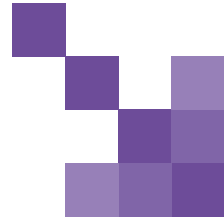


Doing business in Iceland



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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The legal system is based on civil law and has much in common with other Scandinavian countries, with the emphasis on written statutory law and derivative legislation.

Iceland is a member of the European Economic Area (EEA) and therefore, except in a few limited areas, all EU commercial regulations and directives take effect in Iceland.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

In principle, foreign ownership of business is unrestricted. However, some limitations apply to specific areas (as set out in Act No. 34/1991 on investment by non-residents in business enterprises, or in other specific legislation), including:

- Fishing.
- Primary fish processing.
- Energy production.
- Aviation.

A wide range of portfolio investment options are available through licensed securities trading companies. Stricter limitations generally apply to non-EEA and non-Organisation for Economic Co-operation and Development (OECD) investors, but exemptions and special permissions can, in some instances, be obtained from the Ministry of Industry and Commerce.

3. Are there any exchange control or currency regulations?

Foreign exchange controls have been fully abolished in Iceland, but the Central Bank is authorised to impose temporary restrictions on capital outflows in exceptional circumstances. However, this has never been done.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

In general, Iceland does not offer direct subsidies for business investment. Its prime incentives lie in the favourable environment for business in general.

However, there are few exceptions, including grants issued for specific projects on a case-by-case analysis for R&D, film and TV productions in Iceland. The latter specifically target foreign investment in those sectors.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business vehicle used by foreign companies are subsidiaries, in the form of private limited liability companies, and branches of foreign entities. Branches must be registered with the Company Registry (*Hlutafélagaskrá*).

- **Registration formalities.** The company must submit to the Company Registry a copy of its memorandum and articles of association (articles). A completed application to establish a company is generally dealt with in one day (provided that all the required information and documentation is submitted) and costs ISK88,500 (about US\$862), excluding legal costs.
- **Share capital.** The required minimum capital is ISK500,000 (about US\$4,870), which must be paid before registration. There is no maximum share capital requirement.
- **Non-cash consideration.** Shares can be issued for non-cash consideration, but a valuation of the non-cash consideration must be carried out.
- **Rights attaching to shares.** Any restrictions on rights attached to shares must be set out in

the articles, under the conditions set out in the Private Limited Companies Act No. 138/1994 (the English version of the act can be found at http://eng.idnadarraduneyti.is/media/Rafraen_afgreidsla/ehfl.thyding.1.1.2007doc.pdf).

- **Foreign shareholders.** In principle, there are no restrictions on foreign shareholders, except in some specific sectors (see *Question 2*).
- **Management structure.** The board of directors (board) must have at least one director and one reserve director. However, if there are five or more shareholders, the board must have at least three directors. The director (if there is only one), or half of the directors (if there are two or more), and the manager(s), if any, must be resident(s) in the EEA, in OECD member countries or the Faroe Islands. However, the Minister of Commerce can grant an exemption for other citizens or residents.
- **Directors' liability.** Directors are personally liable to the company for negligence in the performance of their duties. They are also liable to third parties for violations of the:
 - Private Limited Companies Act No. 138/1994 or other applicable legislation; and
 - articles.
- **Parent company liability.** In general, each group company is treated as a separate entity. However, in exceptional circumstances a parent company can be liable for the acts of its subsidiaries, such as fraud.
- **Reporting requirements.** A company must:
 - submit annual accounts to the Companies Registry;
 - file an annual income tax return by the end of May;
 - notify any change to the particulars (such as the registered office, directors or articles) to the Companies Registry. This costs at least ISK2,100 (about US\$20).

EMPLOYEES

6. What are the main laws regulating employment relationships?

Numerous acts regulate employment relationships, but the most notable are:

- The Act on Trade Unions and Industrial Disputes No. 80/1938.
- The Working Terms and Pension Rights Insurance Act No. 55/1980.
- The Act Respecting Labourers' Right to Advance Notice of Termination of Employment and to Wages on Account of Absence through Illness and Accidents No. 19/1979.
- The Act on 40 hours Working Week No. 88/1971.
- The Holiday Allowance Act No. 30/1987.

Icelandic employment law applies to both:

- Icelandic citizens employed in Iceland.
- Foreign citizens employed in Iceland (unless they are seconded by a foreign employer).

Certain mandatory rules apply to the employment of the above-listed citizens, irrespective of a choice of law in the employment contract. These rules mainly concern:

- Minimum wages, overtime payment, holiday entitlement, maximum working hours and minimum rest time.
- Working environment and health and safety in the workplace.
- Maternity and paternity leave, and parental leave.
- Equal status and equal rights of women and men.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written employment contract is required for any employment exceeding one month.

The contract must be available no later than two months after the employee is recruited.

Iceland has no statutory minimum wage, but contracts offered must never offer less advantageous terms than those set out in any applicable bargaining agreements, negotiated by parties of the labour market.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

The employees' right to information and consultation is provided for under the following Icelandic law (based on EC legislation on these matters):

- Act No. 63/2000 on collective redundancies.
- Act No. 72/2002 on the safeguarding of employees' rights in the event of transfers of undertakings or businesses or parts of undertakings or businesses.
- Act No. 61/1999 on the European works council in businesses.

Employees are not entitled to management representation.

9. How is the termination of individual employment contracts regulated?

Employers have greater flexibility to terminate employment than in most other European countries. Dismissals can be with or without cause and no specific reason is required. However, a minimum notice period is generally required. This is usually three months for termination of employment contracts for an indefinite period (or up to six months for senior positions).

Employers can dismiss employees without notice, provided that there is a legitimate cause and the employee has received prior warning.

If the dismissal is found to be unfair, the employer can be held liable for damages to the employee.

However, the following categories of workers enjoy special protection against dismissals and redundancies:

- Employees with special family responsibilities (due to sick or disabled family members).
- Pregnant women and parents on maternity and paternity leave.
- Employee representatives.

Discrimination on grounds of sex is prohibited and special rules cover transfer of undertakings and collective redundancies (see *Question 8*). Usually, there is no severance pay beyond ordinary pay throughout the notice period.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Except for the acts mentioned in *Question 8*, there are no specific rules that apply to redundancies. Redundancy is treated as a dismissal without cause.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

EEA and Faroese nationals can live and work in Iceland without a work permit, and enjoy the same social rights as Icelandic citizens.

Citizens of other countries (and, at least until 1 January 2009, nationals of Bulgaria and Romania) must apply for a residence permit and work permit from the Directorate of Immigration (see www.utl.is). See also the website of the Directorate of Labour for further information (www.vinnuvalastofnun.is).

The procedure costs ISK8,000 (about US\$78) and takes up to three months.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

All employees who are considered by the Icelandic tax authorities to be domiciled in Iceland are subject to tax on their worldwide income.

Non-resident individuals staying in Iceland for more than 183 days out of a 12-month period are subject to tax on their worldwide income. Individuals who are in Iceland for a temporary stay (that is, less than 183 days) are taxed on Icelandic source income only.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
-

Tax resident employees

Employees must pay income tax on their gross income. The current applicable rate (state and municipal income taxes combined) is 35.72%.

All individual taxpayers are entitled to a personal tax credit deducted monthly by the employer against the calculated state and municipal income taxes. Credit that has not been used by a spouse or cohabiting person can be used by the other spouse or cohabiting person. The current personal tax credit is ISK34,034 (about US\$331) per month.

The tax year is the same as the calendar year.

Non-tax resident employees

Non-resident employees are taxed in the same way as resident employees (see *above*, *Tax resident employees*). However there is requirement that the work is done in Iceland and the non-tax resident employees are physically present.

Employers

Employers must pay monthly social security contributions on all remuneration paid to employees at a total rate, in 2008, of 5.34% (or 5.99% for seamen).

Payments to pension funds must be paid by both employees (at a minimum rate of 4%) and employers (at a minimum rate of 8%).

More information on applicable tax rates (which may vary annually) can be found on the Internal Revenue Directorate's website (see www.rsk.is).

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Companies that are considered to be domiciled in Iceland are subject to tax on their worldwide income. These companies must pay corporate tax on their worldwide profits.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Corporate income tax

The rate for limited liability companies is 15%. The rate for partnerships is 23.5%.

Value added tax (VAT)

VAT is charged on goods and services supplied in Iceland by businesses against the consideration paid and on imported goods. The standard rate is 24.5%. A reduced rate of 7% applies to certain goods, such as hotel rooms, newspapers, books and food for human consumption, with the exception of alcohol. Financial services are exempted.

The export of goods and services is zero-rated.

Taxes on capital

There is a municipal real estate tax (the amount of this tax varies, depending on the municipality).

16. How are the activities of non-tax resident business vehicles taxed?

Non-resident business vehicles are subject to income tax on:

- Dividends, royalties and profits from Icelandic permanent establishments (branches).
- Capital gains from the disposal of Icelandic assets (including real estate) or shares and bonds.

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
 - **Dividends received from foreign companies.**
 - **Interest paid to foreign corporate shareholders.**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
-

- **Dividends paid.** Non-resident companies are subject to a 15% withholding tax on Icelandic dividends, subject to any applicable tax treaty.
 - **Dividends received.** 10% is withheld at source for dividend payments both to domestic individuals and corporations. In relation to corporations, this tax is considered a prepayment for regular income tax payable after assessment (see *Question 15*). For non-resident corporations, no tax is withheld but the income is taxed as corporate income (see *Question 15*).
 - **Interest paid.** Icelandic interest payments to non-residents are not subject to tax liability.
 - **IP royalties paid.** Non-resident companies are subject to a 15% withholding tax, subject to any applicable tax treaty.
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18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

There are no thin capitalisation rules.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules.

20. Are there any transfer pricing rules? If so, please give details.

Iceland has adopted transfer pricing rules which substantially reflect Article 9(1) of the OECD Model Tax Con-

vention on Income and on Capital (OECD Convention). However, unlike the OECD Convention, Icelandic rules do not require that the relevant entities be related.

21. How are imports and exports taxed?

In general, customs duty, excise duty and VAT are levied on imported goods in accordance with the applicable customs tariff.

However, originating products (within the meaning of the Agreement on the European Economic Area 1992 (EEA Agreement)), the Convention establishing the European Free Trade Association and any other free trade agreements to which Iceland is a party) are eligible for preferential treatment (duty-free importation) on the submission of certain documents.

In general, no duties are levied on exports, unless prescribed by law.

More information can be found on the Internal Revenue Directorate's website (see www.rsk.is) and on the Customs Office's website (see www.tollur.is).

22. Is there a wide network of double tax treaties? If so, please give details.

There are currently 27 double tax treaties in force. An up-to-date list can be found on the Ministry of Finance's website (see <http://eng.fjarmalaraduneyti.is/customs-and-taxes/nr/414>). The Invest in Iceland Agency published a table showing the applicable withholding rates for dividends, royalties and interest in the brochure, Doing Business in Iceland, which is available online at www.invest.is.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The Competition Act No. 44/2005 (which is based on the EEA Agreement) regulates:

- Anti-competitive arrangements and concerted practices between undertakings (comparable to Article 53 of the EEA Agreement and Article 81 of the EC Treaty).

- Abuses of dominant positions (comparable to Article 54 of the EEA Agreement and Article 82 of the EC Treaty).
- Merger control (based on similar principles as Regulation (EC) No. 139/2004 on the control of concentrations between undertakings).

The Competition Act is monitored and enforced by the Competition Surveillance Authority, which can impose high administrative fines (the highest fine levied to date is ISK1.505 billion (about US\$14.7 million) in a case regarding a cartel in the oil market), as well as up to two to four years' imprisonment in the most serious cases.

Unfair practices are regulated by Act No. 57/2005 on unfair business practices and market transparency (Act on Unfair Business Practices), which is monitored and enforced by the Consumer Agency (see www.neytendastofa.is).

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- Nature of right.
- How protected.
- How enforced.
- Length of protection.

Patents

- **Nature of right.** A patent can only be granted for inventions (that is, a practical solution to a problem, where the solution is of a technical nature and is reproducible). For an invention to be patentable, it must:
 - be new (in worldwide terms, not just in Iceland);
 - differ essentially from the prior art; and
 - be industrially applicable.

Patents can be granted for products, methods, apparatuses and applications. The following, among others, are excluded from patent protection (*Icelandic Patent Act No. 17/1991, as amended in 2004*):

- discoveries;
- artistic work;
- computer programs; and
- business methods.

The invention must not have been made known to others before the patent application was filed.

- **How protected.** Protection is obtained by filing a patent application with the Icelandic Patent Office (IPO). Appointment of an agent residing in the EEA is requested. Icelandic patents only enjoy protection in Iceland.
- **How enforced.** The patent owner must bring proceedings in the courts of Reykjavik. The remedies available for intentional infringement of a patent include fines and, under aggravated circumstances, up to three months' imprisonment.
- **Length of protection.** Protection lasts for up to 20 years provided that the yearly fee is always paid. After the patent has expired, anybody can use the invention. Supplementary protection certificates are available for pharmaceuticals and crop protection agents.

Trade marks

- **Nature of right.** Trade marks must not be of a general nature or merely descriptive of the goods or services to which they relate. They must not be identical to, or closely resemble, trade marks that have already been registered for similar goods or services.
- **How protected.** Protection is obtained by registration or by use. Trade mark applications are filed with the IPO (*Trademark Act No. 45/1997*). Appointment of an agent residing in the EEA is requested. A trade mark registered in Iceland only enjoys protection in Iceland.
- **How enforced.** The method of enforcement and the remedies available are the same as for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for ten years, renewable for successive ten-year periods.

Registered designs

- **Nature of right.** A design right does not cover design features that are dictated by a product's technical function or quality. The design right holder has exclusive exploitation rights, provided the rights are registered.
- **How protected.** Protection is obtained by registration with the IPO (*Design Protection Act No. 46/2001 and Regulations on Registration of Design No. 706/2001*). Appointment of an agent residing in the EEA is requested.
- **How enforced.** A registered design can be invalidated by the IPO. Otherwise, the method of enforcement and the remedies available are the same as for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for five years from the date of filing, renewable for successive five-year periods (up to a maximum term of 25 years).

Unregistered designs

These are protected under copyright law (*see below, Copyright*).

Copyright

- **Nature of right.** Copyright protection applies to any work in the field of literature and art created through intellectual effort and originality. Copyright protection is available for a non-exhaustive list of works, including (*Icelandic Copyright Act No. 73/1972*):
 - writings of all kinds;
 - oral lectures;
 - stage performance works;
 - musical works;
 - paintings;
 - drawings;
 - sculptures;

- architectural designs and buildings;
- maps;
- cinematographic work;
- photographic works;
- models;
- software programs.

Neighbouring rights enjoy more limited protection than copyrights.

- **How protected.** Protection subsists automatically as soon as the work is created. No registration system is available.
- **How enforced.** The method of enforcement and the remedies available are the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for the lifetime of the author plus 70 years. It is not renewable.

Confidential information

- **Nature of right.** The use of confidential information is protected under the Act on Unfair Business Practices.
- **How protected.** Protection can be obtained by written agreement between the parties. Breach of this agreement (breach of confidence) constitutes a breach of contract.
- **How enforced.** The injured party must bring a claim for damages arising out of a breach of contract in the courts of Iceland.
- **Length of protection.** This depends on the terms of the contract, but is typically two to five years.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**

- **Distribution.**
- **Franchising.**

-
- **Agency.** The Act on Agency Agreements No. 103/1992, which transposes Directive 86/653/EEC on self-employed commercial agents, contains a number of mandatory provisions which protect agents (but only where the agency agreement is in writing). Mandatory provisions include a right to a reasonable commission and to termination notices and indemnities.

- **Distribution.** There are no specific laws on distribution or franchising in Iceland. General principles on the supply of goods apply, as well as EC competition regulations.

- **Franchising.** See above, *Distribution*.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

E-commerce issues, such as electronic signatures and distance selling, are regulated by:

- Act No. 28/2001 on electronic signatures.
- Act No. 30/2002 on electronic commerce and other electronic services.

These acts incorporate into Icelandic law the provisions of Directive 99/93/EC on electronic signatures and Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, respectively.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Act No. 77/2000 on Data Protection transposes Directive 95/46/EC on data protection into Icelandic law and its provisions are very similar.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

Producers and distributors may be liable for personal injury, damage to property or loss of a provider caused by a defect in a finished product they produced or distributed in Iceland (*Act No. 25/1991 on product liability*).

Act 134/1995 on product safety and official market control provides for additional protection to private consumers in relation to defective products. The Consumer Agency is the competent authority to receive claims.

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A Living Legacy

LOGOS provides companies and institutions with legal services based upon the firm's legacy of practice since 1907. While the founder, Mr. Sveinn Björnsson, went on to become the first president of Iceland, his agency kept growing. LOGOS has become a leading Icelandic agency with successful international outposts.

LOGOS specializes primarily in corporate and commercial law providing service for both the international business community and local corporate clients requiring international legal assistance.

Our teams in Reykjavík, London and Copenhagen use well defined internal procedures to offer an excellent and efficient level of legal service that would make Mr. Björnsson very, very proud!

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