International Business Transactions Checklist

developed by:

LEX MUNDI
THE WORLD’S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

International Tax Practice Group

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INTERNATIONAL BUSINESS TRANSACTIONS CHECKLIST

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TABLE OF CONTENTS

I. GEOGRAPHY, CULTURE AND SOCIETY
II. INVESTMENT ENVIRONMENT
III. INVESTMENT INCENTIVES
IV. FINANCIAL FACILITIES
V. EXCHANGE CONTROLS
VI. IMPORT/EXPORT REGULATIONS
VII. STRUCTURES FOR DOING BUSINESS
VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS
IX. OPERATION OF THE BUSINESS
X. CESSATION OR TERMINATION OF BUSINESS
XI. LABOR LEGISLATION, RELATION AND SUPPLY
XII. TAX ON CORPORATIONS
XIII. TAX ON INDIVIDUALS
XIV. TAX ON OTHER LEGAL BODIES
XV. GENERAL TAX CONSIDERATIONS
XVI. IMMIGRATION REQUIREMENTS
XVII. EXPATRIATE EMPLOYEES
I. GEOGRAPHY, CULTURE AND SOCIETY

1. Culture
   - Are there cultural influences or prohibitions on the way business is conducted?

2. Geography
   - What are the neighboring countries?

3. Judicial System
   - What is the type of judicial system?
   - Is the judicial system generally perceived to be impartial?
   - Must disputes be resolved in the country?
   - Is there a political method of resolving disputes?
   - Are alternative methods of dispute resolution permitted?
   - How long does it take to resolve disputes?
   - Can foreign judicial decisions be enforced in the country?
   - Can decisions from the country be enforced outside the country?
   - Are there separate tribunals depending upon the subject matter of the case?
   - Are there different legal systems within the country or its political subdivisions?
   - Can the investor choose to be subject to the country's jurisdiction or not?

4. Languages
   - What languages are spoken?

5. Public Services/Communications
   - What is the state of the public services (e.g. water, electricity, gas, etc.)?
   - What is the state of the communications system?
   - What is the state of the country's infrastructure (e.g. roads, railways, etc.)?

6. Religion
   - Are there religious influences or prohibitions on the way business is conducted?

II. INVESTMENT ENVIRONMENT

1. Demography
   - What locales are available to an investor (e.g. industrial zones, duty free zones)? See also section III, no. 3 & 4.
   - What are the sizes of the different markets?
What other types of businesses are being conducted in the country?

2. **Diplomatic Relations**
   - Are there established diplomatic relations within the country?
   - What embassies or consulates are in the country?
   - Are there prohibitions or restrictions on certain business dealings with the country?
   - Are there any travel restrictions to or within the country?

3. **Environmental Considerations**
   - What is the attitude and state of environmental regulation?

4. **Government**
   - Are elections scheduled or is there an anticipated change in the present government?
   - Has the government been historically stable?
   - What is the administrative decision making process like in the country?

5. **Investment Climate**
   - Does the country generally welcome investment?
   - Are investments protected against nationalization or expropriation?
   - Are there governmental or private agencies devoted to the promotion of investment?
   - What is the rate of inflation?

6. **Investment Regulations**
   - Are foreign investments restricted or prohibited (e.g. depending on the sector of the economy)?
   - Must the investor be in association with a national of the country or a related state (e.g. the EU) to be permitted to invest?
   - Is the investor limited in the amount of his investment?

7. **Political System/Climate**
   - What is the present political system?
   - What type of political system has existed in the past?
   - Has the political system been historically stable?
   - Is there a federal system?
   - If so, what are the principle areas of federal versus provincial jurisdiction?
   - Is the country socially stable?

8. **Treaties**
   - Are there any treaties relevant to the anticipated investment?
III. INVESTMENT INCENTIVES

1. Export Incentives and Guarantees
   - Are there tax incentives for exports?
   - If so, are they limited to certain types of products?
   - Is export financing available from government or private sources?
   - If so, what forms of financing or guarantees are available?
   - Is there any governmental insurance for exports?
   - Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?

2. Grants, Subsidies and Availability of Funds
   - Can the investor receive grants or subsidies?
   - Are grants and subsidies restricted by the type of activity?
   - What is the process for obtaining approval for these grants or subsidies?
   - How long does it take to receive approval?
   - Can the investor receive loans from the government or governmental agencies?
   - Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?

3. National Tax Incentives
   - Are there national tax incentives for the investor (whether in the country of investment or from the investor's own country)?
   - Are the incentives restricted by type of activity?
   - Are the incentives restricted by duration of activity?
   - Does the investor need to receive approval to be eligible for these incentives?
   - If so, what is the process of application?
   - How long does such approval take?
   - Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?

4. Regional Tax Incentives
   - Are there tax incentives for the investor that exists only in certain regions of the country?
   - Does the investor need to receive approval to be eligible for these incentives?
   - Are the incentives restricted by the type of activity?
   - Are the incentives restricted by the duration of the activity?
   - What is the process of application?
   - How long does such approval take?
   - Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?
IV. FINANCIAL FACILITIES

1. Banking/Financial Facilities
   - What kind of financial institutions exist?
   - Must the investor maintain a bank account in the country?
   - What are the requirements for opening a bank account?
   - What are the restrictions, if any, on the investor’s use of the account?
   - What is the type of financial system in the country?
   - How is the banking system structured?
   - Is there a stock market?
   - Can the investor receive bank loans?

V. EXCHANGE CONTROLS

1. Business Transactions with Nationals, Residents or Non-Residents
   - How are nationals, residents and non-residents defined?
   - Are there restrictions on conducting business with nationals, residents or non-residents?
   - Are there reporting requirements?
   - Can the investor receive loans from nationals, residents or non-residents?

2. Investment Controls
   - Are there restrictions on direct investment in the country?
   - Are there restrictions on indirect investments in the country? Must the investor make declarations regarding the nature of his investment?

3. Money Transfer
   - Is there free determination of exchange rates?
   - Are there restrictions on the transfer of money into or out of the country?
   - Are there restrictions on the remittance of profits abroad?
   - Are there reporting requirements?
   - Can hard currency be taken out of the country?

VI. IMPORT/EXPORT REGULATIONS

1. Customs Regulations
   - Is the country a member of The WTO?
   - Is the country a member of the EU?
   - Is the country a party to a regional free trade agreement?
   - Does the Customs Department value the goods?
   - How are goods cleared through customs?
   - Are there applicable tariffs?
2. Exports
   – Are there restrictions on exports?
   – Are export licenses required?
   – Are there applicable export duties?

3. Foreign Trade Regulations
   – Are there foreign trade regulations on the import or export of goods involved in the business?

4. Imports
   – Are import licenses required?
   – Are there applicable import duties?
   – Are there applicable import quotas?
   – Are there applicable import barriers?

5. Manufacturing Requirements
   – Must the product contain ingredients or components which are found or produced only in the country?
   – Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?

6. Product Labeling
   – Are there applicable labeling or packaging requirements (e.g. multilingual notices, safety warnings, listing of ingredients, etc.)?

VII. STRUCTURES FOR DOING BUSINESS

1. Structural Considerations
   – Will the government seek to participate in the ownership or operation of the entity (e.g. depending upon the type of activity involved)?
   – If so, to what extent?
   – What is the investor’s potential liability to partners, investors or others?
   – Are there restrictions on capitalization?
   – What are the investor’s tax consequences? (see also Sections XII and XIII)

2. Joint Ventures
   – Are joint ventures permitted?
   – If so, what is the registration or incorporation procedure?
   – How long do these procedures take?
   – What costs and fees are involved?
   – Must a national of the country or a related state (e.g. the EU) be a participant, manager or director?
   – What is the investor’s potential liability?
3. **Limited Liability Companies**
   - Are limited liability companies permitted?
   - If so, how are they registered or incorporated?
   - How long do these procedures take?
   - What costs and fees are involved?
   - Must a national of the country or a related state be a participant, manager or director?
   - What is the investor’s potential liability?
   - What are the investor’s tax consequences?

4. **Liability Companies, Unlimited**
   - What are the forms of liability companies?
   - How are these companies registered or incorporated?
   - How long do these procedures take?
   - What costs and fees are involved?
   - Must a national of the country be a participant, manager or director?

5. **Partnerships, General or Limited**
   - Are partnerships recognized or permitted?
   - Must a national of the country or related state be a partner?
   - If so, to what extent?
   - What costs and fees are involved?
   - What is the investor's potential liability?
   - What are the investor’s tax consequences?

6. **Partnerships, Undisclosed**
   - Do undisclosed partnerships exist?
   - If so, how are they formed?
   - What costs and fees are involved?
   - Must a national of the country or a related state be participant, manager or director?
   - What is the investor's potential liability?
   - What are the investor’s tax consequences?

7. **Sole Proprietorships**
   - Can the investor be a sole proprietor?
   - How is the sole proprietorship registered or established?
   - How long does this process take?
   - What costs and fees are involved?
   - What is the investor’s potential liability?
   - Are there restrictions on capitalization?
   - What are the investor’s tax consequences?
8. **Subsidiaries/Branches/Representative Offices**
   - Can the investor establish a branch, subsidiary or representative office?
   - If so, how long does registration or incorporation take?
   - What costs and fees are involved?
   - What is the investor's potential liability?
   - Must a national of the country be a participant, manager or director?
   - Are there restrictions on capitalization?
   - What are the investor's tax consequences?
   - Are these tax consequences different than those of a local company?

9. **Trusts and Other Fiduciary Entities**
   - Are trusts or other fiduciary entities recognized?
   - If so, how are each defined?
   - What are the legal consequences of a transfer of assets to a trust or fiduciary?
   - Can the investor be the grantor, trustee or beneficiary?

**VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS**

1. **Alien Business Law**
   - Is the business subject to any alien business law?
   - Is there registration or reporting requirements?

2. **Antitrust Laws**
   - Do the entity's operations comply with anti-trust laws?
   - Are there filing requirements?

3. **Environmental Regulations**
   - Is the business of the investor subject to environmental regulations?
   - If so, are there added costs involved (e.g. audit requirements)?

4. **Government Approvals**
   - Are government approvals required for the anticipated business?
   - If so, how long does this process take?
   - What fees are involved?

5. **Insurance**
   - Must the enterprise carry insurance?
   - If so, what kinds of risks must be insured?
   - Is there a state monopoly on insurance?
6. Licenses/Permits
   – Are licenses or permits required for the anticipated activity?
   – If so, how does the investor apply for and receive the necessary license or permit?
   – How long does it take to receive the license or permit?

IX. OPERATION OF THE BUSINESS

1. Advertising
   – Are there restrictions on advertising?

2. Attorneys
   – Is it necessary to have local counsel?
   – How can local counsel be found?
   – How much are attorneys' fees?

3. Bookkeeping Requirements
   – Must the investor keep local books of accounts?
   – In what form must the investor keep accounts (e.g. GAAP, in what language, etc.)?

4. Business Ethics/Codes
   – Are there certain business ethics or codes which the investor must follow (e.g. GAAP for accountants, etc.)?

5. Consumer Protection Laws
   – Are there consumer protection laws which apply to the investor's operations?

6. Construction
   – What are the costs of construction?
   – Are permits required for construction?
   – How is authorization to construct obtained?
   – How long does it take to receive authorization?
   – What fees are involved?

7. Contracts
   – Can the investor freely enter into local contracts?
   – Can the contracts be governed by the law of another country?

8. Price Controls
   – Are there applicable price controls?

9. Product Registration
   – Must the entity register its product?
   – If so, how is registration obtained?
– How long does the process take?
– Are there fees involved?

10. Reduction or Return on Capital
– Can capital be repatriated while the corporation is still ongoing?

11. Sale of Goods
– Are there restrictions on the manner, time or place of sale of goods?

12. Trade Associations
– Are there trade associations the investor can or must join?
– If so, are there fees involved?
– Are there mandatory trade practices?

X. CESSATION OR TERMINATION OF BUSINESS

1. Termination
– What are the tax consequences of terminating the business?
– What costs are involved in termination?
– How long does it take to terminate the business?
– How is the investor’s particular form of business treated in termination?
– Can the business be terminated without government approval or intervention?
– What are the obligations toward creditors, employees and others upon termination?
– What are the tax consequences of termination?

2. Insolvency/Bankruptcy
– What is the extent of the investor’s liability in the event of insolvency or bankruptcy?
– What choices, if any, are available to the investor with regard to the restructuring of the business?

XI. LABOR LEGISLATION, RELATION AND SUPPLY

1. Termination
– What laws govern employer/employee relations?
– Are there restrictions on the ability to terminate employees?

2. Employment Regulations
– Must the investor hire nationals of the country?
– Are there obligations to train employees?
– Is there a minimum wage?
– Is there required bonuses or profit sharing with employees?
– Are there a maximum number of hours an employee can work each week?
– Is there a minimum number of vacation and sick days to be given?

3. **Hiring and Firing Requirements**
– Must the investor employ a minimum number of people?
– Must the investor employ a minimum number of nationals?
– Must certain positions in the company be held by nationals?
– Are there rules to follow in hiring/dismissing personnel (e.g. notice)?
– Does the investor have a continuing obligation towards dismissed employees?

4. **Labor Availability**
– Is adequate skilled or unskilled labor available for the anticipated business?

5. **Labor Permits**
– Are labor permits required?
– If so, how are they obtained?
– How long does the process take?
– What fees are involved

6. **Safety Standards**
– Are there safety codes which must be followed?

7. **Unions**
– Are unions recognized?
– What are the unions in the investor's business?
– What are these unions' political affiliations, if any?
– Is there an obligation on the part of the employer to organize unions?
– Are there mandatory collective bargaining agreements for the business involved?

**XII. TAX ON CORPORATIONS**

1. **Allowances**
– What are the major allowances (e.g. capital costs depreciation)?
– What are the major deductible items?
– What are the major expenses that are excluded from deductibility?

2. **Calculation of Taxes**
– How is the taxable base determined?
3. **Capital Gains/Dividends**
   - What are the federal or national tax rates on capital gains and dividends?
   - What are the regional or state taxes on capital gains and dividends?
   - What are the municipal or local taxes on capital gains and dividends?

4. **Filing and Payment Requirements**
   - When must the corporation file its tax return, if any?
   - When are taxes required to be paid?

5. **Miscellaneous Taxes Due**
   - Is there a tax on capital?
   - Is there a business license tax?
   - Is there an apprenticeship tax?
   - Is there a training tax?
   - Are there other taxes?
   - What are the filing and payment requirements?

6. **Registration Duties**
   - Are there registration duties due upon the incorporation of a company?
   - Are there registration duties due upon an increase in capital?
   - Are there registration duties due upon the transfer of the company's shares?
   - Are there registration duties due upon the transfer of corporate assets?
   - Are there any other registration duties due?

7. **Sales Tax or Other Turnover Tax**
   - What is the system of sales tax (e.g. V.A.T., cumulative)?
   - Is input tax creditable against output tax?
   - What are the tax rates?
   - What are the filing and payment requirements?

8. **Social Security and Welfare System Contributions**
   - Are social security contributions due?
   - Are retirement or pension contributions due?
   - Are unemployment insurance contributions due?
   - What are the filing and payment requirements?

9. **Special Tax Schemes**
   - Are there particular tax consequences of doing business in the country?
10. **Tax on Profits**
   - What are the federal or national income tax rates on profits?
   - What are the regional or state tax rates on profits?
   - What are the municipal or local tax rates on profits?

11. **Tax Treaties**
   - Are there any applicable tax treaties?
   - Are there any rules against treaty-shopping?

12. **Territoriality Rules**
   - Where is the corporation subject to tax?
   - Is the corporation subject to tax on its worldwide income?

13. **Treatment of Tax Losses**
   - How are corporate tax losses treated?

14. **Wealth Tax**
   - Is there an applicable wealth tax?

15. **Withholding Taxes**
   - What are the rates of withholding tax on dividends?
   - What are the rates of withholding tax on royalties?
   - What are the rates of withholding tax on interest?
   - What are the rates of withholding tax on profits realized by a foreign corporation?

XIII. **TAX ON INDIVIDUALS**

1. **Allowances**
   - What are the major allowances?

2. **Calculation of Taxes**
   - How is the taxable base determined?

3. **Capital Gains Tax/Dividends**
   - Are capital gains taxable
   - Are dividends taxable?

4. **Filing and Payment Requirements**
   - When must the individual file a tax return, if any
   - When must the individual pay taxes that are due?

5. **5. Inheritance and Gift Tax**
   - Does the individual's presence in the country subject him to inheritance or gift tax?
   - What kinds of assets are subject to tax?
   - What are the tax rates?
6. **Miscellaneous Taxes Due**
   - Are allowances available?
   - What are the payment and filing requirements?

7. **Real Estate/Habitation Tax**
   - Is the individual subject to real estate or habitation tax?

8. **Sales Tax**
   - Does the individual pay sales tax?

9. **Social Security and Welfare System Contributions**
   - Are contributions to social security due?
   - Are contributions to the welfare system due?
   - If so, what are the payment and filing requirements?

10. **Stock Options, Profit Sharing and Savings Plans**
    - Is there taxation of stock option plans?
    - Is there taxation of profit sharing plans?
    - Is there taxation of savings plans?

11. **Taxation of Benefits in Kind**
    - What is the rate of taxation on benefits in kind (e.g. automobile, housing and utilities, education, etc.)?

12. **Taxes on Dividends**
    - Are dividends taxable regardless of their form?

13. **Tax on Income**
    - What are the federal or national tax rates on income for residents?
    - What are the federal or national tax rates on income for non-residents?
    - What are the regional or state tax rates on income for residents?
    - What are the regional or state tax rates on income for non-residents?
    - What are the municipal or local tax rates on income for residents?
    - What are the municipal or local tax rates on income for non-residents?

14. **Tax Treaties**
    - Are there any applicable tax treaties?
    - Are there any rules against treaty-shopping?
15. **Territoriality Rules**
   - Where is the individual subject to tax?

16. **Wealth Tax**
   - Is the individual subject to tax based upon his wealth?
   - If so, what are the rates?
   - Are there any allowances available?
   - What are the payment and filing requirements?

17. **Withholding Tax**
   - Is salary subject to a withholding tax at the source?
   - What is the treatment of residents as compared to non-residents?

**XIV. TAX ON OTHER LEGAL BODIES**

1. **Allowances**
   - What are the major allowances (e.g. capital cost depreciation)?
   - What are the major deductible items?
   - What are the major expenses that are excluded from deductibility?

2. **Calculation of Taxes**
   - How is the taxable base determined?

3. **Capital Gains/Dividends**
   - What are the federal or national tax rates on capital gains and dividends?
   - What are the regional or state taxes on capital gains and dividends?
   - What are the municipal or local taxes on capital gains and dividends?

4. **Filing and Payment Requirements**
   - When must the entity file a tax return, if any?
   - When must the entity pay its taxes?
   - Are taxes paid in installments or annually?

5. **Miscellaneous Taxes**
   - Are other taxes due?
   - What are the filing and payment requirements?

6. **Registration Duties**
   - Are there registration duties or fees due upon the setting up of the legal body?
   - Are there registration duties or fees due upon a change in the capital of the legal body?
– Are there registration duties or fees due upon the transfer of capital?
– Are there registration duties or fees due upon the transfer of assets?
– Are there any other registration duties due?

7. Sales Tax or Other Turnover Tax
– Is the legal body subject to sales tax or any other turnover tax (e.g. VAT, cumulative)?
– Is input tax credible against output tax?
– What are the tax rates?
– What are the filing and payment requirements?

8. Social Security and Welfare System Contributions
– Are social security contributions due?
– Are retirement or pension contributions due?
– Are unemployment insurance contributions due?
– What are the filing and payment requirements for any such contribution?

9. Special Tax Themes
– Are there particular tax consequences of doing business in the country under the form of the particular legal body?

10. Tax on Profits
– What are the federal or national income tax rates on profits?
– What are the regional or state tax rates on profits?
– What are the municipal or local tax rates on profits?

11. Tax Treaties
– Are there any applicable tax treaties?
– Are there any rules against treaty-shopping?

12. Territoriality Rules
– Where is the legal body subject to tax?
– Is the legal body subject to tax on its worldwide income?

13. Treatment of Tax Losses
– How are tax losses treated?

14. Wealth Tax
– Is there an applicable wealth tax?

15. Withholding Taxes
– What are the rates of withholding tax on the legal body’s activities?
XV. GENERAL TAX CONSIDERATIONS

1. Taxes Generally
   − Is there a generally accepted way of structuring the company or other entity so as to insure the desired tax consequences?
   − Is there an advance tax ruling that can be used to validate or invalidate the chosen form of doing business?
   − Is there a general anti-tax avoidance system?
   − Can the chosen form of the business be treated as a deferent form for tax purposes?

XVI. IMMIGRATION REQUIREMENTS

1. Immigration Controls
   − Are there immigration quotas?
   − Are vaccinations required?
   − Are medical certificates required?
   − Are entry permits required?
   − If so, must you apply for an entry permit before entering the country?
   − Are exit permits required?
   − Are re-entry permits required?

2. Immigration Requirements/Formalities
   − Is a residence permit required?
   − If so, does the investor have to apply for one before entering the country?
   − What information must be supplied to the immigration authorities?
   − How long does it take to receive authorization?

3. Visas
   − Is a visa required for travel or stay in the country?
   − Is so, for how long is the visa valid?
   − How does the investor apply for a visa?
   − What documents are required?
   − How long does it take to receive a visa?
   − What fees are involved?

XVII. EXPATRIATE EMPLOYEES

1. Cost of Living and Immigration
   − How does the cost of living compare to that in the investor’s home country?
   − What is the rate of inflation?
2. **Drivers' Licenses**
   - Must the investor obtain a driver's license for that country?
   - How does the investor obtain a driver's license?
   - What fees are involved?
   - Is an examination, either practical or written, required?

3. **Education**
   - What types of schools are available for the investor's family?
   - What fees are involved?
   - What is required for enrollment?
   - Can the investor subsidize housing and receive a tax benefit?

4. **Housing**
   - What type of housing is available for the investor?
   - Can the investor own property?
   - Must the investor have housing before he enters the country?
   - Can the investor receive any tax allowances?

5. **Importing Personal Possessions**
   - How can the investor import his personal belongings?
   - Are import duties payable?
   - Are there requirements for clearing the belongings through customs?

6. **Medical Care**
   - What level of medical care is available?
   - Is there national health care?

7. **Moving Costs**
   - What costs are involved in moving?
   - Can the investor receive any tax allowances?

8. **Tax Liability**
   - What is the expatriate's tax liability? (see also Section XIII)
   - What are the allowances?
   - Are there any applicable tax treaties?

9. **Work Contracts**
   - Does the investor need a work contract to work in the country?
   - If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?

10. **Work Permits**
    - Does the investor need a work permit to work in the country?
    - How and where does the investor apply for the permit?
    - What documents are required?
− What fees are involved?
− How long does it take to receive the permit?
− For how long is the permit valid?