the licensing process.

Special feature: Copyleft clauses

In the context of licensing, an important **software** topic should be briefly outlined: It is the topic of **copyleft**.

While copyright law basically aims to protect software developers and to restrict the distribution, copying, modification and other types of use by users and other developers or to enable them to do so through licensing in return for appropriate remuneration (see above), copyleft aims to keep the entire license chain open. In other words: It may just be distributed, copied, modified, etc.

In the legal sense, copyleft is therefore a clause in license agreements that stipulates that further developments must always be distributed under the identical or essentially identical conditions to the original license.

License agreements for the use of **free software** or **open source software** often contain such copyleft clauses. This means that if one uses free software or open source software for one's own developments that are provided with a copyleft license, one's own further development would also have to be licensed under the same conditions. This would result in reduced (depending on the scope of the original copyleft clause) or no copyright protection at all.

In this respect, it is always advisable to check the existence and scope of any copyleft clauses before resorting to free software or open source software.



Copyright

End of protection

Copyright expires 70 years after the death of the author, Sec. 64 UrhG. Upon the death of the author, copyright passes to the heirs.

In the case of joint authorship, protection ends 70 years after the death of the longest surviving joint author, Sec. 65 (1) UrhG.

The difference between copyright and performance protection right is particularly evident in the protection periods. The term of protection for performance rights is in some cases significantly shorter. For example, the term of protection is

- 25 years for scientific editions.
- 50 years for photographs.
- 25 years for the editor of bequeathed works.
- 2 years after publication for the press publisher.
- 15 years for the database producer.
- 50 years for the broadcasting companies, film producers and producers of motion pictures.
- 50 years for the musicians of a sound record.



Annex 8: National Data Protection Regulations

With regard to the lawfulness of the processing of personal data, reference is made to the provisions of the GDPR, while in the following an overview is provided of the main national data protection regulations.

Basic Aspects

Federal Data Protection Act (BDSG)

For non-public bodies, the BDSG is applicable according to Sec. 1 (4) if

- the data controller or processor processes personal data in Germany, or
- the processing is carried out in the context of the activities of a domestic branch of the controller or processor, or
- the controller or processor does not have a branch in an EU or EEA state, but still falls within the scope of the GDPR.

According to Sec. 1 (5) the BDSG only applies if the GDPR does not apply directly. This means that the BDSG only contains regulations where the GDPR permits the enactment of national law. Against this background, the following BDSG regulations are to be mentioned in particular:

Data protection officer

Data protection officers act as contact persons for data protection issues for employees in the company and any data subjects. They are also responsible for monitoring compliance with data protection regulations within the organization.

The obligation to appoint a data protection officer within a company depends on the number of persons generally involved in the automated processing of personal data. The limit here is set by Sec. 38 (1) BDSG at 20 persons. However, voluntary appointment is of course possible at any time.



Federal Data Protection Act (BDSG)

Basic Aspects

Processing of employee data

Sec. 26 BDSG serves to create a specific regulation for the special data processing conditions in an employment relationship. In this context, the GDPR remains applicable to all processing situations not regulated by Sec. 26 BDSG.

Pursuant to Sec. 26 (1) BDSG, the processing of personal data of employees is permitted if this is necessary

- for the purpose of establishing, implementing or terminating an employment relationship or
- for the fulfillment of rights and obligations arising from a company or service agreement
- for the purpose of uncovering a crime, insofar as there is a suspicion based on factual indications that the specific person has committed a crime during the employment relationship and the employee's legitimate interest in the exclusion of processing does not outweigh this.

Pursuant to Sec. 26 (2) BDSG, processing may also be carried out on the basis of the employee's voluntary consent.

Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, as well as the processing of genetic data, bio-metric data for the unique identification of a natural person, health data or data concerning the sex life or sexual orientation of a natural person are considered sensitive data. Processing of such sensitive data is only permissible in accordance with Sec. 26 (3) BDSG in conjunction with Article 9 (2) b GDPR if this is necessary for the fulfillment of rights and obligations arising from labor law, social security law and social protection law.

Restrictions of data subject rights

The GDPR provides for various data subject rights (information, disclosure, deletion, objection and the right not to be subject to automated decision-making). These are in turn restricted both in the GDPR and in the BDSG. The relevant provisions in the BDSG can be found in particular in Sec. 29, 32 et seq. BDSG. Exceptions can be considered in the following cases, for example:

- If the information or disclosure would reveal facts that must be kept secret due to an overriding legitimate interest of a third party, Sec. 29 BDSG
- If the request for information relates to the transfer of personal data to German intelligence services or if the security of Germany is thereby affected, Sec. 33 (3), 34 (1) no. 1 BDSG
- If the further processing concerns data stored in analog form, the controller contacts the data subject directly for further processing, the further processing is compatible with the purpose of the collection, the communication with the data subject is not in digital form, and the data subject's interest in receiving the information is deemed to be low in the respective individual case., Sec. 32 (1) no. 1 BDSG
- If the prosecution of legal claims could be jeopardized as a result and the interests of the data subject do not outweigh this, Sec. 32 (1) no. 4 BDSG
- If the request would jeopardize confidential transmission to public authorities, Sec. 32 (1) no. 5 BDSG
- If the data may only not be deleted due to legal, statutory or contractual storage regulations, only serve data backup purposes, other processing is excluded and providing information would be disproportionately costly, Sec. 34 (1) no. 2 BDSG



Basic Aspects

Federal Data Protection Act (BDSG)

Further possibilities of data processing

- Sec. 22, 24 BDSG expand the possibilities for processing data.
- Sec. 22 BDSG opens up the possibility of processing sensitive data in the sense of Article 9 (1), (2) GDPR in exceptional cases (see also above under 2.).
- Sec. 24 BDSG serves to enable data processing for purposes other than the purpose of the original data collection under narrow conditions.

Penalty and fine provisions

- Sec. 42 BDSG provides for criminal sanctions for the violations specified therein.

Pursuant to Sec. 43 BDSG, a fine may be imposed in cases where a request by a data subject for information is not handled properly or a consumer is not informed or is informed incorrectly.

Sector-specific data protection regulations

Sector-specific data protection regulations take precedence over the BDSG as more specific regulations, but not over the GDPR.

Sector-specific regulations can be found, for example, in:

- Sec. 95 et seq. TKG (Telecommunications Act) (Use of inventory data by telecommunications providers)
- Sec. 284 SGB V (Social Security Act V) (Social data at health insurance companies)
- Sec. 16 et seq. PaßG (Passport Act) (Data protection provisions in the Passport Act)
- Sec. 77 (4) BetrVG (Works Constitutions Act) (Works agreements)



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in Germany as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.



Setting up for success in **FRANCE**

Welcome to France! If you are looking for a new market to expand your tech business with a large and sophisticated consumer base and a well-defined regulatory environment, you might want to consider France.

France is an attractive destination for many tech entrepreneurs and investors in Europe, with a vibrant ecosystem of startups, investors, accelerators, and research centres.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of entering the French market include:

- The availability of various tax incentives, special regimes, and grants for businesses, such as reduced corporate income tax rates for SMEs, significant tax credits for research and development, and innovation, and a favourable tax regime for young innovative companies.
- The existence of industry associations such as La French Tech, Numeum, France Digitale, and Cap Digital, which aim to promote and support the growth and competitiveness of the digital economy in France.
- A well-established legal and regulatory framework for setting up and operating a business in France, with a variety of corporate forms to choose from and clear rules and procedures for incorporation, governance, and compliance.
- A large and diversified market. France is also an EU leader in several sectors, such as aerospace, defence, biotech, and green tech.

Launching a tech business in France is not without its challenges. You need to navigate a complex and dynamic legal landscape, with various rules and regulations that may affect your operations, your finances, and your intellectual property. This factsheet aims to give you a practical introduction to some of the key legal factors to consider when setting up for success in France.

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1. Corporate considerations for setting up a business in France

What entity you should use to set up your company

The main options available to a foreign investor looking to establish a corporate presence in France are: (i) to incorporate a French company with its own legal personality or (ii) to set up a branch (*succursale*).

French law provides for a variety of vehicles that can be used by foreign companies or individuals investing in France. The most common forms used are the *société anonyme* (SA) and, *société par actions simplifiée* (SAS). Given its high degree of flexibility, the SAS is the corporate form chosen by the large majority of start-up companies and other private equity companies.

The main differences between SA and SAS are as follows:

	Société anonyme (SA)	Société par actions simplifiée (SAS)
Minimum Capital	<ul style="list-style-type: none"> — EUR 37,000 — Incorporation: 50% to be paid up at the time of incorporation (100 % for contribution in kind); balance payable within 5 years — Capital increase: at least 1/4 of the total amount — Public offer of shares possible in compliance with AMF regulations 	<ul style="list-style-type: none"> — No minimum amount required (1€) but in practice, at least 100€ — Incorporation: 50% to be paid up at the time of incorporation (100 % for contribution in kind); balance payable within 5 years — Capital increase: at least 1/4 of the total amount — No public offer possible (with few possible exceptions)
Shareholders	— At least 2 and at least 7 if the company is listed	— 1 At least 1

	Société anonyme (SA)	Société par actions simplifiée (SAS)
Statutory auditors	<p>Thresholds beyond which the appointment of an auditor is mandatory are common to all forms of commercial companies and to civil companies with an economic activity: if the company exceeds two of the following three criteria at the closing date of a financial year:</p> <ul style="list-style-type: none"> — 4 million euros of balance sheet total — 8 million euros in turnover excluding tax — An average number of 50 employees during the financial year <p>If the company is controlled by another company, the appointment of an auditor is mandatory if the company exceeds two of the following three criteria:</p> <ul style="list-style-type: none"> — 2 million euros of balance sheet total — 4 million euros in turnover excluding tax — An average number of 25 employees during the financial year <p>This obligation ceases when two of these three thresholds are not exceeded during the two financial years preceding the end of the statutory auditor's term of office.</p> <p>Even if these thresholds are not reached, the appointment of an auditor may be requested by one or more shareholders representing at least 10% of the share capital and the general meeting may voluntarily appoint an auditor.</p>	
Transfer of Shares	<ul style="list-style-type: none"> — No restrictions on transfers between shareholders, unless otherwise provided for in the articles of association or in a shareholders' agreement (SHA) — No restrictions on transfers to third parties, unless otherwise provided for in the articles of association or in a SHA — Transfers are subject to a 0,1% tax on the purchase price (unless if listed) 	<ul style="list-style-type: none"> — As provided for in the articles of association and/or in a SHA; it is notably possible to provide for: <ul style="list-style-type: none"> • Non-transfer of the shares (max. 10 years) • A shareholder exclusion provision • Prior approval right or pre-emption right in case of transfer, even between shareholders. — Transfers are subject to a 0,1% tax on the purchase price

	Société anonyme (SA)	Société par actions simplifiée (SAS)
Management	<p>The company must choose between 2 types of management structure:</p> <ul style="list-style-type: none"> — Option 1: the company is headed by a Board of Directors ("<i>conseil d'administration</i>"). In this case, the shareholders choose if: <ul style="list-style-type: none"> • The Chairman of the Board is also the Managing Director (<i>président directeur général</i>) • The Managing Director is distinct from the Chairman of the Board. • NB: the Managing Director and the Chairman must be individuals. — Option 2: the company is headed by two governance corporate bodies: a management board (<i>Directoire</i>) and a Supervisory Board (<i>Conseil de surveillance</i>) <p>The Managing Director and the management board have the widest powers to represent and bind the company vis-à-vis third parties (except issuance of guarantee agreements between the company and management or shareholders (related parties agreement and for management board only, sale of real property and shareholding))</p> <ul style="list-style-type: none"> — Any other limitation of power is valid only internally and is not enforceable against third parties 	<p>It is only compulsory to appoint a President.</p> <p>He may be an individual or a legal entity and has the widest powers to represent and bind the company vis-à-vis third parties. Limitations of power are only valid internally and are not enforceable against third parties.</p> <p>Additional boards may be freely set forth in the articles of association and/or SHA (board of directors, supervisory committee, etc.).</p> <p>Rules regarding the appointment, remuneration and dismissal of the President are freely set forth in the articles of association and/or SHA.</p> <p>It is possible to appoint one or several Managing Director(s) (<i>Directeur Général</i>). Such appointment/dismissal can be decided by the shareholders, or the President, as provided for in the articles of association. The powers of the Managing Director are similar to those granted to the President, unless otherwise provided for in the articles of association.</p>



	Société anonyme (SA)	Société par actions simplifiée (SAS)
General Meetings	<p>Ordinary meetings: any decision except amendments to the articles of association.</p> <ul style="list-style-type: none"> — Quorum: 1/5 of the shares having voting rights on the 1st convening, no quorum required on 2nd convening. — Majority: more than 50% of the votes of the shareholders present or represented. <p>Extraordinary meetings: amendments to the articles of association.</p> <ul style="list-style-type: none"> — Quorum: 1/4 of the shares having a voting right on the 1st convening and 1/5 on the 2nd convening — Majority: 2/3 of the votes of the shareholders present or represented — Specific decisions may require unanimity: <ul style="list-style-type: none"> • Share capital increase by raising the par value of shares, • Transformation of the company into a SAS, SNC or civil company (<i>société civile</i>), • Merger or spin-off of the company if there is an increase of the obligations of the shareholders, • Any increase of the obligations and commitments of the shareholders of the company, • Change of nationality of the company. 	<p>No distinction between ordinary and extraordinary meetings (unless otherwise provided for in the articles of association)</p> <ul style="list-style-type: none"> — The articles of association determine the matters which are to be subject to shareholders' approval and the majority rules. — However, some decisions must be approved by the shareholders, among which: <ul style="list-style-type: none"> • Approval of the annual accounts, • Increase, reduction of the share capital, • merger or spin-off, • Dissolution of the company, • Appointment of the statutory auditors, • Change of corporate form, • Approval of specific agreements between the company and management or affiliated companies. — Quorum: if provided for by the articles of association. — Majority: determined in the articles of association. <p>The decisions requiring the unanimity of the shareholders include:</p> <ul style="list-style-type: none"> — Share capital increase by raising the par value of shares, — Merger or spin-off of the company if there is an increase of the obligations of the shareholders. <p>And if not provided otherwise by the articles of associations:</p> <ul style="list-style-type: none"> — amendments to the articles of associations, — extension of the company's duration, — appointment of a liquidator, approval of the annual financial statements in the event of liquidation.

	Société anonyme (SA)	Société par actions simplifiée (SAS)
Civil liability of the management	<ul style="list-style-type: none"> — The Managing Directors, the members of the Board of Directors (<i>Conseil d'administration</i>) and the members of the management board (<i>Directoire</i>) are liable to third parties for any damages incurred by their personal misconduct. — The Managing Directors, the members of the Board of Directors (<i>Conseil d'administration</i>) and the members of the management board (<i>Directoire</i>) are liable to the company and/or the shareholders for: <ul style="list-style-type: none"> • Violation of the articles of association and /or the law; • Mismanagement, negligence... 	<ul style="list-style-type: none"> — The President/Managing Director(s), if any, are liable to third parties for any damages incurred by his/her personal misconduct. — The President/Managing Director(s), if any, are liable to the company and/or the shareholders for: <ul style="list-style-type: none"> • Violation of the articles of association and /or the law; • Mismanagement, negligence...
Criminal liability	<ul style="list-style-type: none"> — The President and Managing Director(s) (if any) may be criminally convicted of a number of offences such as misuse of corporate assets, abuse of power, false declarations on company accounts, stock market offences, tax fraud, corruption, false invoices, etc. 	
Consequences of liquidation (bankruptcy)	<ul style="list-style-type: none"> — Managers can be held liable for unpaid corporate debts of the insolvent company (<i>action en comblement de passif</i>) if their mismanagement led to the asset shortfall. — Proceedings can be made against the parent company when it is ascertained that the parent company has melded its property with that of its subsidiary. — The parent company can be held liable for the bankruptcy of the subsidiary on the ground of mismanagement if it is proven that the parent company was the de facto manager of the subsidiary. — The French courts rely on several criteria to characterise a de facto manager (<i>gestion de fait</i>), such as: <ul style="list-style-type: none"> • control of management decisions on the technical and commercial level: setting prices, negotiating with customers, etc. • the exercise of financial powers: relations with banks, decision-making power regarding loans and cash management • control of personnel management and leadership decisions: recruitment, dismissal, etc. 	



2. Branch vs subsidiary – options for group expansion

The main difference between setting up a branch or a subsidiary is that a branch does not have its own legal personality, which means that its activity and legal liability will at all times be directly related to the foreign investor's parent company.

The main aspects of setting up a branch or incorporating a new company as a subsidiary in respect to the parent company are described as follows:

	Branch	Subsidiary
Legal identity	It does not have its own legal personality (it is the same legal entity as its foreign parent company).	The subsidiary has its own legal personality. It is for all legal purposes a legal entity independent of its foreign parent company. It is subject to the rights and obligations it incurs independently of those incurred by its parent company.
Minimum Capital	N/A	Please refer to SA/SAS table above.
Shareholders	N/A	Please refer to SA/SAS table above.
Management	The branch manager (who must be declared to the clerk's office of the Register and Trade and Commerce) is the sole legal representative vis-à-vis third parties and has the power to commit the branch.	Please refer to SA/SAS table above.
Liability of the parent company	The parent entity remains directly liable with respect to the activities of its French branch (as the branch office is a part of the company itself).	Please refer to SA/SAS table above.
Civil liability of the local management	The branch manager is under the control of the parent company and is in principle not liable for his activities, (subject to the ordinary rules regarding civil and/or criminal liability).	Please refer to SA/SAS table above.

	Branch	Subsidiary
Consequences of liquidation (bankruptcy)	<p>In the case insolvency proceedings regarding the parent company are opened, such proceedings shall also concern the assets of the French branch office.</p> <p>In some cases, French courts also have the jurisdiction to open insolvency proceedings regarding the branch office.</p>	<p>Please refer to SA/SAS table above.</p>
Taxation	<p>The branch, which has no legal autonomy, has no tax autonomy vis-à-vis the parent company. Even if the accounts enable the branch's operating results to be distinguished, these are merged with the company's general results, and taxed in the company's name.</p>	<p>As of 2023, the standard corporate tax rate in France is 25%.</p> <p>The subsidiary is liable for the VAT.</p>



3. Incorporation vs acquisition of a company

Steps to Take	Incorporation	Acquisition
Step 1.	<p>Drafting and signature of the articles of associations (“AoA”) of the company, including inter alia:</p> <ul style="list-style-type: none"> — Identity of the signatories of the AoA, — Corporate form, — Duration of the company, — Corporate name, — Registered office, — Corporate purpose, — Share capital, — Identity of the legal representative/corporate officers, — Provisions regarding the form, composition and powers of the management (board of directors or president), — Forms and conditions of the shareholders’ decisions, — Provisions regarding the allocation of the results, liquidation and dissolution. 	<p>Drafting and signature of:</p> <ul style="list-style-type: none"> — share purchase agreement (not mandatory), — share transfer form, — cerfa n°2759-SD.
Step 2.	<p>Deposit of at least 50% of the share capital at a notary office, bank, investment company or <i>Caisse des dépôts et consignation</i>.</p>	<ul style="list-style-type: none"> — Update of the share transfer register and individual shareholders accounts, — Decision of the shareholder(s) appointing new legal representative(s) (directors, president etc.) and amending the articles of association (corporate name, legal representatives etc.), — Amendment of the articles of association accordingly, — Signature of a non-conviction and filiation declaration by the new legal representative, <p>Update of the declaration of ultimate beneficial owner.</p>

Steps to Take	Incorporation	Acquisition
Step 3.	<p>Filing in a legal gazette / newspaper of legal notices of a notice of creation of the company containing the following:</p> <ul style="list-style-type: none"> — Corporate name, — Corporate form, — Share capital, — Address of registered office, — Corporate purpose (succinct), — Duration of the company, — Name and address of the legal representative, corporate officers, <p>Indication of the Register and Trade and Commerce (<i>Registre de Commerce et des Sociétés, RCS</i>) where the company is incorporated.</p>	Filing of the above documents with the Register of Trade and Commerce.
Step 4.	Registration of the company with the Register and Trade and Commerce and National Register of companies via the sole electronic office for corporate filings available on: formalites.entreprises.gouv.fr .	N/A
Estimated timing and costs	<p>Estimated timing: 2 weeks including: discussion, drafting and incorporation.</p> <p>Estimated costs: From EUR 2,000 to 5,000 depending on the degree of complexity of the AoA (formalities included).</p>	<p>Estimated timing: 2 days and 3 to 5 days for the change of President.</p> <p>Estimated costs: From EUR 4,000 to 8,000.</p> <p>Main advantage: faster.</p>





4. Practical steps required to be undertaken when setting up a company in France

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, and company secretaries and taking out insurance (both as required by law and as may be prudent for your business activity), there will be a number of other practical steps you need to take. The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity in France.

Setting up a registered office

Formality	Basic Aspects
Chose an address for the registered office	<p>For the registered office, it is possible to get an address via a corporate housing company (<i>entreprise de domiciliation</i>) which offers subscription services for office addresses and related postal services for the company to carry out its activities without acquiring or renting offices.</p> <p>It is possible to choose the city where the company will be registered.</p>

Corporate filings – including constitutional and accounting documents where applicable

Formality	Basic Aspects
Filing of the annual accounts	<p>Within a 6-month period following the end of the financial year, must be filed with the clerk's office of the Register of Trade and Commerce:</p> <ul style="list-style-type: none"> — Financial statements (balance sheet, income statement, and appendix) — Management report — Statutory auditor's report (if any) — The allocation of the annual financial net income or loss, as decided by the shareholders.

Proceedings for obtaining authorisation to work in France

Formality	Basic Aspects
Obligation of registration with social security bodies	<p>Even if the company does not set-up a place of business in France, it will have to register near the French social security administration (so called the "URSSAF"), mainly to declare and pay social contributions.</p> <p>Foreign companies without a place of business in France have to be affiliated near a specific office called "URSSAF d'Alsace".</p> <p>Further to such registration, the URSSAF informs the different social security funds in charge of occupational injuries, unemployment, basic and complementary pension funds.</p> <p>The company has also to be affiliated:</p> <ul style="list-style-type: none"> — Near an occupational health care service (employees benefit from regular medical examinations, in some case when they are hired), — Near an insurance covering healthcare costs and provident allowances. <p>Specific duties apply in case of only very temporary missions in France, without a will to voluntarily set-up an activity.</p>



5. Governance

Constitutional documents

It is possible to add, complete or derogate to the clauses of the articles of association via a shareholders' agreement but to avoid any difficulties, it is important to ensure that the provisions of the shareholders' agreement do not contradict the provisions of the articles of association.

Directors Duties and Liabilities

The term "director" usually refers to the function of (i) in the SA, the chairman and members of the Board of Directors (*administrateurs*), and (ii) in a SAS, the members of a non-mandatory governance corporate body provided for in the articles of association and/or a shareholders' agreement, composed of representatives of the shareholders and sometimes of independent members and named "Supervisory Board" or "Strategic Committee". It is opposed to executive corporate officers (*Président, Directeur general*).

The powers of the Directors are mainly limited to the business strategy, supervisory and administrative duties. The directors are not authorised to represent the company vis-à-vis third parties nor to bind the company (i.e., sign contracts with third parties, with employees etc.). Regarding the SAS, the scope of their power is not provided by law but on a contractual basis in the articles of association and/or the SHA. Regarding the SA, the scope of their power is provided by law.

Directors may be held civilly liable for breaches of the law or regulations, breaches of the articles of association or mismanagement. Liability may be joint or individual depending on the case.

In certain limited cases, in particular if the intentional breach of criminal law is proven, directors may incur criminal liability.

Executive Officers Duties and Liabilities

Please refer to the SA/SAS table in paragraph 1 for discussion of civil and criminal liability.



6. Employment considerations

As French labour law is extremely wide and dense, the explanations hereafter are only a very brief summary of rules applicable to an employment relation.

Key requirements for employment contracts in France

Individual recruitment process	
Recruitment process	Compliance with professional equality and non-discrimination at all steps of the hiring process.
Formalization of the employment relationship	<p>A written contract is required – with mandatory provisions:</p> <ul style="list-style-type: none"> — For fixed-term contracts, — For part-time contracts, — For apprenticeships, — For intermittent workers, and — If required by collective bargaining agreement. <p>In practice, a written contract is utmost recommended and unavoidable even for indefinite-term agreements. Contract must be drawn up in the French language (in addition to the native language as the case may be).</p> <p>Anyway, the employee must be provided with various mandatory information (duties, place of work, salary, working time, applicable collective bargaining agreement...).</p>
Formalities	Obligation to file a declaration prior to hiring with the social security bodies, which notably enables the employee to be affiliated to the social security and unemployment insurance schemes, and to request medical follow-up for the employee.

Most common employment contract clauses

Trial period	The contract may start with a trial period. During this period, each party may terminate the contract without having to prevail from a fair reason, just by a notice by registered mail. The trial period may last few months.
Job classification	<p>The contract must define the main duties of the employee: job title and the main missions but this is not an exhaustive list; the employee must fulfil any mission which relates to his qualification.</p> <p>The level of qualification of an employee gives rise to a job classification into a reference scale set by each Collective Bargaining Agreement ("CBA").</p>
Clauses governing working conditions	Remuneration structure, working place, working time, home office...
Specific clauses	Non-compete clause, mobility clause, variable remuneration clause...

Pay and benefits

Remunerations components

Basic remuneration	<p>Remuneration paid to employees as a counterpart of their work.</p> <p>Basic remuneration can be divided into a fixed part and a variable part.</p> <p>The employee's remuneration is at least equal to the legal national minimum salary (SMIC) and CBA's minimum wages.</p>
Variable remuneration	<p>The remuneration must observe the general principle "equal pay for equal work" + no discrimination (maternity leave, sickness, age...).</p> <p>French case law provides that any variable remuneration scheme needs to be compliant with various requirements: the employer must deliver the targets to employee at the beginning of the performance period, these targets must be achievable, the bonus system must be drafted in French language (for French nationals)...</p>

Remunerations components

Benefits in kind	Any non-cash benefit – goods or services – with a monetary value freely provided to employees or at a lower employee contribution than its real value. They are therefore subject to social contributions.
Various premiums	Many premiums can be paid to employees based on a CBAs, contractual terms (thirteenth month, holiday premium, Christmas premium, seniority premiums for example).
Discretionary bonuses	Must observe the general principle “equal pay for equal work” and a principle of no discrimination (maternity leave, sickness, age...).

Reimbursement of professional expenses

Legal principle	Under French rules there is a general principle of reimbursement of professional expenses incurred by the employee for the needs of his activity (under a flat-rate or actual expenses): business travel expenses, meal and accommodation expenses in case of travel, home office...
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Various benefits – Incentives

“Mandatory profit-sharing system” (“participation”)	<p>Must be implemented from the first financial year opened after a period of 5 consecutive calendar years during which the threshold of 50 employees has been reached.</p> <p>Must be set up by collective agreement. Its purpose is to grant a small part of the profit to the employees pursuant to a legal formula set by the law. In very brief, the total profit-sharing premium is: (tax profit – corporate tax – 5% equity capital) x (payroll / added value).</p> <p>It is exempted from a part of social contributions.</p>
“Optional profit-sharing system” (“intéressement”)	<p>It is optional. Its purpose is to involve the employees in the results or performances of the company by the payment of premiums linked to the achievement of targets. A calculation formula must be set by an agreement, concluded for a fixed term of 1 to 3 years. Its formula may be more flexible and adaptable than the “participation” formula.</p> <p>It is exempted from all or part of social contributions depending on the headcount.</p>

Income tax and social security considerations

Social security considerations

As a reminder, the company and the employee have to be affiliated near the French public social security system, for social contributions declarations and payments purposes. Several social security returns have to be filled in on a regular basis.

A pay slip has to be delivered to the employee each month, with mandatory mentions. The payroll office may handle these formalities on behalf of the company.

Compensations are heard as gross salaries, i.e. salaries:

- including the employee's part of social contributions (i.e., that these contributions are deducted from the salary; the employee receives a net one),
- but not the employer's part (i.e., that the employer has to pay additional contributions assessed on the gross salary).

The exact social contribution rates vary in each company. In addition, a part of social contribution basis is capped (the cap is not the same for all the contributions), so that the real contribution rates depend on the amount of the compensation. As a very rough estimate, the nominal rate for the employee's part is around 19-22% of the gross salary, and for the employer's part is around 41-44% of the gross salary.

In addition, the employers are bound to subscribe an insurance coverage, i.e.:

- A healthcare cost coverage, i.e. an insurance granting to the employee a reimbursement of healthcare expenses to complement the public social security allowances;
- A provident fund, i.e. an insurance granting allowances in case of sick leave, disability or death, once again to complement the public social security allowances.

Income Tax considerations

Corporate income tax is levied on the profits of companies operating in France: French corporations and French legal entities assimilated to them, and permanent establishments in France of foreign companies.

With certain exceptions, profits earned abroad are not subject to corporate income tax in France.

The standard corporate income tax rate is 25%, plus an additional social security contribution equal to 3.3% of corporate income tax, after application of a deduction of EUR 763,000 over 12 months.

Tax losses incurred in a given year by a company operating in France can be carried forward to the taxable profits of subsequent years, without any time limit, up to a maximum of EUR 1 million plus 50% of profits in excess of this threshold. Tax losses generated by a company in respect of one activity cease to be chargeable in the event of a change of activity (and cannot be offset against profits from the new activity).

Under certain conditions, the tax loss for a given year can also be carried back to the taxable profit of the previous year, up to a limit of EUR 1 million, thus generating a corporate income tax credit that can be offset against corporate income tax due or refunded (if not offset) after a period of 5 years.

All sums paid as remuneration are, in principle, subject to the following taxes (at the level of the company):

- unique contribution to professional training and apprenticeship:
 - composed of professional training: 1% assuming the company has at least 11 employees (0.55% otherwise),
 - apprenticeship tax: 0.68%,
 - additional contribution to apprenticeship (payable by companies with at least 250 employees): between 0.05% and 0.6% depending on the percentage of apprentices among the employees of the company,
- employers' participation in the construction effort: 0.45%,
- contribution dedicated to the financing of the personal training account for employees on fixed-term contracts: 1% of the remuneration paid to holders of such contracts,
- payroll tax: employers subject to payroll tax are those who are not subject to VAT or have not been subject to VAT on at least 90% of their turnover for the calendar year preceding that of the payment of remuneration. Standard rate is 4.25% increased to 8.50% for the fraction of annual individual remuneration between EUR 8,572 and EUR 17,113 and to 13.60% for the fraction of this remuneration exceeding EUR 17,113.

Working conditions

Work time duration*		Rest time duration*	
Weekly legal length of work	35 hours	Minimum daily break time	20 minutes after 6 hours
Monthly legal length of work	151.67 hours	Minimum daily rest time	11 hours
Maximum weekly length of work	48 hours	Minimum weekly rest time	35 hours
Maximum average weekly length of work over 12 consecutive weeks	44 hours	Weekly day of rest	Maximum of 6 consecutive worked days In principle weekly rest day on Sunday
Maximum daily length of work	10 hours	* Derogations to these durations can be provided under specific conditions and different durations and rules can be provided by CBA.	

Most common working time schemes

“Classic” scheme	<p>Employees work 35 hours per week or any other conventional weekly length of work. Beyond 35 hours (or conventional length of work): overtime, which gives rise to a wage increase equal to 25% for the first 8 hours and then 50%. Under some conditions: overtime may be compensated with compensatory rest. Overtime is computed within the yearly overtime limit (“contingent”). Unless different provisions – by CBA or unilateral decision in some cases – the legal limit is up to 220 hours per year. Beyond the legal limit of 220 hours, employees benefit from an additional compulsory compensatory rest.</p>
Annualization	<p>Definition: computation of working time over a reference period superior to the week.</p> <p>Employees work more than 35 hours per week (example: 37 hours) and either (i) benefit from rest days or (ii) offset this exceeding time by weeks with a low working time, so that the average weekly working time assessed over the year is the legal one of 35 hours.</p> <p>Implementation is subject to a related CBA (or pursuant to the law if the reference period does not exceed 4 weeks, more in some cases).</p>
Day per year scheme	<p>Scheme by which working time is counted on a daily basis over the year without any reference to working hours. It may be concluded with executives (most of the time) with actual autonomy in the organization of their time schedule and whose functions do not require them to follow the collective hours applicable in the workshop, department or team to which they belong,</p> <p>Other validity conclusions:</p> <ul style="list-style-type: none"> — To be provided by a CBA including mandatory provisions: eligible employees, number of working days per year, main characteristics, deep follow-up of workload, reference period...; — Employee agreement formalized in writing; — The number of days of the scheme has to be determined (maximum 218 days); — The granting of the minimum mandatory daily and weekly rest; — At least one meeting per year between the employer and his manager,

Paid leave	
Acquisition / benefit from of paid leave	<p>2,5 business days per month, i.e., 30 business days per year (5 weeks). Some CBAs provide additional leaves, for instance in relation to seniority.</p> <p>In theory, dates of leave are set by the employer pursuant to a dedicated procedure; in practice, there are often discussions with the employees (knowing that employees must take at least 2 weeks between 1 May and 31 October).</p>
Paid leave indemnity	<p>Determined under the more favourable calculation:</p> <ul style="list-style-type: none"> — 1/10 of the total remuneration received by the employee during a year (for the total acquired paid holidays), — remuneration he would have received if he had worked during the leave period
Sick leave	
Formalities	Inform the employer as soon as possible. Deadline usually provided by CBAs or general practices: 48 hours at the latest.
Impact on the employment contract	Suspension during the whole absence.
Compensation	<p>Social security daily allowances (commonly called "IJSS") paid under some conditions (minimum seniority...), generally amounting to 50% of the salary.</p> <p>Complementary wages are paid most of the time according to CBAs, either directly by the employer or by a provident insurance fund ("remuneration maintenance"), under some conditions (seniority...). the amount of this complementary allowance generally decreases according to the duration of the sick leave.</p>

Family-friendly rights

Maternity leave	
Duration	Based on family situation: single or multiple births, mother pathology. For a single birth without any pathology :16 weeks including in principle (6 weeks before birth, 10 weeks after birth).
Impact on the employment contract	<p>Suspension during the whole absence; it is considered as effective work for any benefit / right conditioned by seniority.</p> <p>During pregnancy (before the maternity leave): authorization of absences for mandatory pregnancy-related examinations and duty to adapt a workstation at risk or inadequate for pregnancy.</p> <p>100% of the salary is maintained during the maternity leave, save few exceptions (a part is paid by the social security body).</p>
Protection against dismissal	<p>Pregnant employees benefit from a legal protection against any termination to avoid any discrimination linked to their pregnancy:</p> <ul style="list-style-type: none"> — during pregnancy outside maternity leave and 10 weeks after the end of maternity leave: employer cannot dismiss the employee unless due to gross misconduct; — during maternity leave and paid leave taken immediately after the end of the leave: no dismissal is possible.

Paternity leave

Beneficiaries	Baby father or spouse, partner.
Duration	1st compulsory period of 4 consecutive calendar days taken immediately after the 3-day birth leave, 2nd facultative period of 21 days (28 in case of multiple births) divisible into two periods of at least 5 days each which can be taken immediately after the compulsory period or at the latest 6 months following the childbirth.
Impact on the employment contract	Suspension during the whole absence.
Protection against dismissal	“Protection” during the leave and 10 weeks following the childbirth: employer cannot dismiss the young father unless a gross misconduct.

Special family-related leave

Beneficiaries	Employees, when some family-related event occur (birth, adoption, wedding, French Civil Solidarity Pact (civil partnership), death of a family member...)
Impact on the employment contract	Suspension during the whole absence – Between 1 day and 14 days, depending on the type of the family-related event and provisions of the industry-wide collective bargaining agreement. Full remuneration is maintained.

Termination of employment

Main methods of termination of an employment contract	
Dismissal based on misconduct	Resignation
Dismissal based on economic grounds	Constructive dismissal ("prise d'acte")
Dismissal based on personal reasons (the main grounds are: low-performing, misconduct, medical unfitness to work)	Request for judicial termination at the employer's tort ("résiliation judiciaire")
Voluntary or involuntary retirement	Termination by mutual agreement

Focus on dismissal for individual grounds	
Initiate an individual dismissal	<p>Various types of individual dismissal: insufficiency – misconduct – gross misconduct – unfitness to work – economic reasons.</p> <p>To be caused: dismissal need to be always grounded on precise, dated and detailed facts,</p> <p>If this is a dismissal for misconduct: employer must initiate the procedure at the latest 2 months following his knowledge of the situation.</p> <p>In case of dismissal which is not based on fair reasons, the employee may request damages.</p>
Conduct of the dismissal procedure	<p>Three main steps:</p> <ul style="list-style-type: none"> — Calling to a preliminary meeting by letter mentioning meeting purpose, date, place, possibility for the employee to be assisted, — Meeting with the employee: explain why the dismissal is contemplated and hear his explanations. At this time, no decision is "officially" taken. — Dismissal notification: the dismissal registered mail provides the reasons for dismissal.
Main consequences	<p>Observance of a notice period, except in case of dismissal for serious misconduct or unfitness notably.</p> <p>Granting of dismissal indemnity except in case except of dismissal for serious misconduct.</p> <p>Issuance of end-of-contract documents (receipt for full settlement, last pay slip, certificate of employment and certificate for Pôle Emploi).</p>

Collective rights/bargaining

Trade Unions	
Company employing less than 50 employees	
Setting up of a union section	Has the right to display information.
Works council (so-called "CSE")	
<p>There is an obligation to establish a works council when a company counts 11 employees or more during 12 consecutive months. The CSE is composed of elected employees ("staff representatives") representing employees before the company management.</p> <p>In principle, members are appointed for a 4-year term. Number of members to be elected depend on company's headcount.</p> <p>Where the company has 2 establishments or more: election of establishments social and economic committee and implementation on top of a central social and economic committee.</p> <p>Full members benefit from various rights: delegation hours, freedom of circulation in the company...</p> <p>Each CSE member benefit from a specific protection against (i) any termination whatsoever – what requires from the employer the obligation to ask for a specific authorization before the French labour Inspectorate – or (ii) any change of his working conditions without gathering his consent first.</p>	
Company employing less than 50 employees (works council with "reduced" powers)	
How the works council operates	<p>The works council with "reduced" powers is not a legal entity. It has no budget.</p> <p>The employer must provide the works council with premises necessary for the exercise of their mission, in particular enabling them to meet.</p> <p>CSE members must have billboards enabling them to transmit information to employees and meet at least once a month with the employer (system of prior members' requests and replies provided by the employer, recorded in a special register).</p>
What are the works council's prerogatives?	<p>Its members are responsible for presenting to the employer individual or collective complaints relating to (i) wages (ii) the application of the Labour Code and other legal provisions concerning social protection, health and safety and (iii) the collective agreements applicable in the company.</p> <p>They contribute to promote health, safety and working conditions within the company.</p> <p>They have a right to alert concerns, various rights of information and of referring complaints or observations concerning the application of the provisions in the scope of their powers to the labour inspectorate.</p>

For Information on trade unions and works councils for companies employing at least 50 employees, please see Annex 1.

Training obligations

Vocational training

Legal guidelines

The employer has a general obligation to adapt employees to their jobs, mainly through training.

The employer must establish a yearly training and skills development plan.

The employer pays a social contribution to a fund dedicated to vocational training and may then obtain subsidies from it.

The employer has to organize a professional interview every two years with each employee to examine employees' development and training needs.

Safety training

Obligation to provide safety training for certain workers (new employees, upon the occupational physician request).



7. Incentivisation of early-stage team and shareholder structure

Under French law, several kinds of equity incentive tools may be implemented, the most commonly used are:

- (i) Founders' warrants (BSPCEs - *Bons de Souscription de Parts de Créateurs d'Entreprises*), and
- (ii) free shares (*attribution d'actions gratuites*).

Please refer to the table below for a summary of their main terms and characteristics.

BSPCE (bons de souscription de parts de créateurs d'entreprises)	
Purpose	<p>BSPCE are incentive tools granted for free which entitle their beneficiaries - under certain conditions - to subscribe for shares representing a proportion of the share capital of the issuing company, at a price fixed by the shareholders at the time of allocation of the BSPCE.</p> <p>The shares are issued in case of exercise of the BSPCE (i.e., when the conditions for definitive attribution are met and the beneficiaries' subscription request is accompanied by payment of the corresponding price).</p>
Conditions relating to the company issuing the BSPCE	
Corporate form	Joint stock companies (sociétés par actions) (e.g., simplified joint stock companies (sociétés par actions simplifiée), public limited company (sociétés anonymes), partnership limited by shares (sociétés en commandite par actions) and European companies (sociétés européennes)).
Specific conditions	<p>The issuing company must comply with the main following conditions:</p> <ol style="list-style-type: none"> 1. be registered for less than 15 years, 2. be subject to corporate income tax (impôt sur les sociétés) in France, 3. at least 25% of the share capital is continuously and directly owned by natural persons or legal entities which are themselves at least 75% owned by natural persons, 4. the issuing company is not the result of a restructuring or takeover of pre-existing activities (with some exceptions).
Overall legal limit (% of share capital)	No limit.



Conditions relating to the beneficiaries

Beneficiaries	<ul style="list-style-type: none"> — Employees of the issuing company, — Corporate officers (including board members (administrateurs)) of the issuing company, — Employees and corporate officers of at least 75%-owned subsidiaries of the issuing company which market capitalization is lower than EUR 150 M.
Individual legal limit (% of share capital)	No limit.

Special conditions

Vesting and/or Holding period	Possible (vesting period recommended).
Performance and/or Presence conditions	Possible.

Tax regime

Favourable tax & social regime for the issuing company	<p>No employer social security contribution (20%).</p> <p>Specific favorable tax regime</p>
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Free shares (*attributions gratuites d'actions*)

Purpose	Free shares schemes enable joint stock companies to grant free shares to their employees and corporate officers. The shares will be acquired at the expiry of a vesting period (<i>infra</i>) and, most of the time, when certain presence and/or performance conditions are met.
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Conditions relating to the company issuing the free shares

Corporate form	Joint stock companies (<i>sociétés par actions</i>) (e.g., simplified joint stock companies (<i>sociétés par actions simplifiée</i>), public limited company (<i>sociétés anonymes</i>), partnership limited by shares (<i>sociétés en commandite par actions</i>) and European companies (<i>sociétés européennes</i>)).
Overall legal limit (% of share capital)	The total number of free shares granted may not exceed 10% of the share capital of the issuing company. This threshold may be raised to 30% in case of allocation to all of the company's employees.



Conditions relating to the beneficiary

Prospective beneficiaries	<ul style="list-style-type: none"> — Employees of (i) the issuing company, (ii) companies of which the issuing company holds, directly or indirectly, at least 10% of the share capital or the voting rights (“Subsidiaries”), (iii) companies holding, directly or indirectly, at least 10% of the share capital or the voting rights of the issuing company (“Parent Company”) and (iv) companies which are held, directly or indirectly, at least 50% by a company holding itself, directly or indirectly at least 50% of the share capital of the issuing company (“Sister Company”). — Corporate officers (excluding board of directors’ members (<i>administrateurs</i>) and supervisory board members (<i>membres du conseil de surveillance</i>) of the issuing company (if the issuing company is listed, the scope will be broader).
Individual legal limit (% of share capital)	<ul style="list-style-type: none"> — No shares may be allocated to employees or corporate officers holding more than 10% of the share capital. — The allocation of free shares may not result in a beneficiary holding more than 10% of the share capital.

Special conditions

Vesting period	<p>Possible.</p> <p>1 year minimum if the holding period is 1 year.</p> <p>In any case, the combined vesting and holding periods may not be less than 2 years.</p>
Holding period	<p>Possible.</p> <p>1 year minimum if the vesting period is 1 year.</p> <p>In any case, the combined vesting and holding periods may not be less than 2 years.</p>
Performance and/or Presence conditions	<p>Possible.</p>

Tax regime

Tax regime for the issuing company	Employer social security contribution up to 20%.
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8. Tax incentives / special regimes / grants

Reduced CIT rate for SME

A reduced corporate tax rate of 15% applies to the first EUR 42,500 of the profits of small and medium-sized enterprises if certain conditions are met, including the following:

- The turnover of the company is less than EUR 10 million (out of taxes);
- At least 75% of the company is owned by individuals or by companies that themselves satisfy this condition and the above condition.

Significant tax credits in relation to R&D and innovation

The research tax credit (crédit d'impôt recherche - CIR) is a measure to support the research and development activities of companies, whatever their sector or size.

There also exists a specific tax credit for innovation expenses incurred by small and medium-sized enterprises (i.e., companies with fewer than 250 employees and annual sales not exceeding EUR 50 million or annual balance sheet total not exceeding EUR 43 million) until 31 December 2024.

There is also a tax credit designed to promote cooperation between private corporations and public research bodies and is based on R&D expenses incurred as part of research cooperation agreements concluded between 1 January 2022 and 31 December 2025.

For more information on these tax credits, please see Annex 2.

French IP Box regime

A reduced tax rate of 10% applies on an election performed on an asset-by-asset basis (or, under certain conditions, on a group-of-assets basis), to the net income derived from the licensing of qualifying patents or software, and after deduction of

the research and development expenses incurred during the financial year (a recapture of R&D expenses incurred since the financial year for which the election was made applies the first time the net income is calculated).

If positive, a ratio, which cannot be greater than 100%, is applied to determine the net income subject to the 10% rate. This ratio compares the following:

- 130% of the R&D expenses incurred for the creation, or the development of the qualifying patent, either by the claiming taxpayer or by unrelated parties
- The total R&D expenses incurred for the creation, the development, or the acquisition of the qualifying patent.

If negative, the result is carried forward and deducted from income derived in subsequent years from the licensing of the qualifying patent or software.

Young innovative companies (“JEI”)

The status of Young Innovative Company is granted to SMEs less than 8 years old, at least 50% continuously owned by individuals, either directly or indirectly (but with only one intermediary company that qualifies as an SME), or by certain companies in the venture capital sector, or by associations or foundations recognised as being of public scientific interest or public research and teaching establishments and their subsidiaries, or by companies that themselves qualify as JEIs.

During each financial year, they must incur R&D expenses representing at least 15% of their tax-deductible expenses. These companies must have fewer than 250 employees and sales of less than €50 million or total assets of less than €43 million. These companies benefit from a total, then partial (up to 50%) income tax exemption for a period of 12 months each, as well as a seven-year exemption from property tax and the “*Contribution économique territoriale*” (CET).



9. Investors – considerations for capital raising

In most cases, sponsors investment (notably made by venture capital funds or business) may take the following forms:

- Investment in equity common stock: in the course of the negotiation, the investor may obtain from the target company preferential rights, especially preferential liquidity (i.e., preferential right on the sale proceeds upon exit).
- Investment via convertible bonds (*obligations convertibles*) allowing under certain conditions, the conversion of bonds issued by the target company into shares and securing the financing in case of loss of value of the target company. Such investment is often used in the context of bridge financing.

With the exception of certain specific regimes (foreign direct investment control, merger control, etc.), the requirement for prior authorization is fairly limited in the area of venture capital.

Please note that the French government is actively supporting venture capital investment through organizations such as FrenchTech, or via a public or para-public investment policy (with BPI France in particular).



10. IP – protecting the value of your company

The best strategy to protect intellectual property (“**IP**”) depends on the type and scope of the IP, the industry and market context, the business objectives and resources, and the potential risks and opportunities.

Depending on the nature of the IP, it may be advisable or necessary to register it with the relevant authorities to obtain exclusive rights and prevent unauthorized use by third parties. For example, trademarks, designs, or patents can be registered with the French National Institute of Industrial Property (INPI) or the European Union Intellectual Property Office (EUIPO). Copyrights and related rights are generally protected automatically without registration but can be registered with the INPI or collective management organizations for evidentiary or contractual purposes.

Domain names can be registered with accredited registrars, while trade secrets can be protected by confidentiality measures and contractual clauses. Registration may also facilitate the enforcement, licensing, and valuation of the IP rights.



11. Regulatory – common compliance requirements

General corporate filings

The main transactions affecting the life of a company must be filed/registered with the relevant trade and companies register. This is notably the case for share capital transactions, changes in corporate officers, amendments to the articles of association, annual approval of the company accounts, etc.

Statutory registers

In most companies whose shares are not admitted to trading on a regulated market, ownership of the shares is evidenced by entries in the company's books and shareholder accounts. These documents must be certified by the clerk of the commercial court managing the trade and companies register. The identity of shareholders and the composition of share capital are confidential in the case of SASs and SAs, subject to the obligations relating to the declaration of beneficial ownership.

Data Protection

Data protection regulation in France is mainly governed by the General Data Protection Regulation No. UE 2016/679 of 27 April 2016 ("**GDPR**") and by the French Data Protection Act No. 78-17 of 6 January 1978 (*Loi Informatique et Libertés*), a national law that complements and specifies the GDPR in some aspects. The French Data Protection Authority ("**CNIL**") is the independent public body responsible for enforcing data protection rules and providing guidance and advice to data controllers and processors, as well as to individuals. For more information on data protection, please see Annex 3.

Other

The following regulations and associated topics may notably be relevant depending on the type of the entity that would be chosen and the sector in which it would operate:

- The Labour Code, which requires employers to implement measures to prevent and detect corruption, such as a code of conduct, a whistleblowing system, a risk assessment, a training program, and a disciplinary policy. The labour code also prohibits forced labour and trafficking in human beings.
- The Sapin II Law No. 2016-1691 of 9 September 2016, which aims to prevent and punish corruption, influence peddling, and related offenses, both domestically and internationally.
- The Criminal Code, which criminalizes various forms of modern slavery, such as servitude, forced labour, or human trafficking.
- The Consumer Code, which prohibits unfair commercial practices and deceptive or misleading advertising and requires companies to provide clear and accurate information on the origin, composition, and characteristics of their products and services. The code also empowers consumer associations and public authorities to initiate legal actions against companies that violate consumer rights or interests.



12. Industry Associations

- **La French Tech:** non-profit organization that aims to promote and support the French ecosystem of startups, entrepreneurs, investors, and innovators, both nationally and internationally. It was created in 2013 by the French government as part of a public policy initiative to foster the growth and competitiveness of the digital economy and to showcase the diversity and dynamism of the French tech scene.
- **Numeum:** This is the largest French trade association and lobby for the digital industry in France, representing more than 2,000 companies that provide software, IT services, engineering, consulting, and digital content. It aims to promote the interests, competitiveness, and innovation of the digital industry, as well as its social and environmental responsibility.
- **France Digitale:** This is an association of more than 2,000 startups, investors, and ecosystem players that advocates for a favourable regulatory and fiscal environment for the digital economy, supports the growth and internationalization of French startups, and fosters a culture of entrepreneurship and innovation.
- **Cap Digital:** This is a cluster of more than 1,000 members, including digital companies, research labs, universities, investors, and public authorities, that focuses on the fields of digital transformation, cultural and creative industries, education and lifelong learning, digital cities, and ecological transition. It aims to support the innovation, growth, and internationalization of its members, as well as to foster collaboration, experimentation, and dissemination of digital solutions.
- **FEVAD:** With more than 800 member companies, players in e-commerce, the Fevad is today the largest network of e-merchants in France. The Fevad brings together and unites the actors of e-commerce and distance selling, regardless of their sector of activity, their nature (pure-players or not) and the communication channels used. The role of the Fevad is based on five major missions to unite: represent, regulate, monitor and inform, exchange, promote and communicate e-commerce.

Annex 1: Collective Rights/Bargaining

Trade Unions

Company employing at least 50 employees	
Appointment of trade union delegates ("DS") or trade union section representatives	<p>A DS may be appointed, under conditions, only by a representative trade-union i.e., a trade-union whose candidates obtained at least 10% of the votes in the first round of elections of the works council. Mainly, DS may negotiate collective agreements with the company.</p> <p>Conversely, non-representative trade-unions may appoint a representative. Their main role is to consolidate the trade union's presence within the company in view of the next works council elections.</p>
Conduct of mandatory collective bargaining	<p>For companies with DS.</p> <p>Yearly mandatory company-wide collective mainly relates to wages, working time, profit-sharing, equal treatment between women and men, quality of life at work and of the working conditions.</p> <p>They are annual but their frequency can be modified by collective agreement, within the limit of 4 years.</p>

Works Councils

Company employing at least 50 employees (works council with “extended” powers)

How the works council operates

The works council with “extended” powers is a legal entity. It is required to adopt internal regulations. It has a secretary and a treasurer.

Members of works council benefit, under specific conditions from training, in particular: economic training, health, safety and working conditions training.

Unless other rules set by a Collective Bargaining Agreement (“CBA”), 1 meeting per month in companies counting at least 300 employees and 1 meeting every 2 months in companies counting between 50 and 300 employees are provided (and at least 4 meetings per year on health, safety and working conditions among these meetings).

The works council benefit from specific budgets paid by the employer: (i) a budget for and (ii) social and cultural activities budget.

What are the attributions of the works council (“CSE”)?

The main attributions of the CSE are the following ones:

- 3 compulsory yearly consultations: (i) strategic orientations, (ii) economic and financial situation, (iii) social policy, working conditions and employment – the works council is delivered information on these matters, analyse them and provide an opinion in an advisory capacity,
- Various punctual consultations on any matter relating to the organization, management and general running of the company and for instance (major modification to health or safety conditions or working conditions, introduction of new technologies, measures likely to affect the size or structure of the workforce, collective dismissal for economic reasons, etc.),
- Access to information and documents relating to health and safety. analysis and prevention of occupational risks, in particular warning rights to draw the attention of the management on potential serious risk situations and investigations in case of work accident or occupational disease or work-related diseases,
- Ability to make proposals whose purpose is notably to improve working conditions, employment, professional training, life conditions at work.

Annex 2: Tax Credits

Research Tax Credit

Research activities include fundamental research, applied research and experimental development (including the design of prototypes or pilot plants).

Research expenditure eligible for the research tax credit must be deductible from taxable income in France and relate to operations located within the European Union.

In particular, research personnel expenses, depreciation of fixed assets used for research, patent expenses, sums paid to employees who are not researchers and who are the authors of inventions resulting from research operations, and external research expenses are eligible for the research tax credit.

The tax credit is calculated for each calendar year, and equals 30% of qualifying expenses related to R&D operations up to EUR 100 million, and 5% for such expenses above EUR 100 million.

Innovation Tax Credit

For these expenses, the tax credit is equal to 30% of the eligible expenses up to an overall limit of EUR 400,000 per year, i.e. a maximum tax credit of EUR 120,000 per year.

The tax credit applies to expenses incurred for the design of prototypes of new products, i.e. goods not yet available on the market, which differ from existing or previous products in terms of superior technical, eco-design, ergonomic or functional performance, or pilot installations of the same kind.

It should be noted that the same operation may successively qualify for the research tax credit and the innovation tax credit for the research and development phase, and then for the innovation phase.

R&D Cooperation Tax Credit

The expenses invoiced must relate to research work located within the European Union and carried out directly by the research organization with which the company has signed a collaboration contract.

The tax credit for cooperative research amounts to 40% (or 50% for small and medium-sized enterprises i.e., companies with fewer than 250 employees and annual sales not exceeding EUR 50 million or annual balance sheet total not exceeding EUR 43 million) of the eligible expenses up to EUR 6 million per year (the expenses cannot simultaneously be used for the computation of the classic R&D tax credit).

Annex 3: Data Protection

GDPR main principles

Under the GDPR and the French Data Protection Act, data controllers and processors must comply with a number of principles and obligations when collecting, processing, storing, transferring, or deleting personal data, such as:

- Lawfulness, fairness, and transparency: data must be processed for a specific, explicit, and legitimate purpose, based on a valid legal basis (such as consent, contract, legal obligation, public interest, legitimate interest, or vital interest), and with clear and accessible information provided to data subjects about the processing and their rights.
- Data minimization: data must be adequate, relevant, and limited to what is necessary for the purpose of the processing.
- Accuracy: data must be accurate and kept up to date, and any inaccurate data must be erased or rectified without delay.
- Storage limitation: data must be kept for no longer than necessary for the purpose of the processing, or as required by law, and must be deleted or anonymized when no longer needed.
- Integrity and confidentiality: data must be protected by appropriate technical and organizational measures against unauthorized or unlawful access, alteration, disclosure, loss, or destruction.
- Accountability: data controllers and processors must be able to demonstrate their compliance with the data protection rules and maintain records of their processing activities.

Data subjects have various rights under the GDPR and the French Data Protection Act, such as the right of access (data subjects can request access to their personal data and information about the processing), the right to rectification (data subjects can request the correction of any inaccurate or incomplete personal data) or the right to erasure (data subjects can request the deletion of their personal data in certain circumstances). Other rights also exist, e.g., the right to data processing restriction, to data portability, to data processing objection, to withdraw consent, to lodge a complaint before the French Data Protection Authority (the “**CNIL**”).

GDPR specific requirements

Data controllers and processors must also comply with specific rules and requirements regarding certain aspects of data protection, such as:

- Data protection impact assessment: data controllers must conduct a data protection impact assessment (“**DPIA**”) when the processing is likely to result in a high risk to the rights and freedoms of data subjects, such as when using new technologies, processing sensitive data, profiling, or monitoring.
- Data protection officer: data controllers and processors must designate a data protection officer (“**DPO**”) when the processing is carried out by a public authority or body, or when the core activities of the data controller or processor involve regular and systematic monitoring of data subjects on a large scale, or processing of sensitive data or data relating to criminal convictions and offenses on a large scale.
- Data breach notification: data controllers must notify the CNIL and the affected data subjects of any personal data breach that poses a risk to the rights and freedoms of data subjects, without undue delay and, where feasible, within 72 hours of becoming aware of the breach, unless the risk is unlikely or mitigated by appropriate measures. Data processors must notify the data controller of any personal data breach without undue delay.
- Data transfer: data controllers and processors must ensure that the personal data they transfer to a third country or an international organization outside the EU or the European Economic Area (“**EEA**”) is subject to an adequate level of protection, either by the European Commission’s adequacy decision, or by appropriate safeguards, such as binding corporate rules, standard contractual clauses, codes of conduct, or certification mechanisms, or by derogations, such as explicit consent, contract, public interest, or legal claims.



GDPR resources for SMEs

The CNIL provides various resources and guidance for SMEs to help them comply with the data protection rules and best practices, such as:

- A [dedicated Q&A](#) (questions and answers) for SMEs that offers practical basic information on how to comply with the GDPR / the main obligations.
- A [GDPR toolkit](#) for SMEs that provides a step-by-step guide, a checklist, a glossary, and a Q&A on how to prepare and implement the GDPR in an SME.
- A [GDPR online training](#) (Mooc) that offers an interactive and free course on the main concepts and principles of the GDPR, as well as quizzes and tips to test and improve the knowledge and compliance of the SMEs.
- [Free software](#) that allows SMEs to conduct DPIA and document DPIAs for their processing activities, based on the CNIL's methodology and recommendations.



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in France as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.

Setting up for success in **SPAIN**

Welcome to Spain! Spain is a dynamic and attractive market for tech entrepreneurs, with a growing digital economy, a supportive government, and a vibrant startup ecosystem. Whether you are planning to expand your existing operations, establish a new venture, or partner with local players, Spain offers a wealth of opportunities and challenges for tech entrepreneurs.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of expanding into the Spanish market include:

- Spain is situated in a privileged position, with easy access to other European markets, as well as to Africa, Latin America, and the Middle East. It has a modern and extensive infrastructure network and a strong presence in international organizations, such as the EU, NATO, OECD, and the UN. It also maintains close ties with its former colonies and other emerging economies.
- Access to a supportive and competitive business environment: Spain has made significant efforts to improve its business climate and attract foreign investment in recent years. It has implemented various reforms to reduce bureaucracy, simplify regulations, lower taxes, and enhance legal certainty. It also offers a number of incentives and support programs for tech businesses, such as grants, loans, tax breaks, and subsidies.
- Access to a large and diverse consumer base: Spain has a growing middle class, a young and urban population, and a strong demand for digital services and products. It also has a vibrant and multicultural society, with a rich cultural and linguistic heritage, offering a range of possibilities for targeting different segments and niches of the market.

Launching a tech business in Spain can be a rewarding venture, but it also requires careful planning and preparation. This factsheet outlines some of the main legal factors that tech entrepreneurs should consider before entering the Spanish market. It will also point you to some useful resources that can assist you further in your journey.



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1. Corporate considerations for setting up a business in Spain

What entity you should use to set up your company

The main options available to a foreign investor looking to establish a corporate presence in Spain are Sociedad Anónima (S.A.) and Sociedad Limitada (S.L.):

	S.A.	S.L.
Applicable legislation	Royal Legislative Decree 1/2010, of July 2, approving the consolidated text of the Spanish Companies Act (the "Spanish Companies Act").	
Minimum number of shareholders	One.	One.
Capital stock	Divided into shares ("acciones").	Divided into quotas ("participaciones sociales").
Minimum share capital	60,000€	1€
Payment upon incorporation	At least 25% of the face value of the shares must be paid up at the time of subscription.	The full value of the quotas must be paid out at the time of subscription.
Contributions	A report from an independent expert on any non-monetary contributions is required.	No report from an independent expert on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the execution of the contributions and the assessment of their economic value .
Shareholders' Liability	Limited to the amount of the shareholders' individual contributions. No personal liability of shareholders for corporate debts.	Limited to the amount of the shareholders' individual contributions. No personal liability of shareholders for corporate debts

	S.A.	S.L.
Shares	They are marketable securities. Debentures and other securities that recognise or create a debt, even bonds convertible into shares, can be issued.	They are not marketable securities. Debentures and other securities that recognise or create a debt can be issued.
Transfer of shares	There are no legal limitations.	S.L. shares are generally not freely transferable (unless acquired by other shareholders, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the law establishes a pre-emptive acquisition right in favour of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred to above.

For additional corporate considerations for setting up a business in Spain, see Annex 1.



2. Branch vs subsidiary – options for group expansion

If a company is looking to expand its business in Spain, it may do so through a branch (which does not have legal personality of its own) or a subsidiary (separate entity from the parent company, with its own legal personality):

	Branch	Subsidiary
Legal identity	Does not have its own legal personality (it is the same legal entity as its foreign parent company).	Has its own legal personality. It is for all legal purposes a legal entity independent of its foreign parent company. It is subject to the rights and obligations it incurs independently of those incurred by its parent company.
Minimum share capital	Does not require a minimum capital stock or economic allocation at the time of its incorporation. The main parent company may decide on the allocation of the capital it deems appropriate for its branch.	The minimum share capital required is EUR 1 or 60,000, depending on whether a limited liability company (S.L.) or a public limited company (S.A.) is incorporated, respectively.
Management and governing body	While they usually have a legal representative, branches do not have a governing body. The branch's representative acts as attorney-in-fact under the powers conferred by the foreign parent company and within the limits imposed by the same.	Subsidiaries have the usual governing bodies of any company (General Shareholders' Meeting and administrative body).
Liability of the foreign parent company	Unlimited liability: The liabilities incurred by the branch must be assumed by the foreign parent company without limitation.	The subsidiary's liability is limited to the contributions made by the shareholders (typically the parent company). The subsidiary is liable to pay the debts it incurs out of its own assets, and in principle, the foreign parent company will not be affected by these debts.

For additional considerations regarding Corporate Income Tax / Non-Resident Income Tax, Deductible Expenses, Profit Repatriation, and Dividends, see Annex 2.



3. Incorporation vs acquisition of a company

Corporate presence in Spain may be mainly obtained by incorporation of a new entity or acquisition of a pre-existing incorporated entity. It is possible to purchase a recently incorporated 'clean' company (with no previous activity) through a service provider. This process of establishing a subsidiary/branch is more straightforward. It is also possible to incorporate a new company from scratch, following the procedure set out below.

Steps to Take	Incorporation	Acquisition
Preliminary steps	<ul style="list-style-type: none"> — N.I.E. of director(s): foreign director(s) of the company must apply for their Spanish Identification Number (N.I.E.) for which a PoA in favour or a representative must be granted and apostilled before presentation to the Spanish Authorities. Alternatively, a NIE can be obtained at the consulate office. — Power of attorney for the incorporation/acquisition procedure: grant a power of attorney in favour of the representative to act on its behalf before the Spanish Notary Public in order to grant any such deeds (acquisition or incorporation deed, as the case may be). 	
Step 1: Corporate name	A certificate from the Central Commercial Registry stating that the intended corporate name is available for use and registration in Spain must be obtained. Once the certificate is issued the name will be reserved for 3 months, after which, if the company has not been incorporated it will not be available anymore.	Upon completion of the acquisition, it is generally advisable to modify the company's corporate name. As such, a name certificate will have to be requested before the Central Commercial Registry.
Step 2. Bylaws modification	A copy of the bylaws must be attached to the company's incorporation deed, containing the minimum information addressed in question 5 below.	<p>The GSM/ Sole Shareholder will have to execute the modifications to the bylaws to adapt them to their needs.</p> <p>The amendment must be legalised before a notary and registered with the Commercial Registry.</p>



Steps to Take	Incorporation	Acquisition
Step 3. Bank Certificate.	For the initial contribution to the Company's share capital, the contribution amount must be transferred to an account opened in the name of the company "in process of incorporation" at a Spanish bank or a branch of a foreign bank operating in Spain.	The company already has a bank account, as it has been already incorporated. As a general rule, the new directors can take over the account by showing their registered appointment to the bank.
Step 4. Incorporation deed execution	Execution of the public deed of incorporation: In order to duly and validly incorporate a new entity, a notarial deed of incorporation must be granted before a Spanish Notary Public. In order to do so, the documents referred in steps 1, 2 and 3 above are needed. In case of a non-Spanish shareholder, upon execution of the deed of incorporation, the intervening Notary Public must notify the transaction to the Foreign Investments Registry at the Ministry of Economy and Finance by means of the relevant official form signed by the shareholder. This is a notification for mere statistical purposes.	Execution of the public deed of acquisition: The transfer of the shares of a company must be formalised in a notarial deed. In order to execute such deed, the documents referred in Steps 1, 2 and 3 above are needed (but the amendment of corporate name and/or bylaws is not required). This notarial deed of acquisition must contain the details of the new shareholder and the details of the shareholding acquired. Upon execution of this deed the intervening Notary Public must notify the transaction to the Foreign Investments Registry just as in the case of incorporation.
Step 5. Management body	Appointment of director(s): Initial decisions such as the appointment of the first director(s) of the company are stated in the deed of incorporation.	New shareholder decisions: After the execution of the deed of acquisition, the new shareholder may adopt certain additional decisions such as (i) the appointment of new director(s) (ii) amending the bylaws (corporate, name, domicile, corporate purpose, etc.) or (iii) as the case may be, declare that the company is a sole shareholder company. These decisions must all be notarised.
Step 6. Registration with the Commercial Registry	Once the applicable tax obligations are complied with (although exempt, a seal needs to be stamped in the deed), the deed of incorporation of the company may be registered with the Commercial Registry of the province or territory corresponding to the company's address.	The deed of acquisition of the company need not be registered with the Commercial Registry of the company's domicile but the deed notarising the decisions will be.

For estimated timing and cost and additional comments, see Annex 2.



4. Practical steps required to be undertaken when setting up a new company in Spain

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, and company secretaries and taking out insurance (both as required by law and as may be prudent for your business activity) there will be a number of other practical steps you need to take. The sections below summarise some of the principal practical considerations businesses need to address when establishing a new entity in Spain.

A new legislative amendment has been introduced which makes it possible to fully incorporate a limited liability (S.L.) company by online means, provided the contributions are in cash.

The legislative amendment also provides for the possibility to appear before a notary via videoconference.

The certificate of reservation of the company name can also be obtained online.



Choosing a company name

See Question 3 above.

Setting up a registered office

Formality	Practical Steps
Corporate Address	<p>In order to establish a company's corporate address, the general shareholders' meeting must approve the corporate address and amend the bylaws accordingly. (As a general rule, the administrative body may also modify the corporate address within the national territory.)</p> <p>After execution of the notarial deed, the change of address must be registered with the applicable Commercial Registry.</p>
Registration of the company with the Social Security authorities (obtaining the Social Security contribution account code – "Código de Cuenta de Cotización"-)	<p>The company's registration must take place prior before it starts business activity. In general, companies register with the Social Security General Treasury by submitting the relevant official form and documentation identifying the company (which can be done by electronic means).</p>
Social Security – Notification of opening of workplace	<p>The commencement of activities at the workplace must be notified to the labour authorities within 30 days of its opening using the official form provided for such purpose in each Autonomous Community (region), which can be done by electronic means.</p>

Corporate filings – including constitutional and accounting documents where applicable

See Question 3 above.

Proceedings for obtaining authorisation to work in Spain

In order for a company to become an employer in Spain both the employer company and its employees must be registered within the Spanish Social Security system prior to the start of any employment relationship.

To become an employer with the Spanish Social Security and employment authorities a company must carry out the following procedures:

- Obtaining the company's tax identification number.
- Appointment of a representative of the Spanish company. In the case of a foreigner, such individual must obtain the N.I.E.
- Obtaining the digital certificate.
- Registration of the activity of the company with the Tax Office.
- Obtaining the CNAE (National Classification of Economic Activities) Code.
- Registration as an employer with the Spanish Social Security system which entails obtaining a Social Security Code.

Additionally, when hiring an employee in Spain, companies must notify the Social Security authorities before the employees start rendering services. Notifications are generally made by electronic means, using the RED electronic document submission system.



5. Governance

Constitutional documents

Constitutional documents for an entity to be incorporated in Spain are the following: tax Identification Number (“**N.I.F.**”); Foreigner’s Identification Number (“**N.I.E.**”) (Necessary for all directors/shareholders who are not of Spanish nationality); Parent Company’s Certificate of good standing (dully apostilled and translated); certificate of reservation of the company’s name; bank account; Parent Company’s Ultimate Beneficial Owner deed; and incorporation deed. (Including all the above and the company’s bylaws and appointment of directors).

As a general rule the minimum content of the articles of association, include: the company’s name; company’s share capital; corporate address; corporate purpose; shares transferability; managing bodies: include administrative body and shareholder’s meeting and its functioning (quorum, resolutions, competences, etc.); and company activity’s starting date.

It is also possible to draft ad hoc bylaws which (subject to certain exceptions provided by law) include several additional provisions regarding the functioning of the company (such as directors retribution, reinforced majorities, etc.).

However, some provisions are limited by law and may not be included in the bylaws (for example, the lock up period is limited to 5 years in a S.L.), which is why it is common to execute a private shareholder’s agreement for matters which may not be included in the bylaws. Enforceability of shareholders agreements is private and only shareholders may be liable in case of breach as it is not enforceable against the company.

Common shareholder agreement provisions include: Share transfer regime (drag/tag-along, pre-emptive rights, call/put options, lock-up period, etc); Governance (reinforced majorities, appointment of directors, deadlock); and Non-compete clauses (period, business, territory).

Directors Duties and Liabilities

The company’s administrative body holds the representative powers, and as such, its main duty is to represent the company vis-à-vis third parties. Directors must perform their duties with a duty of care and loyalty to the company.

As established by law, directors owe a duty of loyalty to the company, which means, among other things, that they must:

1. Exercise their powers only for the purposes for which they have been granted.
2. Keep secret any information to which they have had access to in the exercise of their position, even when they no longer hold such offices.
3. Refrain from participating in the deliberation and voting of resolutions or decisions in which they, or a related person, has a conflict of interest.
4. Perform their duties under the principle of personal responsibility with freedom of judgment and independence with respect to third party instructions and connections.
5. Adopt any necessary measures to avoid incurring in situations in which there may be a conflict of interests between the company’s and the director’s interest.

Directors who have been fraudulent or negligent will be liable to the company, to the shareholders and to any creditors for the damage caused by actions or omissions contrary to the law, bylaws or a breach of their duties inherent to their position..

Upon imminent insolvency, directors must take all necessary measures to avoid such insolvency, and will be liable with their own personal assets for the debts of the company when they do not file for dissolution or insolvency proceedings if it determined that they should have done so in according to law.



6. Employment considerations

Key requirements for employment contracts in Spain

<p>Spanish employment sources</p>	<p>The sources of the Spanish employment legal system consist of the Spanish Workers' Statute ('SWS') and other national laws, which contain the minimum legal provisions regarding employment law, and define the respective rights and obligations of employees and employers, general terms of employment contracts, procedures for dismissal and collective bargaining rules, among other aspects.</p> <p>Special regulations governing certain special employment relationships will also apply.</p> <p>Additionally, in Spain there are collective bargaining agreements ('CBA'), which may be binding on an employer depending on its specific business.</p>
<p>Type of employment contracts</p>	<p>Depending on the term of the contract</p> <p>Ordinary employment contracts can be entered into permanently or on a temporary basis. However, fixed-term employment contracts can only be entered into under specific circumstances that justify a short-term hire. Outside of these specific circumstances, there is an assumption that the contract is full-time and permanent. There are different types: Permanent employment contracts; Permanent intermittent / seasonal contracts ('<i>fijos discontinuos</i>'); and Fixed-term employment contracts.</p> <p>Depending on the agreed working hours</p> <ol style="list-style-type: none"> Full time contract: applicable to employees working full-time, in accordance with the company's regular working hours. Part-time contracts: applicable to employees who work less than the regular working hours of a full-time employee.
<p>Permanent employment contracts</p>	<p>Permanent contracts aim to cover the permanent needs of the business. As opposed to temporary contracts, they do not include a date of termination.</p>

Permanent intermittent / seasonal contracts ('*fijos discontinuos*')

Permanent intermittent / seasonal contracts are a different type of permanent contract, under which the employee provides services intermittently throughout the year. These contracts are drawn up mainly for seasonal work, or for areas that have certain peaks in production / workload, although they are not inherently seasonal. An intermittent / seasonal employment contract must be drafted in writing and include, among other aspects, the duration of the seasonal activity as well as the distribution of working hours.

Fixed-term employment contracts

Fixed-term employment contracts can only be used to cover temporary business needs. The contracts must be drawn up in writing, detailing the grounds for the short duration of the employment engagement.

There are different types of fixed-term employment contracts:

- a) **Due to production circumstances, work overload or excess orders when unusual and unforeseeable situations:** duration of a maximum of 6 months (extended to 1 year through a CBA).
- b) **Due to production circumstances, work overload or excess orders when occasional and foreseeable situations:** this type of contract may only be used up to 90 days in any given calendar year and may not be used on a continuous basis. For the duration of the contract, the company would be free to hire as many people as necessary to deal with the excess workload.
- c) **Employment contracts to replace employees:** replacing situations when the employees are temporarily unable to provide services (e.g., maternity/paternity leave, sick leave, etc.).
- d) **Training contracts alternating with paid employment:** used to train unqualified individuals and those with other qualifications, provided that they have not previously completed a training contract at the same level and in the same sector.
- e) **Working experience training contracts:** used with employees holding a university degree, an intermediate or higher diploma, a specialist or professional master's qualification, a certificate under the vocational training system or an equivalent qualification for artistic or sports education.

Senior executives	<p>These employees have broad management authority in relation to the company's general objectives and exercise faculties inherent to the company's ownership with autonomy and full responsibility, only reporting to the company's governing body.</p> <p>Due to their management position, under Spanish regulations, these employees are considered to have a special labour relationship. As a consequence, they are excluded from the SWS and are subject to special regulations contained in supplementary legislation.</p> <p>Usually, senior executives have less protection than ordinary employees in terms of working conditions, compensation in case of dismissal, etc. Having said that, since their employment contracts are subject to the will of the parties, it is not uncommon to agree severance payments and salaries above the statutory minimum.</p>
Contractual special provisions	<p>Special provisions may be also agreed between employees and employers. As an example, employment contracts may include exclusivity commitments, post-contractual non-compete/non-solicitation obligations, confidentiality and data protection, among others.</p>
Probationary period	<p>The employment contracts may also include a probationary period which cannot exceed the duration stated in the SWS (i.e., a maximum of six months for specialised or qualified employees and two months for the rest of employees). However, CBAs may contemplate different durations.</p>

Pay and benefits

Minimum fixed - salary	<p>Companies must observe the minimum salary stated for each professional category in the applicable CBA. At the same time, the CBAs must observe the national minimum salary, which is set yearly (EUR 15,120 yearly gross in 2023 if employed full-time).</p> <p>In addition, employees may be entitled to variable remuneration, incentives or commissions, salary in kind and benefits, which are normally agreed in the individual employment contracts.</p>
Instalments	<p>The annual salary may be paid in 12, 14 or 15 monthly payments, depending on the CBA. However, the standard practice is for CBAs to include (i) 12 equal monthly instalments plus two extra payments to be paid in summer and Christmas, or (ii) 12 equal monthly payments which include the two extra payments on a pro rata basis during the rest of the monthly instalments.</p>

Pensions	Companies in Spain may be obliged to comply with the obligations stated in the applicable collective bargaining agreements. As an example, almost all collective bargaining agreement provide the obligation for companies to underwrite an insurance policy covering different contingencies (i.e., death, different types of disability, etc.).
Performance and bonuses	<p>Only the portion of the salary that is above the minimum wage can be linked to performance. The conditions that are to be met in order to obtain bonuses (unless they are provided irregularly and only due to extraordinary occurrences) must be clearly set.</p> <p>For Personal Income Tax (“PIT”) purposes should the bonus be considered to have a generation period of over two years, a 30% reduction in the taxable base of the PIT could be applicable subject to the following requirements:</p> <ul style="list-style-type: none"> — The remuneration must be paid within one fiscal year; — The reduction would be limited to EUR 90.000; and, — The taxpayer could not have received any income to which this reduction had been applied in the previous five years.

Income tax and social security considerations

During the employment relationship, employers must issue the relevant payslips to their employees and pay Social Security monthly contributions on the employees’ salaries to the national insurance system This is done electronically via the Social Security website (RED System).

Social Security contributions	Social Security contributions apply at the rate of 6.45% for the employee (to be withheld by the employer from the employee’s pay slip) and 30.40% (plus the variable contribution rate for work accidents and professional illnesses’ purposes depending on the specific activity of the employee and the company) for the employer, up to the maximum Social Security contribution base established yearly by the Spanish Authorities (EUR 4,495.50 per month as from January 1, 2023 – this amount may vary in the following months).
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Personal income tax

In addition to Social Security contributions, employees' salaries are subject to PIT at tax rates which range from 19% to 54%, depending on the Autonomous Region in which the employee habitually resides. Please note that certain employment income is exempted from PIT (e.g., severance pay, remuneration in kind consisting in health insurance or transport, etc.) with certain limits and requirements.

Meanwhile, the employer is, in general terms, obliged to perform withholdings on account of the employee's PIT. The rate of the withholding varies for each employee depending on their salary (please note directors are subject, generally, to a withholding of 35% or 19% if the company's turnover in the tax year prior to the payment were below EUR 100,000).

The employer must file periodic return regarding withholdings and payments on account of income from employment and economic activities, prizes and certain capital gains and income imputations (Form 111) on a quarterly or monthly basis, depending on the company's turnover in the prior tax year, as well as an annual summary return (Form 190).

Working conditions

Working hours

Employees' maximum working hours are regulated by the SWS and the applicable CBA; generally, the maximum working hours are fixed at 40 hours per week (annual average). In addition, each shift cannot exceed 9 hours per day and each employee is entitled to (i) a minimum of 12 hours of rest time between shifts and (ii) one and a half days off between working weeks.

Anything above the maximum permitted working hours is considered overtime and will be paid or compensated with the equivalent time-off, unless otherwise agreed in the CBA or individual contract. The maximum overtime is 80 hours per year.

Additionally, companies are required to record employees' working hours on a daily basis.

Remote work

Remote work is subject to special regulations when it takes place during 30% of the working hours of the employee within 3 months, having to subscribe a special agreement which will be subject to mandatory provisions including among others, the payment of the expenses linked to the performance of services and the provision of the relevant means.

Holidays	<p>Employees are entitled to a minimum of 30 statutory calendar days of annual leave per year, although this could be increased in the applicable CBA or employment contract. Annual leave cannot be replaced by financial compensation.</p> <p>In addition to the above, employees can enjoy up to 14 public bank holidays per year (12 national-wide and two local bank holidays), which are decided each year by the state and local governments.</p>
Sick leave	<p>Employees are entitled to benefits paid by the Social Security system when sick. The specific amount and duration will depend, among other aspects, on the cause (i.e., work or non-work-related illness or accident) and the employee's salary.</p> <p>During sick leave, the employment contract remains suspended, except for long-term sick leave (i.e., over two years), in which case the employment contract may be terminated and, instead of being on temporary sick leave, the employee could be entitled to a permanent disability allowance from the Spanish Social Security, if the authorities grant it following an administrative hearing.</p>
Other paid leaves	<p>Employees are entitled to paid leave under certain circumstances such as moving house, getting married or childbirth. During this time the employees receive their salary from the employer, and it is usually governed by the provisions of the applicable CBA.</p>

Family-friendly rights

Parental leave	<p>Both men and women are entitled to 16 weeks' paid leave for the birth or adoption of a child. Six of those weeks must be taken immediately after the birth.</p> <p>During parental leave, the employment contract remains suspended with the right to return to their job. The national Social Security system pays the employee an allowance up to 100% of the Social Security contribution base.</p>
Taxation	<p>Certain tax incentives are available for parents (e.g., tax credit for large families – three children or more-, tax credits for mothers with children under the age of three, etc.).</p>

Termination of employment

Type of terminations	<p>Employment contracts in Spain can only be terminated (by written notice) based on the grounds expressly stipulated by law and pursuant to the procedures and requirements established for each case:</p> <ul style="list-style-type: none"> a) Termination by mutual agreement: the specific conditions of the termination are agreed between the parties. b) Termination based on the expiration of the fixed-term employment contract. c) Termination at the employee's request: in the event of (i) a substantial change in working conditions is executed by the employer without following the statutory procedure which is detrimental to the employee's dignity; (ii) a continuous non-payment of salaries; and (iii) any other infringement by the employer (except in cases of force majeure). The infringements detailed above give rise to the employee's right to terminate the contract and receive the statutory severance package for unfair dismissal and the employee's right to resign observing the legal notice established in the applicable CBA, if any. d) Termination by dismissal (please refer to Dismissals Section).
Dismissals	<p>The employer may terminate the employment contract based on the following:</p> <ul style="list-style-type: none"> a) Objective grounds: (i) an employee's incompetence; (ii) if the employee does not adequately adjust to reasonable changes in their job position; and (iii) economical, technical, organisational and/or production-related grounds. b) Disciplinary reasons: the employment contract may be terminated as a consequence of a gross misconduct by the employee.
Notice termination	<p>For objective dismissals, companies must provide 15 calendar days' notice before the termination date. Otherwise, payment in lieu must be fulfilled to the employee for such 15 calendar days. Notice is not necessary in disciplinary dismissals.</p> <p>Collective bargaining agreements include the termination periods for employees when leaving the companies.</p>

Classification of the dismissal

In the event that the dismissed employee challenges the company's decision before the Labour Courts, the termination may be classified as:

- a) **Fair**, if the formal requirements have been observed and the employer provides evidence supporting the grounds stated in the dismissal letter.
- b) **Unfair**, if (i) the employer does not have sufficient grounds to carry out the dismissal or (ii) the formal requirements have not been observed (including lack of payment of the statutory severance package for cases of objective dismissal).

If the dismissal is declared unfair, the employer may choose between (i) paying the employee severance for unfair dismissal (i.e., 45 days' salary per year of service up until February 12, 2012, capped at 42 months' salary and 33 days' salary per year of service from February 13, 2012 to the date of termination, capped at 24 months' salary) or (ii) reinstating the employee to their previous post and paying any awarded back pay (i.e., salary accrued from the termination date until the reinstatement date); or

- c) **Null and void**, if the termination has been carried out in breach of the employee's fundamental rights or if it affects certain protected employees (i.e., those who are pregnant or on parental leave or during the 12 months from the date of birth, etc.). If the dismissal is declared null and void, the employee has the right to be reinstated in the company and receive the salary accrued during the dismissal proceedings.

Taxation

As briefly noted above, severance pay up to a maximum of EUR 180,000 derived from dismissal or termination is exempt from PIT subject to certain limits and requirements. The non-exempt part of the severance pay could benefit from the 30% reduction abovementioned when the conditions are met.

Collective rights/bargaining

Employees' representation in Spain is structured on a 'dual channel' model, based on two different types of employees' representatives within the company (i) works council/employee's representatives; and (ii) union representatives.

Works council / employee's representative	<p>Works council members are elected by all employees in the company. A works council can be created by both union and non-union members. The number of members in a work council will depend on the size of the company or workplace.</p> <p>For companies with 50 employees or fewer, employee representatives will be appointed (instead of works council).</p>
Union representatives	<p>Union representatives are company employees who only represent union members at the workplace. Broadly speaking, union representatives only have the corresponding rights and legal protection if they belong to the largest trade union in the region or a trade union that is part of the works council.</p>
Rights of representatives	<p>In general terms, employees' representatives have certain information rights on specific issues that may affect the workforce, such as the financial situation of the company, statistics on health and safety issues, sanctions imposed on employees and other company decisions that may affect workload organisation as well as employment contracts. They are also entitled to issue a non-binding report in the event that the employer intends to implement certain reorganisation plans.</p> <p>In addition to the above, employees' representatives are entitled to time off to carry out their duties, which is estimated on a monthly basis.</p> <p>Finally, employee's representatives have certain legal protection against restructuring and redundancy, as they are considered a priority to remain employed.</p>

Training obligations

Employers are required to provide training on health & safety to its employees:

Health & Safety

Employees have a right to proper protection with regard to health and safety at work and employers must comply with several obligations in this regard in order to ensure such right.

The prevention of occupational risks at the workplace should be integrated through the implementation and application of a suitable health and safety prevention plan.

The essential instruments for the application of the prevention plan are (i) the risk assessment of each position, (ii) the planning of the preventive action, (iii) periodical monitoring of employee's health and (iv) training of employees.

In order to comply with health and safety obligations, the employer will need to either establish its own health and safety prevention service or to contract out the service to a third-party company specialising in occupational risks management.



7. Incentivisation of early-stage team and shareholder structure

Companies motivate and incentivize key workers in the following ways:

- **Profit sharing:** Spanish law provides for the possibility, as long as the company's bylaws allow it, to include profit sharing in the concept of the directors' remuneration as a way to incentivize directors, as good financial results will entail a higher profit for the director in question. However, the percentage of profit sharing must not be higher than 10% of the of the profits to be distributed among the shareholders.
- **Stock options:** Consists of an opportunity to acquire stock in their company at a determined price at the time the options are granted and fixed for the term of the options.

Shares and stock options in start-ups delivered to employees at a discount or for free can benefit from a PIT exemption of up to EUR 50,000 provided that the following requirements are met:

- i) Shares must be offered by the employer company or, in general terms, by any other company of the group or sub-group of companies.
 - ii) Employees, together with their relatives, should not own a participation of more than 5% of the employer company or, in general terms, of any other company of the employer company's group or subgroup of companies; and,
 - iii) Shares must be held by the employees for at least three years.
- **Pension scheme:** It is typical to offer, as part of the remuneration, pension schemes to ensure workers a revenue after retiring.



8. Tax incentives / special regimes / grants

The entities considered as start-ups per the Spanish Law can take advantage of certain tax benefits both for corporate income tax (CIT) purposes as for personal income tax (PIT) and non-residents' income tax (NRIT).

For CIT purposes:

- i) a reduced IS rate of 15% for the first year with a positive taxable income and the following three years (provided that the consideration of emerging company is maintained);
- ii) the deferral without guarantees of the IS in the first two tax years with positive taxable income; and,
- iii) an exemption from making payments on account of IS during the first two tax periods following the first period with a positive taxable income.

Please note that depending on the company's turnover, other tax incentives non-specific to startups could apply (e.g., special regime for companies of reduced dimension in the CIT, reduced tax rate, etc.).

For PIT purposes, please refer to point 7 above for the advantageous tax treatment of employee share plans.

The Spanish PIT Law also provides a tax deduction for investment in new or recently created companies.

The referred tax credit allows PIT taxpayers to reduce their tax quota in an amount up to 50% of the base of the deduction (which is the acquisition value up to a maximum of EUR 100,000) -i.e., maximum tax credit of EUR 50,000-. In this regard, a recent modification eliminated the prohibition of owning more than 40% of the share capital (individually or together with close relatives) in the startup exclusively for founding partners or shareholders (i.e., the prohibition persists for those individuals who are not founding partners or shareholders).

In line with one of the requirements to be considered a start-up company, the shares or participations in the entity must be acquired by the taxpayer: (i) at the time of incorporation; or (ii) through a capital increase carried out, in general, within five years of such incorporation, or within seven years of such incorporation in the case of companies in certain sectors.



9. Investors – considerations for capital raising

Under Spanish law, Foreign Direct Investment (FDI) are those (i) carried out by residents outside the EU or EFTA, or (ii) EU or EFTA residents whose UBO is a non-EU or EFTA country.

Relevant investments are those where the foreign investor (i) acquires a stake of at least 10% of a Spanish company, or (ii) takes control of a company by decisive influence over the company assets or management body.

FDIs in Spain will require FDI authorisation from the Spanish Council of Ministers prior to their completion when they meet either of the two following alternative criteria (it will suffice for them to meet one of them): (i) the investment is made in one of the “sensitive” sectors that affect “public order, public security and public health”; or (ii) the nature of the investor is “sensitive” (e.g. Foreign investors controlled directly or indirectly by a ‘third country’ government (including public bodies, sovereign wealth funds or the armed forces), foreign investors which have received international sanctions, etc.), regardless of target company’s sector.

However, all FDI (regardless of the sector and the identity of the purchaser) below €1 million is exempt from the requirement to obtain FDI authorisation.

The most common investment options in Spain include:

1. **Private Equity**, which consists of providing financial resources for a period of time in exchange for a stake in companies. It basically involves making long-term professional investments in small, medium and large companies with the aim of making them grow, strengthen them and make them more profitable.
2. **Debt**: It is common that banks help SMEs to finance their investments with loans. However, the inflation and the interest rate are making investors look for alternative ways to invest.



10. IP – protecting the value of your company

Intellectual property is one of the most important assets of the companies, including startups. It is important to protect startups' intellectual property from the moment the startup is constituted and starts operating, as its protection is essential for the long-term success of a startup. More specifically, intellectual property would be even more critical for startups which object is based on innovation and the creation of new products or services. If a company does not adequately protect its intellectual property, it runs the risk of having other companies benefit from its work and investment, which can negatively affect the company and reduce its ability to compete in the market.

Therefore, it is essential companies:

- continuously monitor potential infringements of their intellectual property rights (including industrial property and trade secrets rights, if any);
- if an infringement is identified, take appropriate legal action, such as sending a cease-and-desist notice to the infringer, initiating legal action or initiating alternative dispute resolution procedures such as mediation or arbitration.

What assets can a company protect through intellectual property rights?

Intellectual property

Under Spanish Law the term "intellectual property" refers to copyright and related rights, while other rights such as trademarks, patents and industrial designs are referred to as "industrial property".

Copyright protects literary, artistic and scientific works, such as software, music and graphic designs.

The Spanish Intellectual Property Act requires for a work to qualify for Copyright (and related rights) protection to be: (i) a human creation; (ii) original; and (iii) expressed by any means or medium, tangible or intangible.

As one of a tech company's main assets is likely to be computer software (e.g. mobile applications and websites), it is important for startups to bear in mind that software may benefit from intellectual property protection as long as it complies with the three abovementioned requirements.

Industrial property

A company can protect its assets such as patents, utility models, trademarks and industrial designs.

Additionally, domain names play a relevant role in the startup operation, as they are an essential element of electronic commerce and constitute the mean of access of potential consumers to such startup website and operation in Spain and an identifier for that startup on the Internet. The domain name ".es" is the territorial Internet domain for Spain. In this regard, please consider that ".es" is the top level internet domain for Spain. However, international domain names such as ".com" or ".edu", are not restricted to Spain and may be subject to other protection. The information in this factsheet relates to the .es domain name only.

Trade secrets

A trade secret is any information or know-how, including technological, scientific, industrial, commercial, organisational or financial information or knowledge that has an actual or potential business value.

Trade secrets are, for many companies, one of the most valuable intangible assets on which they often base their business. For this reason, the holder of this information must take all necessary security measures to protect it.



Software algorithms are often one of the main trade secrets for tech companies.. To protect algorithms, companies need to implement strong security measures, such as restricted access, confidentiality agreements and encryption.

For additional guidance on the legal requirements around assets to be protected under intellectual property rights, and what laws regulate such protection, see Annex 4.

What other requirements should companies bear in mind for protecting their IP assets?

Employment and commercial agreements: confidentiality and intellectual property clauses:

- i) **Confidentiality clauses or non-disclosure agreements (NDAs)** to protect confidential information and the company's intellectual property. The purpose of these clauses is to prevent an employee/third party from sharing or disclosing sensitive company information, both during and after the employment/commercial relationship.
- ii) It is advisable that confidentiality clauses contain and specify: (i) what information is considered confidential; (ii) term of the confidentiality undertaking; (iii) custody obligations of the devices that may contain confidential information; (iv) prohibition to make copies of the information on external storage devices or personal clouds of confidential information; and; (v) the consequences of non-compliance with the duty of confidentiality assumed by such party.

Intellectual property clauses to ensure that any creations developed by the employee or third parties under the respective agreements are assigned to the company. Expressly stating the assignment of intellectual property rights to the company in the agreement is an important step because:

- a) In case of employment agreements: Article 51 of the Intellectual Property Act states that, in the absence of agreement, intellectual property rights generated by an employee are exclusively assigned to their employer (in this case, your company).

- b) In case of commercial agreements: If there is not a clear provision in the agreement governing ownership of created intellectual property rights, it could be difficult to argue that your company is the owner of the intellectual property rights in the work developed under the agreement unless you are able to prove that the work has been developed under your instructions or initiative and coordination.

Terms and conditions.

Companies offering their products and services through their websites and apps should ensure their terms and conditions are available not only when purchasing the product or service (purchase terms and conditions) but also when surfing the website and app (terms of use).

In relation to intellectual property protection it is advisable that the above mentioned terms include at least the following provisions: (i) all materials included in the website/app belong to the company; (ii) the user/customer cannot reproduce, make any copies of the website/app content, or carry out any web scrapping practices; and (iii) the user/customer will be liable for any content downloaded on the website/app and must inform the company about any illegal content identified on the website/app.



11. Regulatory – common compliance requirements

General corporate filings

Annual accounts must be filed yearly with the Commercial Registry. For these purposes, the company's administrative body has to draw-up the annual accounts within the three months following the end of the financial year (i.e., March 31).

After the drawing up of the annual accounts, the General Shareholders Meeting must – within the six months following the end of the financial year (i.e., June 30) - approve the annual accounts and agree to the allocation of the obtained results. Once the annual accounts have been approved, they must be filed with the Commercial Registry.

Statutory registers

Companies must keep a shareholders' registry book (Article 106 of the Commercial Registry Regulation). This book must be legalised with the Commercial Registry whenever there is a change in the company's shareholding structure (incorporation of the company, transfer of shares, capital increase or decrease...).

Additionally, Companies must keep a minutes book, containing the minutes passed by the company's Shareholder Meeting and Administrative Body. The book must be legalised yearly with the Commercial Registry. For sole shareholder companies, a book containing all contracts entered into by the company with its shareholder must be kept and legalised whenever there is a new contract executed.

Data Protection

In Spain the EU General Data Protection Regulation (GDPR) applies together with the Organic Law 3/2018 of December 5, on the Protection of Personal Data and guarantee of digital rights and certain other legislation applicable depending on the nature of business activities carried out (e.g. health, telecommunications, e-commerce, financial services, or online behavioural advertising).

The role of a company when processing personal data (controller, joint controller or processor) is relevant as specific measures (e.g. joint controllership agreement or data processing agreement) are required. If the company decides on the processing (controller or, when jointly with other controllers decides on the processing of personal data, joint controller) or processes personal data on behalf of a controller (processor) it is key to comply with corresponding obligations under the applicable data protection regulations.

When the controller or processor is established in Ukraine and the data processing activities are related to (i) products or services offered, irrespective of whether a payment of the individual is required, to individuals who are in Spain (or any other EU Member State) or (ii) there is a monitoring of the behaviour of individuals who are in Spain (or any other EU Member State), the GDPR will be applicable. In these cases, the controller or the processor must designate in writing a representative, except where the processing is occasional, does not include, on a large scale, processing of special categories of data (art. 9 GDPR) or personal data concerning criminal convictions and offences (art. 10 GDPR) and is unlikely to result in a risk to the rights and freedoms of natural persons. The latter applies for all EU Member States and not only for Spain.



There is no obligation to notify databases to the Spanish Data Protection Authority (hereinafter “**Spanish DPA**” or “**AEPD**”) or to pay any fee to this authority.

There is an obligation to apply technical and organisational measures to ensure a level of security appropriate to the risk, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Failure to comply with the GDPR and the Organic Law 3/2018 may give rise to administrative fines up to twenty (20) million EUR or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. The data subject is entitled to receive a compensation from the controller or processor before the civil jurisdiction if he/she has suffered material (economical) or non-material (honour) damage as a result of the infringement.

For international data transfers from the EU to Ukraine companies should take into consideration the Standard Contractual Clauses (SCCs) approved by the European Commission through the [Commission Implementing Decision \(EU\) 2021/914 of June 4, 2021](#).

For additional tools, guidelines, and resources, see Annex 3.

Other

For banking, financial services and activities guidance, see Annex 4.





12. Industry Associations

- **AMETIC** is the main representative association of the digital industry sector in Spain. The size and nature of the organizations that are part of AMETIC are very diverse, from SMEs to large global companies in the fields of Information Technology, Telecommunications, Electronic Industry, Digital Services and Content, Digital Transformation, Enabling Technologies, Banking, Energy, Sustainability, etc. In addition, other associations of the sector at the territorial level and technology parks are also integrated into AMETIC. Its headquarters are located at 74, Príncipe de Vergara in Madrid and 28, Avenida Sarriá in Barcelona. You can also contact them by e-mail at ametic@ametic.es or through their website: <https://ametic.es/>
- **Spanish Chamber of Commerce (Cámara de Comercio de España)**, supports businesses over the entire process of setting up companies, collaborating in all the steps needed to open a business, giving advice early on, handling administrative processes and consolidating the business plan. Its headquarters are located at 12, Ribera de Loira in Madrid. You can also contact them through their website <https://www.camara.es/en>
- **CEOE**. Companies are associated under the employer association named CEOE (“Confederación Española de Organizaciones Empresariales”). There is also a main association focused on small and medium companies called CEPYME (“Confederación Española de la Pequeña y la Mediana Empresa”).
- **DigitalES and Adigital**. Apart from AMETIC (mentioned above), other associations of the tech sector are DigitalES and Adigital.
- **CCOO and UGT**. Regarding employees’ association, the trade unions with most representativeness are CCOO (“Comisiones Obreras”) and UGT (“Unión General de Trabajadores”). Additionally, there are several other trade unions which represent employees, but with a lower representation level.
- **Spanish Association of Fintech and Insurtech**. The main objective of the Spanish Association of Fintech and Insurtech is to create a standard of good practices, within the development of startups and Fintech and Insurtech companies in Spain, and to try that the associated technology companies comply with a Code of Conduct and Good Practices agreed by the Association, seeking the adoption of service standards that protect and benefit the consumer, promoting a responsible use of financial and insurance products.

Annex 1 – Additional Corporate Considerations for Setting up a Business in Spain

	Sociedad Anónima (S.A.)	Sociedad Limitada (S.L.)
Amendments to the bylaws	<p>Except as otherwise provided in the bylaws, amendment proposals are subject to:</p> <p>Calling of the General Meeting, the notice of the meeting must indicate the points to be amended.</p> <p>Resolution of the modification will depend on the call in which we find ourselves, in the first call a quorum of 50% of the share capital with voting rights is required, requiring an absolute majority for approval, in the second call 25% of the share capital with voting rights is required, requiring the approval by 2/3 of the present capital.</p> <p>Execution of the notarial deed and registration in the Commercial Registry.</p>	<p>Except as otherwise provided in the bylaws, amendment proposals are subject to:</p> <p>In the call of the general meeting, the notice of the meeting must indicate the points to be modified.</p> <p>Resolution of the amendment by more than 50% of the votes corresponding to the shares into which the capital stock is divided.</p> <p>Execution of the notarial deed and registration in the Commercial Registry.</p>
Venue for shareholders' meeting	<p>Unless otherwise provided in the bylaws, both ordinary and extraordinary meetings must be held in the municipality in which the company has its registered office. Universal meetings, which are held without prior call, with all shareholders present or duly represented, and unanimously agreed to, may be held anywhere.</p> <p>Additionally, if provided for in the companies' bylaws an online meeting can take place, as long as it is possible to recognise all of the shareholder's and they can intervene.</p>	<p>Unless otherwise provided in the bylaws, both ordinary and extraordinary meetings must be held in the municipality in which the company has its registered office. Universal meetings may be held anywhere.</p> <p>Additionally, if provided for in the companies' bylaws an online meeting can take place, as long as it is possible to recognise all of the shareholder's and they can intervene.</p>

	Sociedad Anónima (S.A.)	Sociedad Limitada (S.L.)
Attendance and majorities at shareholders' meetings	<p>Corporate resolutions are adopted by a simple majority of the votes of the shareholders present or represented at the meeting.</p> <p>The bylaws may require a minimum number of shareholders to attend the general meeting, but in no case may the number required be greater than one per thousand of the capital stock.</p>	<p>Corporate resolutions are adopted by a majority of the votes validly cast, provided that they represent at least 1/3 of the votes corresponding to the shares into which the capital stock is divided.</p> <p>All shareholders are entitled to attend the general meeting. The bylaws may not require the ownership of a minimum number of shares to attend the general meeting.</p>
Number of members of the board of directors	The minimum number of members of the board of directors is 3 and there is no maximum number of members.	Consists of a minimum of 3 and a maximum of 12 members.
Term of the office director	Maximum 6 years (4 years at listed companies). They may be re-elected for periods of the same maximum duration.	Unless otherwise is stated in the company's bylaws, it is for an indefinite period.
Issue of bonds	Bond issues may be used as a means to raise funds. Bonds convertible into shares may be issued or guaranteed.	Bond issues may be used as a means to raise funds, although the total amount of the issues may not be higher than twice the company's equity, unless the issue is secured by a mortgage, by a pledge of securities, by a government guarantee or by a joint and several guarantee from a credit institution. If the issue is secured by a joint and several guarantee from a mutual guarantee society, the limit and other conditions of the guarantee will be determined by the guarantee capacity of the society at the time of providing it, in accordance with its specific legislation. Bonds convertible into shares cannot be issued or guaranteed.

Annex 2 – Additional Tax Considerations for Branch vs Subsidiary

	Branch	Subsidiary
Corporate Income Tax (CIT) / Non-Resident Income Tax (NRIT)	<p>Branches are subject to taxation for non-residents' income tax in respect of profits resulting from the economic trade or business carried out by the Branch. Their taxable income of the permanent establishment must be determined in accordance with the provisions of the corporate income tax (CIT) Law.</p> <p>General tax rate: 25%</p>	<p>Spanish subsidiaries are taxed on a worldwide basis in Spain (i.e., all income obtained by the subsidiary regardless of where it is obtained) for CIT.</p> <p>General rate: 25%</p>
Deductible Expenses	<p>The taxable income of the permanent establishment must be determined in accordance with the provisions of the CIT Law (as detailed in the side column).</p> <p>Nevertheless, there are some differences in respect to the taxation of the subsidiary and the Branch, particularly regarding the deductible expenses subject to the following provisions:</p> <p>Payments made by a branch to its foreign head office or a PE of its head office for royalties, interest, commissions, or technical assistance fees are not tax deductible.</p> <p>Management and general administrative expenses incurred by the head office that can be allocated to the branch are tax deductible if the payments for these expenses are made following criteria of continuity and rationality and provided that certain documentary requirements and other formalities are fulfilled.</p>	<p>Deductible expenses are those that are allowed for accounting purposes. In general terms, expenses would be deductible when they meet the following requirements:</p> <ul style="list-style-type: none"> — Duly registered in the accountancy of the subsidiary, both technically and temporally. — Duly justified. — Related with the income obtained by the subsidiary. — Not being considered as non-deductible expenses for CIT purposes. <p>Following the above, certain adjustments should be made to the result shown in the P&L account since certain expenses are expressly considered as non-deductible for CIT purposes.</p>

	Branch	Subsidiary
Profit Repatriation	<p>From a Spanish Branch to the head office, the remittance is generally subject to a withholding tax of 19%.</p> <p>However, depending on the Double Tax Treaty (“DTT”), this could be decreased.</p>	n/a
Dividends	n/a	The distribution of profits in the form of dividends from a Spanish subsidiary to its non-resident parent company would be generally subject to a withholding tax of 19% unless a DDT or a EU Directive is applicable.

Annex 3 – Additional Considerations for Incorporations vs Acquisition

Steps to Take	Incorporation	Acquisition
Estimated timing and costs	<p>It generally takes approximately 4 weeks to incorporate and register the company with the relevant Commercial Registry .</p> <p>The costs of incorporating an Sociedad Limitada (S.L.) consist of the initial share capital (a minimum of EUR 1 plus additional amount to ensure the company is duly capitalised to perform its business), notarisation and registration fees.</p>	<p>It generally takes around a week to acquire a shelf company from the date on which the law firm (or other seller) is provided with all relevant information and relevant powers of attorney.</p> <p>The costs of acquiring an S.L. amount to approximately EUR 4,500-5,000 (on the basis of a company with an available share capital of approximately EUR 3,000, although a higher share capital may be necessary to ensure the company is duly capitalised to perform its business), notarisation and registration fees.</p>
Additional comments	Please note that, certain information (e.g., naming and changes of directors, changes in the corporate name and address, register for tax purposes, etc.) must be communicated to the Spanish Tax Administration through the filing of the corresponding census declaration (Form 036).	



Annex 4 – Additional Guidance on the Legal Requirements around Assets to be Protected under Intellectual Property Rights, and the Spanish Laws regulating that protection

Intellectual Property

What are the legal requirements for company assets to be protected under intellectual property rights?

In Spain, intellectual property rights are acquired automatically from the moment the work is created, provided that such creation complies with the abovementioned requirements. Consequently, no register is required for obtaining the intellectual property protection, although these rights may voluntarily be registered under the Intellectual Property Registry or third parties (such as notary or trusted third-party) for evidence requirements (although they admit proof to the contrary).

What laws regulate such protection?

The Intellectual Property Act is the main regulation which provides the intellectual property legal regime.

What rights would a company acquire if the asset is protected by intellectual property rights?

If a company obtains intellectual property rights of a work, it obtains the exclusive right to reproduce, distribute and publicly display that work so that the company could prevent others from using such copyrighted work unless such third parties are authorised to do so by the owning company (e.g. a written consent) or by applicable law. The owner also has the right to create derivative works of the copyrighted work.

Industrial Property

What are the legal requirements for an asset to be protected under Industrial Property rights?

Unlike intellectual property, the registration of industrial property is compulsory (i.e., prior registration is necessary to obtain the rights to exploit the industrial property rights).

The registration of industrial property in Spain (trademarks, patents and industrial designs) is carried out through the Spanish Patent and Trademark Office (SPTO) (<https://www.oepm.es/>) and this registration may be done online.

Spanish domain name under “.es” is managed by the public business entity Red.es and registration of “.es” domain names may be obtained through registration before registrar agents, which have been certified before the entity Red.es to carry out such processing of domain name registry requests on behalf of the respective applicants. Domain name registration may be carried out online.

What laws regulate such protection?

In Spain, main industrial property regulations are:

- i) For patents: Law 24/2015 of July 24, on Patents;
- ii) For industrial designs: Law 20/2003, of July 7, on Industrial Designs;
- iii) For trademarks: Law 17/2001 of December 7, on Trademarks; and
- iv) For “.es” domain names: Order ITC/1542/2005 of 19 May 2005, which approves the National Plan for Internet domain names under the country code corresponding to Spain (“.es”) and related documentation.



What rights would a company acquire if the asset is protected by industrial property rights?

The registration of industrial property grants exclusivity and prevents others from using, copying or imitating your business, product or process, allowing the entity to create a unique identity and distinguish itself and its products and services from those of its competitors.

By registering a Spanish trademark, a company has the exclusive right to use that trademark to distinguish its products or services from those of others in the Spanish market. It also has the right to prevent others from using a similar or identical trademark that may cause confusion among consumers.

- Trademark period of protection: 10 years (unlimitedly renewable for 10 years periods).

If the company registers a Spanish patent or an industrial design, it obtains the exclusive right to use, manufacture, sell and distribute the patented invention or the industrial design during the period of patent and industrial design protection in Spain. This prevents others from using, making or selling the invention without the authorization of the owner of the patent or industrial design rights.

- Patent period of protection: 20 years (non-renewable)
- Industrial design period of protection: 5 years (renewable for 5 years periods until a maximum of 25 years is reached).

Through the registration of a domain name, the company can use the domain name and prevent others from using such domain name on the Internet:

- Domain name period of protection: from 1 to 10 years (unlimitedly renewable).

Trade Secret

What are the legal requirements for a company trade secret to be protected?

In order to be qualified as a trade secret, the know-how or information must be secret, i.e. known only to a limited number of persons within the business, have business value and be subject to reasonable and specific measures to keep it secret.

Since trade secrets are not subject to formal registration before any authority, it is up to organisations themselves to establish security policies for the treatment of secret information and to define the procedures for identifying it and keeping it confidential. Among others, it would be advisable to: (i) implement internal confidentiality policies for all employees; (ii) limit physical and digital access to systems containing confidential information; and (iii) implement IT security measures.

What laws regulate such protection?

In Spain business secrets are regulated by Law 1/2019 of February 20, on Trade Secrets.

What rights would a company acquire if the asset is protected as trade secret?

If a company protects an asset as a trade secret, it will have the exclusive right to use it for its own benefit. This means that others, including competitors, would be prohibited from using or exploiting the trade secret without proper authorization of the trade secret owner or unless otherwise permitted by applicable law. By safeguarding a valuable trade secret, a company can obtain a competitive advantage in the market.

Unlike some other forms of intellectual property, trade secrets can potentially be protected indefinitely as long as their owner maintains their secrecy and fulfils the three above-mentioned requirements.



Annex 5 – Data Protection Tools, Guidelines and Resources

For small business and entrepreneurs, the Spanish Data Protection Authority (DPA) provides the following tools:

- [Facilita Emprende](#): a tool to help startups comply with data protection regulations.
- [Facilita RGPD](#): a tool to support companies that carry out low-risk data processing in their compliance with the GDPR.

Additionally, the Spanish DPA has released the following guidelines and resources for companies processing personal data:

- [Basic Roadmap | AEPD](#).
- [Risk Management and Impact Assessment in the Processing of Personal Data | AEPD](#).
- [A Guide to Privacy by Design | AEPD](#).
- [Guidelines for Data Protection by Default | AEPD](#).
- [Guidelines on Personal Data Breach Notification | AEPD](#).
- [Audit Requirements for Personal Data Processing Activities involving AI | AEPD](#).

For additional information on data protection and the GDPR (please note that these links apply for all EU Member States), please visit:

- Practical guide to doing business in Europe: [Data protection](#).
- [Data protection guide for small business | European Data Protection Board \(EDPB\)](#).
- FAQs of the European Commission on [rules for business and organisations](#).

Annex 6 – Banking, Financial Services and Activities

Banking, financial services and activities

In general terms, the provision of banking and financial services in Spain has its own regulatory framework and is supervised by different national competent authorities. A summary of the main activities that would require a special licence or authorisation in Spain is set out below:

- **Banking activities:** the activity of holding repayable funds from the public is a reserved activity in Spain that can only be performed by credit institutions. In order to establish a credit institution in Spain, an authorization by the Bank of Spain is required.
- **Payment services/issuance of e-money:** providing payment services or issuing e-money are also reserved activities in Spain, requiring an authorisation from the Bank of Spain.
- **Investment services:** the provision of investment services, such as reception and transmission of orders, execution of orders, investment advice or portfolio management with respect to financial instruments requires an authorisation by the National Securities Market Commission.

However, in Spain there is [a controlled testing space](#) (also known as 'sandbox') for companies that aim to test projects involving a technology-based financial innovation applicable to the financial system. Interested companies can apply to be included in the sandbox and, if admitted, they can perform their technology tests under the supervision of different authorities. The requirements to access the sandbox are the following:

- The proposed projects must provide a technology-based innovation applicable in the financial system.
- They must be sufficiently advanced to be tested.
- They must provide potential added value in at least one of the following aspects:
 - Facilitating regulatory compliance.
 - Entailing a benefit for users of financial services.
 - Increasing the efficiency of entities or markets.
 - Providing mechanisms to improve regulation or financial supervision work.

In order to assess the different proposed project to access the regulatory sandbox, the supervisory authorities will take into consideration the impact that the projects could have on the Spanish financial system.



The information in this factsheet is for general purposes and guidance only. It is designed to provide a general overview of some important considerations when setting up for success in Spain as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.

Setting up for success in **ITALY**

Welcome to Italy! Italy is a country with a rich history, culture, and tradition, but also a dynamic and innovative economy that offers many opportunities for tech businesses. If you are looking for a new market to expand your tech business, Italy could be an attractive and strategic choice.

Italy is already a leader in several sectors such as fashion, design, manufacturing, tourism, and food. Italy also has strong digital potential, with a growing number of internet users, e-commerce platforms, and online services entering the market.



When looking to expand into a new market, you will need to think about your corporate structure - whether to open a branch, establish a legal entity or acquire an existing company. You will also need to consider funding, IP, employment, data protection and regulatory issues.

Some of the potential benefits of expanding into the Italian market include:

- The existence of industry associations, such as Confindustria and Chambers of Commerce, that provide support and promote the general interests of companies and the local economy.
- Italy offers a favourable legal and regulatory environment for tech businesses, with several incentives and support measures to foster innovation and competitiveness. For instance, Italy has introduced a flat tax regime for startups, a patent box regime for intellectual property income, a visa program for foreign entrepreneurs and investors, and various grants and subsidies for research and development activities.
- Italy has implemented the EU directives on data protection, e-commerce, and consumer rights, ensuring a high level of compliance and harmonization with the European market.

Setting up a tech business in Italy can come with some challenges and complexities. You need to navigate the legal, fiscal, and cultural aspects of doing business in a different country, and comply with the local and EU rules and regulations. In this factsheet, we will provide you with some of the key legal factors to consider when launching a tech business in Italy to help you set up for success.

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1. Corporate considerations for setting up a business in Italy

What entity you should use to set up your company

The main options available to a foreign investor interested in establishing a business in Italy are: (i) to incorporate an Italian company with its own legal personality; or (ii) to incorporate a branch. The main difference between these options is that a branch does not have its own legal personality, which means that its activity and legal liability will at all times be directly related to the foreign company.

There are a variety of vehicles that can be used by foreign companies or individuals investing in Italy. The most common forms used are the joint stock company (S.p.A.) and the limited liability company (S.r.l.). The main differences between S.p.A and S.r.l. are as follows:

	S.p.A.	S.r.l.
Name and naming requirements	The choice of the name for a company is free; it is necessary to carry out preliminary research at the Italian Register of Companies to make sure that the name has not already been taken. The name must include the legal form, i.e., "S.r.l." or "S.p.A."	
Minimum share capital	EUR 50,000.	EUR 10,000.
Payment upon incorporation	At least 25% and 100% of the in-kind contributions.	At least 25%.



	S.p.A.	S.r.l.
Typical documents	Typical documents include: (i) a list of shareholders and information regarding the foreign company wishing to incorporate it; (ii) the shareholders' ledger and share certificates; (iii) Italian tax code of the directors and of the auditing body (any non-Italian citizen director must request the issuance of an Italian tax code); (iv) bylaws and deed of incorporation of the company.	Typical documents include: (i) a list of quota-holders and information regarding the foreign company wishing to incorporate it; (ii) power of attorney, notarized and apostilled, if necessary, issued in favour of the persons who are requested to carry out the incorporation meeting in Italy; (iii) certificate of existence and good standing of the quota-holders; (iv) specific information about the company management; (v) Italian Tax Code of the directors and of the auditing body (if any) (any non-Italian citizen director must request the issuance of an Italian tax code); (vi) bylaws and deed of incorporation of the company.
Non-monetary Contributions	A report from an independent expert on any non-monetary contributions is required. The expert must be appointed by the competent court and the evaluation reviewed by the company's directors.	A report from an independent expert on any non-monetary contributions is required. The expert must be appointed by the shareholders.
Shares	<p>Shares have an equal face value and attribute equal rights to their holders. It is possible to create different share classes, each having its own set of rights.</p> <p>For capital increases, shareholders generally have a pre-emption right on new share issues, unless differently provided and agreed upon by a (special) majority of shareholders in particular circumstances. The maximum number of shares is predetermined by the articles of association and can be listed on regulated markets.</p>	<p>The number of quotas is equal to the number of quotaholders. The quotas represent a divisible portion of the corporate capital. The value of the quotas and the voting rights depend on the represented portion of the corporate capital.</p> <p>Quotas cannot be listed on regulated markets.</p>
Transfer of shares	Shares are freely transferable unless otherwise provided by the bylaws.	Quotas are freely transferable unless otherwise provided by the bylaws.
Amendments to the bylaws	<p>Amendments to the bylaws are adopted by resolutions of the shareholders' meeting passed by majority vote. The competence lies with the extraordinary meeting.</p> <p>Resolutions amending the bylaws, like all resolutions of the extraordinary meeting, must be recorded in minutes drawn up by a Notary Public.</p>	Amendments to the bylaws are adopted by resolutions of the shareholders' meeting passed by majority vote. Resolutions amending the bylaws must be recorded in minutes drawn up by a Notary Public.

	S.p.A.	S.r.l.
Venue for shareholders' meeting	As indicated in the bylaws, or in the municipality where the company has its registered office.	As indicated in the bylaws, or in the municipality where the company has its registered office.
Attendance and majorities at shareholders' meetings	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
Shareholders' meeting requirements	A shareholders' meeting must be called at least once a year, in order to resolve the approval of the financial statement of the company. It is not possible to adopt written resolutions.	The article of associations of a S.r.l. may provide that the decisions of the quotaholders are taken by way of written resolution or written consent. Quotaholders are required to, at a minimum, approve the company's financial statements once a year.
Number of members of the board of directors	The number of directors, if not determined by the articles of association, is determined by the shareholders' meeting, which also determines their remuneration.	Minimum: 2 directors.
Term of the office directors	Directors remain in office for a maximum of three financial years. Unless otherwise provided in the articles of association, directors may be re-elected and may be dismissed by the shareholders' meeting at any time for just cause.	May be indefinite period of time (in such case the shareholders may revoke them with prior notice).
Directors' liabilities	Directors must fulfil their duties, under the provisions set forth by the law and the article of associations, and with the diligence required by the type of appointment and their specific competencies. Directors are jointly liable to the company for the damages arising from the non-fulfilment of such duties. Directors are jointly liable if, being aware of prejudicial acts, they did not do what they could do to prevent their performance or to eliminate or reduce their harmful consequences. The directors are also liable to the company's creditors for non-observance of their duties concerning preservation of the company's assets.	Directors are liable to the company for damages resulting from their failure to comply with the duties imposed by law and the articles of association. The main parameter for assessing a director's liability is that of professional diligence. If there is more than one director, as in the case of the board of directors, they are all jointly and severally liable and each may therefore be ordered to pay compensation for the entire damage caused by their acts. If there is only one director, liability will lie with him alone. A director who proves that he/she is not at fault, or has notified the other directors or the company of his/her dissent, is not liable.
Board of Statutory Auditors	Compulsory	Optional/ Compulsory according to Article 2477 Italian Civil Code.

	S.p.A.	S.r.l.
Issue of bonds	Bonds can be issued.	Bonds can be issued only to professional investors.
Increasing capitalization	In order to resolve upon the increase in the corporate capital of a S.r.l. or a S.p.A., a proper extraordinary quotaholders'/shareholders' meeting must be held in front of a Notary Public. The decision is approved with the majorities provided by the articles of association.	
General Legal liability	No personal liability of the shareholders (other than the payment of the shares in full).	No personal liability of the shareholders (other than the payment of the quota in full).
Innovative Start-up	<p>The legislation in support of innovative start-ups (Decree-Law 179/2012, converted into Law 221/2012) applies to both S.p.A. and S.r.l.</p> <p>These companies must also comply with the following requirements: (i) be newly incorporated or have been operational for less than 5 years; (ii) have their headquarters in Italy or in another EU country, but with at least a production site branch in Italy; (iii) have a yearly turnover lower than EUR 5 million; (iv) do not distribute profits for 5 years from the enrolment into the special section of the Register of Companies; (v) have the production, development and commercialization of innovative goods or services of high technological value as exclusive or prevalent company object and core business; and (vi) are not the result of a merger, split-up or selling-off of a company or branch.</p> <p>The innovative character of the enterprises is identified by at least one of the following criteria:</p> <ul style="list-style-type: none"> — at least 15% of the company's expenses can be attributed to R&D activities; — at least 1/3 of the total workforce are PhD students, the holders of a PhD or researchers; or, alternatively, 2/3 of the total workforce must hold a Master's degree; — the enterprise is the holder, depositary or licensee of a registered patent (industrial property), or the owner and author of a registered software. 	



2. Branch vs subsidiary – options for group expansion

Although in general terms a branch and a subsidiary follow a very similar process for their incorporation (both require the execution of a public deed of incorporation before a Notary Public and registration in the competent Register of Companies) both legal forms present a series of differences that must be considered. The most significant differences are summarised in the following chart:

	Branch	Subsidiary
Legal identity	It does not have its own legal personality (it is the same legal entity as its foreign parent company). However, it carries on the business on an autonomous basis and in a different location and has a separate tax and accounting identity.	The subsidiary has its own legal personality. It is for all legal purposes a legal entity independent of its foreign “parent” company. It is subject to the rights and obligations it incurs independently of those incurred by its parent company.

	Branch	Subsidiary
Formalities	<p>In the jurisdiction of the foreign parent company. In order to register a branch in Italy, the following documents must be prepared in the jurisdiction of the foreign parent company:</p> <ul style="list-style-type: none"> — corporate resolutions adopted by the competent body of the parent company upon the incorporation of the branch and granting of the powers to the branch manager; — a certified copy of the registration certificate of the foreign parent company within the foreign Register of Companies; and — a certified copy of the articles of association and bylaws of the foreign parent company. <p>The above documents must be certified and legalized by means of the “Apostille”. An Italian sworn translation is also required.</p> <p>In Italy Typical documents include, but are not limited to, the following: registration with the appropriate Register of Companies, issuance of an Italian tax code and VAT number for the branch office, issuance of an Italian tax code for the legal representative(s) of the branch office, statement of new activity in Italy.</p>	<p>The legal steps involved in establishing a subsidiary are similar for most types of company structure and usually consist of the following steps:</p> <ol style="list-style-type: none"> a) name checking and name reservation; b) drafting of the company's articles of association and memorandum of association; c) pre-payment of 25% of the share capital; d) appraisal report on contributions of credits or goods in kind; e) execution of the memorandum of association in front of an Italian Notary Public; f) submission of deed of incorporation and of other relevant documents to the Register of Companies by the appointed Notary Public; g) registration of the company with the Register of Companies and awarding of a company registration number; h) application for any government authorizations required for particular activities; i) registration with local VAT authority and application for a VAT identification number; j) opening of the operating bank accounts; and k) execution of the cash capital contribution and/or the contribution in kind.
Minimum share capital	It does not require a minimum capital stock or economic allocation at the time of its incorporation.	The minimum share capital requires is EUR 10,000 or 50,000, depending on whether a limited liability company (S.r.l.) or a joint stock company (S.p.A.) is incorporated, respectively.
Management and governing body	Simpler than a subsidiary. One or more branch managers are granted with the ability to represent the branch office (so-called <i>preposti</i>).	General shareholders' meeting and the corresponding management body (sole director or joint directors or board of directors).

	Branch	Subsidiary
Liability of the foreign parent company	Unlimited liability: the liabilities incurred by the branch must be compulsorily assumed by the foreign parent company without limitation.	Liability limited to the contributions made. The subsidiary is liable for the debts incurred by the subsidiary with its own assets and, in principle, the foreign parent company will not be affected by these debts.
Tax subject in Italy	Yes, for revenue accrued from the activities in Italy of the branch.	Yes.
Financial Statements	It does not have to do a real financial statement but a simpler report.	It depends. In some cases, the subsidiary may avail itself of the exemption from drafting its own consolidated financial statements by filing the parent company's consolidated financial statements.



3. Incorporation vs acquisition of a company

In order to become shareholder of a company, two options should be considered: whether to incorporate a new company or to acquire an existing one. The most significant differences are summarised in the following illustrative chart:

	Incorporation	Acquisition
Common preliminary steps	<p>Prior to the execution of either the deed of incorporation of the company or the deed of acquisition, as the case may be, there are some common preliminary steps:</p> <ul style="list-style-type: none"> — Tax code of director(s): foreign director(s) of the company must apply for their Italian Tax Code (<i>codice fiscale</i>). — Power of attorney for the incorporation/acquisition procedure: grant a power of attorney in favour of the representative to act on its behalf before the Italian Notary Public in order to grant any such deeds (acquisition or incorporation deed, as the case may be). 	
Step 1. Company's bylaws	A draft of the bylaws for the incorporation of the company must be prepared regarding the type of company and characteristics the company will have (i.e., type of management body, company's purpose, etc.).	The target company's articles of association can remain the same. If an amendment is needed, it shall be done before an Italian Public Notary.
Step 2. Bank account	The bank account may be opened even after the incorporation. In this case, the necessary sum to set-up the company (i.e., the corporate capital) can be kept in escrow by the Notary Public on his trust bank account and then can be transferred onto the Italian entity's bank account when the latter is opened. The bank account is local.	The company already has a bank account.

	Incorporation	Acquisition
Step 3. Execution of a public deed	<p>Execution of the public deed of incorporation: A public deed of incorporation must be granted before an Italian Notary Public.</p> <p>In order to do so, the documents referred in steps 1 and 2 above are needed.</p> <p>The incorporation meeting that takes place before an Italian Notary Public must provide for, <i>inter alia</i>, the filing and registration of the articles of association (and annexed bylaws) with the competent Register of Companies.</p>	<p>Execution of the public deed of acquisition: The transfer of the shares or of the quotas of a company must be formalised in a public deed.</p> <p>This public deed must contain the details of the new shareholder (the buyer) and the details of the shareholding acquired, as well as the purchase price and the registration fee to be paid.</p>
Step 4. Establishing the management body	<p>Within the deed of incorporation, the management body is also appointed. The company may be governed by a sole director, various directors acting jointly or separately or a board of directors.</p>	<p>New shareholder decisions:</p> <p>After the execution of the deed of acquisition, the new shareholder may adopt certain additional decisions such as appointing new director(s) and amending the bylaws (corporate, name, domicile, corporate purpose, etc.). These decisions must also be notarised.</p>
Step 5. Registering the public deed with the Register of Companies held by the competent Chamber of Commerce	<p>The deed of incorporation of the company must be registered with the Register of Companies of the company's domicile.</p>	<p>The deed of acquisition of the company does not need to be registered with the Register of Companies of the company's domicile, but the deed notarising the decisions must be.</p>



4. Practical steps required to be undertaken when setting up a new company in Italy

In addition to setting up a local bank account, appointing professional advisers and service providers such as accountants, lawyers, and company secretaries and taking out insurance, there will be several other practical steps a company will need to take. The sections below summarise some of the principal practical considerations a company will need to address when establishing a new entity in Italy.

A new legislative amendment has been introduced which makes it possible to fully incorporate a S.r.l. by online means, provided the contributions are in cash.

The amendment also makes it possible to appear before an Italian Notary Public via videoconference.

The certificate of reservation of the company name can also be obtained by online means.

Choosing a company name

The choice of the name for a company is free (provided not already taken). A preliminary search of the proposed name should be undertaken at the Italian Companies' Register to avoid choosing a name which is the same or very similar to one already in use. Additionally, the name of the company must include its legal form (i.e., "S.r.l." or "S.p.A.").

Setting up a registered office

See table on next page.

Formality	Practical Steps
Registered Office	<p>To establish a company's registered office, the general shareholders' meeting must approve such registered office and indicate it in the articles of associations and the bylaws of the company (generally, the bylaws provide that the administrative body may also transfer the registered office's address within the national territory).</p> <p>After execution of the notarial deed, any address change must be registered with the competent Companies' Register.</p>
Registration of directors and shareholders with the Italian Tax Authority	<p>All directors and shareholders must obtain an Italian tax code (<i>codice fiscale</i>).</p> <p>The tax code is issued by the Italian Revenue Agency (<i>Agenzia delle Entrate</i>). The shareholder and/or director must fill out a form provided by the Italian Revenue Agency and to sign a statement indicating the purpose of the request.</p>
Registration of the company with the Companies' Register (obtaining the tax code and the REA)	<p>Company's registration must take place prior to the beginning of the activity. In general, companies register with the competent Companies' Register by submitting the relevant official form and documentation identifying the company (which can be done by electronic means).</p>
Execution of the articles of associations	<p>The company's shareholders must execute the articles of incorporation through a public deed. This implies that the articles of association must be signed in front of an Italian Notary Public.</p>
VAT Number	<p>Once the articles of association are executed, it will be necessary to obtain the Company VAT number (<i>Partita IVA</i>) which is issued by the Italian Revenue Agency. The request is made online, and the VAT number is usually issued on the same day.</p>
Social Security – Notification of opening of workplace	<p>The notification of the beginning of a business with employees involves a number of formalities to be fulfilled via the online ComUnica system.</p>
Certificate of incorporation	<p>The final step of the incorporation process is to obtain the certificate of incorporation (<i>Visura</i>). It will be necessary to file all the documentation of the incorporating company (articles of association, bylaws, VAT number, tax code) to the Companies' Register.</p>

Corporate filings – including constitutional and accounting documents where applicable

See Question 3 above.



5. Governance

Constitutional documents

Constitutional documents for an entity to be incorporated in Italy are the following:

- Italian Tax Code (mandatory for all directors/shareholders).
- Parent company's certificate of good standing (dully apostilled and translated).
- Bank account.
- Parent company's ultimate beneficial owner deed.
- Incorporation deed (including all the above and the company's bylaws and appointment of directors).

At a minimum, the articles of association must include, *inter alia*:

- The company's name.
- Company's share capital.
- Registered office.
- Corporate object.
- Transferability of shares.
- Managing bodies: include administrative body and shareholder's meeting and its functioning (quorum, resolutions, competences, etc.)
- Company activity's starting date.

It is also possible to draft ad hoc bylaws which (subject to certain exceptions provided by law) include several additional provisions regarding the functioning of the company (such as directors' retribution, reinforced majorities, etc.).

However, some provisions are limited by law and may not be included in the bylaws (e.g., the lock-up period cannot exceed 5 years for S.r.l.), which is why it is common to execute a private shareholders' agreement for matters which may not be included in the bylaws. Enforceability of shareholders' agreements is private and only shareholders may be liable in case of breach as it is not enforceable against the company.

Common shareholders' agreement provisions include:

- Share transfer regime (drag/tag-along, pre-emptive rights, call/put options, lock-up period, etc).
- Governance (reinforced majorities, appointment of directors, appointment of an observer).
- Non-compete clauses (period, business, territory).

Directors Duties and Liabilities

As a general principle, the Italian Civil Code provides that the directors must comply with the duties provided by law and by the bylaws with the diligence required by the nature of the office held as well as in consideration of the specific competence of each director. The directors are jointly and severally liable towards the managed company for damages arising from the breach of their duties, except for those competences which have been delegated to the executive committee or which have been otherwise delegated to one or more directors.

General duties binding each director include:

- Duty to act in order to pursue the company's purpose.
- Duty to set out an organizational, administrative and accounting structure adequate given the nature and size of the company and functional to the timely detection of a business crisis.
- Duty of care.
- Duty to inform the other directors.
- Duty to act advisedly.
- Duty to monitor the executive directors.
- Duty to inform the other directors and statutory auditors, of any existing conflict of interest in a specific company transaction.



Directors are also responsible for ensuring that the company complies with its other statutory and legal obligations, for example under environmental laws, health and safety laws, employment laws, consumer protection laws, competition laws and bribery/anti-corruption laws.

Civil liability may be incurred by directors towards:

- The company for damages caused by a failure of one or more directors to perform the specific duties and obligations under applicable law and the bylaws with regard to the management of the company.
- The company's creditors if directors have breached the specific rules regarding the preservation of the corporate assets.
- Individual shareholders or third parties for damages directly caused by directors' fraudulent or negligent action.

In relation to criminal liability, as well as the general rules that apply to all, specific rules of criminal corporate law apply to directors.



6. Key requirements for employment contracts in Italy

Given the existence of a large number of national collective agreements (**NCA**s) and their extensive use by employers, employment agreements in Italy usually consist of simple hiring letters which refer to the items required by the law including the identity of the parties, place of work, employment start date, trial period, duration of the employment and enrolment, employee's duties and the provisions set forth by the applicable NCAs.

Individual employment contracts also specify the employee's "category" as established by the Civil Code (blue collar employees (*operai*); white collar employees (*impiegati*); middle managers (*quadri*); executives and white-collar managers (*dirigenti*)).

At the beginning of the employment relationship, the employer must inform the employee of the main terms and conditions of the contract.

Pay and benefits

Minimum wage	There is no statutory minimum wage in Italy. Minimum wages for each contractual level are usually set forth by the relevant NCAs.
Statutory Bonuses	There are no statutory bonuses. NCAs may provide for collective performance bonuses (" <i>premi di risultato</i> ") or individual performance bonuses.
Fringe Benefits	Employers can grant certain employees fringe benefits (for example a company car and mobile phone to top/middle management and sales positions, luncheon vouchers, and internal or external training and education).
Severance Payments	Employers must fund severance payments for all employees (" <i>Trattamento di Fine Rapporto - TFR</i> "), amounting to 1/13.5 of the annual overall compensation, payable on termination of employment for any reason (including resignation, dismissal for just cause or death).

Income tax and social security considerations

Income Tax	Income from employment is subject to personal income tax (IRPEF) withheld by the employer at progressive rates.
Social Security System	Both employees and employers must contribute to the social security system. Italian employers must register with the Italian Security Administration (Istituto Nazionale Previdenza Sociale) (INPS) to pay social security contributions for employees.

Working conditions

Working Hours	<p>The duration of the working week cannot exceed 40 hours a week within a reference period of four months. Executives are not subject to the rules governing working hours. Some NCAs provide for a working week of less than 40 hours. Employees must have least one weekly rest day (usually Sunday).</p> <p>Exceptional and temporary business activities may need employees to work on weekly rest days or legal holidays.</p>
Overtime work	Overtime work is considered as the hours worked exceeding 40 hours per week and may not exceed 8 hours weekly and 250 hours yearly. NCAs set specific additional rates to be applied to overtime work and can also replace overpay with additional rest days.
Sick leave	Employees are entitled to 3 days of paid sick leave charged to the employer.

Family-friendly rights

Maternity Leave	Pregnant employees are entitled to 5 months of maternity leave, from the second month before the due date to the third month after birth. The last 3 months can be extended to 7 months in specific cases. Pay replacement benefits are provided by social security. During maternity leave employment is suspended and seniority is protected.
Other leave	There are other types of leave provided for by law and the applicable NCA's, for example adoption leave, paternity leave, parental leave, and short-term leaves, such as wedding leave or leave linked to public and jury duties, family circumstances, or education.

Termination of employment

Dismissal should always be provided by written notice. Individual dismissals of employees are subject to certain restrictions.

The following types of dismissal are recognized as lawful:

Dismissal for just cause (<i>giusta causa</i>)	The dismissal is due to the misconduct of the employee making a continuation of the employment relationship untenable (for instance theft, riot and insubordination). Case law on this point illustrates sharply contrasting precedents which make it extremely difficult in practice for an employer to act with speed and certainty. If just cause occurs, an employee may (following a disciplinary procedure which takes about seven days unless differently provided for by the NCA) be dismissed without notice or any payment in lieu of notice.
Dismissal for a justified reason (<i>giustificato motivo</i>)	Includes a serious breach of the contract by the employee ("justified subjective reason", e.g., lack of productivity or continuous uncooperative attitude, in which case a dismissal can be notified only after the disciplinary procedure mentioned above has been completed), or "any reason concerning the productivity, the organization of the work or the operation of the company" ("justified objective reason", e.g., the removal of the position). In such cases the employee must nevertheless either be given notice of dismissal or receive payment in lieu of notice.

Executives are subject to different rules.

Italian law prohibits dismissal for all categories of employees in certain cases, including:

Marriage	In the case of female workers during the period from the announcement of her marriage until one year after its celebration.
Pregnancy	From the beginning of a pregnancy until one year after the birth in the case of female workers and for those who take paternity leave, from the duration of the leave until one year after the birth.
Illness and Accidents	In the case of illness and accidents at work, for the period of time set out in the NCA.
Managers appointed to the works council	In the case of dismissals of managers appointed to the works council for the period from the date of their appointment to such office until one year has elapsed from vacation of office.
Discriminatory reasons	For discriminatory reasons (e.g., determined by political ideologies, religion, racism, language, sex and for belonging to a trade union).



Collective rights/bargaining

The NCA is an agreement negotiated and signed by the trade unions of both employers and employees for each sector. In any employment relationship, there is usually an underlying applicable NCA. The NCA regulates the elements of the labour relationship that the law expressly defers to it or those aspects that, although regulated by the law, the parties deem useful to also be governed by the NCA.

NCAs provide the standard point of reference for all workers in a particular business sector, even if the employee in question is not a member of a trade union. The NCAs establish a minimum salary and the minimum terms that all employment agreements in the relevant sector must comply with. An employment contract cannot provide terms and conditions below the levels and standards set out in the applicable NCA.

It is important to choose the right NCA according to the employer's business activity to avoid possible claims by the employees. Please note that a different NCA applies to executive-level employees.



7. Incentivisation of early-stage team and shareholder structure

Companies can motivate and incentivize its key workers in the following ways:

- **Bonuses:** at present, the most widespread ones are agreements providing – under company or territorial collective agreements – for the payment of performance bonuses paid by the employer to its employees upon achievement of specific objectives.
- **Company welfare:** consists of services, works, and services paid to the employee in kind or in the form of reimbursement of expenses, having purposes of social importance, excluded from the income of employment.
- **Stock option plans:** stock option plans are a tool for rewarding and retaining the loyalty of the beneficiary workforce (employees or directors) considered strategically important for the company. Through the assignment of stock options, the company offers an employee the right (option) to acquire his/her own shareholding, or that of another company belonging to the same group, in a predetermined future period and at a fixed price, usually equal to the value of the shares at the time of the offer itself.
- **Pension scheme:** it is typical to offer, as part of the remuneration, pension schemes to ensure workers a revenue after retiring.
- **Tax reductions:** among the benefits for employees of an innovative start-up, the law provides that their total remuneration is made up of a salary element that cannot be less than the minimum salary provided for in the applicable collective bargaining agreement and of a variable remuneration element linked to the efficiency or profitability of the company, to the productivity of the employees or the team, or to other objectives or parameters of performance agreed between the parties. Variable remuneration can include the assignment of options to buy shares of the company and/or the transfer of such shares at no cost to the

employee. The income deriving from the assignment of financial instruments or similar rights (including options to buy shares or other financial instruments of the start-up) by an innovative start-up to its directors, employees or independent workers does not constitute employment income and is therefore exempt from both tax and social security contributions. This benefit applies only on condition that those financial instruments or rights are not bought back by the innovative start-up itself or any company, which controls or is controlled by the innovative start-up. Any capital gain realized through the sale of these financial instruments is subject to the ordinary tax regime for capital gain in Italy. The special regime above applies only within the first five years from incorporation of the start-up.

Generally speaking, in Italy, a favorable treatment applies to innovative start-up and SME providing incentives as:

- Free-of-charge incorporation with digital signature;
- Exemption from paying: (i) annual fees to the Chambers of Commerce; and (ii) other registration fees and duty stamps usually owed to the Companies' Register;
- A flexible corporate management including (i) the possibility to create categories of shares with particular rights (e.g., voting rights non proportional to the participation in capital); (ii) possibility to issue participative financial instruments; and (iii) possibility to offer capital shares to the public;
- The innovative start-up is exempt from regulations on dummy companies and on companies registering systematic losses;
- Easier compensation of VAT credits;
- Tailor-made labor law including the possibility to derogate the ordinary rule regarding renewals of employment agreements and keeping the ratio between fixed-term and open-ended agreements;
- Chance to collect capital through authorized equity crowdfunding portals; and
- "Fail fast" procedure.



8. Tax incentives / special regimes / grants

Entities considered as start-ups under Italian law can take advantage of certain tax benefits including, *inter alia*:

- **Smart&Start Italia:** Smart & Start is the incentive scheme that is aimed at boosting the creation and growth of innovative startups (i.e., hi-tech startups that are subject to a simplified regulation), through the development and/or improvement of innovative technological solutions in Italy. Eligible expenses must be between EUR 100,000 and EUR 1,500,000. The subsidy consists of an interest-free loan up to 80% of the total investment (10% in the form of a grant in Southern Italy). Funding may rise to 90% if the startup is composed exclusively of women and/or people under 36, or if it includes at least one Ph.D. holder moving to Italy.
- **Enterprises “Zero Interest Rate”:** “Zero Interest Rate” is aimed at supporting new enterprises with benefits granted in the form of a mix of zero-interest rate loans and grants which may cumulatively cover up to 90% of eligible expenses. Targets are micro and small companies established in Italy for no more than 60 months, composed, for more than half (i.e., at least 51%) of members and shares, of 18–35-year-olds or women (no age limit).

In general, the following incentives are available for companies operating in Italy, including, *inter alia*:

- **Patent box:** super-deduction of 110% in corporate income tax (known as *imposta sul reddito sulle società*, (IRES)) and regional production tax (known as *imposta regionale sulle attività produttive* (IRAP)) for the research and development costs incurred in relation to eligible intangible assets.
- **R&D:** innovation and design tax credit - volumetric tax credit, with different rates by type of eligible activity (R&D, innovation, digital 4.0, green) and tax period.

- **Tax credit for investments in industry 4.0 assets:** tax credit with different rates depending on the type of asset (tangible or software), the amount of eligible investments, and the tax period.
- **New employment bonuses:** are reductions, or total exemptions, in social security contributions. The benefit is a labour cost reduction, to employers that hire specific categories of people, including people under 36 and unemployed women of any age, both with a 100% reduction, as well as for all already existing and new employees in Southern Italy (30% reduction).
- **Inpatriate workers:** can benefit from a reduction equal to 70% - or 90% of the personal income tax (IRPEF – *Imposta sul reddito delle persone fisiche*) if residents in Southern regions (Abruzzo, Apulia, Basilicata, Calabria, Campania, Molise, Sardinia and Sicily) - over their taxable income for a period of 5 years (up to 10 years depending on the number of dependent children and the acquisition of residential property).
- **Investments in innovative companies by legal entities:** legal persons investing in innovative startups and SMEs can benefit from a 30% tax reduction of the IRES. The investment must be kept for at least 3 years.
- **Investments in innovative companies by natural persons:** natural persons investing in innovative startups and SMEs can benefit from a 50% tax reduction on the investor’s taxable income for IRPEF. The investment must be kept for at least 3 years.



9. Investors considerations for capital raising

Non-direct investments

In Italy there are participatory financial instruments which are a sort of preferred shares or convertible instrument for early-stage investment until rounds A and B.

There is no need for government authorization unless the company does activities that fall under the Golden Power: the power of the Italian Government, exercised by the Presidency of the Council of Ministers, to intervene when it deems it is necessary in corporate decisions implemented by enterprises belonging to industries of strategic and national interest. By using the Golden Power, the Italian State can, inter alia, veto certain transactions and/or corporate resolutions, or impose specific conditions to the transactions.

State support

There are various acceleration programs and state fundings whose requirements are established on the basis of different criteria such as, for example, man/woman/region and are both state and regional incentives.



10. IP – protecting the value of your company

Intellectual property rights (**IPRs**) are an important and sometimes the most fundamental asset of a company, especially for tech businesses / start-ups. Therefore, attention should be paid to the means of protecting such IPRs. In Italy, the competent authority for the management of IPRs is the Italian Patent and Trademark Office (**UIBM**) which has its own freely accessible database.

Below are the main IPRs and their characteristics.

Trademark Registration	<p>It is essential to file a trademark with the UIBM to protect a company's brand identity and prevent unauthorized use by others. Applications for trademark registration can be submitted online.</p> <p>Once registered, the trademark is protected for 10 (ten) years from the date of deposit and can be renewed every 10 years, with no limits.</p>
Copyright Protection	<p>Copyright automatically arises upon the creation of an original work. However, to enhance protection, it is advisable to include the copyright symbol (©), the year of creation, and the name of the copyright owner on the work.</p>
Patent and Design Protection	<p>For inventions and innovative designs, it is crucial to seek patent and design registrations through the UIBM. This grants exclusive rights and prevents others from using, making, or selling the invention or design without permission.</p>
Non-Disclosure Agreements (NDAs)	<p>Including confidentiality clauses in commercial contracts and entering non-disclosure agreements can protect sensitive information, business plans and trade secrets from being disclosed to unauthorized parties, thus keeping the business advantage for the launch of products and services which are characterized by a high degree of tech innovation.</p>



Licensing and Assignment Agreements	When granting permission to use intellectual property to third parties, it is crucial to have licensing and assignment agreements in place. These agreements define the terms and conditions under which the intellectual property can be used or transferred and creates the legal grounds for the enforceability of the company's own rights.
Employee and Contractor Agreements	Ensuring that employees and contractors sign agreements that assign ownership of intellectual property created during their employment or engagement to the company can help safeguard the company's rights and avoid frictions with employees dedicated to the development of intellectual property for the company's own business purposes.
Monitoring and Enforcement	It is important to monitor for potential infringements of intellectual property rights and take appropriate legal actions, such as sending cease and desist letters or pursuing litigation if necessary.

It is advisable to consult with a legal professional specializing in intellectual property law to ensure full compliance with the specific legal requirements and to tailor the protection strategies to the company's needs.



11. Regulatory – common compliance requirements

General corporate filings

Companies' annual draft of their financial statements must be drawn-up by the administrative bodies, and then approved by the general shareholders' meeting, within three months following the end of the financial year (i.e., for financial years ending on 31 December, by 31 March), unless specific extensions are provided for by the law (up to 180 days from the end of the financial year).

After the approval, the financial statements must be filed with the Companies' Register, together with the minutes of the general shareholders' meeting that approved them, within 30 days following their approval.

Statutory registers

Both limited liability companies and joint stock companies must keep statutory registers, to be endorsed by the Companies' Register at the time of incorporation of the company and annually thereafter. Statutory registers include: (i) the shareholders' ledger (mandatory for joint stock companies only), which shows the shareholding structure of the company (e.g., incorporation, transfers of shares, or capital increases), (ii) the bond registry book (for joint stock companies only, if bonds are issued), (iii) the minute books of the shareholders' meetings (and of the bondholders' meetings, if applicable), meetings of administrative body and supervisory body and (iv) the financial instrument registry (for joint stock companies only, if financial instruments are issued).

For sole shareholder companies, a book containing all the agreements entered into by the company with its shareholders must be kept and legalised whenever there is a new agreement executed.



Data Protection

In Italy, opening a company involves complying with various privacy requirements to protect personal data. Some of the key privacy requirements for opening a company in Italy include:

Data Protection Officer (DPO)	Certain companies may be required to appoint a Data Protection Officer, particularly if they process significant amounts of personal data or engage in specific types of data processing activities (such as, for example, data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership).
Data Processing Lawfulness	Personal data must be processed lawfully, which typically requires obtaining the data subject's consent, fulfilling a contractual obligation, complying with a legal requirement, protecting vital interests, performing tasks carried out in the public interest, or pursuing legitimate interests (provided they do not override the data subject's rights and interests).
Information and Transparency	Companies must provide individuals with clear and transparent information about how their personal data is processed. This includes details such as the purposes of processing, the legal basis for processing, the recipients of the data, the data retention period, and the rights of the data subjects.
Data Subject Rights	Individuals have several rights regarding their personal data, including the right to access their data, rectify inaccuracies, erase data under certain circumstances ("right to be forgotten"), restrict processing, object to processing, and data portability.
Data Breach Notification	Companies must have procedures in place to demonstrate their compliance with the privacy-related legal framework and, in particular also to detect, assess, and report personal data breaches to the Italian Data Protection Authority (<i>Garante per la protezione dei dati personali</i>) and, in certain cases, notify affected individuals. The notification must be made without undue delay and, where feasible, not later than 72 hours after having become aware of the breach.
Cross-Border Data Transfers	Transferring personal data outside the European Economic Area (EEA) must comply with specific requirements, such as implementing appropriate safeguards (e.g., using Standard Contractual Clauses or relying on specific derogations).
Privacy Policies and Consent	Companies should have in place comprehensive privacy policies for each data subject whose personal data it processes and that outline their data processing practices. When consent is required based on the kind of data and purpose of processing, obtaining valid consent from individuals for processing their personal data legitimately is crucial, and it should be freely given, specific, informed, and unambiguous.



12. Industry Associations

- **Confindustria:** Confindustria is the main association representing manufacturing and service companies in Italy, with a voluntary membership of more than 150,000 companies of all sizes, employing a total of 5,383,286 people. The association's activities are aimed at guaranteeing the central importance of companies, the drivers of Italy's economic, social and civil development. By representing companies and their values at institutions of all levels, Confindustria contributes to social well-being and progress, and from this standpoint guarantees increasingly diversified, efficient and modern services.
- **Chambers of Commerce:** within the territorial area they cover, the chambers of commerce provide support and promote the general interests of companies and the local economy. With the exception of the responsibilities assigned by the Constitution and the laws of Italy to state authorities, regional authorities and local authorities, they also have administrative and economic functions in relation to the business system. The chambers of commerce, individually or as an association, also exercise the powers delegated to them by the State and by the regional authorities, as well as other tasks assigned them under international conventions or agreements, their actions being shaped by the principle of subsidiarity.



The information in this factsheet is for general purposes and guidance only.

It is designed to provide a general overview of some important considerations when setting up for success in Italy as a tech business. It is not intended to be comprehensive or definitive. It also does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. You should do further research and seek appropriate legal, tax, accountancy and other professional advice relevant to your particular circumstances before making any decisions that may affect your business.