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Doing Business between SINGAPORE & LATIN AMERICA

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SINGAPORE

Duane Morris & Selvam

1. What are the key regulatory requirements and procedures for establishing and operating a business in Singapore?

The main legislation that governs the incorporation of companies in Singapore is the Companies Act 1967 (CA). The governmental body that administers the CA is the Accounting and Corporate Regulatory Authority of Singapore (ACRA).

Registration and Formation

A company can be registered online using BizFile+ (a portal on the ACRA website) by a Singapore citizen, a permanent resident or an individual holding a SingPass (an online account to access Singapore government e-services).

Foreign individuals and entities must engage the services of registered filing agents (for example law, accounting, or corporate secretariat firms).

Company Name

Pursuant to Section 5 of the Business Names Registration Act 2014 (BNRA), before a person carries on business in Singapore, the person and the person's business name must be registered with the ACRA. Pursuant to Section 17 of the BNRA, the business name cannot, amongst others, be undesirable or identical to any other registered business name, or the name of any corporation or limited partnership.

Key Appointment Requirements

Pursuant to Section 145(1) of the CA, every company must have at least one director who is ordinarily resident in Singapore and, where the company only has one member, that sole director may also be the sole member of the company.

Pursuant to Section 171 of the CA, every company must have one or more secretaries each of whom must be a natural person who has his or her principal or only place of residence in Singapore and who is not debarred from acting as secretary of the company.

Pursuant to Section 205 of the CA, the directors of a company must, within 3 months after incorporation of the company, appoint an accounting entity or accounting entities to be the auditor or auditors of the company (unless exempted from audit requirements).

Reporting Requirements

Pursuant to Section 19 of the CA, a person desiring the incorporation of a company must furnish with ACRA the company's financial year end (FYE).

Pursuant to Section 175 of the CA, listed companies are to hold their Annual General Meeting (AGM) within 4 months after their FYE, while any other company is to hold their AGM within 6 months after FYE. Private companies may not need to hold an AGM if they meet the criteria specified in Section 175A of the Act namely:

- If all members have approved a resolution to dispense with the holding of AGMs;
- If the company sends their financial statements to members within 5 months after the FYE; or

- If the company is a private dormant relevant company that is exempt from preparing financial statements.

Pursuant to Section 197 of the CA, a listed company must file its Annual Returns (AR) within 5 months after FYE, and for all other companies, within 7 months after FYE.

Pursuant to Section 201(8) of the CA, a company must have its accounts audited (unless it is a dormant company or falls within the definition of a small company or small group under the CA).

Maintenance of Company Registers

The CA requires all companies to maintain up-to-date registers of people in the following roles of Members, who are often also known as shareholders; Directors; Secretaries; Auditors; CEOs and Controllers, also commonly known as beneficial owners.

These registers (except for the register of members for public companies) are maintained by ACRA in electronic form. Pursuant to Section 173A(1) of the CA, whenever there are changes in the appointments or particulars of directors, secretaries, auditors and CEOs, the company must update this information via BizFile^{+} within 14 days from the date of the change.

Registering a Foreign Company in Singapore

Apart from setting up a local company or subsidiary as illustrated above, a foreign company can also:

1. **Transfer its registration to Singapore (Re-domiciliation)**

The Companies (Amendment) Act 2017 introduced an inward re-domiciliation regime in Singapore, to allow foreign corporate entities to transfer their registration to Singapore (e.g. foreign corporate entities that may want to relocate their regional and worldwide headquarters to Singapore and still retain their corporate history and branding). A foreign corporate entity that re-domiciles to Singapore will become a Singapore company and is required to comply with the Companies Act, just like any other Singapore-incorporated company. Re-domiciliation will not affect the obligations, liabilities, properties or rights of the foreign corporate entities.

2. **Set up a Representative Office**

Foreign companies interested in exploring potential business opportunities in Singapore may set up a Representative Office (RO) before committing to a business venture. It allows a foreign entity to assess the business environment in Singapore before deciding to set up a permanent establishment. A RO is a temporary set-up with no legal status so it cannot engage in any trading or business activities which yield a profit. An application to register a RO must be submitted to Enterprise Singapore. An approved RO of a foreign commercial entity may operate in Singapore for a validity period of one year only from its commencement date. An extension of RO will only be granted on a case-by-case basis, and is subject to approval for up to a maximum of three years.

All new applications of foreign commercial entitles must fulfill the following criteria: Sales turnover of the foreign entity must be greater than US$250,000; Number of years of establishment of the foreign entity must be greater than or equal to 3 years; and Proposed number of staff for RO should be greater than 5 people.

3. **Register a Branch of the Foreign Company**

Unlike a subsidiary, the branch of a foreign company must have a locally resident authorised representative. The foreign branch must also comply with the statutory and disclosure requirements of the Companies Act like lodging financial statements with ACRA.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Singapore? Are there any restrictions or limitations on FDI in specific sectors?

Singapore has relatively minimal restrictions on FDI except in a few specific sectors referred to below. There is no separate law governing foreign investments in Singapore and foreign investments in these sectors are regulated by sector-specific regulators.

Real Estate

The main legislation providing for restrictions on foreign investment in real estate is the Residential Property Act 1976 of Singapore. Generally, foreign persons are not permitted to purchase most types of public housing in Singapore. Foreign persons are required to seek prior approval from the Singapore Land Authority for the purchase of landed residential property, land zoned for residential purposes, all the apartments or units in a residential development, place of worship, worker's dormitories or serviced apartments and boarding houses (not registered under the Hotels Act 1954 of Singapore).

Broadcasting Companies

The main legislation providing for restrictions on foreign investment in broadcasting companies is the Broadcasting Act 1994 of Singapore (BA). Pursuant to Section 44 of the BA, a broadcasting company must not, unless the Infocomm Media Development Authority (IMDA) approves, be granted or hold a relevant licence if the IMDA is satisfied that any foreign source, alone or together with other foreign sources: holds at least 49 percent of the shares in the company or its holding company; is in a position to control the voting power of at least 49 percent in the company or its holding company; or all or the majority of the persons having the direction, control or management of the company or its holding company are appointed by, or accustomed or under an obligation to act in accordance with the directions of, the foreign source. Pursuant to Section 43(1) of the BA, a person must not, without the prior consent of the IMDA, receive any funds from any foreign source for the purposes of financing, directly or indirectly, wholly or partly, any broadcasting service owned or operated by any broadcasting company. Pursuant to Section 43(2) of the BA, the IMDA may grant its consent if it is satisfied, on any information that it may require to be provided to it, that the funds from a foreign source is intended for bona fide commercial purposes.

3. What are the tax implications and incentives for businesses investing in Singapore? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

The corporate income tax rate in Singapore is 17 percent of the company's chargeable income. There are however a number of tax incentives for businesses in Singapore.

Section 13O/U Income Tax Act 1947 (ITA)

Pursuant to Section 13O/U(1) of the ITA, there may be tax exemptions arising from funds managed in Singapore by a fund manager. However, there are certain conditions that have to be met. For example, for Section 13O(1) in relation to single family offices, the fund must, amongst others, have a minimum fund size of S$20 million at the point of application and throughout the incentive period; employ at least two investment professionals (IPs), with at least one IP being a non-family member; and incur at least S$200,000 in local business spending. For Section 13U(1) in relation to single family offices, the fund must, amongst others, have a minimum fund size of S$50 million at the point of application and throughout the incentive period; employ at least three IPs with at least one IP being a non-family member; and incur at least S$500,000 in local business spending.

Start-up Tax Exemption Scheme

New start-up companies can have a 75 percent exemption on the first S$100,000 of normal chargeable income and a further 50 percent exemption on the next S$100,000 of normal chargeable income. All new start-up companies are eligible for the tax exemption scheme, except companies whose principal activity are that of investment holding or companies that undertake property development for sale, investment, or both. The new start-up company must also be incorporated in Singapore; be a tax resident of Singapore for that year of assessment; and have its total share capital beneficially held directly by no more than 20 shareholders throughout the basis period for that year of assessment where all the shareholders are individuals; or at least 1 shareholder is an individual holding at least 10 percent of the issued ordinary shares of the company.

Avoidance of Double Tax Agreements (DTAs)

Singapore has signed DTAs with a number of countries like Brazil and Mexico such that businesses are not double taxed from income that flows between the two countries. For the full list of DTAs, Limited DTAs and exchange of information arrangements, please see the Inland Revenue Authority of Singapore list.

4. How does Singapore address intellectual property protection and enforcement?

Intellectual property is addressed via a number of legislations depending upon the type of intellectual property that is to be protected.

Trade Marks

The main legislation would be the Trade Marks Act 1998 (TMA). Under Section 2 of the TMA, a trade mark is defined as any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

Generally, a trade mark should be registered with the Intellectual Property Office of Singapore (IPOS). This is because pursuant to Section 4(1) of the TMA, a registered trade mark is a property right and the proprietor of a registered trade mark has the rights and remedies provided by the TMA. There are acts that can amount to the infringement of a trade mark. For example, pursuant to Section 27(1) of the TMA, a person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, the person uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered. Pursuant to Section 31(2) of the TMA, in an action for an infringement, the types of relief that the court may grant include an injunction (subject to such terms (if any) as the court thinks fit); damages; an account of profits; or statutory damages in relation to counterfeit trade mark.

Patents

The main legislation would be the Patents Act 1994 (PA). Under the PA, a patentable invention is one that is new, involves an inventive step, is capable of industrial application and achieves the sufficiency test meaning the specification of its application must disclose the invention in a manner which is clear and complete for the invention to be performed by a person skilled in the art. There are acts that can infringe a patent. For example, pursuant to Section 66(1)(a) of the PA, where the invention is a product, the person, without the consent of the proprietor, makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise. Pursuant to Section 67(1) of the PA, civil proceedings may be brought for a claim including, amongst others, injunction, damages or account of profits.

Copyrights

The main legislation would be the Copyright Act 2021 (CA). Pursuant to Section 8 of the CA, works that are protected include an authorial work; a published edition of an authorial work; a sound recording; a film; a broadcast; or a cable programme. The copyright gives the owner certain rights like the ability to publish the musical work. There are acts that can infringe the copyright. For example, pursuant to Section 146(1) of the CA, copyright is infringed if a person does in Singapore, or authorises the doing in Singapore of, any act comprised in the copyright; and the person neither owns the copyright nor has the licence of the copyright owner. Pursuant to Section 305 of the CA, the remedies that the Court may grant include injunction; damages; account of profits; delivery up order or disposal order.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

Singapore Code on Takeovers and Mergers (Takeover Code)

The Takeover Code is issued by the Monetary Authority of Singapore pursuant to Section 321 of the Securities and Futures Act 2001. It is nevertheless non-statutory in that it does not have the force of law. Although the Takeover Code is not law, a breach of the Takeover Code may prompt the Securities Industry Council to issue a private reprimand or public censure or further action as the council thinks fit, including one designed to deprive an offender of the benefits of the capital markets.

Its primary objective is fair and equal treatment of all shareholders in a take-over or merger situation. For example, for a voluntary offer, to ensure equality in price, Rule 15.2 states that offers must, in respect of each class of equity share capital involved, be in cash or securities or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 3 months prior to its commencement. The Takeover Code is administered and enforced by the Securities Industry Council.

SGX-ST Listing Manual (Listing Rules)

The Listing Rules comprise the Mainboard Rules which apply to companies listed on the Mainboard of SGX and the Catalist Rules which apply to companies listed on Catalist. Rule 703(1) of the Mainboard Rules states that an issuer must announce any information known to the issuer concerning it or any of its subsidiaries or associated companies which (a) is necessary to avoid the establishment of a false market in the issuer's securities; or (b) would be likely to materially affect the price or value of its securities. As such, in a takeover offer, an announcement of such information might have to be made.

Companies Act 1967 (CA)

The CA regulates, among others, the criteria and processes by which share transfers, schemes of arrangement, amalgamations and compulsory acquisitions are effected.

Competition Act 2004 (Competition Act)

The Competition Act was enacted to provide a generic competition law to protect consumers and businesses from anti-competitive practices of private entities. Section 54 of the Act would be relevant in a merger and acquisition scenario. Section 54(1) states that apart from excluded mergers, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited. Generally, competition concerns will arise when the merged entity has/will have a market share of 40 percent

or more; or the merged entity has/will have a market share of between 20 percent to 40 percent and the post-merger combined market share of the three largest firms is 70 percent or more.

6. How does Singapore approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Latin American counterparts? Are there any alternative dispute resolution mechanisms available?

Litigation can occur in Singapore's domestic courts or the Singapore International Commercial Court (SICC). Litigation is more adversarial in nature. There are also differences in litigation in the domestic courts and the international courts. For example, in the domestic courts, questions of foreign law are regarded as questions of fact that are proved by way of expert evidence. Foreign law experts are called as witnesses and subject to cross-examination. Substantial time and costs may thus be incurred. In the SICC, questions of foreign law may, if the SICC grants permission, be determined on the basis of submissions instead of proof. Counsel may thus make submissions on foreign law directly to the SICC, saving time and cost of calling expert witnesses.

The alternative dispute resolution mechanisms in Singapore would include arbitration and mediation. Mediation and arbitration are both consensual in nature meaning they can only take place if both parties agree to resolve the dispute through these means. Mediation and arbitration proceedings are also confidential by default. Additionally, mediation is more facilitative, enabling parties to be involved in the decision making and arrive at a mutually acceptable resolution. Parties hence have more control in the outcome in mediation. Parties can settle their disputes in the Singapore International Arbitration Centre (SIAC) or the Singapore International Mediation Centre (SIMC).

7. Are there any recent or upcoming regulatory changes or developments in Singapore that may impact investments or business relations with Southeast Asia?

In January 2022, Singapore and the Pacific Alliance signed the Pacific Alliance-Singapore Free Trade Agreement (PASFTA).

1. **What are the advantages in the trade in goods?**

- Trade in Goods: There will be no tariffs imposed on the majority of the tariff lines. In particular, Colombia – with whom we have no other FTAs at present – will reduce/ eliminate tariffs on 85.7 percent of tariff lines.

- Rules of Origin: Businesses can use materials originating in any PASFTA Party to contribute towards a good's originating status, so that their exports can qualify for preferential tariff treatment more easily, subject to certain conditions.

- Customs Procedures and Trade Facilitation: There will be improved transparency in customs procedures and integrity in customs administrations through simplified customs procedures and enhanced trade facilitation provisions. Smooth customs processing, including the expeditious release of express consignments and perishable goods, will benefit businesses and promote regional supply chains.

- Technical Barriers to Trade: Easier access to markets through transparent and non-discriminatory rules for developing technical regulations, including rules that will facilitate the acceptance of the results of conformity assessment procedures from the conformity assessment bodies in any of the PASFTA Parties.

2. **What are the advantages in services, investments and movements of capital?**

   - Singapore service providers and investors to be treated as favourably as other service providers and investors present in the Pacific Alliance.
   - Singapore service providers are not required to establish or maintain a local representative office in the Pacific Alliance for sectors which have been committed for liberalisation.
   - Mutual recognition of qualifications or certifications, with a view to facilitating trade in professional services.
   - Singapore companies operating in the Pacific Alliance are not required to appoint individuals of any particular nationality to senior management or their board of directors.

3. **How does PASFTA impact intellectual property and government procurement?**

   - Singapore companies can bid for the Pacific Alliance's government procurement projects.

4. **Are there any key special dispositions to highlight?**

   - Companies which sell products with embedded software are not obliged to release their source code.

8. Are there any particular governmental agreements or partnerships that may be relevant to highlight?

Enterprise Singapore and Singapore Business Federation have launched the Latin America – Singapore Connect platform to drive business connections between Singapore and Latin America businesses. Done in collaboration with partners such as the Brazilian Trade and Investment Promotion Agency (APEX Brazil) and various embassies, it aims to build awareness of the business opportunities in Latin America and facilitate business connections between Singapore and Latin America companies.

For Southeast Asia: Considering Singapore's Connectivity with ASEAN

1. **How does having a presence in Singapore facilitate access to Southeast Asia [ASEAN members]?**

Singapore can be the launchpad for Latin American companies to access the Southeast Asian market. Singapore is business friendly and very well connected with Southeast Asia. It is part of ASEAN and the RCEP (the first free trade agreement among the largest economies in Asia). Additionally, Singapore has already attracted many MNCs from around the world including those from Southeast Asia. Singapore also has a very educated workforce that can meet the work demands of Latin American companies and help these companies connect with the Southeast Asian region, having similar cultures with nearby countries like Malaysia. Singapore is at the forefront of modern technology connectivity including being the early adopter of 5G nationwide which would help boost the productivity of Latin American companies too.

ARGENTINA

Martínez de Hoz & Rueda

1. What are the key regulatory requirements and procedures for establishing and operating a business in Argentina?

Law No. 19,550 (the 'General Companies Law') regulates different types of legal vehicles through which people can operate businesses in Argentina, among which the most commonly used are the corporation (*Sociedad Anónima*) and the limited liability company (*Sociedad de Responsabilidad Limitada*). Despite the flexibility allowed by limited liability companies, the corporation (*sociedad anónima or SA*) is by far the most widely used form of business organization in Argentina; it is used by small, medium and large size foreign or local investments.

Corporations in Argentina can be incorporated as a sole-owner corporation *(Sociedad Anónima Unipersonal or SAU)*, incorporated by only one shareholder, or as a regular stock corporation that must be incorporated by two or more shareholders. Shareholders may be individuals or legal entities, and except for specific cases provided by the law and regulations, there are no nationality or residence requirements to own or hold shares in a corporation. Foreign entities and/or foreign individuals may own up to the total (100%) of the authorized capital stock of the company. In case a foreign legal entity wishes to hold shares in an Argentine corporation, it needs to register with the Public Registry of Commerce under Article 123 of the General Companies Law in order to be able to fully exercise its rights as shareholder.

In principle, shares are freely transferable; bylaws may impose transfer restrictions, but they may not prohibit transfers. Any transfer of shares and of any lien on them must be notified in writing to the board of directors of the corporation. Transfers of shares and any lien on them are valid vis-à-vis third parties as from the registration thereof in the corporation's stock ledger.

The management and administration of a corporation is vested on the board of directors (administration body), which must be composed by a minimum of one director and a maximum number to be determined in the bylaws. In certain cases, the General Companies Law requires the corporation to have a board of directors composed of at least three members. While the members of the board of directors may be foreigners, the majority of the board members must be Argentine residents (Argentine citizenship is not required).

The constitutive act and bylaws of the company must be registered with the local Public Commerce Registry, and its formation must be published in the Official Gazette in the case of corporations and limited liability companies.

Once the company has been registered, Argentine legislation requires it to obtain a tax identification number (CUIT, in its Spanish acronym) and social security registration by submitting the corporate documentation to the Federal Public Revenue Administration (AFIP, in its Spanish acronym). For the payment of local taxes, the company must register with the tax authority of the jurisdiction where its bylaws have been registered.

Chapter IX of the General Companies Law establishes the documentation and accounting obligations that the company must fulfill, such as the submission of annual financial statements. Companies must prepare and present financial statements, including the Balance Sheet (*Estado de Situación Patrimonial*), Statement of Income (*Estado de Resultados*), Statement of Cash Flows (*Estado de Flujo de Efectivo*) and the Statement of Comprehensive Income (*Estado de Evolución del Patrimonio Neto*). These statements must provide a clear overview of the company's financial performance and state.

Argentine regulation also requires all corporations domiciled in Argentina to keep accounting records of their transactions. The mandatory accounting books are the general journal and the inventory book. In compliance with Article 73 of the General Companies Law, a special book must also be kept to record the minutes of the collective bodies' meetings (i.e., board of directors, shareholders, etc.). Corporations must keep a stock ledger book, in which it will be transcribed, *inter alia*, the kind of shares, rights and obligations reflected, status of capital integration, the votes granted, etc. On the other hand, the stockholders or representatives who attend the meeting will sign the attendance book, certifying their addresses, number of shares held and the corresponding number of votes.

Financial statements and mandatory books must be prepared, kept and presented in compliance with the specifications established by the law.

Foreign entities wishing to conduct businesses in Argentina have two options: establishing a branch or a subsidiary. In the latter case, legal entities holding stakes in an Argentine company shall first register with the local Public Commerce Registry, submitting various corporate documents to the registry and demonstrating that they have substantial trade or business activities outside of Argentina (meaning that most of their assets are located outside the country). Subsidiaries operate as an independent legal entity from their parent company and must keep its accounting in an independent way. This also includes different bank accounts, assets, financial records and liabilities. Taxation is also different, since the subsidiary must have its own CUIT and pay its own taxes.

Unlike subsidiaries, a branch is not an independent legal entity from its parent company, and it is managed by a resident representative duly appointed by it. Therefore, the parent company is held liable for its debts and obligations. When registering a branch with the local Public Commerce Registry, it is required to: (i) show evidence of the parent company's existence under the laws of its country, (ii) register the articles of incorporation of the branch, appoint a representative or manager and register them accordingly, and (iii) register an address in Argentina.

The General Companies Law also allows foreign companies to carry out isolated acts without the need for registration with the local Public Commerce Registry, understanding 'isolated acts' as those that do not have a vocation for permanence or regularity. To determine if an act is isolated, authorities usually consider *inter alia* its economic magnitude, repetition, the purpose given to it, and whether the foreign company is established in a low or zero taxation jurisdiction.

Businesses operating in Argentina must also comply with labor regulations established in Law No. 20,774 on Labor Contracts and the applicable collective agreements.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Argentina? Are there any restrictions or limitations on FDI in specific sectors?

The prevailing principle in Argentina is that foreign investors are subject to the same rules and regulations as local investors, in accordance with Section 20 of the National Constitution. Investments in Argentina are governed both by international treaties and local regulations that cover the treatment afforded to foreign investments, the registration of foreign companies, and foreign exchange controls. Moreover, Law No. 21,382 on Foreign Investments promotes foreign investment in Argentina by ensuring equal treatment between local and foreign investors; it allows foreign investors to, among other things, make investments intended to promote economic activities or enhance already existing ones, and use any of the legal forms of organization provided for by national legislation, all under the same conditions and subject to the same rights and obligations that are imposed to nationals.

However, there are restrictions in certain economic sectors. For example, according to Decree Law No. 15,385 and Law No. 26,737 on Rural Lands, foreign individuals and legal entities are impeded from owning portions of land that are close to Argentine borders or adjacent to certain bodies of water. Law No. 26,737 also imposes restrictions on the ownership or possession of rural land. Additionally, Law No. 25,750 regulates the participation of foreign investors in media and broadcasting companies, typically capping their investment at 30% (except for investors from the United States, who are covered by an Investment Promotion and Protection Treaty between the US and Argentina).

3. What are the tax implications and incentives for businesses investing in Argentina? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

The Argentine tax system consists of three levels: a national level, a provincial level and a municipal level. In Argentina, there is a prohibition of double taxation, which means that provincial and municipal jurisdictions cannot establish taxes similar to the so-called "shared taxes" mentioned in Federal Revenue Sharing Law No. 23,548. The largest collection of revenue occurs at the national level, collected by the Federal Public Revenue Administration (AFIP, in its Spanish acronym). The main national taxes applicable to corporations and partnerships are the Net Income Tax, the Value Added Tax (VAT), and the Tax on Financial Transactions.

Regarding the Net Income Tax, legal entities residing in Argentina are taxed on worldwide income: any profits, including capital gains, are taxable. These entities can claim any similar taxes paid abroad on foreign-source income as a tax credit. Non-residents and foreign legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources. The standard rate for most corporations is 35%, although it can vary depending on the type of business entity and the annual taxable income.

The Value Added Tax (VAT or IVA, in its Spanish acronym) is levied on to the sale of goods located in Argentina, the provision of services and the importation of goods and services. The standard tax rate is 21%, but there are increased rates of 25% for certain products or services (such as power or communications), and reduced rates of 10.5% for others.

The main provincial taxes are the Turnover Tax and the Stamp Tax, which are collected by the tax authorities of each province. The Turnover Tax is a tax on gross revenues from the sale of goods and services, and the Stamp Tax is levied on documents or agreements that evidence acts of transactions for valuable consideration. Each rate depends on the Tax Code of each province but is generally between 3% to 5% for the Turnover Tax, and 1% for the Stamp Tax.

At the municipal level, municipalities have taxing powers, but they are limited to the application of a few fees.

Tax incentives are available for certain activities, such as mining, forestry and renewable energy. Additionally, the Promotion Regime for the Knowledge-Based Economy (Law No. 27,506) establishes tax incentives aimed at encouraging economic activities that apply the use of knowledge and information digitization to the production of goods and provision of services. Law No. 23,877 also grants companies the possibility to obtain a 'tax credit certificate' of certain eligible expenditures in research, development and technological innovation, which will be creditable against federal taxes. In accordance with Law No. 19,640, activities performed in the Province of Tierra del Fuego have an exemption from corporate Net Income Tax and VAT.

Argentina is a signatory to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI). It has also signed multiple Double Taxation Avoidance Agreements that are currently in force with Australia, Belgium, Brazil, Bolivia,

Canada, Chile, Denmark, Finland, France, Germany, Italy, México, the Netherlands, Norway, Qatar, Russia, Spain, Switzerland, Sweden, the United Arab Emirates, the United Kingdom, and the United States. Moreover, Argentina has signed treaties with Austria, China, Japan, Luxembourg and Turkey, but these are not currently in force. There are also negotiations with other countries such as Colombia, India, Israel, Kuwait and Saudi Arabia.

4. How does Argentina address intellectual property protection and enforcement?

Intellectual property in Argentina is protected by Law No. 24,481 on Invention Patents and Utility Models. Law 24,481 recognizes the patentability of product or process inventions, provided they involve inventive activity and are susceptible to industrial application. The patent grants the inventor the right to prevent third parties from engaging in acts of manufacturing, use, sale, or importation of the product, or if it's a process, in acts of utilization, for a non-extendable period of 20 years. The patent right belongs to the inventor, who has the right to assign, transfer, and enter into licensing agreements. The law establishes the requirements and the procedure for its granting before the National Institute of Intellectual Property, as well as the procedures and penalties for cases of violation of the rights conferred by the patent.

This regulation is in line with the international standards determined by the World Intellectual Property Organization. Additionally, Argentina is also a signatory of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which obligates contracting states to implement minimum standards of protection for each area of intellectual property covered by the treaty, such as trademarks, copyrights and related rights, geographical indications, industrial designs, patents, the layout-designs of integrated circuits and undisclosed information including trade secrets and test data.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

The regulatory framework for mergers, acquisitions, and joint ventures is established in the Argentine National Civil and Commercial Code.

The Argentine Civil and Commercial Code establishes the general rules governing contracts and commercial transactions, including mergers and acquisitions. Some of the key aspects related to mergers and acquisitions that can be found in the Civil and Commercial Code include general rules for the sign and execution of purchase contracts for shares or assets, the responsibilities and obligations of the parties involved -including the obligation to disclose relevant issues and provide access to necessary information for due diligence- and provisions related to the valuation of assets and the determination of the purchase price in a transaction.

In Argentine legislation, joint ventures are commonly known as "*Unión Transitoria*" These business partnerships were specifically conceived for temporary associations of companies to undertake specific works or services, whether in Argentina or another country. Since UTs are created by contract, and have a purely contractual nature, they consist in types of joint venture agreements whereby each member thereof preserves its individuality and autonomy. Any profits generated by the UT are allocated to each member thereof, *pro rata* to its participating interest set forth in the respective joint venture agreement. A foreign company can participate in a domestic UT as long as it is registered as a local branch. The agreement establishing the UT and the appointment of a representative must be registered with the local Public Registry.

In addition, there are other specific regulations that may apply to mergers and acquisitions in Argentina. For example, the General Companies Law No. 19,550 and the regulations of the National Securities Commission (CNV, in its Spanish acronym), which are relevant in the context of acquisitions of publicly traded companies.

As for antitrust legislation, it is comprised of Antitrust Law No. 27,442, along with its Regulatory Decree No. 480/2018 and Resolution No. 208/2018 of the Commerce Secretariat.

Law No. 27,442 establishes the legal framework for competition law and antitrust regulations in Argentina. The law stipulates that companies must notify transactions such as mergers and acquisitions to the National Commission of Competition Defence when the total business volume of all affected companies in the country exceeds the sum of a hundred million (100.000.000) mobile units (mobile units are used as a as a unit of account and, as of November 2023, one mobile unit equals ARS $162,55 -which, as of November 2023, is the equivalent of 0,44 U$S at the official exchange rate-). After the notification, the Competition Defence Tribunal will assess whether the reported transaction has the potential to restrict or distort competition, in accordance with the guidelines established in Resolution 408/2018 of the Commerce Secretariat. Chapter VII of Law No. 27,442 establishes sanctions for acts that do not comply with the provisions of the law, ranging from the cease of anti-competitive acts to fines.

6. How does Argentina approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Parties may agree to settle disputes through litigation before Argentine courts. The specific court that handles a cross-border business transaction dispute shall depend on the nature (civil, commercial, public, etc.) and jurisdiction (federal or provincial) of the matter due to Argentina's federal nature. Argentina has both federal and provincial court systems, each with lower courts, courts of appeal, and local supreme courts. The system is not one of *stare decisis*: although lower courts tend to follow decisions handed down by higher courts, they are not bound by them.

Federal courts in Argentina have jurisdiction over federal matters, with different venues throughout the country. Within the City of Buenos Aires, there are federal courts organized into Courts of Appeals and lower courts, each specializing in various subject matters (*inter alia* commercial, labour, and civil law). Federal Courts of Appeal are appellate courts for decisions of both lower federal courts and administrative courts operating within the framework of the Federal Executive Branch. These federal courts coexist with provincial court systems.

Provincial courts, established by provincial governments, handle matters not under federal jurisdiction. They provide ordinary justice within their respective territories, and decisions from provincial lower courts can be appealed to higher Courts of Appeals, which have both civil and commercial competencies. Each of Argentina's 23 provinces has its own procedural code and judges.

The Supreme Court of Argentina serves as the highest court and may review a Court of Appeals or provincial Supreme Court's decision only by means of an 'extraordinary legal remedy' when it is alleged that said decision conflicts with the National Constitution, a treaty, or a federal law. The Supreme Court may overturn or vary the lower court's decision, order a new trial or hearing, or uphold the appellate court's ruling.

The Argentine Civil and Commercial Code has incorporated specific rules on international *lis pendens*, international cooperation, and procedural assistance between foreign and local courts, and has empowered Argentine courts to issue provisional measures and injunctions in certain cross-border cases. Non-Argentine citizens are guaranteed the same rights as Argentine citizens under the Argentine Constitution, including unlimited access to Argentine courts for the resolution of legal disputes.

As litigation before domestic courts can extend for a long period of time, foreign counterparties often opt for arbitration proceedings (however, the difference cost wise must be considered).

Domestic and international commercial arbitration in Argentina are governed by different sets of federal legislation. Regarding international commercial arbitration, Argentina has adopted the 2006 UNCITRAL Model Law (Law No. 27,449 on International Commercial Arbitration), albeit including certain modifications. While this law governs exclusively all substantive aspects of international commercial arbitration in Argentina, the Argentine Civil and Commercial Code governs domestic arbitration. Procedural codes complement both legal systems with procedural rules.

Law No. 27,449 excluded the provision of the UNCITRAL Model Law whereby the parties may determine whether an arbitration is international by expressly agreeing that the subject matter of the arbitration agreement relates to more than one country and determines in its Section 3 in which scenarios shall an arbitration be considered international. Law No. 27,449 further authorizes lower commercial courts of the seat of the arbitration to provide assistance for the appointment of arbitrators and appoint the commercial courts of appeals of the seat of the arbitration to hear on the challenge of arbitrators, the termination of the arbitrator's mandate and the jurisdiction of the arbitral tribunal.

The recognition and enforcement of foreign awards is also governed by Law No. 27,449. However, international treaties have constitutional pre-eminence over domestic laws and therefore treaties on arbitration matters prevail over domestic arbitration laws. Argentina is a party to several treaties on the recognition and enforcement of arbitral awards, including the 1958 New York Convention. With respect to the latter, Argentina declared that: (1) it shall only recognize and enforce foreign arbitral awards under the Convention, if they were issued in another contracting state; (2) the Convention shall apply to awards arising out disputes related to legal relationships, whether contractual or otherwise, which may be considered to be commercial under Argentine law; and (3) the Convention will be interpreted in accordance with the Argentine Constitution.

Although the law does not establish which courts have jurisdiction to hear an application for recognition and enforcement of foreign or domestic arbitral awards, requests are regularly filed with lower courts, with reference to the rules for recognition and enforcement of decisions issued by foreign courts. Similarly, although Argentine law does not specifically assign jurisdiction to Argentine courts over recognition and enforcement of foreign arbitral awards, Argentine case law consistently established that Argentine courts have jurisdiction if the party against whom a court judgment is enforced is domiciled or has assets in Argentina. A decision by an Argentine court recognizing or denying recognition of a foreign award may be appealed: if the decision is not appealed within statutory time limits, or the appellate court upholds or overrules the decision, it will become enforceable or be permanently rejected, as applicable. Domestic awards have the same status as domestic court decisions, and therefore recognition is not necessary, as they constitute enforceable decisions.

Procedural rules also recognize mediation as an alternative dispute resolution mechanism, as several jurisdictions require the claimant to start a mediation proceeding before filing a judicial claim.

It's also important to note that Argentina has signed various Bilateral Investment Treaties (BITs) with several ASEAN member countries, such as Thailand, the Philippines, Vietnam and Malaysia - as well as with other Asian countries like China, Russia, Israel and the Republic of Korea-, which contain specific provisions for the settlement of disputes between the investor and the host contracting party. BITs were also signed with Japan, Qatar and the United Arab Emirates, but they are not yet in force.

7. Are there any recent or upcoming regulatory changes or developments in Argentina that may impact investments or business relations with Southeast Asia?

Historically, Argentina's governments in the last 20 years have not typically embraced free trade agreements, as the country has traditionally maintained an inward-looking business environment, characterized by a series of protectionist laws and regulations. There was a brief departure from this paradigm between 2015 and 2019 during the presidency of former President Mauricio Macri, who sought to open Argentina's doors to international business, trying to reverse the passive attitude of the nation in regional and global trade groups that was set before by Peronist governments. After 4 years of resuming the previous protectionist foreign policy with the assumption of power of the Peronist government led by Alberto Fernández in 2019, another paradigm will lead Argentina's course from December 10th, 2023, as the new elected President Javier Milei assumes power. As a libertarian, free trade plays a preponderant role for Milei, who deeply believes in openness to international trade and in the State's lack of intervention in private sector matters. Although he has made no explicit statements yet on the future of business relations with Southeast Asia, everything seems to indicate a new era of openness to international commercial relations ahead.

The presidency of Carlos Menem between 1989 and 1999 is also noteworthy in this area. A distinguished example of this period regarding commercial bonds with Asian countries can be found in a series of Investment Promotion and Protection Treaties signed between Argentina and Vietnam in 1996 that reactivated the relationship lost years before, along with other international treaties signed thereafter. Since 1989, the Argentine Republic has concluded almost 20 bilateral treaties for the Promotion and Protection of Foreign Investments.

As of November 2023, Argentina has not directly signed nor negotiated any free trade agreements with Singapore. However, Argentina is a member of the MERCOSUR (*Mercado Común del Sur*), a South American economic and political bloc that establishes free trade amongst member nations. According to a press release from Singapore's Ministry of Trade and Industry in July 2022, Singapore has concluded free trade negotiations with the South American bloc, aimed at eliminating and lowering business costs and import tariffs, facilitating trade and boosting investment, innovation and knowledge. The MERCOSUR-Singapore Free Trade Agreement (MCSFTA) will feature 19 Chapters, with the following being the main ones: Trade Remedies, Bilateral Safeguards, Customs Procedure and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Cross-Border Trade in Services, Movement of Natural Persons, Investment, E-Commerce, Intellectual Property Rights, Government Procurement, Micro, Small and Medium Enterprises, Competition Policy, Transparency, and Dispute Settlement.

Other reports have pointed out that MERCOSUR will also have meetings with Indonesia, with whom exploratory talks have been held in recent years.

In the past two decades, Argentina has engaged in various commercial agreements -non-Free Trade - with other ASEAN countries. In February 2019, an agreement was signed to export citrus fruits to Vietnam, with an emphasis on fostering a comprehensive partnership to boost trade, investment, and cultural ties between the two nations. In March 2014, Argentina and Thailand entered into an agreement focused on mutual assistance in customs matters. In January 2013, Argentina and Indonesia established an agricultural cooperation agreement, encompassing various aspects of agriculture, including crop production, precision planting systems aimed at sustainable practices, livestock, biotechnology, and family farming development, among others. In 2003, Argentina and Laos approved an economic and commercial cooperation agreement that covered areas such as trade in goods and services, finance, transportation, industry, and technology exchange.

Although there have been no recent FTAs directly signed between Argentina and Southeast Asian countries, Argentina has been actively pursuing collaborations and agreements in the energy sector. A noteworthy development is the recent agreement between Argentina's YPF and Malaysia's energy giant Petronas, which aims to collaborate on a substantial LNG export initiative. This project is focused on the liquefaction of natural gas extracted from Vaca Muerta's vast shale gas resources, and shall include upstream gas production, dedicated pipelines and infrastructure development, along with marketing and shipping. While not an FTA, this collaboration underscores Argentina's efforts to strengthen ties with countries in the ASEAN region, potentially paving the way for future trade and investment opportunities.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

As of November 2023, there are no significant agreements under negotiation or in force between the Argentine Republic and the Republic of Singapore.

BRAZIL

Veirano Advogados

1. What are the key regulatory requirements and procedures for establishing and operating a business in Brazil?

Any foreign entity (or individual residing abroad) who wishes to carry out business operations in Brazil or establishing a local subsidiary will need to be enrolled with the National Register of Legal Entities of the Ministry of Finance (CNPJ/MF) and with the Central Bank of Brazil (BACEN). For such enrolment, foreign entities (or individuals who reside abroad) need to appoint and maintain at all times a legal representative resident in Brazil with sufficient powers to receive processes on its behalf and represent the foreign entity before the Brazilian authorities. The same requirement is applicable to officers of Brazilian entities who reside abroad.

In order to open a local company in Brazil and start its operation, it will be necessary to collect the requisite documentation, choose the legal type and tax regime of the company, define the location of the headquarters and register the company with the CNPJ/MF and with the local Board of Trade.

With respect to the corporate types, the Brazilian Civil Code provides for several types of companies, although the most commonly used corporate structures for carrying out organized business activity in Brazil are the Limited Liability Company *(Sociedade Limitada*), regulated by Law 10.406/2022 ("Brazilian Civil Code"), and the Corporation (*Sociedade Anônima)*, regulated by Law 6.404/76 ("Brazilian Law of Corporations").

In general terms, a *Sociedade Anônima* requires more human and financial resources to be maintained than a *Sociedade Limitada*, due to the more robust governance structure required by the Brazilian Corporations' Law. Corporations are required to maintain several corporate and financial books, and to carry out periodic publications of its financial statements, calls to shareholders meetings and other corporate acts. The *Sociedade Anônima* is more appropriate for either larger companies with more complex structures or entities which need a more robust governance structure between shareholders, especially if minority shareholders are involved. Limited liability companies are subject to fewer management and disclosure requirements, which make them the preferable vehicle for well-established foreign entities who wish to hold a single-member vehicle in Brazil.

Once the legal type has been defined and the company's articles of organization have been drawn up, they will need to be registered with the relevant Commercial Registry in order for the company to have legal personality. In addition, in order for the company to operate at a business address, it is also necessary to obtain the necessary registrations, a business license and the operating licenses required depending on the activities to be carried out.

Certain sectors are also subject to special regulations and require specific authorizations for operation. For example, financial institutions are subject to special regulation by the Central Bank of Brazil and will require its previous authorization for operation and for carrying out several corporate acts (such as changes to corporate capital). Likewise, insurance companies are regulated by the Federal Insurance Commissioner.

Finally, Brazilian companies which have non-resident shareholders are also required to present their ultimate beneficial owner information to the Federal Revenue Service within 30 days of incorporation, and also maintain this information duly updated in case of changes.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Brazil? Are there any restrictions or limitations on FDI in specific sectors?

Brazil exercises certain controls on cross-border currency transactions, including transborder loans and foreign direct investments. Recently, a new foreign exchange law (Law No. 14,286/21, the "New Foreign Exchange Law") introduced a new legal framework for the foreign exchange market, which reduced hurdles on the export and import of goods and on the free circulation of capitals. Following enactment of such law, the National Monetary Council (CMN) as well as BACEN published resolutions aiming at regulating foreign exchange transactions.

In accordance with BACEN Resolution 278/2022, the supply of information regarding FDI to BACEN must be made when (a) there is a financial transfer related to the non-resident investor of an amount equal to or greater than US$100,000 or its equivalent in other currencies; (b) there is movement of funds of an amount equal to or greater than US$100,000 or its equivalent in other currencies; or (c) the base date of periodic declarations occurs, for the recipients subject to such declarations. Loans and credits granted by non-residents to Brazilian companies or individuals also require disclosure to BACEN. Transactions in lower amounts do not need to be registered with BACEN.

The deadline for registering the transaction is 30 days as of the capitalization, conversion, assignment, exchange, transfer of quotas or shares between investors, corporate reorganization, reinvestment and receipt in national currency in non-resident accounts.

Foreign direct investments are also subject to periodic declaration obligations which vary depending on the total amount of assets the company. Quarterly declarations are required (on March 31, June 30 and September 30 of each year) for companies that have total assets in an amount equal to or greater than R$300 million. As of November 1, 2023, an annual declaration must be submitted by companies with total assets equal to or greater than R$100 million. Finally, a quinquennial declaration must be submitted by any company with foreign capital that has total assets in the amount equal to or greater than R$100,000, regardless of the amount of the interests held by non-resident shareholders.

There are restrictions to foreign direct investments in certain sectors, for example newspaper and television services, aeronautics, nuclear energy and acquisition of rural lands.

3. What are the tax implications and incentives for businesses investing in Brazil? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

The Brazilian tax system is split into federal, state and municipal taxes. The taxation system in Brazil is quite complex, and the Brazilian Senate is currently discussing a reform in tax legislation to substitute several federal, state and municipal indirect taxes and introduce a dual value added tax (VAT) regime, including a Tax on Goods and Services ("*Imposto sobre Bens e Serviços*" or IBS) that will replace the state VAT (ICMS) and the Municipal Tax on Services (ISS), and the Contribution on Goods and Services ("*Contribuição sobre Bens e Serviços*" or CBS) that will substitute the federal PIS and COFINS contributions, as well as the federal excise tax on manufactured products (IPI). The bill is currently waiting to be evaluated and voted by the Brazilian Senate and may be subject to changes.

Based on the legislation currently in force, the main taxes levied on business operations in Brazil are:

<u>Corporate Income Tax ("CIT")</u>: CIT is a federal tax computed similarly to the practices in other countries, i.e., the taxpayer computes its annual (or quarterly) net profits, as per its legal book. Then such net income before taxes is adjusted in order to reflect non-deductible costs and

expenses, or non-taxable revenues. This method of collecting CIT is known as the actual profits method ("*lucro real*"). The basic tax rate for the calculation of the CIT based on the "adjusted actual profits" is 15%. An additional 10% tax rate on top of the basic 15% rate applies to annual taxable income that exceeds R$240,000. Entities with annual revenues up to R$78 million are allowed to elect for a simplified method for collecting CIT, known as the deemed profits regime ("*lucro presumido*"). Under this regime, the taxable basis corresponds to a percentage of the legal entity's gross revenue. For industry and commerce, deemed income is the equivalent of 8% of the company's gross revenues. In case of service entities, the percentage used in calculating deemed income ranges from 16% to 32% of the gross revenues derived from services rendered. It is important to note that entities that earn foreign income are not allowed to elect to be taxed under this regime.

Social Contribution on Net Profits ("CSLL"): CSLL is another tax calculated on profits that is very similar to the above CIT. The main difference is that CSLL carries a 9% rate, so that the combined rate for income taxation in Brazil is 34% (CIT - 25% plus CSLL - 9%). The legal entities that have elected to collect CIT under the deemed profits regime must also collect CSLL as per the same method. The difference is that in the case of CSLL, the deemed margin is 12%, except for service providers, in which case it shall be 32%. The CSLL is considered a creditable foreign income tax by the countries with which Brazil maintains tax treaties to avoid double taxation. In summary, it is internationally considered to have the nature of an income tax.

Social Integration Plan ("PIS"): This is a social contribution tax levied at the rate of 0.65% or 1.65% (this higher rate applies to companies that pay the tax on a non-cumulative basis under the actual profits method) on the company's gross revenues.

Social Security Contribution on Gross Revenues ("COFINS"): This is another social contribution levied at the rates of 3% or 7.6% (this higher rate applies to companies that pay the tax on a non-cumulative basis under the actual profits regime) on the company's gross revenues.

PIS and COFINS on Imports: These taxes shall be charged on any import of goods and services at the combined tax rates of 11.35% and 9.25%, respectively. The taxes shall be creditable for companies subject to the non-cumulative regime under the actual profits regime.

Import Tax ("II"): Unless an exemption is available, all products imported to Brazil are taxed by II. The II is levied on the "customs value" pursuant to GATT rules. The "customs value" is generally assessed based on the "transaction value." The II tax rate depends on the product's tariff classification.

Federal Excise Tax ("IPI"): The IPI is a value added tax paid upon the import or sale or other transfer of industrialized and certain partially industrialized products. The IPI tax rate varies depending on the type of the product.

State Value Added Tax ("ICMS"): The ICMS is a value added sales and services tax levied by the states on the import or sale or other transfer of a product or on certain transportation and telecommunication services. The rates vary from state to state and depending on the transaction (the basic rates in São Paulo and Rio de Janeiro are 12% for inter-state transactions and respectively 18% and 20% for intra-state transactions). As a value added tax, the taxpayer is entitled to credit the ICMS paid upon its purchases against the ICMS it receives upon its sales.

Municipal Tax on Services ("ISS"): The ISS is a municipal tax levied on the provision of services that are listed by Federal Law No. 116/2003. The tax is imposed on a cumulative basis (not creditable) and the tax rate may vary between 2% and 5%, depending on the type of service. As a rule, the tax is collected to the municipality of the service provider, however, the legislation provides certain situations where the tax must be collected to the municipality where the service in rendered. The

ISS is also levied on the import of services and collected by the Brazilian entity that is contracting the services from abroad. On the other hand, ISS is not levied on the export of services (however, if the result of a certain service is verified in Brazil, ISS may be imposed, even if the payment for such service is made by a non-resident).

Tax on Financial Operations ("IOF"): The IOF is levied at variable rates on certain financial transactions (e.g. loans, foreign exchange transactions, insurance, securities, etc.). Currently, as a rule, there is a 0.38% rate on most foreign exchange transactions. The IOF rate may be reduced to 0% in some cases, such as: (i) exchange operations relating to the inflow of revenues in Brazil deriving from the export of goods and services; (ii) exchange operations relating to the inflow and outflow of resources in and from Brazil, derived from foreign loans; and (iii) remittances of interest on net equity and dividends relating to foreign investment.

Payroll Taxes: Employees in Brazil are subject to certain payroll taxes, which include (i) Social Security Contribution ("INSS"); Employees' Severance Indemnity Fund ("FGTS"); work accident insurance ("RAT"); and variable contribution destined to "third parties" engaged in social development activities (e.g. SENAI, SESC, SESI). As a rule, the INSS tax rate is 20% over the employee´s payroll, however, certain entities may be eligible to calculate INSS at a tax rate ranging from 1% to 4.5% applied over the entity´s gross revenue rather than being calculated upon the entity's payroll ("CPRB"). The contribution to FGTS is levied on employee's salary at the rate of 8%. The entity is responsible to withhold both payroll taxes and personal income taxes from its employees on a monthly basis.

3.1 Tax Incentives

Each of the government levels are authorized to grant tax benefits, incentives or subsidies (as long as they comply with some specific rules, according to each case). There are several Brazilian states and municipalities which grant tax incentives provided that the premises of the investor are physically incorporated inside their territories. These incentives depend on whether these newly incorporated entities will generate substantial jobs, increase the business scale of the region, etc. As an example, the state of São Paulo provides tax incentives for various sectors, such as: (i) acquisition of machinery and equipment for fixed assets; (ii) programs for the use of accumulated credit from ICMS in investment projects; (iii) Incentive Program for the Railway Sector (simplification of the import and trade operations within the state of São Paulo related to the railway sector), among others. The municipality of São Paulo also grants tax incentives to stimulate its economy, such as the tax incentive program to develop the eastern area of the city ("*Programa de Incentivos Fiscais para a Zona Leste*"), which exempts entities incorporated in the region to collect ISS and other municipal taxes, provided that certain requirements are met.

With regards to tax incentives granted by the Federal Government, it is worth to mention the program called "*Lei do Bem*," which creates tax incentives (e.g. reduction of IRPJ, CSLL and IPI) to entities subject to the actual profits method that invest in research and development activities related to technology innovation in Brazil.

3.2 Non-Resident Taxation

Currently, dividends or profits credited or paid to either residents or non-residents are not subject to any withholding income tax.

Services fees are generally subject to a 15% withholding income tax. Royalties, technology or know-how fees, software licensing fees and compensation for administrative and technical services and technical assistance are also generally subject to a 15% withholding income tax rate, plus a 10% CIDE (the taxpayer of the CIDE is the Brazilian company – it is not a withholding tax). The

withholding income tax rate is increased to 25% when the payments are made to non-resident entities located in tax haven jurisdictions.

Interests are subject to a 15% withholding income tax and increased to 25% when the payments are made to non-resident entities located in tax haven jurisdictions. Lower income tax rates may apply to residents of countries with which Brazil has a tax treaty, such as Singapore, as detailed below.

Non-resident capital gains are subject to progressive income tax rates, which vary from 15% (for capital gains that does not exceed R$5 million) to 22.5% (for the portion of the gain that exceeds R$30 million). If the beneficiary is domiciled in a tax haven jurisdiction, the amount of gain is subject to a flat 25% tax rate.

3.3 Tax Treaty Between Brazil and Singapore

Brazil has signed Double Taxation Treaties ("DTTs") with more than 30 countries, including Singapore. The DTT between Brazil and Singapore was promulgated by the Brazilian Government on June 30, 2022, and entered into force on January 1, 2023. The DTT expressly applies to CIT and CSLL taxes in Brazil and to income tax in Singapore.

Among the main provisions, the withholding income tax imposed on dividends distributed by an entity resident in Brazil or in Singapore to a resident in the other State is limited to a 10% rate if the beneficiary of the dividends holds at least 25% of the entity that distributes such amounts and to a 15% rate in all other cases.

Interests are taxed at the sourcing country, limited to a 10% rate if the beneficial owner is a bank and the loan has been granted for at least 5 years for the financing of the purchase of equipment or of investment projects and to a 15% rate in all other cases. Royalties are taxed at a 15% rate when arising from the use of right to use trademarks or 10% in all other cases. The tax imposed on technical services and technical assistance services at the sourcing country is limited to a 10% rate.

The DTT also provides that double taxation shall be avoided by the credit method (income tax paid in one country may be offset in the calculation of the income tax in the other country), both in Brazil and Singapore.

4. How does Brazil address intellectual property protection and enforcement?

The Brazilian case law and doctrine separate industrial property and intellectual property concepts, the latter being the most comprehensive, including all kinds of IP rights, from copyrights to trade secrets and know-how and industrial property as the only ones that are strictly registrable (e.g., trademarks, patents and industrial designs). In this sense, there are some specific legislations involving the intellectual property protection: Law No. 9,279/1996 ("Brazilian Industrial Property Law"), addressing matters related to industrial property and unfair competition; Law No. 9,610/1998 ("Brazilian Copyright Act"), addressing matters related to the protection of copyrights; and Law No. 9,609/1998 ("Brazilian Software Act"), addressing matters related to the protection of software.

Specifically in relation to the industrial property rights ("Registered IP"), the Brazilian Industrial Property Law establishes that, in order to have an exclusivity right throughout the Brazilian territory, it is necessary to obtain a registration before the Brazilian Patent and Trademark Office ("INPI"), which also grants the owner of the registration the following rights – in addition to exclusivity: (i) challenging the use by third parties; (ii) receiving royalties from license or assignment agreements with third parties; and (iii) including the industrial property registration as an asset in its share capital.

The enforcement of such rights may be initially performed administratively – before the INPI – and, if the issue is not resolved through such procedure, it is possible to seek remedy through the legal system and file a claim – which must necessarily filed in the Federal Court, due to the involvement of the INPI. Alternatively, in some specific cases, it is also possible to resolve the issue through arbitration.

Specifically in relation to the rights which are not considered as industrial property rights ("Unregistered IP"), they are granted to the owner regardless of a prior registration before the INPI – even though possible, the registration (i) before the INPI (in case of software); and (ii) in the National Library (in case of copyrights) are not mandatory and are, as a rule, used to prove the anteriority of the development in case of any claims.

Additionally, there is also the possibility of protection of trade secrets if the following requirements are met: (1) the technology must not be easily accessible to people within the business market to which it is related to, nor publicly known; (2) the technology must have commercial value; (3) the owner of the technology must undertake reasonable precautions to ensure its secrecy; and (4) the technology has been obtained lawfully. In this sense, to guarantee the maintenance of the nature of a trade secret, it is important that the owner of the trade secret (i) stores all information in a secure way and grants access to it on a need-to-know basis; and (ii) imposes on employees and third parties who have access to the information strict confidentiality clauses to guarantee the reasonable precautions to ensure its secrecy are being observed.

In Brazil, trade secret is defined by doctrine, but they receive legal protection from international legislation (such as TRIPS), the Federal Constitution and the Brazilian Industrial Property Law. Thus, they create rights and obligations and produce legal effects in Brazil. According to the Brazilian Industrial Property Law, whoever reveals, exploits or uses, without authorization, any knowledge, information or confidential data used in industry, commerce or services to which the person has had access to through a contractual relationship, even after the termination of the agreement or relationship, commits the crime of unfair competition, unless the information is public knowledge or obvious to someone with the required technical skills.

In addition, the Brazilian Industrial Property Law also addresses matters related to unfair competition, which encompasses, for example: (i) using of fraudulent means to divert the consumers, for their own benefit or the benefit of others; (ii) using other people's expressions or advertising signs, or imitating them, in such a way as to create confusion between products or establishments; (iii) giving or disclosing false information about a competitor in order to obtain an advantage, among others.

Differently from the industrial property rights, the enforcement of the rights over Unprotected IP are not subject to an administrative sphere and shall be discussed directly by judicial means or arbitration.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions or joint ventures? Are there any antitrust or competition regulations that must be considered?

Mergers and acquisitions are regulated by the Brazilian Civil Code and Brazilian Corporations' Law, depending on the corporate type of company involved in the transaction. These laws establish the rules, procedures and obligations surrounding these transactions.

Joint ventures are not specifically regulated by Brazilian legislation, so they are typically treated as a commercial partnership agreement. However, there are some normative texts that provide guidelines for their operation, for example, Normative Instruction No. 76 of the National Department of Trade Registration ("DNRC"), which deals with cases in which foreigners participate

in a joint venture. The joint venture agreement may also determine the creation of a new entity between the partners for operating the collaboration; such new entity will be regulated by the Brazilian Civil Code and Brazilian Corporate Law, according to the respective corporate type.

In relation to antitrust regulation, Brazilian Federal Law No. 12.529/2011 ("Antitrust Law") provides for the prevention and repression of infractions against the economic order in Brazil, guided by the constitutional principles of freedom of initiative, free competition, the social function of property, consumer protection and repression of the abuse of economic power. The Antitrust Law adopts the prior approval regime for mergers and acquisitions, whereby the closing of the transaction is conditional on the prior approval of the Administrative Council for Economic Defense ("CADE"). All transactions in which one of the companies or groups of companies involved has recorded annual gross revenue in Brazil in the year prior to the transaction of at least R$750 million, and any other party involved has recorded gross revenue of at least R$75 million in the same period, must be submitted to CADE.

6. How does Brazil approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Brazilian law, in general, authorizes parties to choose the dispute resolution mechanism and choice of jurisdiction to solve disputes. Once decided the applicability of Brazilian jurisdiction to a cross-border business transaction, dispute resolution will be regulated by Brazilian law. If there is no arbitration clause regulating the relationship between the parties, the procedure will be judicial, regulated by Law 13.105/2015 (Brazilian Code of Civil Procedure).

The parties to cross-border business transactions can also agree to submit the dispute to an arbitration procedure, which in Brazil is regulated by Law 9,307/96. This legislation provides a comprehensive framework for the arbitration procedure, ensuring the enforceability and effectiveness of arbitral awards.

The parties can decide if the procedure will be regulated by the rules of the arbitration institution elected to administer the dispute (such as ICC, CCBC-CAM) and by other international rules (such as UNICITRAL, IBA, etc.). Also, the parties can elect foreign law to govern the merits of the dispute.

The settlement of disputes by Brazilian courts can be quite a time-consuming process, due to the existing three levels of jurisdiction (first level courts, court of appeals and superior courts) and the high number of existing litigation. For this reason, foreign counterparties usually tend to opt for arbitration proceedings, particularly in complex transactions.

In addition to arbitration, Brazil also offers alternative dispute resolution mechanisms such as mediation and conciliation, which can be pursued in parallel or as standalone procedures. These methods can be particularly useful in resolving disputes that may benefit from a more collaborative approach.

7. Are there any recent or upcoming regulatory changes or developments in Brazil that may impact investments or business relations with Southeast Asia?

Negotiations to implement a Free Trade Agreement between the MERCOSUR countries, including Brazil, and Singapore were concluded on July 20, 2022. The agreement is currently in the process of legal review by the Parties for subsequent signing and entry into force. Brazil's current Foreign Minister Mr. Mauro Vieira stated on April 17, 2023, that the Brazilian government is working to sign the agreement this year.

On December 16, 2021, the Ministers of States Parties of MERCOSUR also began negotiations with the Minister of Trade of the Republic of Indonesia to conclude an Economic Partnership Agreement between the countries.

Brazil already has a ratified Trade Agreement with Malaysia, signed in Kuala Lumpur on April 26, 1996, and enacted in Brazil by Decree No. 2,878 of December 15, 1998; and with Thailand, signed in Brasilia on September 12, 1984, and enacted in Brazil by Decree No. 442 of February 6, 1992. Both agreements aim to develop trade relations between the countries.

Brazil also has a technical cooperation agreement with Cambodia, signed on July 2, 2021, and with Laos, signed on March 17, 2022, and an agricultural cooperation agreement with Thailand, signed on March 11, 2022.

7.1 What is the disposition that benefits the trade in goods?

The main goals of the MERCOSUR-Singapore Agreement is to eliminate import tariffs between the parties and ensure the national treatment for imported goods. The agreement also contains provisions to facilitate the temporary admission of goods, import and export licenses, goods re-imported after repair abroad, among others.

Once the Agreement enters in force, it will immediately exclude import tariffs for all products exported by MERCOSUR to Singapore immediately. In return, MERCOSUR will liberalize import tariffs for 95.8% of the tariff universe, which corresponds to 90.8% of the total value currently imported from Singapore. Approximately 25% of the applicable tariffs will have free trade in MERSOCUR immediately after the Agreement enters in force, while other tariffs will be gradually liberated over the course according to according to a schedule of relief distributed in baskets of 4 years (12.5% of LTs), 8 years (40.9%), 10 years (15.1%) and 15 years (1.7%).

The agreement also contains rules of origin for verifying and certifying the origin of the goods to guarantee the access to the tariff concessions under the agreement for all interested players.

7.2 What is the disposition that benefits services, investments and movements of capital?

The MERCOSUR-Singapore Agreement also aims to facilitate market access between the parties by setting boundaries to prevent licensing and qualification requirements from being used as disguised restrictions on trade, endorsing what was agreed to at the WTO in December 2021.

It also contains a regulatory framework to guide the development of financial and professional services in the regions, aiming to establish an open and secure innovation market for financial services providers while preserving the prerogatives of local authorities and market regulators to adopt measures to ensure the protection of information.

It establishes rules for the movement of persons with respect to migration procedures, with the goal to promote and facilitate the access of business developers and investors to the respective Singaporean and MERCOSUR markets.

7.3 What is established around intellectual property and government procurement?

The Brazilian laws related to intellectual property do not address any matters related to government procurement. Nevertheless, it is worth noting that the Law No. 10,973/2004 ("Brazilian Innovation Law") regulates incentives for innovation and scientific and technological research in

the productive environment and aims to promote cooperation and interaction between public bodies and between the public and private sectors.

In this sense, if there is a public body involved in the development of innovative products or processes, the Brazilian Innovation Law shall be applicable and the ownership of the intellectual property rights will be subject to its provisions.

7.4 Are there any key special dispositions to highlight?

In addition to the dispositions for trade in goods, services and investments, the MERCOSUR-Singapore agreement includes dispositions on:

E-Commerce: The agreement establishes the broadest architecture on this form of trade ever agreed by MERCOSUR with extra-regional partners. The commitments between MERCOSUR and Singapore include topics such as: (i) protection of personal data, (ii) cross-border transfer of information by electronic means, (iii) paperless commerce, (iv) prohibition of requirements for server location and electronic invoicing, and (v) prohibition of charging customs duties on electronic transmissions.

Government Procurement: The agreement establishes rules regarding non-discrimination of foreign suppliers and transparency. The text is in accordance with the model of the WTO's Government Procurement Agreement (GPA).

Customs Procedures and Trade Facilitation: The Agreement provides for the adoption of international standards and the intensive use of information technology to accelerate and simplify bureaucratic procedures.

Trade Remedies: The agreement ensures the right of MERCOSUR and Singapore to adopt the trade remedies provided for by the WTO.

Sanitary and Phytosanitary Measures (SPS): The agreement contains provisions that ensure greater predictability, agility and mutual knowledge between sanitary systems, which will guarantee that members facilitate trade while maintaining commitments to protect human, animal and plant life and health in their territories. The agreement has dispositions that guarantee that sanitary and phytosanitary measures cannot be used as unjustified barriers to trade.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

Decree No. 11.109, of June 29, 2022, enacted the Agreement between the Federative Republic of Brazil and the Republic of Singapore to eliminate double taxation in relation to taxes on income and to prevent tax evasion and avoidance, and its protocol, signed in Singapore on May 7, 2018. In summary, the Agreement applies to persons resident in one or both Contracting States. For the purposes of the Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly transparent under the tax laws of either Contracting State shall be deemed to be income of a resident of a Contracting State, but only to the extent that the income is treated, for the purposes of taxation by that State, as the income of a resident of that State. In no event shall the above provisions be construed so as to restrict in any way the right of a Contracting State to tax residents of that State.

The Agreement applies to taxes on income levied by one of the Contracting States, whatever the system used for their assessment. Income taxes are considered to be all taxes levied on total income or elements of income, including taxes on gains from the alienation of movable or

immovable property, taxes on the total amount of wages or salaries paid by companies, as well as taxes on capital appreciation.

The current taxes to which the Agreement applies are as follows: (a) in the case of Brazil: (i) the federal income tax; and (ii) the social contribution on net profit; and (b) in the case of Singapore: (i) the income tax.

The Agreement shall also apply to any identical or substantially similar taxes that are introduced after the date of signature of the Agreement, either in addition to those mentioned above or in their place. The competent authorities of the Contracting States shall notify each other of significant changes in their respective tax laws.

CHILE

Cariola-Díez Perez-Cotapos

At Cariola Díez Pérez-Cotapos we have built a culture of teamwork. We always seek to consolidate teams of excellence, formed from specialists, committed at the highest level. We are convinced that our most important assets are our lawyers and our clients. We promote meritocracy and non-discrimination.

1. What are the key regulatory requirements and procedures for establishing and operating a business in Chile?

From a corporate perspective, there are different ways to operate a business in Chile, the two common used options are the following:

(a) Establishing a new company in Chile, for which one must follow the procedures and requirements that depend on the type of company being formed. The most common types are:

(i) Simplified Corporation (*Sociedad por acciones*): This is a capital-based company composed of at least one, and up to two thousand, natural or legal persons whose ownership of the capital is represented by the type and quantity of shares they hold. This type of company has two notable advantages: the first is that it can be formed by a single individual, and the second is that the management structure is flexible, defined in the bylaws, and can involve a board of directors, a manager, as well as joint administration, among others. Additionally, as a capital-based company, shares can be easily sold through a private instrument, following legal formalities. Note that the directors, administrators, or the administrative body agreed in the bylaws can live and exercise their functions from abroad, so it is not mandatory for the company to have Chilean executives or foreign base managers to operate in our country. This is the type of company that we usually recommend, unless by law for certain activities the company is required to be a joint-stock company.

(ii) Limited Liability Company: This is a partnership composed of at least two and a maximum of fifty natural or legal persons, whose liability is limited to the amount contributed to the capital. These companies are generally managed by one or more partners, as specified in the bylaws. Being a partnership, in order to change or incorporate a partner, or for transferring social rights, it always requires the unanimous consent of the partners and a consequent amend of its bylaws.

(iii) Joint-Stock Company ("*Sociedad anónima*"): This is a capital-based company composed of two or more natural or legal persons whose ownership of the capital is represented by the type and quantity of shares they hold. The law stipulates that the management of these companies belongs to a board of directors with a minimum of three members elected by the shareholders' meeting for a specified term. As a capital-based company, shares can be sold through a private instrument, following legal formalities. Directors and owners may be foreign nationals.

(b) Establishing a foreign company agency, following the procedure outlined in Articles 447 and subsequent of the Commercial Code or the procedure outlined in Articles 121 and subsequent of the Law on Joint-Stock Companies (Law No. 18.046), as applicable. Within these procedures, a general power of attorney with extensive powers must be granted to the agent who will manage the agency. It should be noted that, although the agency has

its own capital for operations in Chile, the agency's liability is not limited to assets located in Chile or to the mentioned capital.

From a regulatory perspective, to develop certain activities an authorization or permit must be obtained from the respective administrative authorities. Some of the most common procedures and authorizations can be classified as it follows:

a) Environmental: according to the Environmental Framework Law and its regulations (Law No. 19,300 and its regulations), some projects or activities must be submitted to the Environmental Impact Assessment System ("SEIA" for its Spanish acronym) before its execution. Depending on the effects that the activity may cause on the environment, the activity may be submitted to the SEIA through a statement or a study. After the impact assessment of the environmental authority within the SEIA, an environmental license may be granted.

b) Health: Chilean health regulations require certain activities to obtain a resolution from the health authority, authorizing the activity before its execution. The specific requirements to obtain an authorization may vary depending on the activity to be developed.

c) Construction: Chilean regulations establish certain requirements for building activities (from urbanistic, traffic, building requirements, and architecture perspectives). To determine if certain activity may be developed, the land use determined in the respective zoning regulations must be reviewed. To develop any construction, authorizations from the Municipal authorities will be required.

d) Municipal: some activities require a municipal patent to be developed.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Chile? Are there any restrictions or limitations on FDI in specific sectors?

In general, there are no limitations on capital investments in Chile, except for very specific exceptions such as cabotage, acquisition of land on the borders or extractive fishing activities, among others. Foreigners can be subject, if they want, to Law No. 20,848. This law establishes a framework for foreign direct investment (FDI) in Chile by any natural or legal person incorporated abroad, without domicile in Chile, whose investment exceeds US$5,000,000.

This regulation grants various rights to foreign investors, including the repatriation of the invested capital and net profits after fulfilling tax obligations, access to the Formal Exchange Market for the settlement and acquisition of foreign currencies, non-arbitrary discrimination, subjecting the foreign investor to the regime of national investors, and exemption from value-added tax on the importation of capital goods under certain conditions.

Furthermore, the Central Bank of Chile sets forth rules applicable to credits, deposits, investments, and capital contributions from abroad in Chapter XIV of the Compendium of Rules on International Exchange of the Central Bank of Chile, which apply to transactions exceeding US$10,000.

When bringing foreign currencies into Chile for these transactions, it must be done through the Formal Exchange Market, and the relevant authorities must be informed in accordance with the Compendium of Rules on International Exchange of the Central Bank. Additionally, any modifications made to these transactions must be reported to the Central Bank through the same means used for the original reporting. As mentioned, there are few economic sectors which have

restrictions or limitations on FDI. The latest OECD study on FDI in Chile states[1]: "Investment-related policies are non-discriminatory and foreign-owned companies receive national treatment, i.e., they are treated no less favourably than domestic companies. There are only certain market access restrictions in the fisheries and transportation sectors, while specific authorization is required to invest in hydrocarbon exploration and exploitation, mining, and nuclear energy production".

Chile is a country open to foreign investment, as it has the most free trade agreements in the world, with very low customs duties and open, competitive and unsubsidized markets.

3. What are the tax implications and incentives for businesses investing in Chile? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

Generally, taxpayers domiciled or resident in Chile are subject to taxation on a worldwide basis. Non-domiciled and non-resident taxpayers are taxed only on income from Chilean sources.

Usually, income generated by Chilean entities is taxed in two tiers/levels: At the first level, entities are subject to a 25% (Full Integration System for Small and Medium Enterprises)[2] or 27% (Partially Integrated System, which is the general regime) corporate income tax rate depending on its tax regime. Corporate Income Tax is determined on the annual profits of the Chilean Company. Then, on the second level, the partners or shareholders will be subject to a 35% Additional Withholding Tax (WHT) in case they are non-residents in Chile. Under the general regime, WHT is due upon remittance of dividends.

In general terms, partners or shareholders may use 100% (if the company is subject to the Full Integration System for small and medium enterprises) or 65% (if the company is subject to Partially Integrated System) of the amount paid as corporate income tax by the Chilean company as tax credit against the WHT. Note that, in this case foreign shareholders residing in treaty country, may use 100% of the corporate income tax effectively paid by the Chilean Company (27%) as credit against the WHT due.

Chilean treaty network comprises more than 30 countries and several international organizations. This allows the access to reduced withholding tax rates on interest, royalties, and services rendered by foreign shareholders, subject to customary transfer pricing regulation, along with the tax credit for the totality of the corporate income tax referred above.

Up to this date, Chile has not signed a Double Taxation Treaty with Singapore.

Regarding other tax incentives for investing in Chile, we can mention the following:

a) VAT exemption: foreign investors and the recipient companies of their investment may apply for a VAT exemption concerning import of capital goods allocated to the development, exploration, or exploitation of mining, industrial, forestry,

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[1] https://www.subrei.gob.cl/docs/default-source/estudios-y-documentos/otros-documentos/oecd_examen-de-la-calidad-de-la-ied-en-chile.pdf?sfvrsn=acfd4a99_0

[2] According to the provisions set forth in article 14 D) of Chilean Income Tax Law, to be eligible for the Full Integration System for Small and Medium Enterprises, the company must comply with the following requirements: (i) the average gross income for the last 3 years cannot exceed 75,000 Chilean Unidades de Fomento (USD 3,000,000 approx.), and cannot exceed 85,000 Chilean Unidades de Fomento (USD 3,520,000 approx.) in any given year; (ii) the effective equity cannot exceed 85,000 Chilean Unidades de Fomento (USD 3,520,000); (iii) revenues derived from the exploitation of real estate (except agricultural), securities, participation in association contracts or joint ventures and/or equity interests, cannot exceed 35% of total revenue.

energy, infrastructure, telecommunications, research, technological development, medical, or scientific projects in Chile, among others, which involve investments equal to or exceeding US$5.000.000.

b) VAT Recovery:

i) Fixed Assets: VAT levied in the purchase of fixed assets and services contracted to build those assets (which integrate the cost of the fixed assets), accumulated for more than two monthly periods, can be used as credit against other taxes or refunded in cash by the Chilean Treasury.

ii) Export: Exporters of goods and services may apply for the refund of the VAT surcharged when acquiring goods, using services, or importing goods, if said goods and services are used for export activities.

c) R&D Tax Incentive: Chile provides R&D tax relief through a tax credit against the corporate income tax. Chilean entities can use the 35% of the investment in R&D as a tax credit against the corporate income tax. Additionally, the remaining 65% of R&D investment, can be deducted from the gross revenue as a tax expense.

4. How does Chile address intellectual property protection and enforcement?

The Chilean intellectual property regime is mainly governed by two legal bodies: The Copyright Act (Law N° 17.336) and a Patents and Trademarks Act (Law N° 19.039). Whereas works of authorship are protected through the copyrights regime from the moment they are created - regardless of whether they are registered or not- patents and trademarks related rights are fully enforceable after being properly registered.

Copyright protection extends worldwide throughout the author’s lifetime and 70 years after their death. Trademarks and patents, however, are only enforceable within the Chilean territory, notwithstanding international trademark applications granted in accordance with the Madrid System (or Madrid Protocol), which can be filed before the Chilean Patent and Trademark Office (*Instituto Nacional de Propiedad Industrial* or “INAPI”). Patent protection in general extends for 10 years with no further renovation. Trademark protection extends for 10 years, renewable for periods of 10 years.

Copyright, trademark, and patent owners have exclusive enforceability rights which allow them to pursue both civil and criminal liability against infringing third parties.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

The regulations regarding mergers and acquisitions are found in the Law on Joint-Stock Companies (Law No. 18,046) and other legal frameworks. These laws outline the procedure to be followed. These are fairly standard procedures that can even be subject to foreign law by means of the corresponding framework contract (Share Purchase Agreement). Therefore, as a general rule, we do not identify atypical complications specific to Chilean jurisdiction, with the exception of certain specially regulated activities such as, for example, maritime cabotage.

As for joint ventures, this is an atypical contract for which there is no specific legal regulation. Therefore, the contract is based on the will of the parties involved and must adhere to the general validity requirements of any contract (capacity of the parties, will free from defects, lawful purpose and consideration, and the agreed-upon formalities).

Regarding Antitrust matters, in Chile there is a mandatory merger control system that applies to certain Concentration Operations (as defined below) that surpass certain sales thresholds. This notification obligation exists notwithstanding whether the parties of the Concentration Operation are competitors or not.

(a) Notifiable transactions: "Concentration Operation" refers to any fact, act, agreement, or combination thereof, that results in two or more economic agents that are not part of the same business group, and which were previously independent from one another, ceasing to be independent in any scope of their activities in one or more of the following ways:

(i) by merging—regardless of the legal structure of the merging entities or the resulting entity.

(ii) by the acquisition of one or more economic agents, whether directly or indirectly, of rights that allow them, individually or jointly, to decisively influence in the management of another economic agent.

(iii) by their association, under any structure, to create an independent economic agent, different from them, that conducts its business in a permanent manner (e.g., Joint venture).

(iv) by acquiring control over the assets of the other by any title.

(b) Sales: a Concentration Operation is required to be notified to the Competition Authority, the National Economic Prosecutor (FNE), in the event that:

(i) the combined sales of the parties in Chile in the financial year preceding the transaction is at least UF (*unidades de fomento* or adjustable units) 2.5 million (approx. €95.6 million / USD $100.6 million).

(ii) the individual sales in Chile of the parties (or of at least two parties if there are more than two) in the financial year preceding the transaction is at least UF 450,000 (approx. €17.2 million / USD $18.1 million).

The turnover calculations will depend on the form of concentration at hand (note that, in any case, only sales in Chile shall be considered):

i) Mergers: the turnover of the merging parties and of the entities of their economic group.

ii) Acquisition of decisive influence in another entity: the turnover of the acquirer and of the entities of their economic group, and the sales of the target entity.

iii) Association, under any structure, to create an independent economic agent (Joint ventures): the turnover of the entities taking part in the association and of the entities of their economic group.

iv) Acquisition of control over the assets of another entity: the turnover of the acquirer and the sales of the entities of their economic group, and the turnover produced by the acquired assets.

Sales between the companies within the same business group are excluded, as well as such sales which do not come from the usual line of business of the companies.

Any transaction that falls within the scope of a Concentration Operation and that exceeds both sales thresholds must be filed to the FNE at any time before the closing of the same. The parties are not allowed to close such operations prior to receiving the corresponding authorization by the antitrust authorities.

(c) Procedure: as of January 2023, the average clearance time is eighty-five calendar days (from notification to clearance), and usually it takes between 4 to 6 weeks to prepare a filing. There are three mechanisms to notify a Concentration Operation, which differ on how much information is requested by the authority, but the procedure and timelines are the same. The mechanisms are:

(i) ordinary mechanism (general rule).

(ii) simplified mechanism: which can be used if any of the hypotheses indicated by the FNE in the Notification Regulation is verified (e.g., operation related to the acquisition of individual control over an economic agent in which the acquirer had prior to the joint control operation).

(iii) simplified with no horizontal or vertical overlaps: which can be used if there are no current or potential horizontal or vertical overlaps between the economic agents taking part in the transaction (this includes entities from their corresponding business groups).

(d) Sanctions: for the failure to notify, there is a fine of up to UTA 20 (*unidad tributaria anual* or Chilean annual tax units) (approx. €15.9 / $16.8) for each day of delay, starting from the closing of the Concentration Operation. If the case goes to trial before the Competition Tribunal, breaches to merger control regulations could result in fines of up to 30% of the sales of the offender corresponding to the line of products or services associated with the infringement, during the term of the infringement, or up to double the economic benefit gained by the infringement. If this amount cannot be determined, then a fine of up to UTA 60,000 (approx. €48 million / $50.5 million) may be levied, as well as sanctions including termination of the transaction.

6. How does Chile approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

In Chile, disputes regarding cross-border business transactions are generally handled by international arbitration. In 2004 Chile enacted Law No. 19,971 on international commercial arbitration, based on the UNCITRAL Model Law, which provides regulatory support to international arbitration seated in Chile and abroad. Likewise, Chile is a member state of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), therefore, if a dispute over cross-border business transactions is ruled by foreign bodies, the arbitral award rendered could be enforced in Chile.

Our legal system tends to respect the autonomy of the parties regarding Alternative Dispute Resolution, so there is no law that prevents them from agreeing in Chile or abroad on a submission clause in favour of a foreign arbitration court or law (except for certain matters, usually not related to commercial transactions, which by law shall not be submitted to arbitration).

With Southeast Asian counterparts, disputes resolution is generally subject to either the rules of the International Chamber of Commerce (ICC) or the Arbitration and Mediation Centre of the Santiago Chamber of Commerce (CAM Santiago), a well-recognized organization that offers

multiple mechanisms for alternative dispute resolution, both domestic and international, including international commercial arbitration, mediation services and dispute boards.

Regarding investment arbitration for the resolution of conflicts between a foreign investor and the Chilean State, in almost all investments treaties our country has included ICSID or UNCITRAL arbitration clauses as a strategy to position itself as an attractive foreign investment focus in Latin America. In this respect, we can mention the Agreement between Chile and Malaysia on the Promotion and Protection of Investments.

7. Are there any recent or upcoming regulatory changes or developments in Chile that may impact investments or business relations with Southeast Asia?

CPTPP came into effect in Chile in 2023, but since 2006 there's an FTA between Chile, Singapore, New Zealand, and Brunei (P4) effective. Currently, trade in goods under the Agreement (P4) covers almost all products (except for those products that, as part of the negotiation, were excluded from tariff preferences for export to Brunei Darussalam). The P4 agreement formed the basis of the CPTPP agreement.

7.1 What are the disposition that benefits the trade in goods?

Art. 1.2 (P4): Establishment of the Free Trade Area.

> *The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, which are part of the WTO Agreement, hereby establish a free trade area.*

Art. 3.3 (P4): National Treatment.

> *Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994. To this end, the provisions of Article III of GATT 1994 are incorporated into and shall form part of this Agreement, mutatis mutandis.*

7.2 What are the disposition that benefits services, investments, and movements of capital?

All service sectors are covered by the P4 agreement and are subject to obligations under the articles on National Treatment, Most-Favoured-Nation Treatment, Market Access, or Local Presence.

Art. 12.2 (P4): Objectives

> *The objectives of this Chapter are to facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation, while recognising the rights of Parties to regulate services, including to introduce new regulations, and the role of governments in providing and funding public services, giving due respect to national policy objectives including where these reflect local circumstances.*

The P4 agreement does not cover investments, except for those related to certain services. These are included in chapter 12 of the Agreement.

7.3 What is it established around intellectual property and government procurement?

There is no particular regulation on intellectual property and government procurement in Chile. Consequentially, general procurement regulation is applicable (Law N° 19.886). There are three different procurement procedures: public bidding, private bidding, and direct contracting. Public bidding is mandatory whenever procurement exceeds 1.000 UTM (approximately USD 71,700 as of September 2023). Said procedure is also subject to tighter regulation and greater transparency criteria. There is no foreseeable upcoming regulation on the matter.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

The latest agreement reached between Chile and Singapore is the Digital Economy Partnership Agreement (DEPA), which aims to establish a regulatory framework favourable to ICT companies, promoting the export of products and services by regulating areas such as data flow, artificial intelligence, privacy, among others.

COLOMBIA

Brigard Urrutia

1. What are the key regulatory requirements and procedures for establishing and operating a business in Colombia?

Corporate Considerations:

The most frequently used corporate vehicles for foreign investors to conduct business in Colombia are commercial companies. The main types of commercial companies in Colombia are: (i) simplified stock companies (S.A.S., by its acronym in Spanish); (ii) corporations (Sociedades Anónimas or S.A., by its acronym in Spanish; and (iii) limited liability companies.

However, in recent years, the S.A.S. has become the legal vehicle of choice of most of the business community, given its flexibility in terms of its incorporation process and the ample freedom given to its shareholders to set the terms and conditions of the Company´s internal administration and corporate bodies.

In any case, below please find a chart summarizing the main characteristics and differences between the corporate governance and structure of limited liability companies, corporations and simplified stock companies:

ISSUE	LIMITED LIABILITY COMPANIES	CORPORATIONS	SIMPLIFIED STOCK COMPANIES
1. Required number of partners / shareholders	Minimum 2 and maximum 25. No restriction applies regarding the percentage of ownership held by a single partner as long as the minimum number of partners is met.	Minimum 5 and no maximum limit. None of the shareholders can hold 95% or more of the subscribed capital.	May be wholly owned by a single shareholder and has no maximum limit.
2. Liability of the partners / shareholders	It is limited to the amount of the contribution to the company, except for tax and labor law obligations where each partner is jointly and severally liable.	Limited to the amount of the contribution, except for fraud and cases of piercing of the corporate veil.	Limited to the amount of the contribution, except for fraud and cases of piercing of the corporate veil.
3. Corporate bodies / Legal representatives	The Board of Partners is the highest corporate body. The Board of Directors is not mandatory. Even though it is not mandatory, the Board of Directors can exist by the wish of the Board of Partners. The legal representatives must	The General Shareholders Assembly is the highest corporate body. The Board of Directors is mandatory and must be formed at least by three members. The members of the	The General Shareholders Assembly is the highest corporate body. The Board of Directors is not mandatory. Even though it is not mandatory, the Board of Directors can exist by the

ISSUE	LIMITED LIABILITY COMPANIES	CORPORATIONS	SIMPLIFIED STOCK COMPANIES
	be appointed by whoever has the function according to the bylaws and have the powers granted in the bylaws.	Board of Directors must be appointed by the General Shareholders Assembly. The legal representatives must be appointed by whoever has the function according to the bylaws and have the powers granted in the bylaws.	wish of the General Shareholders Assembly. The legal representatives must be appointed by whoever has the function according to the bylaws and have the powers

For the case of commercial companies, the following steps need to be carried out for incorporation purposes:

- Prepare the following documents:
  - (i) Bylaws of the company.
  - (ii) Letters of acceptance of office for the Company´s legal representatives.
  - (iii) Copies of the identity documents of the Company´s legal representatives.
  - (iv) Special powers of attorney granted by the founding shareholders (in case the incorporation process is carried out by power of attorney).
  - (v) In case the founding shareholder is a legal entity (local or foreign), the certificate of incumbency and good standing of said corporation.
- Translate and legalize the documents required for incorporation (bylaws, documents evidencing the incumbency and good standing of the founding shareholder, among others) when such documents are in a language other than Spanish.
- Finalize the bylaws and execute the public deed or private incorporation document before a Notary Public.
- Prepare and sign the forms established by the Chamber of Commerce for the registration of legal entities.
- File the documents for registration before the Chamber of Commerce.
- Request the issuance of the certificate of good standing (*certificado de existencia y representación legal*) of the company, once incorporated.

Please note that there are other necessary steps after incorporation, detailed below:

- Request for an appointment before the Colombian Tax Authority (DIAN) to update the Company´s Single Tax Registry (RUT) and obtain the Single Tax Registry of its legal representatives.

- Activate the electronic signature mechanism of the legal representatives.
- Request the issuance of a copy of the Company´s Single Tax Registry.
- Registration of the corporate books before the Chamber of Commerce.
- Issuance of stock certificates in favor of the founding shareholders.
- Transfer of the initial capital.
- For foreign companies, it is necessary to register their foreign investment before the Colombian Central Bank (*Banco de la República*) once such resources have been effectively wired.

Tax Considerations:

Corporate income tax

- National legal entities and branches of foreign entities are subject to this tax on their worldwide ordinary and extraordinary income. Conversely, foreign legal entities are taxed solely on their Colombian-sourced, ordinary, and extraordinary income.
- Ordinary income is subject to a tax rate of 35%. However, there are some exceptions introduced with the recent tax reform (Law 2277 of 2022):

  (i) Financial institutions have a surtax of 5% (total rate of 40%) until 2027. This rate is applicable to those entities whose taxable income exceeds 120,000 tax units (COP $5.089.440.000).

  (ii) Taxpayers whose economic activity is power generation from hydric resources have a surtax of 3% (total rate of 38%) until 2026. This rate is applicable to those entities whose taxable income exceeds 30,000 tax units (COP $1. 272.360.000).

  (iii) The tax reform introduced a surtax to the entities that develop the following economic activities: coal and oil extraction.

Dividends

- Dividend tax is imposed on profits distributed by Colombian entities and remittances by branches and permanent establishment:
- Dividends paid by a Colombian entity to a foreign shareholder from profits that were taxed at the corporate level will be taxed at the level of shareholders at a 20% rate.
- Dividends paid by a Colombian entity to a foreign shareholder from profits that were not taxed at the corporate level will be taxed at the level of the shareholder at a 35% rate (recapture tax) and the additional 20% rate, after subtracting the income amount.

Capital Gains

- Capital gains tax is imposed on earnings that are obtained from certain operations expressly defined by law.
- Among the most significant operations subject to the capital gains tax are the following: gains obtained from the sale of fixed assets owned for a period of at least 2 years, gains derived from the liquidation of any type of company on the excess of the invested capital,

when the gains or earnings do not correspond to income, reserves or earnings distributable as non-taxable dividends, as long as the company has completed at the moment of liquidation 2 or more years of existence, gains resulting from inheritance, legacies, donations, as well as those received in the manner of spousal forced shares, among others.

- The tax reform increased the capital gains tax rate from 10% to 15% for entities, whether national or foreign. Be advised that capital gains derived from lotteries, raffles, and other similar activities will be taxed at a 20% rate.

Wealth Tax

- Law 2277 of 2022 permanently reintroduced as from 2023, an annual wealth tax for individuals and certain foreign entities.

- The wealth tax is levied on the possession of net wealth for tax purposes more than 72,000 UVT (approx. USD 635,000) on January 1 of each year.

- This tax applies to: (i) resident individuals and estates with respect to their worldwide assets (equity); (ii) non-resident individuals and estates over their assets held in Colombia; and (iii) certain foreign entities that have assets in Colombia other than certain types of investments.

- Progressive rates apply and vary according to the net worth of the individual. They range between 0.5% and 1.5%.

- This tax may be applicable to foreign companies if they directly acquire assets in Colombia or do not fully comply with foreign exchange regulations.

Significant Economic Presence

- As from January 2024, a Significant Economic Presence rule ("SEP") will be in effect for income tax purposes. Under this new rule, non-resident entities may be subject to income tax on income from the sale of goods and/or rendering of services to clients and/or users located in the national territory if they meet the criteria established by the law.

- Additionally, the SEP rule will apply to non-resident entities that cumulatively:

  (i) During the previous taxable year or in the current taxable year, had income equivalent to 31,300 Units of Tax Value (approximately USD 275K in FY23) or more from transactions involving the sale of goods or services to client(s) and/or user(s) located in Colombia.

  (ii) Have deliberate and systematic interactions maintained with the Colombian market, which includes:

    a. The non-resident has at least 300,000 or more clients and/or users located in the Colombian territory during the previous taxable year or the current taxable year.

    b. The non-resident maintains or establishes the possibility for users to view prices in Colombian Pesos (COP) or allowing payments in COP.

    c. Having aggregated applications in activities carried out by related parties.

Minimum Effective Tax Rate

- As from 2023, a Minimum Effective Tax Rate ("METR") of 15% is introduced for resident corporations (a few industries are exempted: companies qualified as "ZOMAC" or entities whose adjusted profits are equal or lower than zero, concessions, among others).

- Subject to a system of formulas, taxpayers within the scope of the application must adjust the METR to 15%. The METR will be calculated by dividing the tax due (+/- certain adjustments) by the accounting profit (+/- certain adjustments).

Value Added Tax – VAT

- VAT is levied on the: (i) sale or transfer, at any title, of tangible movable assets; (ii) sale or right transfers over intangible assets associated to intellectual property rights; (iii) the provision of services within Colombia or from abroad to Colombian users; and (iv) the importation of tangible movable assets, unless a certain item is expressly excluded from such tax. The general tax rate is 19% on the total value of the transaction, but different rates may apply to specific goods and services.

- Certain goods or services are taxed at 0% (exempt) and others are not subject to tax (excluded).

- Input VAT is creditable against output VAT as long as the former was levied on goods and services used in the production or manufacture of taxable or exempt (not excluded) goods and services.

- As from 2023, taxpayers are entitled to credit against their income tax liability, the VAT paid for the acquisition, construction, formation or importation of productive fixed assets, under certain conditions.

Industry and Commerce Tax – ICT

- ICT is a municipal tax levied on gross revenues derived from services, commercial or industrial activities within the jurisdiction of a Colombian municipality at an approximately 1% over gross revenue.

- Taxpayers are entitled to deduct from their taxable income the 100% if the ICT effectively accrued as of the respective taxable year.

Debit Tax – Tax on Financial Transactions

- Debit tax is a national tax, levied on the disposal of funds from saving or checking bank accounts, the issuance of cashier's checks, or any accounting entries or accruals that involve the payment of obligations.

- The current rate is 0,4% on the gross amount of the transaction and the tax amount is withheld by the financial institution and debited from the payer's balance, thus not affecting the amounts payable to third parties.

- It is important to note that 50% of the total amount paid due to bank debit tax is deductible for income tax purposes, regardless of it being linked to an income producing activity.

Be advised these are high-level comments and, to accurately determine the tax effects of a specific activity or transaction, a *case-by-case* analysis is strongly suggested.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Colombia? Are there any restrictions or limitations on FDI in specific sectors?

International investment rules in Colombia are issued by the National Government. As per the foreign exchange regime in force, international investment is considered a transaction under foreign exchange control. Thus, any amount related to foreign investment must be paid in a correct way to ensure compliance with basic responsibilities and registration with the Colombian Central Bank. Other kinds of contributions, like capitalization of services, loans, imports of goods and in general terms by any lawful agreement or contract are also subject to the Colombian Foreign investment regime.

There are no general restrictions on foreign investment in Colombia. As a general requirement (more than a restriction) all funds originated abroad used to invest in a local asset must be registered with the Central Bank. This is meant to control the flow of foreign currencies into the Colombian market. Registration as a foreign investor with the Colombian Central Bank confers foreign exchange rights related to the repatriation of the capital invested and any gains, as well as to make any kind of reinvestments in Colombia.

The general rule is that foreign investment is not industry specific, thus allowed in any kind of sector of the economy or industry. However, the following sectors are not open to foreign investment at all:

- Defense activities
- Processing and disposal of hazardous or radioactive products not produced in Colombia.
- Investment in financial institutions regulated by the Superintendence of Finance of Colombia that may be subject to prior approval (if the investor is acquiring 10% or more of the entity).
- Foreign investment in television may not exceed 40% of the equity of the relevant operator.

Foreign investment is divided into two kinds:

- Foreign Direct investment: in Colombian corporations (any kind), shares registered with the National Registry of Securities and Issuers (RNVE) purchased with the aim of permanence, branches of foreign entities, real estate, trusts administrated by companies under supervision by the Superintendence of Finance, certain agreements (i.e., collaboration, joint venture, association, among others), private equity funds and intangibles.
- Portfolio investment: in RNVE-registered securities, any collective investment funds.

The regime is mandatory, and proceedings are normally completed post-closing.

Failure to comply with the foreign investment regime may trigger fines by the Superintendence of Corporations that, as per the law, can amount to 200% of the transaction value, but ordinarily range between 2.2% and 4%. These fines are commonly applied in cases of late registration of substitutions, modifications, or cancelations of foreign investments (currently subject to a deadline of six months after completion).

As a general principle, a foreign investment duly performed and registered with the Colombian Central Bank will be protected under the Colombian Constitution, as per the Colombian regulations that prohibit expropriation against private property, and the remittance of funds

abroad can only be temporarily limited by the Colombian authorities, if international reserves amount to less than three months of imports.

Colombia has also been executing Bilateral Investment Treaties (ALL / Bits) and free trade agreements (FTA) with investment chapters to ensure international protection for foreign investors (i.e. Canada, Chile, China, Korea, United States, France, UK, Switzerland, Europe Union, among others).

As per the Commercial Code in Colombia, any permanent activity by a foreign entity in Colombia will require it to incorporate a branch, subsidiary, or agent.

Additionally, the following sectors require that foreign investors have a legal local representative and/or commercial presence in Colombia: travel and tourism agency services; money order operators; customs brokerage; postal and courier services; merchandise warehousing; merchandise transportation under customs control; international cargo agents; public service companies, including sewage and water works, waste disposal, electricity, gas and fuel distribution, and public telephone services; insurance firms; legal services; and special air services, including aerial fire-fighting, sightseeing, and surveying.

3. What are the tax implications and incentives for businesses investing in Colombia? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

Colombia offers a wide variety of tax benefits and holidays. Their applicability is limited to specific facts and circumstances and, therefore, should be carefully assessed on a case-by-case basis. For reference, please find below a non-exhaustive list of tax benefits:

- ZOMAC: This tax regime applies to entities incorporated in areas affected by the armed conflict in Colombia.
- The benefit consists of a special income tax rate: for the period between 2022 to 2027, the rate will be 75% of the general corporate income tax.
- In addition to the areas shown in the map below, the latest tax reform included the Amazonian departments (Putumayo, Cáuca, Caquetá, Guaviare, Vaupés, Nariño, Guainía, Meta, Vichada y Amazonas) as a ZOMAC area.

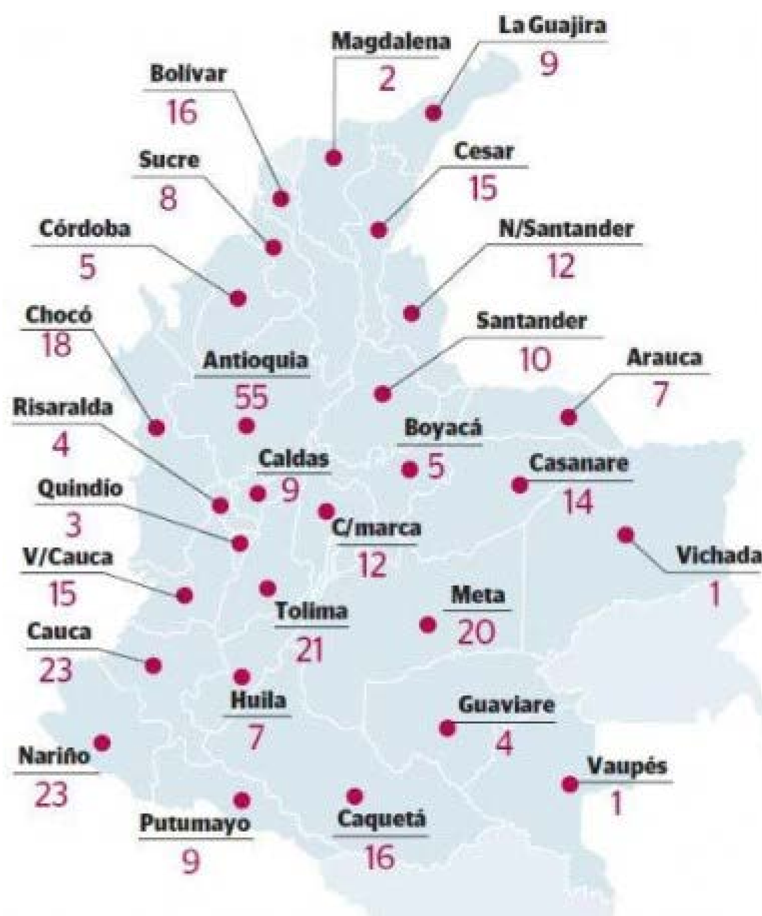

Photo: Departamento Nacional de Planeación.

To qualify for these benefits the entity must: *(i)* be a New entity incorporated in a specific area in the chamber of commerce of that jurisdiction, *(ii)* conduct its entire operation in the specific area, *(iii)* comply with certain investment and employment generation commitments:

Company size			
Medium entities		Large entities	
Investment	Employment	Investment	Employment
~ USD 356. 972	14	~ USD 3.751.485	62
~ USD 288.246	8	~ USD 2.461.802	29

(i) Medium: when total assets are greater than ~USD 1.258.970, but less than ~USD 3,776,156.

(ii) Large company: when total assets are equal to or greater than ~USD 3,776,156.

- ZESE: For the first 5 years of operation the income tax rate is 0%, from year 5 to year 10 the half of the rate in force for corporations.

Currently, new entities can apply for this regime until December 31 of 2024 (before the tax reform, until July 8, 2025).

Please note that this regime only applies to activities fully conducted in Buenaventura or Barrancabermeja (i.e., ZESE zones).

- **Hotel services:** Legal entities that build new hotels or thematic parks in Colombian territory, refurbish or expand existing ones, but do so between years 2023 and 2027, provided that certain special requirements are met, may be taxed permanently at the special corporate income tax rate of 15%.

- **Sale of low value multifamily property**: The following income related to low value multifamily property will be exempt of income tax in compliance with certain requirements: *(i)* the profit derived from the sale of land intended to low value multifamily property project and *(ii)* the income earned on the first sale of low value multifamily property.

  On the other hand, the constructors of low value multifamily property will be able to file for a refund or compensation of the VAT paid on the acquisition of construction materials.

- **First job deduction**: Taxpayers who hire employees for their first job can deduct 120% of the wages paid as an incentive to hire workers under 28 years old who have never had a job.

Please find enlisted below the current Double Tax Treaty (DTT) executed by Colombia with other jurisdictions to date:

	Double Tax Treaty ("DTT")	In Force?
1	Spain	Yes (Law 1080 de 2006)
2	Chile	Yes (Law 1261 de 2008)
3	Switzerland	Yes (Law 1344 de 2009)
4	Canada	Yes (Law 1459 de 2011)
5	Mexico	Yes (Law 1568 de 2012)
6	South Korea	Yes (Law 1667 de 2013)
7	Portugal	Yes (Law 1692 de 2013)
8	India	Yes (Law 1668 de 2013)
9	Czech Republic	Yes (Law 1690 de 2013)
10	France	Yes (Law 2061 de 2020)
11	United Kingdom	Yes (Law 1939 de 2018)
12	Arab Emirates	No
13	Italy	Yes (Law 2004 de 2019)
14	Japan	Yes (Law 2095 de 2021)
15	Uruguay	No
16	Luxembourg	No
17	Holland	No
18	Brazil	No
19	Peru	Yes (Decision 578 de 2004)
20	Ecuador	
21	Bolivia	

Please note that every incentive has their own requirements to be fulfilled. Hence, we suggest carrying out a *case-by-case* analysis to establish if the investment or company would be able to benefit from the incentive.

4. How does Colombia address intellectual property protection and enforcement?

Colombia addresses IP protection and enforcement both as a member of relevant international treaties for the enforcement of intellectual property rights, such as the Paris Convention, the Madrid Agreement, TRIPS, and the Andean Community Decision 486 of 2000, among several others. As a member country of the Andean Community of Nations, Colombia has assimilated Decision 486 of 2000 as internal law, and as such, most of the IP protection and enforcement is guided by said decision. Several domestic laws also complete the legal framework related to intellectual property in the country.

Colombia deals with IP by dividing it into two categories: Industrial property (trademarks, patents) and copyrights. Both are enforced by different agencies: the Superintendency of Industry and Commerce (or SIC) and the National Agency for Copyright (DNDA, in Spanish), respectively. They also work together in some instances to ensure the protection and enforcement of IP rights.

While industrial property rights must be registered to gain effective legal protection (trademarks protection is granted for 10 years, with the possibility of renewal. On the other hand, patents are granted for a period of 20 years), copyrights do not need any type of formal registration, as the protection is granted automatically the moment the work is created. Nonetheless, formal registration of copyrights is available through the DNDA, and can serve as strong evidence of the ownership of the work.

In hindsight, Colombia has made considerable efforts to ensure the effective protection and enforcement of IP rights. The country is aligned with international standards, and its presence and participation in global treaties on the protection of intellectual property rights continues to give prove of the continuous efforts to comply with IP laws.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

As per Colombian Law[3], companies that undertake the same economic activity or participate in the same value chain and meet the thresholds set forth by the Superintendence of Industry and Commerce (SIC) are required to inform the SIC about any proposed transactions to merge, consolidate, acquire control or integrate, regardless of the legal structure of the proposed transaction.

The relevant thresholds established by the SIC are as indicated below[4]:

- Individual or combined annual operating income as of December 31st of the year immediately preceding the transaction equal to or exceeding 1.641.044, Tax Value Units[5] (“TVU” –approximately COP 69.6 billion i.e., approximately USD16 million for 2022); or
- Individual or combined assets as of December 31st of the year immediately preceding the transaction equal to or exceeding 1.641.044,99 UVT (COP 69.6 billion i.e., approximately USD16 million for 2022).

[3] Articles 9 through 13 of Law 1340 of 2009 and Resolution 2751 of 2021 of the SIC.

[4] At the average exchange rate for 2022 as reported by the Colombian Central Bank: 1US$ = COP$4.255,44

[5] A tax value unit (UVT) for 2023 is COP 42,412 (as of 1 January 2023).

The assets and operating income taken into account are the total values registered in the previous fiscal year's financial statements of the companies involved in the transaction, including the assets and operating income of all related entities[6], either in Colombia or abroad, depending on whether the companies have corporate presence in Colombia.

Whenever the parties to the transaction have corporate presence in Colombia in the form of subsidiaries or affiliates, the assets and operating income considered for threshold calculations will be those of the parties and their related group entities in Colombia. Otherwise, if the parties in the transaction do not have corporate presence in Colombia and participate in the market through distributors or resellers, the assets and operating income taken into account for threshold calculations will be those of the parties and the worldwide group entities that participate in the same economic activity or value chain.

However, if the parties meet one or both aforementioned conditions, the applicable procedure before the SIC will depend on the combined markets shares. If the parties hold a combined market share below 20% in the relevant market, they must present a short-form notification to the SIC describing the intended transaction. If the parties hold a combined market share above 20% in the relevant market, they must present a long form filing before the authority.

Regarding joint ventures, the SIC has issued guidelines that have set a test similar to the **"full functionality"** test applicable under EU competition law. The SIC has indicated that a joint venture will require a merger control filing if (in addition to meeting the regular thresholds of the merger control test) (i) it will result in a reduction of competition on a permanent basis, (ii) it develops activities that can be understood to constitute a market, as opposed to the simple delegation of day-to-day activities of its parents (e.g. joint purchasing, joint distribution, R&D, etc.); and (iii) it has sufficient financial and commercial independence to be able to act as a separate business from its parents. If the joint venture does not meet these criteria, it will not be subject to the merger control procedure.

The analysis conducted by the SIC aims to determine whether the transaction has any adverse effect on the relevant market or on the consumers, or if it infringes competition. If the SIC finds the operation restricts competition, this authority will challenge the economic integration. The SIC can impose remedies in order to neutralize any negative impact that the transaction may have on the relevant market. Remedies are not listed in the law, and thus any effective measure may be proposed. Failure to comply with the remedies is a violation of the antitrust law, punishable with the fines set forth below.

Obtaining clearance, when required, is a prerequisite for closing, and therefore any closing before clearance will be deemed to be a violation of Colombian antitrust law with the possibility to impose greater amounts for the following possible fines[7]:

- Up to 100,000 monthly minimum legal wages ("MMLW") (currently $116,000,000,000 COP i.e., approximately USD 27 million for 2022)

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[6] Related entities is understood as a group of entities that participate either in the same economic activity or in the same value chain.

[7] Article 25 and 26 of Law 1340/009

- to the facilitator of the conduct, regardless of being a company or an individual may receive a fine up to 2,000 MMLW (currently $2,320,000,000 COP i.e., approximately USD 545,184 for 2022)[8].

- If, in addition to the above, if the SIC deems the transaction to be restrictive of competition, the authority can order its "reversion", including the divestiture of the acquired assets.

- Regarding tax considerations reorganizations are tax free provided certain requirements are met.

6. How does Colombia approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Colombia regulated alternative dispute resolution's mechanisms in the constitution and in other laws and regulations. Conciliation and arbitration are widely developed; the conciliation agreement and the arbitral award have *res judicata* consequences. Technical mediation -*amigable composición*- is also regulated and commonly included in contracts with state-own parties. Those mechanisms are available to national and international parties.

Colombia is a signing party to the UN Convention on International Settlement Agreements Resulting from Mediation since 2019. The convention has not entered into force; however, the local procedure to ratify it is almost done. Thus, it seems likely than before a year, the convention would enter into force.

The Colombian arbitration regime is a dualist system. The domestic arbitration section is closely connected to the General Procedural Code -applicable to litigation proceedings before the courts.

The international arbitration section -applicable to cross-border business transactions- adopted the UNCITRAL Model Law on International Commercial Arbitration with some minor modifications. Furthermore, Colombia is a contracting party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

Thus, the grounds for the setting aside an arbitral award and for the denial of recognition of foreign awards are not related to the reviewing of the merits. A final and binding arbitral award against any party will be recognized and enforceable against a Colombian counterparty by the Colombian courts according and subject to the New York Convention. Therefore, the recognition and enforceability of an arbitral award will be analysed on a case-by-case basis using international standards.

There is not case law under Colombia highest courts related to Southeast Asian parties; however, the outcome, assuming the arbitral award complied with international procedural standards, would be the recognition and enforcement of the arbitral award.

7. Are there any recent or upcoming regulatory changes or developments in Colombia that may impact investments or business relations with Southeast Asia?

Currently Colombia has one (1) executed Free Trade Agreement (FTA) with only one country in Southeast Asia, namely: Singapore. This FTA was concluded between the Pacific Alliance (i.e. Republic of Chile, Republic of Colombia, United Mexican States and the Republic of Peru) and the Republic of Singapore (PASFTA). The PASFTA was signed by the Pacific Alliance and Singapore the

[8] At the average exchange rate for 2022 as reported by the Colombian Central Bank: 1US$ = COP$4.255,44

26th of January 2022; within Colombia, the treaty was approved by the Colombian legislative branch (Law 2284/2023) and is pending review by the Colombian Constitutional Court.

Please refer to question 2 for foreign investments regulations. The only recent changes are related to the upcoming procedures to report the foreign investment records without payment through the foreign exchange market [i.e., substitution and cancellation from investments, payments in kind, among others] that must be electronically reported through the digital platform from the Colombian Central Bank: Foreign Exchange Information System. There are no regulations that prevent or impact the Southeast Asian investments in Colombia or the investments from Colombia to the Southeast Asia.

Regarding to Tax considerations to date there are no envisaged upcoming tax reforms that may impact investments or business relations with Southeast Asia.

7.1 How is trade in goods encouraged?

The PASFTA includes various provisions that benefit and/or intend to facilitate trade in goods between Colombia and Singapore. Of these, we highlight the accordance of national treatment to the goods of the other party and the progressive elimination of customs duties that each party agreed in their Tariff Elimination Schedule (Chapter 3); the rules of origin and origin procedures to determine whenever a good is originating in the territory of the other party (Chapter 4); the promotion of efficient administration and simplification of customs procedures, and the facilitation of trade between the parties (Chapter 5); the regulation of sanitary and phytosanitary measures of a party that may, directly or indirectly, affect trade in goods between the parties (Chapter 6); the preparation, adoption and application of standards, technical regulations and conformity assessment procedures of the parties (Chapter 7); and measures adopted or maintained by a party affecting international maritime transport services (Chapter 10).

7.2 How are services, investments, and movements of capital encouraged?

Pursuant to foreign exchange regulations, there are two types of currency markets, due to the foreign exchange regime is based on the criteria that some transactions are under control and others are not subject to any control. Consequently, (i) the Foreign Exchange Market [that is obliged in case of transactions under foreign exchange control] and (ii) the Free Market [applicable to transactions that are not under foreign exchange control] coexists in Colombia.

Transactions under exchange control must be paid with the authorized intermediary of the exchange market (i.e., commercial banks and authorized financial entities, among others) or through compensation accounts (bank accounts held abroad Colombia by Colombian residents registered before the Colombian Central Bank through which the resident will carry out payments under control. The registration of these accounts leads to the imposition of periodic obligations before the Colombian Central Bank and the Tax Authority).

The following transactions must be paid through the foreign exchange market and comply with the reporting obligations that may arise:

- Import and export of goods,
- International indebtedness,
- Foreign Investment in Colombia,
- Investment of Colombian capital abroad,

- Financial investments and/or in assets located abroad and their returns (excepting those made with resources currently in the free market),
- Guarantees and collateral structures in foreign currency,
- Derivative transactions.

Considering the above, in order to carry out transactions derived from investments, it is mandatory to perform those payments through the foreign exchange market, either with intermediaries from the exchange market or through the compensation accounts.

Otherwise, the payment of services or the movement of capital that is not related to the above-mentioned transactions, are considered as operations of the free market, which payments could be performed through the free market, thus no report liabilities will arise. Nevertheless, currencies derived from transactions of the free market may be also transferred voluntarily through the foreign exchange market and upon this, they will be also considered part of the foreign exchange market.

The following are the main regulations governing the foreign exchange and international investment regime in Colombia:

- Law 9 of 1991
- Decree 1068 of 2015
- Decree 1191 of 2017
- External Resolution No. 1 of 2018 issued by the Board of Directors the Colombian Central Bank
- External Regulatory Circular DCIP 83 of the Colombian Central Bank

Additionally, there are six chapters of the PASFTA that benefit the investments made by the investor of a party, as well as the trade in services. On one hand, the agreement includes an investment chapter that regulates FDI and imposes obligations to measures adopted or maintained by any governmental body of a party related to covered investors and investments (Chapter 8). On the other hand, it includes various chapters regulating services, specifically: measures adopted or maintained by a party affecting cross-border trade in services supplied by service suppliers of the other party (Chapter 9); measures by a party affecting trade in public telecommunications services (Chapter 12), and measures adopted or maintained by a party that affect trade by electronic means (i.e., electronic commerce) (Chapter 13). Additionally, and benefitting both investors and companies providing services, the PASFTA includes specific provisions to facilitate the temporary entry of a business person of a party into the territory of the other party (Chapter 11) and to promote an environment that supports the development, growth and competitiveness of small and medium enterprises (SMEs) (Chapter 19).

7.3 What is it established around intellectual property and government procurement?

Colombia is party to the Free Trade Agreement with the Pacific Alliance (which includes Mexico, Peru, and Chile). As of January 2022, a Pacific Alliance-Singapore Free Trade Agreement was signed by the parties. Nonetheless, only Singapore and Peru have ratified the trade deal, meaning that at least one more member state is needed before it can take effect.

No specific chapter of IP-related provisions was included; however, the FTA does include chapters regulating telecommunications and electronic commerce.

Annex 14-A of the above-mentioned FTA contains government procurement provisions between Singapore and Colombia. It includes all the authorized public agencies to be involved in procurement processes and establishes that each of the Colombian entities must conduct its procurement in a transparent manner, in accordance with commercial considerations; and must treat the suppliers of the other Party at least as favourably as it treats its domestic suppliers. This Annex and all chapters of the Pacific Alliance-Singapore Free Trade Agreement can be found here.

On the matter of related Free Trade Agreements with Asian countries, an FTA was signed and ratified in 2016 with South Korea, with chapter 15 establishing IP related provisions. This chapter addresses the responsibility by each party to ensure adequate, effective, and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights. It also includes provisions referring to the need to comply with IP-related international treaties, the obligation to provide a system that permits owners to assert their IP rights in trademarks, through administrative and/or judicial means, as well as the necessity to operate under continuous operation between the parties, among others. Chapter 15 can be found here.

Chapter 21 establishes government procurement conditions, which include transparency within the procurement system with regards to information, conditions for participation, etc. This chapter can be found here.

During the negotiations between the Pacific Alliance and Singapore, the parties decided to exclude intellectual property from the coverage of the PASFTA. Hence, other than multilateral agreements that regulate IP to which both countries are parties (e.g., WTO TRIPS Agreement), there is no specific disposition regulating IP between Colombia and Singapore.

The PASFTA includes a specific regulation for government procurement between the parties of the agreement in Chapter 14 (Government Procurement). This chapter is applicable to "any measure adopted or maintained by a Party regarding covered procurement". Regarding general principles applicable to covered procurement, Chapter 14 accords "immediately and unconditionally" to the goods and services of the parties, as well as their suppliers, treatment no less favourable than the treatment accorded to a locally established supplier (i.e. national treatment and non-discrimination).

Additionally, this chapter includes specific provisions to facilitate the participation of SMEs in covered procurement (Article 14.22, PASFTA). To do so, the PASFTA endeavours parties to make all tender documentation available free of charge and conduct procurement by electronic means or through other new information and communication technologies.

The public procurement law does not provide a specific regulation related to intellectual property. As such, clauses of intellectual property agreed in state contracts shall be regulated by the provisions set forth in the Commercial Code and Civil Code[9]. However, state entities that require to execute a contract with the owner of a specific intellectual property can directly execute such agreement, without the need to open a public bidding process[10].

[9] See article 13 of Law 80 of 1993, which provides that the commercial and civil provisions are applicable to matters not regulated in Law 80 of 1993.

[10] See article 2 of Law 1150 of 2007.

On the other hand, regarding the upcoming and recent regulatory changes specifically targeted at public procurement, the Congress of the Republic of Colombia enacted Law 2294 of 2023 on May 19, 2023, whose purpose is to issue the National Development Plan 2022-2026. This law (articles 100 and 101) introduced regulatory changes that may impact the participation of Southeast Asian bidders in public procurement processes.

First, article 100 of the National Development Plan, provides that state entities will be entitled to directly enter into contracts with natural persons or non-profit organizations that are part of the popular and community economy (these new types of contracts are defined as Public Popular Associations).

The referred Public Popular Associations can be executed for the following purposes: (i) execution of works; or (ii) procurement of goods and services related to: (a) social infrastructure, (b) rural property, (c) tertiary and country side roads, (d) culture, (e) local production infrastructure, (f) energetic efficiency project, (g) production of food, (h) community water management, (i) basic sanitation, (j) care economy, (k) environmental and community strengthening, and (l) acquisition of products of agricultural origin or destination.

Nevertheless, Public Popular Associations are limited to state contracts that are equal or below the minimum amount threshold. This means, that state entities are entitled to use this mechanism if the value of the agreement does not exceed the 10% of the minor amount of the state entity, which is calculated as follows (see article 2, Law 1150 of 2007):

- For state entities that have an annual budget equal or higher than 1,200,000 legal monthly minimum wages[11] (SMMLV for its acronym in Spanish), the minor amount shall be of 1,000 SMMLV. The minimum amount is equal to 100 SMMLV (approx. USD 27,259).

- For state entities that have an annual budget equal or higher than 850,000 SMMLV and below 1,200,000 SMMLV, the minor amount shall be of 850 SMMLV. The minimum amount is equal to 85 SMMLV (approx. USD 23,170).

- For state entities that have an annual budget equal or higher than 400,000 SMMLV and below 850,000 SMMLV, the minor amount shall be 650 SMMLV. The minimum amount is equal to 65 SMMLV (approx. USD 17,719).

- For state entities that have an annual budget equal or higher than 120,000 SMMLV and below 400,000 SMMLV, the minor amount shall be 450 SMMLV. The minimum amount is equal to 45 SMMLV (approx. USD 12,267).

- For state entities that have an annual budget below 120,000 SMMLV, the minor amount shall be 280 SMMLV. The minimum amount is equal to 28 SMMLV (approx. USD 7,633).

Moreover, it is important to note that, the execution of the Public Popular Associations is conditioned to the regulation that the Colombian government shall issue through the National Planning Department. This means, that currently, the Public Popular Associations cannot be executed until the government issues such regulation.

[11] For 2023, the legal monthly minimum wage is of COP$1,160,000. Approximately USD 272.59 using the average exchange rate for 2022 as reported by the Colombian Central Bank of 1US$ = COP$4.255,44.

Consequently, once the Colombian government issues the regulation of Public Popular Associations, the participation of Southeast Asian bidders in public procurement may be affected, as they may not be considered part of the popular and community economy.

Article 101 of the National Development Plan provides another contractual mechanism defined as Public Popular Initiative Associations. The purpose of this contractual mechanism is to bind public entities and different community-based associative instruments[12] for the development of infrastructure projects related to roads, education, environment, agriculture, livestock and public utilities.

The execution of the Public Popular Initiative Associations is conditioned to the regulation that the National Planning Department issues, with the support of the Ministry of Finance and Public Credit and the National Public Procurement Agency. This regulation shall be issued within six months following the enactment of the National Development Plan.

As the regulation establishes the requirements and conditions to be met for the execution and performance of Public Popular Initiative Associations, the duration of such contracts, the conditions governing the right to remuneration, among others, there are too many variables and unknowns to determine how the Public Popular Initiative Associations will affect the participation of Southeast Asian bidders in such public procurement processes.

7.4 Are there any key special dispositions to highlight?

Yes, in addition to the chapters referred above it is worth mentioning that the PASFTA, being a last generation agreement, includes the following dispositions regulating ESG and/or Good Regulatory Practices (GRP) matters which indirectly affect trade of goods/services between the two countries:

- Chapter 15. Competition Policy.
- Chapter 17. Trade and Gender.
- Chapter 18. Economic and Trade Cooperation.
- Chapter 20. Good Regulatory Practices.

Of these, we highlight the regulation of “appropriate measures” to prohibit anticompetitive business conduct and misleading or deceptive conduct that has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation (Chapter 15); the incorporation of gender perspective into the promotion of inclusive economic growth, as well as the recognition of the key role that gender-perspective policies can have to achieve a sustainable socioeconomic development (Chapter 17); the creation of Cross-Cutting Committees (e.g., Other Issues Committee) that shall facilitate the exchange of information in the relevant areas of economic and trade cooperation and ensure the effective and efficient implementation of cooperative activities and projects (Chapter 18 and 20). It is worth mentioning that the under the PASFTA each party is obliged to establish contact points, which serve both national governments and investors/companies to consult information related to the implementation of the GRP Chapter (Article 20.6, Chapter 20).

[12] Defined in article 101 of the National Development Plan as popular economy units, community, social or communal action organizations, or other forms of social organization, such as black, Afro-Colombian, Raizal and Palenquero groups and/or communities, women and victims.

On the other hand, investments or companies coming from Singapore should bear in mind that Colombia offers various alternatives to optimize foreign trade operations, some of which are: International Trading Companies; International Logistics Distribution Centres; Special Import and Export Programs (known as "Vallejo Plan") and, Free Trade Zones. Each of these is specifically regulated in the national Customs Regulation and offer diverse Tax and Customs benefits for their users.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

From a trade/investments related perspective, Colombia has negotiated and/or executed with the Republic of Singapore the following:

- Bilateral Investment Treaty. Executed between the two governments on July 17, 2013. Pending internal approval of the Colombian Congress.

- Air Transport Services Agreement. Executed by the Ministers of Foreign Affairs of both governments on May 7, 2012. This is the first agreement of this nature signed by Colombia with a country in Southeast Asia. Pending internal approval of the Colombian Congress.

Cooperation Matters:

- Memorandum of Understanding between the Colombian Presidential Agency for International Cooperation (APC) and Singapore Cooperation Enterprise (SCE), executed on October 26, 2021.

- Memorandum of Understanding between the Investment Promotion Agency "Enterprise Singapore" and ProColombia, executed on January 24, 2022.

  (i) On August 2023 a MOU was signed between Singapore and Colombia. The Singapore Business Federation (SBF) signed the document that aims to boost partnerships in sectors such as technology and innovation, artificial intelligence, blockchain, among others.

  (ii) For public procurement, there is no particular agreement or partnership between the two governments that may be relevant to highlight.

  (iii) For antitrust law, there is no particular agreement or partnership between the two governments that may be relevant to highlight.

  (iv) In litigation: Pacific Alliance-Singapore Free Trade Agreement – Including an Icsid Arbitration Clause (Signed)

  (v) From a tax point of view, there are no agreements or partnerships between Colombia and Singapore.

COSTA RICA

TACTIC Estudio Legal

1. What are the key regulatory requirements and procedures for establishing and operating a business in Costa Rica?

The Costa Rican legal framework provides several options for the establishment of a business in the country, whether through the incorporation of a new legal entity or directly through a foreign corporation without a Costa Rican branch.

The two most common options for the establishment of a new legal entity in the country are (1) a corporation (Sociedad Anónima) or (2) a limited liability company (Sociedad de Responsabilidad Limitada), regulated in the Code of Commerce, Law N°3284.

Corporations are legal entities that can be owned either by locals or by foreign nationals or companies, without any type of restriction or limitation on the number of foreign nationals involved. They are operated through a Board of Directors, and must have nominative capital stock represented by shares. The highest decision-making body of a corporation is its Shareholders Assembly, comprised by all persons or companies that own the capital shares.

Limited liability companies (LLC) are very similar to corporations in their functionality and regulation, allowing them to be owned by local or foreign nationals. However, limited liability companies have a simpler governing structure, and the transfer of shares (called “quotas”) has more limitations than in a corporation, since each transfer needs to be approved by the General Assembly.

Even though each type of legal entity has specific requirements for its incorporation, the process for registering the entity follows the same basic steps: (1) a Notary Public prepares a draft deed of incorporation, containing the statutes of the company and the appointment of the board of directors or representatives, (2) the shares or quotas are issued in accordance with contributions from shareholders, (3) registration taxes are paid, (4) the deed of incorporation is filed before the National Registry for its official registration. This process can be completed within one day, with the final confirmation of incorporation from the National Registry notified within a week.

Another option for the establishment of a business in the country is the registration of a subsidiary or branch of a foreign legal entity. In this case, the governing body of the foreign company must issue a formal order for the registration of a branch in Costa Rica, which needs to be legalized and filed before the National Registry of Costa Rica, in order to process the registration. A local representative that will hold the legal power to act on behalf of the foreign company also needs to be registered in the same act.

Once the legal entity is incorporated, the company must be registered before the Tax Authority of the Ministry of Finance (*Dirección General de Tributación Directa del Ministerio de Hacienda*), as a tax contributor, and also before the Costa Rican Bureau of Social Security (*Caja Costarricense de Seguro Social*) for the registration of future employees and compliance with labour and social security obligations.

Finally, there are other compliance requirements in order to open a physical working space, such as offices, industrial plants, or commercial spaces. These obligations will depend on the type of facility that will be established, but the ones that are applicable to all are: (1) the environmental viability license, issued by the National Environmental Technical Secretariat (*SETENA*), (2) the sanitary operation license, issued by the Ministry of Health, and (3) the commercial operation license issued by the local municipality.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Costa Rica? Are there any restrictions or limitations on FDI in specific sectors?

Costa Rica is one of the leading destinations for FDI in the world, and its legal framework has been modelled towards the achievement of its FDI goals. Conversely, in Costa Rica, foreign nationals enjoy the same rights and duties as Costa Ricans. This principle is codified in the National Constitution and it informs the rest of the national legal framework.

There are no restrictions for foreign nationals to buy or own land in the country, and it is not necessary to have citizenship, resident status, or permanence to become a property owner.

Additionally, there are no limitations for opening businesses in the country by foreign nationals, and no restrictions on the number of foreign nationals that a company can hire, provided they have valid work permits in the country. For this, the General Directorate of Immigration has a fast-track system that facilitates procedures for companies to hire foreign nationals.

There are only a few limitations on participation of foreign nationals in certain specific sectors. For example, companies looking to obtain a concession on beachfront properties (which are all government-owned) need to have at least a 50% participation of nationals, in accordance with Law N°6043, on the Maritime-Terrestrial Zone. Other industries have restrictions on FDI, but only because they function as government owned monopolies. Amongst those sectors are electricity distribution and transmission, water distribution, alcohol production and sale of fossil fuels. In those cases, the national private sector is also barred to participate.

3. What are the tax implications and incentives for businesses investing in Costa Rica? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

Costa Rica has a solid system of incentives for businesses looking to invest in the country, mainly centered around the Free Trade Zone regime.

Regulated by Law N°7210, the Free Trade Zone regime (FTZ) is a set of benefits and incentives provided by the Government of Costa Rica to companies making new investments in the country, with the aim to encourage FDI, commercial exchange and job creation. The companies that opt for this regime, must comply with a set of requirements established by law (like a minimum investment amount, and a minimum of hired employees), as well as being involved in manufacturing, trading, services or scientific research, in one of the strategic sectors designated by the government, including advance manufacturing, light manufacturing, food and agritech, medtech, pharmaceuticals, biotech, software development, IT services, gaming and animation, marketing and advertising, engineering & design, shared services, regional headquarters, back office/BPO, financial, consulting, supply chain & logistics, excellence centers, amongst others.

In addition to those sectors, through Law N°10234, which entered into force in 2022, a new set of sectors can apply to the Free Trade Zone regime, provided they established their operations outside the Greater Metropolitan Area of Costa Rica, specifically (1) health clinics and centers, (2) sustainable adventure parks and (3) significant suppliers with more than 40% of their sales to FTZ companies.

The companies established in the FTZ regime enjoy the following benefits:

(a) Exemption from all taxes on profits, as well as any other whose tax base is determined in relation to gross or net profits, dividends paid to shareholders, income or sales, for at least the first 8 years of operation.

(b) Exemption in the import of merchandise necessary for the operation and administration of the activity authorized to the company.

(c) Exemption on the import of vehicles.

(d) Exemption on local purchases, goods or services necessary for the operation and administration of the activity authorized to the company.

(e) Export exemption.

(f) Exemption for a period of 10 years from taxes on transfer of real estate and municipal patents.

(g) Tax credits.

(h) Access to training and education programs.

(i) Exemptions on some social security obligations, if established outside the Great Metropolitan Area.

Apart from the Free Trade Zone regime, the Costa Rican government also provides a different set of incentives for companies setting up a new business in the tourism sector, regulated by Law N°6990, and applicable specifically for hotel construction & equipment, air travel, aquatic travel and marinas, tour agencies and rent-a-car companies.

Regarding tax treaties and agreements, Costa Rica has signed, to date, four double taxation agreements with Germany, Spain, Mexico and the United Arab Emirates. These agreements are based on the Model Tax Convention of the OECD and the United Nations Model Convention on Double Taxation.

Additionally, Costa Rica has signed a higher number of Tax Information Exchange Agreements, including with countries such as Australia, Canada, France, Italy, South Korea, South Africa, The Netherlands and the United States.

Finally, in 2021 Costa Rica became the latest member of the Organization for Economic Co-operation and Development (OECD), being the fourth country in the Latin American and Caribbean region to join the organization. To become a member, Costa Rica had to comply with the highest global standards on regulation and governance, strengthening the country´s commitment with the continuous improvement of the business climate for foreign direct investment.

4. How does Costa Rica address intellectual property protection and enforcement?

For several years, Costa Rica has reinforced and ensured the protection of intellectual property and the rights of its owners, along with taking action to defend these rights against third parties engaging in infringements. Consequently, various laws have been enacted to safeguard multiple forms of intellectual property.

The Law on Trademarks and Distinctive Signs (Law N°7978) safeguards trademark and distinctive sign owners' rights, addressing unfair competition. It covers trademark registration, trade names, advertising signs, appellations of origin, and geographical indications. The law outlines nullity and cancellation procedures, sets a ten-year protection term for trademarks (renewable), and indefinite protection for trade names and advertising signs (linked to related trademarks or trade names).

The **Copyright and Related Rights Law (Law N°6683)**, safeguards original intellectual creations in art, literature, and science. It also protects the rights of performers, producers, and broadcasters. It grants authors the exclusive right to use their works, including modification, communication to the public, reproduction, distribution, and the right of prosecution ("droit de suite"). Copyright lasts during the author's life, plus 70 years and then goes into the public domain. The law outlines the registration process in the National Registry of Copyrights. Additionally, a regulation provides further clarity and definitions.

The **Patent, Industrial Designs, and Utility Models Law (Law N°6867)** outlines the patent criteria. It defines inventions as creations applicable to industry, setting standards for patentability, including novelty, inventive step, and industrial application. Patents grant exclusivity for 20 years from the application date (under the Paris Convention or PCT). The law also addresses industrial designs with a 10-year protection period from the granting date. Utility models, simpler to register, also have a 10-year protection period from the filing date.

The **Intellectual Property Rights Enforcement Procedures Law (Law N°8039)** covers enforcement actions for intellectual property rights. It includes administrative activities before the Industrial Property Registry, the National Registry of Copyrights and Related Rights, and judicial actions. The law outlines preventive measures, including border measures, with a requirement for providing guarantees. It designates the Administrative Registry Court for reviewing administrative appeals, addresses civil and criminal proceedings, and defines intellectual property-related offenses.

Costa Rica also has laws concerning intellectual property protection, including the Law on Undisclosed Information (Law N°7975), the Law on the Protection of Integrated Circuits Tracing Systems (Law N°7961), and the Law on the Protection of Plant Varieties (Law N°8631).

Finally, Costa Rica is a signatory to multiple international agreements, including the Paris Convention, TRIPS Agreement, Trademark Law Treaty, Patent Cooperation Treaty, and the Berne Convention for the Protection of Literary and Artistic Works.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

In Costa Rica, mercantile companies are regulated by the Code of Commerce, which contemplates mergers and acquisitions in what refers to corporate law.

Chapters 3, 6, and 7 of the First Book of the Code of Commerce cover the two most popular corporate forms in Costa Rica, corporations and limited liability companies, and include company acquisition related regulations that refer mainly to the transfer of shares or equity participations and related requirements.

The purchase of ongoing businesses is different from a company acquisition, but it is also regulated expressly in the Code of Commerce. If the formalities established therein for these transactions are not met in full, the transaction will be absolutely void (for any eventual rights of third parties or creditors of the acquired ongoing business) and payments made to the creditor will not be considered valid.

Regarding mergers, the Code of Commerce includes a very basic set of regulations regarding the legal nature of a merger and the formal requirements to complete it. Merging entities may either form a new company or be merged via absorption (acquisition), in which only one of the entities survives.

On its part, the Law for the Promotion of Competition and Effective Consumer Protection N°7472 is the main framework for competition law. One of the main aspects to keep in mind is that a preliminary merger control for transactions of a certain value (over a threshold of US$15 million) or of special relevance to the national market is mandatory.

Article 16 of the Law for the Promotion of Competition and Effective Consumer Protection defines which transactions may be considered a concentration, and when a merger or acquisition falls within this definition it must file a notification or previous communication to COPROCOM (the Commission for the Promotion of Competition) before going through with the transaction. In the specific case of mergers and acquisitions, the authorization procedure is short; however, if the preliminary merger control notice is not sent, COPROCOM may challenge a merger proven to qualify as a concentration by opening a penalising procedure.

Additional to the communication to COPROCOM, mergers or acquisitions involving regulated entities (banks, public companies, financial entities, pension funds, companies managing funds of third parties and insurance companies) must obtain the applicable approvals from the Securities Supervisory Agency (*Sugeval*), the Private Pension Funds Supervisory Agency (*Supen*), the General Insurance Supervisory Agency (*Sugese*), the General Telecommunications Supervisory Agency (*Sutel*) or the Financial Entities Supervisory Agency (*Sugef*), as appropriate.

6. How does Costa Rica approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Costa Rica has a strong legal framework for dispute resolution and arbitration in cross-border business transactions, allowing for disputes to be resolved through a judicial proceeding, in the Costa Rican Judicial System, or through other mechanisms such as arbitration, mediation, negotiation or conciliation.

Just like in numerous other nations, the primary channel for conflict resolution in Costa Rica is the judicial system. This approach is favoured due to its cost-effectiveness and its administration by the government itself. In the context of Costa Rica, the judicial system holds a fundamental role in the country's enduring democratic structure.

It is also important to note, that, as foreign nationals enjoy the same legal rights and protections as Costa Rican citizens, they have, as their right, unrestricted access to the Costa Rican court system for the resolution of legal disputes. This ensures that individuals from other countries, residing or conducting business in Costa Rica, have a levelled playing field when it comes to seeking justice.

Regarding arbitration as a dispute resolution method, Costa Rica operates a dual-track arbitration system: (i) one that originates from the Alternative Dispute Resolution Law N°7727, effective since 1998, governing arbitration within the country, and (ii) a separate law overseeing international arbitration, the International Commercial Arbitration Law, based on the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) N°8937, effective since 2011. Both systems produce res judicata and in the event of non-compliance with an arbitration award, the decision may be enforced in the National Courts of Justice.

Costa Rica is also part of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is a significant international treaty in the realm of international commercial arbitration. This means that an arbitral award granted in a member country can be recognized and enforced in Costa Rica, and vice versa, facilitating investment, international trade, cross-border commercial disputes and legal certainty.

Costa Rica offers a vast number of alternative dispute resolution centers for domestic or international arbitration, such as the Center for International Conciliation and Arbitration (*CICA*) of the Costa Rican – American Chamber of Commerce (AmCham) and the Center for Conciliation and Arbitration of the Costa Rica Chamber of Commerce (CCA), among others.

Besides litigation and arbitration, Costa Rica also encourages the use of alternative dispute resolution mechanisms, including mediation and conciliation. The Costa Rican Judicial System, as well as various private organizations, offer mediation and conciliation services to facilitate dispute resolution outside of the court system.

Regarding Southeast Asian counterparts, to this day, there are few precedents of commercial or trade disputes that have been resolved at the international level. However, Costa Rica and Singapore signed a free trade agreement in 2013 (for more on this subject see below), which includes a chapter on commercial dispute resolution and reciprocal protection of investments between the parties, including an incorporation of the International Centre for Settlement of Investment Disputes (ICSID) model, offering a cooperative relationship and legal certainty for the parties.

7. Are there any recent or upcoming regulatory changes or developments in Costa Rica that may impact investments or business relations with Southeast Asia??

The Costa Rica-Singapore Free Trade Agreement aims to enhance trade and investment by creating a free trade zone, reducing customs duties, protecting intellectual property, streamlining customs procedures, and adhering to the World Trade Organization regulations. It seeks to strengthen economic cooperation, promote efficiency and innovation, and benefit the well-being of its citizens through mutual trade and investment, driven by the growing economic ties and friendship between the two nations.

On the other hand, the Costa Rica-China Free Trade Agreement, in effect since 2011, is a crucial trade partnership for Costa Rica, with China being its second-largest trading partner after the United States. This agreement has driven substantial growth in trade, particularly in sectors like medical devices, meat, citrus products, and technology. Furthermore, it has facilitated Chinese investments in Costa Rica, contributing to the country's economic development and reinforcing the bilateral relationship.

7.1 What are the dispositions that benefit the trade in goods?

The Singapore-Costa Rica Free Trade Agreement promotes trade in goods by eliminating duties, simplifying customs procedures, and addressing issues related to intellectual property and sanitary and phytosanitary protection, among other aspects. This creates a more favourable environment for bilateral trade between the two countries.

7.2 What are the dispositions that benefit services, investments and movements of capital?

The Singapore-Costa Rica Free Trade Agreement promotes the liberalization of services in telecommunications, financial services, professional services, and others. This allows companies from both countries to operate in each other's market with fewer restrictions.

The agreement also includes provisions for investment protection, which means that Costa Rican and Singaporean companies have guarantees and protections for their investments in each other's country. This encourages foreign investment and economic cooperation.

The agreement facilitates the movement of capital between the two countries, which means that restrictions on the transfer of funds and the repatriation of profits are reduced, providing greater security for investors.

7.3 What is established around intellectual property and government procurement?

The agreement includes provisions that focus on safeguarding intellectual property rights, encompassing patents, copyrights, and trademarks. Both nations pledge to adhere to international intellectual property standards, ultimately offering robust protection to intellectual property rights holders.

Furthermore, the agreement deals with public procurement and advocates for transparency and equitable treatment during bidding procedures. This ensures fairness and equality for businesses from Costa Rica and Singapore, as they can compete for government contracts in each other's nations equitably.

7.4 Are there any key special dispositions to highlight?

The Singapore-Costa Rica Free Trade Agreement mentions an essential highlight on sustainability issues. It includes provisions such as environment and labour. The inclusion of commitments related to sustainability and the balance between economic, social, and environmental components is a clear sign that both countries seek to promote sustainable development at a global level.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

The Singapore-Costa Rica Free Trade Agreement signifies a strategic commercial partnership, recognizing Singapore as a key trade partner. This agreement grants Costa Rica preferential access to this vital Asia-Pacific market, potentially boosting trade and investment. For a more detailed analysis of the agreement, see Question 7.

MEXICO

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ELÍAS-CALLES
ABOGADOS

1. What are the key regulatory requirements and procedures for establishing and operating a business in Mexico?

Establishing and operating a business in Mexico involves complying with various regulatory requirements and procedures. The specific requirements can vary depending on the type of business and its location, the below are some key steps and considerations to keep in mind:

1. Business Structure: Choose the appropriate legal structure for your business. Common entitiy options include *Sociedad Anónima* (comparable to a Corporation) or *Sociedad de Responsabilidad Limitada* (comparable to an LLC). Each has its own requirements and implications for liability, taxation and ownership.
2. Business Name: Register your business name with the Public Registry of Commerce (*Registro Público de Comercio*) to ensure it is unique and not already in use by another entity.
3. Legal Requirements and Documentation:
   - Draft and notarize the entity's articles of incorporation (*acta constitutiva*). In Mexico, the entities by-laws and articles of incorporation are combined in the same formation document (i.e., *acta constitutiva*).
   - Obtain a tax identification number (*Registro Federal de Contribuyentes - RFC*) from the tax authorities (*Servicio de Administración Tributaria - SAT*).
   - Comply with any industry-specific regulations and licenses.
4. Permits and Licenses:
   - Identify and obtain any required permits and licenses based on your business activities and location. The process can vary greatly depending on your industry.
5. Employment Regulations:
   - Understand labor laws and employment regulations in Mexico, including minimum wage, working hours and employee benefits. You will need to register your employees with the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social - IMSS*).
   - Implement workplace health and safety measures to comply with regulations and ensure the well-being of your employees.
6. Taxation:
   - Register for federal, state and local taxes. Mexico has a value-added tax (*IVA*) and an income tax (*ISR*) that businesses must pay.
   - Keep accurate financial records and report your taxes to the *SAT*.

7. Environmental Regulations:
    - Comply with any environmental regulations relevant to your business activities, which can be particularly important in industries such as manufacturing.
8. Intellectual Property:
    - Protect your intellectual property if necessary by registering trademarks, copyrights and patents with the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial - IMPI*).
9. Banking and Finance:
    - Open a business bank account to separate your personal and business finances.
10. Renewal and Reporting:
    - Stay updated with annual reporting and renewal requirements for permits, licenses and business registration.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Mexico? Are there any restrictions or limitations on FDI in specific sectors?

Mexico has a legal framework and regulations governing FDI designed to encourage and regulate foreign investment in the country. However, there are some restrictions and limitations, particularly in specific sectors. The key regulatory authorities for FDI in Mexico include the Ministry of Economy (*Secretaría de Economía*), the National Foreign Investment Commission (*Comisión Nacional de Inversión Extranjera*) and the Mexican government. The main aspects of FDI regulations in Mexico are the following:

1. Foreign Investment Promotion Law: Mexico's Foreign Investment Promotion Law (*Ley de Inversión Extranjera*) is the primary legal framework that governs FDI. This law establishes the general rules for foreign investment and outlines the rights and obligations of foreign investors.
2. National Treatment: Under the law, foreign investors generally receive the same treatment as Mexican investors, including equal protection and legal certainty.
3. Reserved Activities: Mexico has a list of economic activities that are either restricted or prohibited for foreign investment. These activities are listed in the National Foreign Investment Law (*Ley de Inversión Extranjera*) and can vary over time. Some sectors, such as education, certain transportation services and certain media and telecommunications activities, may have restrictions or limitations on FDI.
4. Investment Vehicles: Foreign investors can establish various types of business entities, including corporations (*Sociedad Anónima*), limited liability companies (*Sociedad de Responsabilidad Limitada*) and more. The choice of entity may impact the rights and responsibilities of foreign investors. International and domestic tax implications should be carefully reviewed when choosing an entity type.
5. Permits and Approvals: In many cases, foreign investors need to obtain specific permits and approvals from the Ministry of Economy or other relevant authorities before making certain investments.
6. Taxation: Tax laws in Mexico apply to both domestic and foreign investors. It's essential to understand Mexico's tax regime, which includes income tax (ISR), value added tax (IVA) and other taxes that can affect foreign investors.

7. Labor Laws: Foreign investors must adhere to Mexican labor laws, which include minimum wage requirements, working conditions and employee benefits.

8. Intellectual Property Protection: Mexico provides intellectual property protection for foreign investors, including trademark, copyright and patent protection through the *IMPI*.

9. Dispute Resolution: Mexico has bilateral investment treaties (BITs) and is a party to the United States-Mexico-Canada Agreement (USMCA), which includes provisions for dispute resolution between foreign investors and the Mexican government.

10. Immigration: Foreign investors should also consider Mexico's immigration system while planning any investment that might require non-Mexican personnel to work on site. Mexico has three different work permits: (1) work permit; (2) temporary resident visa; and (3) permanent resident visa. The processing times are usually long and process is riddled with nuisances. Experience counsel should be consulted to avoid major delays and obstacles.

It's important to note that FDI regulations can change, and the specific requirements may vary depending on the sector in which you plan to invest. Before proceeding with any foreign investment in Mexico, it is advisable to consult with legal and financial professionals who are well versed in the latest regulations and requirements.

3. What are the tax implications and incentives for businesses investing in Mexico? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

We can provide some general information about tax implications and incentives for businesses investing in Mexico:

1. Corporate Income Tax: Mexico has a federal corporate income tax, which was levied at a rate of 30%. Different tax rates may apply to certain industries or regions, so it's important to check the specific tax rate applicable to your business.

2. Value Added Tax (VAT): Mexico imposes a VAT on the sale of goods and services. The standard VAT rate was 16%, but there were reduced rates and exemptions for specific products and regions.

3. Maquiladora Program: Mexico has a maquiladora program that provides tax incentives for manufacturing and assembly operations in designated areas. These incentives can include reduced or deferred income tax rates.

4. Free Trade Agreements: Mexico has a network of free trade agreements, including the United States Mexico Canada Agreement ("USMCA"), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and others, which can offer advantages (such as preferential duty treatment) for companies engaged in international trade.

5. Tax Treaties: Mexico has double taxation treaties with several countries. These treaties can help prevent double taxation and provide benefits to businesses operating in Mexico.

6. Special Economic Zones: Mexico has established special economic zones with specific tax incentives, considerably in the states of the north of Mexico, also known as "border states," reduced corporate tax rates and other benefits to attract investment in those areas.

7. Research and Development Incentives: Mexico offers incentives for research and development activities, which can include deductions and credits.

8. Nearshoring Incentives. On October 11, 2023, a decree was published that grants income tax incentives for key sectors of the export industry. The decree is directed to key sectors of exportation to promote nearshoring, such as the semiconductors, automotive, electric

and electronic, medical and pharmaceutical devices, agroindustry, human and animal nutrition industries.

It's important to consult with a local tax advisor or legal expert to understand the specific tax implications and incentives relevant to your business and the most current tax rates and regulations. Tax laws can change, and they may vary depending on the type of business, its industry and its location within Mexico.

Additionally, tax treaties and agreements between countries can change over time, so it's essential to confirm the status of any specific tax treaty or agreement between Mexico and your home country or the country where your business is based.

4. How does Mexico address intellectual property protection and enforcement?

Mexico, like many countries, has established a legal framework to address intellectual property protection and enforcement. Intellectual property (IP) refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names and images used in commerce. It is essential to protect IP to incentivize innovation and creativity and to promote economic growth.

Here are some key aspects of how Mexico addresses IP protection and enforcement:

1. Legal Framework: Mexico has a comprehensive legal framework for IP protection. The primary legal instruments include the Industrial Property Law (*Ley Federal de Protección a la Propiedad Industrial*) and the Copyright Law (*Ley Federal del Derecho de Autor*). These laws provide the foundation for the protection of patents, trademarks, copyrights and other forms of IP.
2. International Agreements: Mexico is a signatory to various international agreements and treaties related to IP protection. One of the most important agreements is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is part of the World Trade Organization framework. Mexico's participation in these agreements ensures that its IP laws are in line with international standards.
3. National Institute of Intellectual Property: *IMPI* is the Mexican government agency responsible for granting and enforcing IP rights. It oversees the registration of patents, trademarks, industrial designs and copyright. IMPI also plays a crucial role in enforcing IP rights and settling disputes.
4. Patent Protection: Mexico provides patent protection for inventions, granting exclusive rights to inventors for a specified period (usually 20 years). Patent applications must meet certain criteria to be granted protection.
5. Trademark Protection: Mexico allows individuals and businesses to register trademarks, granting exclusive rights to use a particular mark in connection with specific goods or services. Trademark registration is essential for protecting brand identity and reputation.
6. Copyright Protection: Copyright law in Mexico protects original literary, artistic and musical works. Copyright protection is granted automatically upon the creation of the work, but registration is still recommended to provide evidence of ownership in legal disputes.
7. Enforcement: Mexico has legal mechanisms in place to enforce IP rights. This includes civil and criminal procedures to address IP infringement. The government, through agencies like *IMPI* and law enforcement authorities, can take action against counterfeit and pirated goods, copyright infringement and trademark violations.

It's worth noting that IP protection and enforcement can vary in effectiveness and consistency, and enforcement actions may depend on the specific circumstances and the resources available.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions or joint ventures in Mexico? Are there any antitrust or competition regulations that must be considered?

In Mexico, mergers, acquisitions and joint ventures are subject to various regulatory frameworks and legal requirements, including antitrust and competition regulations. The key regulatory frameworks and considerations for these types of transactions in Mexico include:

1. Federal Economic Competition Law (*Ley Federal de Competencia Económica - LFCE*): The *LFCE* is Mexico's primary antitrust and competition law. It is enforced by the Federal Economic Competition Commission (*Comisión Federal de Competencia Económica - COFECE*). Under the *LFCE*, transactions that result in a significant concentration of market power may be subject to regulatory scrutiny. Parties involved in mergers, acquisitions or joint ventures must notify *COFECE* when certain financial thresholds are met. *COFECE* can then assess whether the transaction may substantially lessen competition in the market.
2. Notification Thresholds: Parties must notify *COFECE* if the transaction meets certain financial thresholds. These thresholds are subject to periodic adjustment and may vary depending on the industry involved.

   A joint venture, merger or acquisition transaction should be notified and cleared by *COFECE* only if it triggers any of the thresholds set forth in Article 86 of the *LFCE*, in one or more steps, in Mexico.

   The referred thresholds vary according to the Mexican Official Unit of Measure (known as "*UMA*") value, which between January 2022 and 2023 were approximately the following values:

   - Section I. When the value of the transaction (i.e., the price to be paid for the shares or assets), directly or indirectly, and regardless of its place of execution, is greater than $1,867,320,000 pesos (the equivalent of approximately USD$104 million) in the portion attributable to the Mexican shares or assets, if any.

   - Section II. When the transaction involves the direct or indirect acquisition or accumulation of 35% or more of the capital stock or assets of an economic agent (e.g., a company) having, before the transaction, assets or annual sales in Mexico or attributable to Mexican operations, greater than $1,867,320,000 pesos (the equivalent of approximately USD$104 million).

   - Section III. When the transaction involves the direct or indirect acquisition or accumulation in Mexico by the acquirer of assets or capital stock of other entities in an amount exceeding $871,416,000 pesos (the equivalent of approximately USD$49 million) and the economic agents participating in the transaction (e.g., joint-venture parties, buyer, seller or others), jointly or separately, had assets or annual sales in Mexico in the previous year exceeding $4,979,520,000 pesos (the equivalent of USD$279 million approximately).

Due to the last *UMA* increase, the fines that *COFECE* may impose for the omission to notify a concentration have also increased.

3. Conditional Approvals: *COFECE* may approve transactions outright, conditionally approve them with remedies, or prohibit them if they are found to harm competition. Remedies can include divestitures or behavioral commitments to mitigate anticompetitive effects.

4. Pre-merger Notification: Parties are required to submit a pre-merger notification to *COFECE* before closing the transaction. A waiting period is usually imposed to allow *COFECE* to review the transaction.

5. Foreign Investment Restrictions: As previously mentioned, some industries in Mexico have restrictions on foreign investment, and they may vary depending on the sector. It's important to check whether the transaction involves a sector with foreign investment limitations.

6. Sector-Specific Regulations: Depending on the industry involved in the transaction, there may be sector-specific regulations that apply. For example, in the financial sector, the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores - CNBV*) may be involved in reviewing transactions.

7. Tax Considerations: Mergers, acquisitions and joint ventures may have tax implications, and it's important to consider tax planning and consult with tax professionals to optimize the transaction's tax structure. Generally, tax considerations are the main driver of transaction structure.

8. Labor and Employment Laws: Transactions may also have implications for employees, and it's important to comply with Mexican labor laws, including the obligation to inform and consult with labor unions in certain cases.

9. Environmental Regulations: If the transaction involves an industry with environmental considerations, it's important to comply with Mexican environmental laws and regulations.

10. Intellectual Property and Technology Transfer: In cases where intellectual property or technology is involved, it's essential to address issues related to intellectual property rights, licensing and technology transfer.

Legal counsel can help ensure compliance with all relevant laws and regulations and guide you through the notification process and any potential challenges that may arise during the transaction.

6. How does Mexico approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Mexico, like many other countries, has established a legal framework and practices for dispute resolution and arbitration in cross-border business transactions. The approach to dispute resolution in Mexico involves both domestic and international mechanisms. When dealing with Southeast Asian counterparts, the specific approach may vary based on the agreements and preferences of the parties involved.

Domestic Dispute Resolution in Mexico:

1. Mexican Courts: One option for dispute resolution is to seek remedies through the Mexican court system. This is typically the first step if there is no prior agreement to use alternative dispute resolution methods.

2. Commercial Courts: Mexico has specialized commercial courts in major cities that handle business-related disputes. These courts have judges with expertise in commercial matters.

3. Alternative Dispute Resolution (ADR): Many cross-border contracts include clauses specifying ADR methods, such as negotiation, mediation or conciliation, before resorting to litigation.

4. International Arbitration: Mexico is a signatory to many international conventions. Mexico is a party to international arbitration conventions, such as

the United Nations Commission on International Trade Law and the New York Convention. These conventions facilitate the enforcement of international arbitration awards in Mexico and the recognition of foreign arbitration agreements.

5. International Arbitration Clauses: Many cross-border contracts include arbitration clauses specifying that any disputes will be resolved through international arbitration. This allows for a neutral forum for dispute resolution, often outside of the jurisdiction of either party.

Practice with Southeast Asian Counterparts:

When dealing with Southeast Asian counterparts, the specific approach to dispute resolution can vary based on the contractual agreements and the parties' preferences.

The choice of dispute resolution mechanism, such as litigation or arbitration, often depends on the bargaining power and the negotiation process between the parties.

Parties from Southeast Asian countries may prefer arbitration, especially if they are familiar with international commercial arbitration and are concerned about impartiality and enforcement issues within Mexican courts. Claims litigated in Mexico's judicial system are notoriously slow.

Alternative Dispute Resolution Mechanisms:

In addition to traditional litigation and arbitration, alternative dispute resolution mechanisms are available in Mexico. These include negotiation, mediation and conciliation, which can be used to resolve disputes without going to court or arbitration.

Some contracts require parties to engage in negotiation or mediation before pursuing formal dispute resolution processes.

It's important to note that the specific approach to dispute resolution in cross-border transactions can vary widely based on the parties involved, the terms of the contract and the nature of the dispute. Parties often have the flexibility to choose the most appropriate mechanism based on their needs and preferences.

7. Are there any recent or upcoming regulatory changes or developments in Mexico that may impact investments or business relations with Southeast Asia? (Please address Free Trade Agreements with Singapore (even if still under negotiation or pending ratification) and if there is none, please describe FTAs in place with other countries in [South East Asia/ASEAN])?

Mexico had primarily focused on trade agreements in North America and Latin America. Its most notable trade agreements were:

1. North American Free Trade Agreement (NAFTA): Mexico was part of NAFTA, which was subsequently replaced by the USMCA in 2020. While this agreement primarily covers North American trade, it is relevant to consider Mexico's trade relations with the United States and Canada when assessing its overall trade environment. Given geopolitical tensions and trade restrictions (e.g., tariffs), many companies are selecting Mexico to manufacture and sell products to the United States.

2. Pacific Alliance: Mexico was a member of the Pacific Alliance, a trade bloc that also included Chile, Colombia and Peru. While not directly related to Southeast Asia, it was a significant regional agreement in Latin America. However – and this is an important and relevant point of discussion – after several negotiations between the countries in the

Pacific Alliance and Singapore, Singapore has managed to become an Associate Member of the Pacific Alliance.

3. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP): Mexico is a member of the CPTPP, which includes several Southeast Asian nations, such as Vietnam and Malaysia. This agreement aims to facilitate trade and economic cooperation among its member countries.

8. Are there any particular agreements or partnerships between the governments of Singapore and Mexico that may be relevant to highlight?

In 2018, bilateral trade amounted to over US$2.8 billion, making Mexico Singapore's second largest trading partner in Latin America. The countries are looking forward to enhance the commercial opportunities that will arise due to the successful completion of the negotiations that lead Singapore to becoming an Associate Member of the Pacific Alliance in 2022, a step that seeks to further enhance trade and productive investment for both countries. We also want to underscore the importance of the CPTPP, a high-standard agreement already in force between Singapore and Mexico.

PERU

Rodrigo, Elías & Medrano

1. What are the key regulatory requirements and procedures for establishing and operating a business in Peru?

From a corporate perspective, the stock corporation and the limited liability company are the most significant and frequently used company types regulated under the General Corporations Law ("LGS" for its Spanish acronym).

Peruvian legislation acknowledges and governs three types of stock corporations: (i) general stock - S.A.; (ii) closely held - S.A.C.; and (iii) publicly held - S.A.A. These three types of corporations mentioned above have the essential features of any stock corporation, that is, stocks are issued, their ownership is divided into equity shares, and they have limited liability.

(i) A general stock corporation is a capital stock company. Its capital is represented by shares which give titleholders the rights set forth in the LGS Law, as well as in the respective company bylaws.

(ii) Specific regulations regarding closely held corporations include characteristics proper to a capital stock company, and provide a suitable corporate structure for a limited number of shareholders who are usually involved in the company management. Given the importance of shareholders' personal factors in terms of ownership and capital management, its shares cannot be listed on the stock market.

(iii) An publicly held corporation must comply with one or more of the following conditions: (i) have made a primary public offering of shares or bonds convertible into shares; (ii) have more than 750 shareholders; (iii) more than 35% of its capital stock must belong to 175 or more shareholders, without considering within this number those shareholders whose individual owner equity does not reach two per thousand of the capital or exceeds 5% of the capital stock; (iv) it is incorporated as such; or (v) all shareholders with voting rights have unanimously approved to adopt such corporation system. Publicly held corporation must register its stock in the Stock Market Public Registry.

On the other hand, regulations applicable to the limited liability company - S.R.L. are similar to those for closely held corporations as members' personal factors are involved in these types of companies pursuant to the LGS Law. In these companies, capital is represented by membership interest.

An alternative to setting up corporations is to establish branches, which are deemed to have permanent legal representation and enjoy procedural autonomy in the sphere of activities assigned to them by the parent company, in accordance with the powers granted to their representatives. Branches do not have independent legal status.

The process of incorporating a company typically takes about 15 business days. However, founding partners who are non-resident entities or individuals located abroad at the time of incorporation will need to register the corresponding powers of attorney. These documents must be registered with the Public Registry, which could extend the process by an additional 15 business days.

Regarding the key regulatory requirements, the undertaking of certain business activities requires prior approval from the competent authorities. This is the case, for instance, for banking and

financial, insurance, and telecom activities, among others. Likewise, any activities involving natural resources, both renewable and nonrenewable, require prior authorization or granting of a concession by the competent governmental authorities.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Peru? Are there any restrictions or limitations on FDI in specific sectors?

Peru has a reliable legal framework aimed at maintaining the stability required to promote private sector activity and foreign investment. For the past two decades, Peru has been undergoing comprehensive economic growth, especially for its strong fiscal and macroeconomic policies, leading to impressive economic growth. Foreign investments are generally permitted without restrictions in most economic activities. The country's general legal regime actively encourages and safeguards foreign investments, with the following key principles:

- *Equal Treatment*: Foreign investments enjoy the same rights and protections as local investments.

- *Open Sectors:* Foreign investors have the freedom to invest in any sector of the economy without requiring explicit government authorization, except for: (i) the limitations on shareholding ownership by foreigners in local companies in certain industries such as air and maritime transport, among others; and, (ii) owning real estates within 50 kilometers from national borders.

- *No Exchange Controls*: Peru has no exchange controls in place, allowing unrestricted use, convertibility, and remittance of foreign currency.

3. What are the tax implications and incentives for businesses investing in Peru? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

The Peruvian tax authority ("SUNAT", for its Spanish acronym), collects and administrates national taxes, custom duties and other foreign trade levies, which constitute revenue of the Peruvian Treasury.

Some tax implications and incentives for businesses investing in Peru are:

- Stability Agreements: Investors and the Peruvian companies they invest into, may both benefit from Peru's legal stability regime by entering into Legal Stability Agreements (LSA). Through an LSA, the Peruvian State guarantees investors (local and foreign) and local companies receiving such investments, legal stability of the laws governing certain legal matters for a specific term. The primary objective of an LSA is to safeguard investors and recipient companies through the granting of legal stability that covers areas like income tax, the unrestricted availability of foreign currency, among others.

- LSAs have status of law, which means that they may not be amended or terminated by any of their parties on a unilateral basis. Further, in practice this means that the Peruvian State may not unilaterally modify an LSA by adopting a law or terminate it in any way other than the grounds for termination expressly provided for in the LSA itself.

- LSAs may be executed provided certain requirements are met. The main requirement is for investors to carry out an *investment* into a Peruvian company, which may take different forms. Typically, investments take the form of cash contributions to the capital stock of a recipient company. If an investment in the form of a cash contribution has been made before the execution of a LSA, said contribution may be taken into account for purposes of fulfilling the investment requirement in an LSA, provided the latter is executed within

the following twelve months from the registration of the contribution as part of the capital stock in the local company's accounting records.

- Generally, the validity term of an LSA is ten years. The term to complete the committed investment is usually two years. There is an exception for local companies that have entered into, or will enter into, concession agreements with the Peruvian State, in which case the LSAs (both the LSA to be executed by the investor and the one to be executed by the recipient company) may have the same term as the concession agreement. In those cases, the term to invest and comply with the investment commitment may also be determined by the provisions in the pertinent concession agreement, thus the usual two-year term will not apply.

- As mentioned, the main requirement for an investor to be able to request the execution of an LSA is for that investor to make an *investment* into a Peruvian recipient company. The investment shall be of at least USD 10 million for companies pertaining to the mining and hydrocarbon sectors, or USD 5 million for companies belonging to any other economic sector. The amount of the investment will be set by the LSA and will be referred to as the "investment commitment". As general rule, the investment commitment has to be completed within a term of two years. Additionally, investments must be channeled through the Peruvian financial system.

Rights afforded by LSAs:

- *For foreign investors*: LSAs guarantee investors, for the entire term of the LSA and only in respect to the amount of the investment commitment, legal stability on the following:

  - Income tax regime: Dividends and any other form of profit-sharing in profits to which foreign investors are entitled will not be affected by modifications or new taxes arising during the period of validity of the LSA.

  - The right to free availability of foreign currency (only for foreign investors);

  - The right to freely remit funds, profits, dividends and royalties abroad, without any limitations or restrictions (only for foreign investors);

  - The right to use the best exchange rate available on the market;

  - The right to non-discrimination.

  - Local investors will be afforded stability on items (i), (iv) and (v) above only.

- *For recipient companies*: LSAs guarantee, for the entire term of the agreement, legal stability of on the following:

  - Income Tax (only if one of the specific requirements is met – see below): Throughout the term of the LSA, amendments to the Income Tax regime will not be applicable to the titleholder of the LSA. Similarly, taxable income will be calculated based on the same rates, deductions and scale set forth in the legislation in effect at the time of executing the LSA. This protection will apply regardless of whether said modifications prove favorable or not to the company;

  - Employment system.

  - Export promotion system.

Note that local companies that receive investments from at least one investor that qualifies to execute an LSA as investor, will automatically qualify to request the execution of an LSA as recipient company. Such LSA would afford only the guarantees set out in sections (ii) and (iii) above. In order to also access stability on tax matters, the investment to be received by the recipient company shall comply with at least one of the following additional requirements:

- The investment needs to exceed 50% of the company's capital stock and reserves at the time of the execution of the LSA, and shall be allocated to the expansion of its production capacity or to technological improvement; or,

- The new investment entails the acquisition of more than 50% of the shares of a company that is directly or indirectly owned by the State (as is the case in state-owned companies that are privatized).

- Under Act No. 29230, companies can engage in agreements with regional and local governments, or the national government, to finance or execute public investment projects from ProInversion's portfolio. Upon completion, these projects are handed over to the respective entity, and companies receive payment in the form of Public Investment Certificates from the Peruvian Government. These certificates can offset income tax obligations up to 80% of the company's previous fiscal year's income tax and other tax obligations. If unused due to this limit, new certificates with a 2% annual credit are issued. If not used within ten years, reimbursement can be requested from SUNAT. To participate, companies must meet certain legal criteria and be registered in the National Registry of Suppliers of the OSCE. Legislative Order No. 1238 extends this benefit to health, education, tourism, and other projects.

4. How does Peru address intellectual property protection and enforcement?

The Instituto Nacional de Defensa de la Competencia y de Protección de la Propiedad Intelectual ("INDECOPI"), is the national institute responsible for the registration of trade names, trademarks, commercial slogans, certification marks and designations of origin, among others.

- **Trademarks:** Andean Community's Resolution No. 486 and Legislative Order No. 1075, govern the protection of distinctive signs in Peru. In Peru the right to the exclusive use of a trademark is acquired by registering it before INDECOPI's Distinctive Sign Direction. The registration will be in force for ten years from the date it is granted and may be renewed for successive periods of ten years. The registration of a trademark may be cancelled at the request of any interested person, if it has not been used in any of the member countries of the Andean Community (Bolivia, Colombia, Ecuador or Peru) during the three years prior to the filing date of the request for cancellation. Commercial slogans, trade names, collective marks, certification marks and designations of origin are also considered distinctive signs subject to registration.

- **Patents and Industrial Designs:** Andean Community's Resolution No. 486 and Legislative Order No. 1075, amended by Legislative Orders No. 1309 and No. 1397, govern the protection of new creations in Peru. Patents for inventions are granted, whether for products or procedures, in all fields of technology, provided that they are new, involve inventive steps, and are capable of industrial application. Uses and second uses cannot be patented. The registration lasts 20 years from the date the application is filed.

- **Copyrights:** Andean Community's Resolution No. 351 and Legislative Order No. 822 (Copyright Law, amended by Legislative Orders No. 1076) govern copyright protection in Peru. Copyright protection applies to any original intellectual creation of an artistic, scientific or literary nature, which can be disclosed or reproduced in any form. Registration

is merely declarative. Solely by creating it, the author of the work has the original ownership of an exclusive right that is enforceable against third parties and includes moral and economic rights. The INDECOPI Copyright Office is the national administrative entity responsible for administrative monitoring and protection of copyrights and related rights in the first administrative instance. Meanwhile, the Intellectual Property Specialized Chamber of INDECOPI represents the second and the final administrative instance.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

In Peru, since 2021, the regime of prior control of business concentration transactions is in force. The legal basis that regulates this regime is formed by Law 31112, "*Law that establishes the prior control of business concentration transactions*"; its Regulation, approved by Supreme Decree 039-2021-PCM; the "Guidelines for the Calculation of Notification Thresholds", approved by Resolution 022-2021/ CLC-INDECOPI and the "*Guidelines for the Qualification and Analysis of Concentration Transactions*" approved by Resolution 103-2022/CLC-INDECOPI.

This regime, which is applicable to all economic activities (and not only to the electricity market as it was before), obliges economic agents to request prior approval from the INDECOPI for business concentration transaction that comply with the requirements set forth in the regime.

The main aspects of the business concentration regime are as follows:

1. The following are considered business concentration transaction, and therefore could be subject to prior control by INDECOPI:

   (i) A merger of two or more economic agents, which were independent before the operation, whatever the form of corporate organization of the merging entities or of the entity resulting from the merger.

   (ii) The acquisition by one or more economic agents, directly or indirectly, of rights that allow them, individually or jointly, to exercise control over all or part of one or more economic agents.

   (iii) The formation by two or more independent economic agents of a joint venture or any other analogous contractual modality that implies the acquisition of joint control over one or more economic agents, in such a way that said economic agent performs the functions of an autonomous economic entity.

   (iv) The acquisition by an economic agent of direct or indirect control, by any means, of operating productive assets of one or more other economic agents.

It should be noted that not only the four (4) types of transactions described in the preceding paragraph are the ones subject to the prior authorization procedure. As long as there is a change of control, and the requirements are met, an operation could be subject to the regime [10].

For the purposes of analyzing a business concentration transaction, INDECOPI also considers as a transaction the set of acts carried out between the same economic agents within a period of two (2) years. In such case, the transaction must be notified prior to the execution of the last act that allows the thresholds to be reached.

2. Acts subject to the authorization procedure: In order to determine whether or not a transaction must go through the merger control regime, three (3) conditions must be verified simultaneously:

(i) That the transaction be executed or have effects in Peru.

(ii) That the transaction involves a transfer of control. According to the Law, control "Is the possibility of exercising a decisive and continuous influence over an economic agent through: (i) rights of ownership or use of all or part of the assets of an enterprise, or (ii) rights or contracts that allow decisive and continuous influence over the composition, deliberations or decisions of the bodies of an enterprise, directly or indirectly determining the competitive strategy".

(iii) That both parties jointly exceed the two (2) thresholds described in the following section.

3. Thresholds: The economic corporate control structures are subject to the procedure of prior control when the parties comply, concurrently, with the following thresholds:

(i) The total sum of the value of sales or annual gross income or value of assets in the country of the companies involved in the corporate control structure operation has reached during the fiscal year prior to that in which the operation is notified, a value equal to or greater than 118,000 Tax Units ("UIT" and the "Joint Threshold").

(ii) The value of the annual sales or gross income or value of assets in the country of at least two of the companies involved in the corporate control structure operation have reached, during the fiscal year prior to the one in which the operation is notified, a value equal to or higher than 18,000 UIT each (the "Individual Threshold").

4. In the event that a transaction is not subject to the merger control regime, INDECOPI may initiate an ex officio prior control procedure when there is prima facie evidence that it may generate a dominant position or affect effective competition in the relevant market, even if the aforementioned thresholds are not exceeded. This power may be exercised by INDECOPI up to one (1) year after the formal closing of the transaction.

5. Term and duration of proceedings: The authorization procedure by INDECOPI is one of two phases, depending on the transaction to be analyzed and the possible effects that it may have on the relevant market.

The first phase culminates with the authorization of INDECOPI in cases that do not involve competition concerns. This phase lasts a maximum of 55 working days and concludes with the approval of the transaction by INDECOPI. In case the authority does not issue a decision within the term, the transaction shall be deemed to be approved by the application of the positive administrative silence. Only when a corporate control structure operation has competition concerns or involves companies with a significant participation in the relevant market, INDECOPI initiates the second phase of the analysis, which lasts a maximum of 90 working days (extendable for an additional 30 working days, with prior justification).

6. Termination of proceedings: Once the transaction has been analyzed, the Law states that INDECOPI may: (i) authorize the transaction; (ii) authorize the transaction with conditions aimed at avoiding or mitigating the possible effects that could arise from the corporate concentration transaction; or (iii) not authorize the transaction. INDECOPI's decisions may be appealed.

7. Fines and non-compliance: Failure to comply with the regime leads to fines and corrective measures. The amount of these fines could be up to a maximum amount equivalent to 12% of the gross sales or income received by the infringer, or its economic group, related to all its economic activities, corresponding to the fiscal year immediately prior to the issuance of INDECOPI's resolution.

INDECOPI may impose corrective measures aimed at undoing the transaction when possible. Notwithstanding the foregoing, the Law indicates that a business concentration transaction that must be submitted to the prior control procedure has no legal effect whatsoever as long as it does not have the prior authorization of INDECOPI. At this point, it must be noted that formally closing a transaction before obtaining INDECOPI's authorization is not the only case of infringement to the corporate control structure operation. Thus, actions such as sharing sensitive information between the parties, integrating operations or influencing in any way the company's competitive strategy (exercising some kind of control, even de facto) before obtaining INDECOPI's authorization may be considered as a punishable infringement.

6. How does Peru approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Arbitration has become the most common mechanism for cross-border business transactions. The Peruvian Arbitration Act, known as Legislative Decree No. 1071, outlines that any disputes falling within unrestricted matters or those permitted by law, treaties, or international agreements can be resolved through arbitration.

When arbitration takes place, any matters not expressly provided for by the parties will be ruled by the arbitration law, which contains provisions regulating both domestic and international arbitration carried out in Peru. Foreign arbitral awards will be recognized and enforced in Peru, pursuant to the following instruments, even if they are based on a foreign law:

- Convention of Reconnaissance and Execution of Arbitral Decisions, approved in New York on June 10, 1958; or
- Inter-American Convention on International Commercial Arbitration, approved in Panama on January 30, 1975.

In addition to the previous mentioned conventions, Peru has upheld several multilateral instruments, standing out the ICSID Convention and the Montevideo Convention.

Peru has also entered into bilateral treaties regarding the recognition of foreign awards.

7. Are there any recent or upcoming regulatory changes or developments in Peru that may impact investments or business relations with Southeast Asia?

Peru has undergone several regulatory developments that significantly impact investments and business relations with Southeast Asia:

- *Bilateral Trade Agreement with Singapore*: Peru and Singapore have a bilateral trade agreement since 2009. Recently, Peru ratified the Pacific Alliance-Singapore Free Trade Agreement ("PASFTA"). When PASFTA becomes effective for all four member States (Chile, Colombia, Mexico, and Peru), Singapore will become the first Associate State of the Pacific Alliance. These agreements facilitate trade and investment between Peru and Singapore, opening up opportunities for businesses from both countries.

- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"):* Peru ratified the CPTPP in 2021. This comprehensive trade agreement encompasses various Southeast Asian countries, including Vietnam and Singapore. The CPTPP aims to enhance Peruvian exports and strengthen economic ties with member nations in the Asia-Pacific region. It provides a framework for reducing trade barriers and promoting economic cooperation.

- *Accession to the Treaty of Amity and Cooperation in Southeast Asia (TAC)*: In 2019, Peru joined the TAC, reflecting its commitment to fostering peaceful coexistence, dispute resolution, and cooperation with ASEAN countries. This accession demonstrates Peru's willingness to deepen its ties with Southeast Asian nations and aligns with ASEAN's goals.

- *Free Trade Agreement (FTA) with Thailand*: Peru signed a bilateral FTA with Thailand in 2011, enhancing trade relations between the two countries. Discussions are also ongoing for a potential FTA with Indonesia, further expanding Peru's trade opportunities in Southeast Asia.

- *Request to Become a "Development Partner" in ASEAN*: In September 2023, Peru formally requested to become a "Development Partner" within ASEAN. This demonstrates Peru's keen interest in strengthening its relationship with ASEAN countries and participating in the development initiatives and economic cooperation within the region.

URUGUAY

Martínez de Hoz & Rueda

1. What are the key regulatory requirements and procedures for establishing and operating a business in Uruguay?

The Corporations Law (No. 16.060) regulates different types of legal vehicles through which people can operate businesses in Uruguay, among which the most commonly used are the stock corporation (*Sociedad Anónima*) and the limited liability company (*Sociedad de Responsabilidad Limitada*). Simplified Stock Corporations (governed by Law No. 19.820), which can be opened online, are also increasingly popular. The Corporations Law also allows for the establishment of branches of foreign corporations.

Corporations may be set up from scratch in 45 days, although law firms have shelf companies available which may be purchased and commence operations in a few days. LLCs or SSCs may take around two weeks to incorporate, but operations may begin forthwith.

2. What are the legal frameworks and regulations governing foreign direct investment (FDI) in Uruguay? Are there any restrictions or limitations on FDI in specific sectors?

FDI is a key component of the Uruguayan economy. FDI is completely free and unrestricted. The State has guaranteed by law the equal treatment of foreign investors as local ones, the free transfer of profits and the free currency market (Investment Promotion Law, No. 16.906).

Foreign investors may have a refund of 30 to 100% of the Corporate Income Tax, a 10-year exemption of Property Tax, VAT refunds and are exempt from import taxes.

3. What are the tax implications and incentives for businesses investing in Uruguay? Are there any tax treaties or tax agreements in place that facilitate cross-border investments?

Foreign investors have taxation benefits awarded by the Investment Promotion Law (No. 16.906, see question 2 above).

Uruguay is a unitary country and has a single taxation system. The main taxes for businesses are income tax (IRAE), VAT (IVA) and Property Tax. Uruguay also has a cutting-edge Free Zone regime (governed by Law No. 15.921) which allows firms settled therein to operate towards third countries completely tax-free.

Certain activities are also favored by the State and as such enjoy ample tax benefits. These include the forestry and IT sectors.

Uruguay has signed double taxation avoidance treaties with 25 countries: Argentina, Belgium, Brazil, Chile, Ecuador, Finland, Germany, Hungary, India, Italy, Japan, Liechtenstein, Luxembourg, Malta, Mexico, Paraguay, Portugal, South Korea, Spain, United Arab Emirates, United Kingdom, Romania, Singapore, Switzerland and Vietnam.

Uruguay is also a party to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Law No. 19.814).

4. How does Uruguay address intellectual property protection and enforcement?

Intellectual property is recognized by the Uruguayan Constitution (Article 33) and by several laws (No. 9.739 on Copyright, No. 17.616 on Intellectual Property Protection, No. 17.011 on Trademarks and No. 17.164 on Industrial Property and Patents).

The Patent Cooperation Treaty is currently undergoing the ratification procedure before the Uruguayan Parliament.

5. What are the key regulatory frameworks that need to be considered for mergers, acquisitions, or joint ventures? Are there any antitrust or competition regulations that must be considered?

Mergers and acquisitions are free in principle in Uruguay. However, consideration must be given to antitrust matters. These are governed by the Antitrust Law (No. 18.519, as amended by Law No. 19.833). There is a pre-merger control when acts of economic concentration take place, i.e. when the combined turnover in the country of all companies involved in the transaction in any of the last three fiscal years has exceeded approximately USD 90 million. However, there are certain exceptions, namely (i) when the buyer already held at least 50% of the shares, (ii) when the acquisition does not entail voting rights, (iii) when a foreign company without prior activity in the country acquires a Uruguayan company (what is traditionally called 'first landing'), and (iv) the acquisition of companies in bankruptcy proceedings, provided that only one bidder has submitted offers.

Joint ventures are not expressly regulated in Uruguayan law. They may take the contractual form of a corporation (of any of the kinds mentioned in the answer to question 1 above), an Economic Interest Group, which have separate legal personality, or a consortium, which however does not have separate legal personality (these last two regulated by Sections 489 to 500 and 501 to 509 of the Corporations Law No. 16.060, respectively). JVs may even be carried out via commercial agreements governed by either the Civil or the Commercial Codes.

6. How does Uruguay approach dispute resolution and arbitration in cross-border business transactions? What has been the practice with Southeast Asian counterparts? Are there any alternative dispute resolution mechanisms available?

Barring contractual clauses to the contrary, dispute resolution will take place at the forum assigned by conflict of law provisions. Uruguay has recently amended its Private International Law Act (No. 19.920) which provides for a modern outlook. In this sense, the applicable law and forum regarding sale of goods shall be the place where they are located at the time of the contract's execution.

However, and in application of the party autonomy principle, parties to international contracts may choose the law of their liking to govern their contract, or even soft law bodies.

Regarding dispute resolution, the default option is local courts, which are generally regarded as competent, efficient and fair. Uruguay as a unitary country has a single court system throughout.

However, parties may also resort to arbitration, fixing the seat and applicable law that they prefer. Uruguay has adopted the UNCITRAL Model Law on International Commercial Arbitration (No. 19.636) and is a party to the 1958 New York Convention and the 1965 Washington (ICSID) Convention.

Uruguay has signed 34 Bilateral Investment Treaties with different countries. In the Southeast Asia region, it is bound with Malaysia and Vietnam, and in the Asian continent also with China and South Korea. Negotiations with Qatar and Saudi Arabia are currently underway.

7. Are there any recent or upcoming regulatory changes or developments in Uruguay that may impact investments or business relations with Southeast Asia? (Please address Free Trade Agreements with Singapore (even if still under negotiation or pending ratification) and if there is none, please describe FTAs in place with other countries in Southeast Asia/ASEAN)?

Uruguay does not have any Free Trade Agreement with Singapore. However, Uruguay is a member of the MERCOSUR ("*Mercado Común del Sur*") trade bloc, which has concluded FTA negotiations with Singapore in July 2022. The MERCOSUR-Singapore Free Trade Agreement (MCSFTA), as it will be known, has not yet been signed, but news on this matter may be forthcoming.

The treaty includes protection for several matters which have been raised in this questionnaire, such as Trade Remedies, Bilateral Safeguards, Customs Procedure and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Cross-Border Trade in Services, Movement of Natural Persons, Investment, E-Commerce, Intellectual Property Rights, Government Procurement, Micro, Small and Medium Enterprises, Competition Policy, Transparency, and Dispute Settlement.

The Mercosur trade bloc is also currently in negotiations with Indonesia and South Korea to conclude Free Trade Agreements, with no recent developments to report.

Individually, Uruguay has also applied for membership to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), of which the Southeast Asian nations of Brunei, Malaysia, Singapore and Vietnam are members. The application was filed on December 1, 2022, but to date no developments regarding a start of negotiations have been announced.

8. Are there any particular agreements or partnerships between the two governments that may be relevant to highlight?

The most notable agreement currently binding Uruguay and Singapore is the Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed in Singapore on January 15, 2015, and which entered into force on January 1, 2018.

Uruguay's intent to become a member of the CPTPP is also noteworthy, although it has not materialized yet.

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