

# Corporate and Commercial Law – global update

**#1/2023 – January 2023**



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# Editorial

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Dear reader,

We are pleased to present the latest edition of EY Corporate and Commercial Law global update, the purpose of which is to inform EY clients and colleagues of the noteworthy and most recent legal news across a number of jurisdictions.

In this issue, we have articles from a total of 37 jurisdictions on current legal affairs around the globe, covering Western Europe, Latin America, Central and Eastern Europe and Asia-Pacific.

The articles in this global update reflect the global reach and diversity of EY Law services, from corporate law to civil law and commercial law to regulatory aspects. If you wish to receive more detailed information on law services or on the topics discussed in this issue, please feel free to reach out to us. You will find contact details for each of the jurisdictions where EY member firms offer law services at the back of this publication.

Across the global EY network of member firms today, there are more than 3,400 qualified professionals providing services for the legal function in more than 90 jurisdictions. Apart from offering specific tailor-made legal advice for a number of business needs, we also cover a wide range of sectors: automotive and transportation, banking and capital markets, consumer products and retail, government and public sector, health, insurance, life sciences, media and entertainment, oil and gas, power and utilities, private equity, real estate and hospitality, technology and telecommunications. EY lawyers work closely alongside professionals in Assurance, Consulting, Strategy and Transactions, and Tax. Working across borders, the sector-focused, multidisciplinary approach means EY member firms offer highly integrated and broad pertinent advice across the globe.

Kind regards,



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# Argentina



## National Securities Commission – General Resolution no. 930/2022 – special double listing regime for foreign companies

On 13 May 2022, General Resolution No. 930/2022 of the National Securities Commission (the CNV) was published in the Official Gazette of the Argentine Republic, establishing the Special Double Listing Regime for Foreign Companies.

Through this new regime, foreign companies that are listed in one or more markets outside of Argentina, prior to submitting their request to the comptroller authority, may apply for entering into the public offering regime in the Argentine Republic for either existing or new shares.

This Special Double Listing Regime applies to companies that are duly authorized by the relevant exchange commission of countries that have entered into cooperation agreements, or countries that have not entered into such agreements, but the CNV considers that such commission reasonably protects local investors and ensures an adequate information regime.

Foreign entities must comply with the requirements and annual obligations set out in the resolution while they are listed in Argentina.

The markets will ensure the disclosure, in real time, of the shares' prices and volumes traded of in all those foreign markets in which the companies requesting entry to this Special Double Listing Regime are listed. The CNV may modify the frequency of this information in consideration of the foreign market where the securities are traded.

This regime intends to benefit access to financing for local and foreign companies that pretend to perform a public offer of shares in Argentina.

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# Austria



## The legal fate of a British Limited with administrative headquarters in Austria after Brexit

Following Brexit, it remains unclear what will happen to limited liability companies (Ltd) with a corporate seat in the United Kingdom (UK) and a head office in Austria that did not change their legal form before Brexit.

According to Section 10 of the Austrian International Private Law Act (IPRG), the personal statute of a legal entity/association of persons/assets that can be the bearer of rights and obligations, is the law of the state in which the legal entity has its actual seat or head office (“real seat theory”).

Since Austria's accession to the EU in 1995, the British Limited has also been popular in this country, as it offered the partners protection against liability with their private assets and, moreover, could be formed without a certain minimum share capital.

As an expression of the freedom of establishment, once a Limited was registered in the UK, it could move its administrative headquarters to another EU member state. This was backed up by a discussion of the European Court of Justice (ECJ). With that decision, the provision of Section 10 IPRG and with it the real seat theory were overridden by the primacy of application of the freedom of establishment under EU law.

The withdrawal of the UK from the EU removed the basis for the ECJ's case law on the freedom of establishment of UK entities. After the conclusion of the withdrawal agreement, it remained open what should happen to existing Ltds.

The Austrian Supreme Court (OGH) dealt with this question in 9 Ob 74/21d. It came to the conclusion that as a result of Brexit, a British Limited with its principal place of administration in Austria no longer has legal capacity as such. It does not thereby become a legal non-entity but is to be assessed according to Austrian corporate law. In doing so, the OGH ruled that the Limited becomes a company under civil law (Gesellschaft bürgerlichen Rechts). If there is only one shareholder, the company's assets are transferred to him as sole proprietor by way of universal succession (Section 142 Corporations Act analogously). Furthermore, at the end of 2020, the debts of such Ltds were transferred to their share-holders who become personally liable for them.

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# Azerbaijan



## New Investment Act enacted in Azerbaijan

A new Investment Act (New Act) effective from 28 July 2022 and is an important milestone in the execution of the Azerbaijan 2030: National Priorities for Social and Economic Development Program and Socio-economic Development Strategy of the Republic of Azerbaijan for 2022-2026. The program and strategy aim to achieve a more favorable investment environment for investors and to attract foreign direct investment into the non-oil sector of the national economy. The adoption of the New Act pursues the goal of modernization of current legislation in the respective field.

The New Act replaces the Protection of Foreign Investment Act 1992 and the Investment Activity Act 1995. Nevertheless, the provisions of the previous Acts that provided more favorable treatment for investments during the period they were in force will continue to have legal effect for the next 10 years.

The New Act introduces extensive legal regulations for investment activities and provides guarantees for the protection of the rights and interests of local and foreign investors in Azerbaijan. The Act regulates, inter alia, the following important matters:

- ▶ Main principles, purposes and directions of state policy in the field of investing activities
- ▶ Actions for the promotion of investing activities and priorities in this field
- ▶ Forms of investing activities
- ▶ Rights and duties of investors
- ▶ Applicable regimes to investments
- ▶ Additional dispute resolution methods, including administrative methods and alternative dispute resolution instruments for local and foreign investors
- ▶ Guarantees provided by the state for investors

The adoption of the New Act aims to create a modern and efficient legal framework to improve the conditions of the investment climate and support the economic development of Azerbaijan.

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# Belgium



## New Belgian Civil Code on contractual obligations

On 1 January 2023, Book 5 of the new Belgian Civil Code on contractual obligations will enter into force and will be applicable to contracts concluded on or after this date.

One of the main purposes of the new Belgian Civil Code is to update the Civil Code Napoleon of 1804 and to incorporate the established case law and doctrine. For some specific legal principles, the new Belgian Civil Code deviates from the old Civil Code, case law and doctrine to connect to the existing legislation of neighboring countries or regimes.

Significant updates include:

- ▶ There is termination for breach without court intervention.
- ▶ Anticipatory breach: In exceptional circumstances, the contract may be terminated when it becomes clear that the debtor will not perform its obligations on time and when the consequences of such non-performance are sufficiently serious.
- ▶ Hardship: a change of circumstances that makes the performance of the contract excessively onerous, justifies the renegotiation of the contract and can even lead to court-imposed amendment or termination of the contract.
- ▶ Knock-out rule for general terms and conditions (battle of the forms): contradicting general terms and conditions of the parties to the contract will not be applied.
- ▶ General rule on unfair terms: Any term that has not been negotiated and creates a significant imbalance between the rights and obligations of the parties is unlawful. This general rule complements the already existing and specific unfair terms rules in the business-to-consumer and business-to-business context.
- ▶ Abuse of circumstances: Abuse of inferiority of one of the negotiating parties can justify the modification or even nullity of the contract.

As indicated above, the new Belgian Civil Code will apply to contracts concluded on or after 1 January 2023. However, some Belgian courts and tribunals are anticipating the new rules and have already applied them to existing contracts.

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# Brazil



## Changes to publication rules for Large Limited Liability Companies

According to data made available by the Boards of Trade, limited liability companies are the most common corporate category in Brazil. This is due, among other reasons, to the fact that limited liability companies are not subject to many of the obligations applicable to corporations (Sociedade Anônima) related to publication of corporate acts and, in particular, financial statements.

However, based on a provisional judicial decision made by the 25th Federal Civil Court on 16 December 2008, regarding the interpretation of the current legislation (Article 3 of Law 11.638/2007), the Board of Trade, based on a provisional judicial decision, obliged large limited liability companies to publish their financial statements, including as a prerequisite for filing the Minutes of the Annual Meeting of Shareholders, a mandatory meeting for limited liability companies.

Under the terms of the law, large limited liability companies are defined as companies or groups of companies under common control that have, in the previous fiscal year, total assets greater than BRL 240,000,000 (two hundred and forty million Brazilian Reais) or annual gross revenue greater than BRL 300,000,000 (three hundred million Brazilian Reais).

Recently, on 3 November 2022, there was a final court decision made by the 1st Panel of the Federal Regional Court of the 3rd Region removing the need for publication of the Financial Statements by large limited liability companies. As a result of this decision, the Boards of Trade have already been notified and are prevented from requesting the publication of the Financial Statements of large limited liability companies.

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# Canada



## Bill 95: New Brunswick updates Beneficial Ownership Registry Rules

Over the past few years, there has been global media attention surrounding the use of private corporations for illicit activities such as money laundering and terrorist financing.

In 2019, Canada's federal government adopted amendments to the Canada Business Corporations Act to stave off further financial crimes through greater transparency over corporate ownership and governance.

Since then, several provincial governments have followed suit, including the government of New Brunswick. On 10 June 2022, the province enacted Bill 95, amending the Business Corporations Act, SNB 1981, c B-9.1 thereby requiring corporations to maintain a Beneficial Ownership Registry (the Registry) of individuals with significant control over the corporation.

An "individual with significant control" over a corporation is:

- ▶ The registered holder of the shares of such corporation
- ▶ The beneficial owner of the shares of such corporation
- ▶ An individual with direct or indirect control or direction over the shares of such corporation

A "significant number of shares" is any number of shares that carry 25% or more of the voting rights attached to all of the corporation's issued and outstanding voting shares, or any number of shares that is equal to 25% or more of all of the corporation's issued and outstanding voting shares.

For each individual with significant control, the registry must include:

- ▶ Full name, date of birth and last known address
- ▶ Jurisdiction of residence for tax purposes
- ▶ Date they became or ceased to be an individual with significant control
- ▶ A description of how each individual has significant control, including their interests and rights in respect of shares of the corporation
- ▶ A description of each step taken to ensure that the register is accurate, complete and up to date
- ▶ Any other prescribed information

A corporation or its individual shareholders who fail to comply with the new registration rules or fail to cooperate with government authorities conducting investigations can face a fine of CAD10,200 for a first offense, with further fines increasing to CAD15,000, and may even face imprisonment for up to 90 days. It should be noted that judges have the authority to increase the amount of the fines in certain cases.

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# Chile



## New cybercrime act

In June 2022, the Chilean Congress passed a bill, Law No. 21,459, that replaced the former regulation on cybercrimes.

The new regulation is intended to bring Chile legislation in line with the Budapest Convention and update a regulation that had been in force for nearly 30 years and which, over time, became obsolete due to the restrictive nature of the criminal offenses regulated and the few tools for investigating crimes associated with cybersecurity issues.

Among other matters, the regulation enshrines new offenses such as an attack on the integrity of a computer system, illegal access, receiving computer data and abuse of devices, as well as mitigating and aggravating circumstances and special investigative measures. In this context, the new law imposes additional responsibilities, for example, on how data of a diverse nature is obtained and processed, which translates into having to carry out due checks on the origin of the data processed by an entity, whether public or private.

Additionally, Law No. 21,459 modifies other regulatory bodies such as Law No. 20,393, which establishes the criminal liability of companies and legal entities, incorporating within the catalog of offenses those contemplated in the Cybercrime Act. Because of this, entities will have to update their crime prevention models, bearing in mind that this requirement will come into force in December 2022.

This necessarily requires technological, cybersecurity, legal and compliance capabilities to fully address the challenges imposed by the new regulations. In this context, adapting policies and legal instruments that do not correlate to the processes and IT systems of a company will most likely be insufficient to deal with the new crimes contemplated in Law No. 21,459.

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# China Mainland



## Key regulatory developments of Cross-border Data Transfer in Mainland China

The long-awaited China Measures for Security Assessment of Cross-border Data Transfer (the CBDT Measures) took effect on 1 September 2022. A multitude of international companies with frequent CBDT activities regard the CBDT Measures as a straitjacket. Briefly, mandatory security assessment is required if:

- ▶ Data handlers transfer important data overseas (i.e., data that may endanger national security and public interests if it is tampered with, destroyed, leaked, or obtained or used illegally)
- ▶ Critical information infrastructure operators (entities operating key network facilities and information systems of key industries related to national security and public interest) or data handlers handling the personal information (PI) of more than 1 million persons transfer PI overseas
- ▶ Data handlers export PI of 100,000 persons or sensitive PI of 10,000 persons, calculated from 1 January of the previous year
- ▶ Other situations as stipulated by the Cyberspace Administration of China (CAC)

It is expected that in number of companies, companies in the Mainland China would not have been compliant with the CBDT Measures when transferring data overseas in the past. These companies will have a six-month grace period to remediate and comply. However, without tailored data mapping, some companies are confused or unsure as to whether they have exceeded the above threshold. Furthermore, it will be the first time these companies familiarize themselves with self-assessment, security assessment and standard contract templates.

With templates for self-assessment in place, the issuance of first-edition guideline by CAC relieves a portion of the anxiety, but these templates are only a guide. Therefore, depending on the actual business operation, companies still have to explain numerous items in detail, especially the lawfulness, legitimacy and necessity for CBDT and its impacts on China's national security, public interest and rights of individuals involved.

It is worth noting that for companies below the threshold, transferring PI outside of Mainland China are still subject to other regulatory mechanism (i.e., standard contract or certification by specialized agencies recognized by CAC). Currently, the draft of the standard contract has not been passed, and the implementation of certification is unclear in practice.

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# Colombia



## UBO report is due by 31 July 2023

By 31 July 2023, all Colombia legal entities, national companies, branch offices of foreign companies, permanent establishments, non-profit organizations and certain types of entities/agreements without legal personality administered from Colombia (e.g., JV agreements, trusts, investment funds) will have the obligation to identify and provide detailed information regarding their ultimate beneficiary owners (UBO) to the UBO's Sole Register (RUB per its Spanish acronym). The register is administered by the Tax Authority, and other Colombian authorities will have access to it, including the General Attorney Office, The General Prosecutor Office and Superintendencies.

UBO is understood as any individual who owns or controls, directly or indirectly, a legal entity subject to UBO report obligations (or a party to an agreement subject to report). The UBO includes individuals owning 5% or more of the shares or voting rights, those benefiting from 5% or more of the assets or profits, the settlor, the trustee, and the trust committee, among others. When it is not possible to identify the individual who meets the criteria, the UBO reporting obligations should be complied with the report of the individual holding the position of legal representative.

For purposes of identifying the UBO, detailed corporate due diligence must be performed to identify, verify, properly validate and document the chain of ownership and control, and it must be kept available for the Tax Authority. The due diligence and the RUB should be updated quarterly (January, April, July and October).

Information reported in the RUB should be aligned with other substantial and reporting obligations and access to information such as: the controlling individual or ultimate parent company reported in the mercantile registry for control situation or business group reporting (corporate law obligation); identification of the UBO of all contractual counterparties (anti-corruption law obligation); and provision of UBO information to all contractual counterparties upon request (anti-corruption law obligation).

Although these obligations have different legal scope and reach than the reporting of the UBO, they may necessitate a robust supporting documentation to explain and justify differences when and if required by other authorities, including those with access to the RUB. Therefore, a comprehensive analysis should be performed to adopt strategic definitions as well as to identify risks and manage them.

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# Cyprus



## Cyprus adopts the new law on shipping limited liability companies

On 6 October 2022, the Cypriot House of Representatives approved the Limited Liability Shipping Company Law of 2022 (the SLLC Law), which creates a new type of corporate entity, the Shipping Limited Liability Company (SLLC). The new legal framework is inspired by the Companies Law, Cap. 113 (the Companies Law) which had governed, up to now, the shipping companies. However, it adopts simplified procedures that make the establishment and operation of an SLLC more attractive and flexible to any interested party.

The SLLC Law reflects the move toward digitalization; an illustration of this is the use of electronic methods for processing transactions, including the possibility of entry into contracts by SLLCs electronically, aside from written and oral contracts, as well as maintaining and inspecting the register of shareholders via electronic means.

A significant deviation from the Companies Law is the requirement for a qualified lawyer to hold the office of Secretary of the SLLC, aiming to ensure effective compliance with all applicable rules and legislation governing the SLLC.

All documents, confirmations and certificates issued by the SLLC Registrar are bilingual, either in Greek and English or Turkish and English, unlike certificates issued by the Registrar of Companies, which are issued in Greek or English.

Simplified procedures are also being adopted in relation to variations to the share capital. For instance, the decision on an increase in capital is made during a general meeting by simple majority (not by a special resolution as prescribed for under the Companies Law for regular companies). Further, the decision on a decrease in share capital is made by a special resolution following a 15-day creditors' notification to the general meeting (and does not require the approval by the Court as prescribed for under the Companies Law for regular companies).

Pursuant to the SLLC Law, SLLCs that have been incorporated and registered under the Companies Law have the option to continue their operations as SLLCs provided they meet the requirements set out in the SLLC Law.

In summary, the adoption of the SLLC Law aims to establish a "one stop shop" and create a modern, effective shipping company regime, which is expected to improve conditions for companies and investors, and have a positive impact on the economic environment of Cyprus in the shipping industry.

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# Czech Republic



## Enacting of the Czech Register of expelled persons

The Czech Republic Parliament is adopting a bill amending certain laws in connection with the use of digital tools and processes in corporate law and the functioning of public registers (the Amendment). Among other newly implemented tools, the Amendment proposes the establishment of a non-public register of persons expelled from office of a member of an elected body of a business corporation (the Register).

The main reason for adoption of the Amendment is that the current legislation does not provide for any effective control that persons expelled by a court from holding an office in an elected body of a corporation do not actually hold such an office. The Amendment also implements the Digitalisation Directive (i.e., Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019).

The Register will be non-public, and access will be enabled mainly for courts and notaries when registering members of elected bodies of business corporations.

The Register will also be linked to the Criminal Register, the Misdemeanour Register and the Insolvency Register. Therefore, the process of registering members of elected bodies of business corporations should be further simplified for the registrants as it will be no longer necessary to submit an extract from the Criminal Register, for example.

The Register will keep a record of persons who:

- ▶ Have been expelled by a court decision due to violation of his/her duties in the performance of office
- ▶ Have been imposed a prohibition of activity constituting an obstacle to the performance of his/her duties
- ▶ Have been convicted of certain crimes
- ▶ Have been declared bankrupt

The Amendment is currently within the legislative process and has not yet been officially adopted.

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# Denmark



## Foreign direct investments

Last year, an Investment Screening Act entered into force in Denmark, stipulating that certain transactions (including the establishment of new companies), completed on or after 1 September 2021 may not legally be carried out in Denmark without a permit from the Danish Business Authorities prior to the completion of the transaction (i.e., prior to closing/prior to the establishment).

If the transaction is covered by the Investment Screening Act, it is the buyer's duty to ensure that a permit is applied for.

Whether the transaction is covered by the Investment Screening Act depends on three factors: (1) the sector(s)/activities that Target (NewCo) operates within, (2) the investment and (3) the investor.

The Investment Screening Act covers transactions where direct or indirect possession or control of at least 10% of the shareholding, voting rights or equivalent control by other means is transferred to a foreign investor.

As a rule of thumb, transactions regarding companies that operate within the sector(s)/activities set out below will be covered by the Investment Screening Act (note that this list is not exhaustive):

- ▶ The defense sector
- ▶ IT security functions or the processing of classified information
- ▶ Dual-use items
- ▶ Critical technology (e.g., drones, robots and the like)
- ▶ Critical infrastructure (e.g., the energy sector, the medical sector and the like)

As a consequence of the new Investment Screening Act, it is now important to investigate whether there is an obligation to obtain a permit from the Danish Business Authorities prior to completing a transaction where 10% or more of the shareholdings, voting rights or equivalent control by other means in a Danish company, either directly or indirectly, is transferred.

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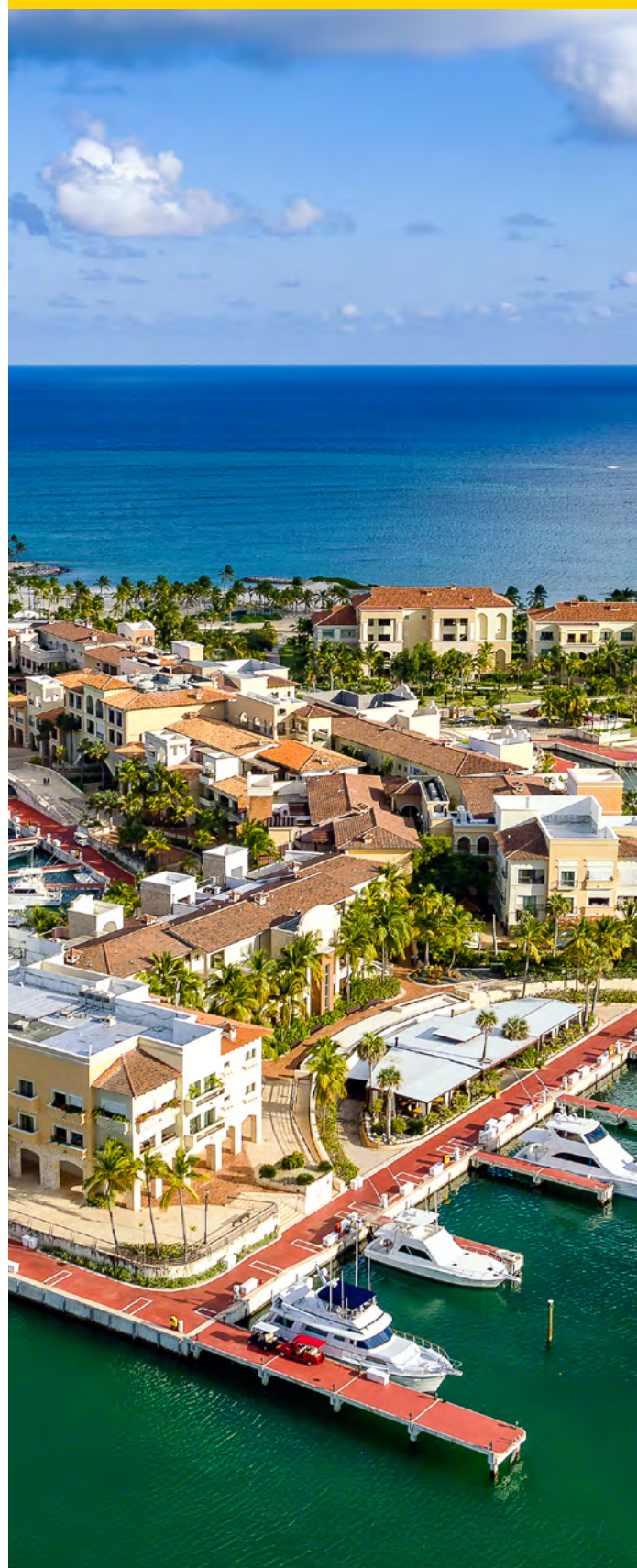
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# Dominican Republic



## Invest in the Dominican Republic

Over the last years, the Dominican Republic has implemented, for the benefit of the few local and foreign investors, an extensive system of incentives established in Dominican legislation.

Sectors with incentives through special laws include Free Zones, Border Development Zones, qualified industries with special regimes with incentives, solid waste treatment, cinema, tourism, renewable energy, and textiles.

Some of the legislations and special laws that support foreign investments are:

- ▶ **Foreign investment law and its implementing regulation:** incentives such as liberalization of dividends and repatriation of capital.
- ▶ **Incentives for the promotion of solid waste projects:** incentives such as five years from the date of its enactment, exemption of 100% of the income tax and exemption of 100% of the tax on assets.
- ▶ **Incentives for the development of renewable sources of energy:** incentives such as 100% exemption on imports and Impuesto sobre Transferencia de Bienes Industrializados y Servicios (ITBIS) and all taxes on final sales on imported equipment and machinery and transformation, transmission, and interconnection equipment.
- ▶ **Incentives for the promotion of Free Zones:** incentives such as special customs control regime, exemptions of up to 100% in the payment of construction tax, loan contracts, registration and transfer of the real estate to establish the Free Zone operator.
- ▶ **Incentives for the film industry:** incentives such as deduction of 100% of the real value invested against the income tax (limited to 25% of the tax payable).
- ▶ **Tourism incentives for development:** incentives such as companies established in these localities are not liable to income tax.

Also, Law 45-20 establishes legal regulations that promote the use of secured transactions, especially as a tool for access to credit for small and medium-size companies. This law establishes an electronic registration and advertising system and regime that give rise to transparency and security for foreign investors who wish to make use of these guarantees.

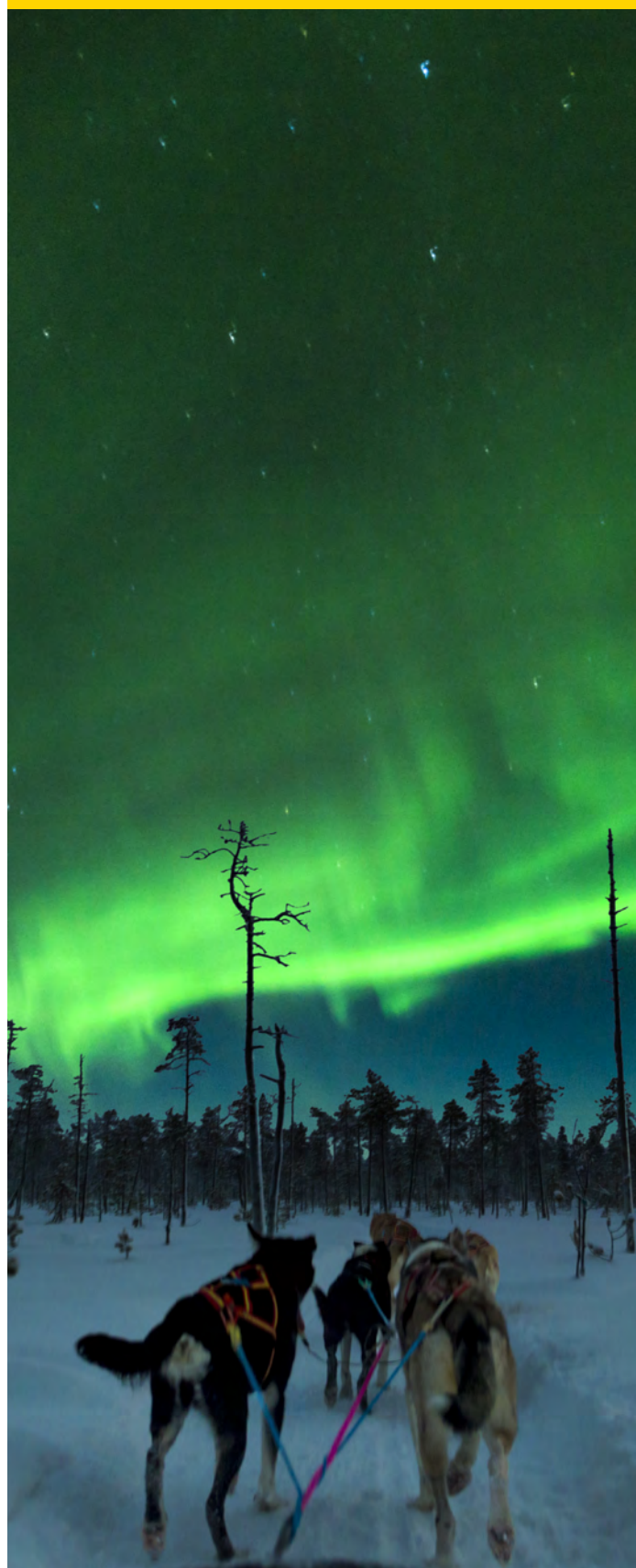
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# Finland



## Migration of a company to be enabled in Finland

The Finnish government has proposed amendments to the Finnish Limited Liability Companies Act, as well as various legislation related to the insurance and financial sectors, to implement the EU Directive on cross-border conversions, mergers and divisions. The Directive will become applicable on 31 January 2023, and the proposed amendments in Finnish legislation are planned to enter into force on the same day.

The aim of the Directive is to ease companies' choice of registered office within the EU, change of company form to that of another European Economic Area (EEA) state, and transfer of domicile within the EEA. Some of the changes are technical in nature and some are more fundamental (e.g., a new chapter will be added to the Limited Liability Companies Act that would permit a non-Finnish company registered in an EEA state to change its legal form to a Finnish limited liability company and registering its domicile to Finland or a Finnish company to change its legal form and registering in another EEA state).

The proposal assigns the Finnish Patent and Registration Office the responsibility of overseeing preliminary supervision prior to implementing the cross-border arrangement or transaction, including arranging and completing all procedures and formalities in Finland as well as ensuring that the arrangement is not carried out for the purpose of abuse or fraud, avoiding EU or national law, or otherwise for criminal purposes. If all conditions of the arrangement are fulfilled and the regulated procedures followed, the Finnish Patent and Registration Office will issue a certificate and submit it to the competent authority of the other state.

In essence, the amendments will ease the migration of companies to and from Finland. It is expected that the most significant impact of the proposal will be on cross-border mergers and acquisitions in which a company is merging, dividing or transferring its domicile abroad.

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# France



## Foreign direct investment regulation in France: Publication of the first guidelines

On 8 September 2022, the French Directorate General of the Treasury (Direction Générale du Trésor) published the first guidelines regarding the Foreign Direct Investment (FDI) regulation in France. These guidelines clarify some matters that were subject to interpretation.

FDI carried out in France remains free. However, prior authorization from the minister in charge of the economy is needed if the following three cumulative criteria are met:

1. An investment is made by a “foreign” individual or entity (even if an EU/EEA national), including a French entity controlled by one or more foreign individuals or entities.

The guidelines confirm that a “foreign entity” can be companies and also non-profit organizations, investment vehicles, public entities, etc. established under foreign law.

2. The law applies only to “investments,” which are defined as follows:

- ▶ The acquisition of “control” of a French entity
- ▶ The acquisition, in whole or in part, of a French branch of a business
- ▶ The crossing of the threshold of 25% of ownership - directly or indirectly, alone or in “concert” - of the voting rights in a French entity (applicable only to non-EU or non-EEA investors). As a temporary measure, this threshold is lowered to 10% for listed companies until 31 December 2022.

The guidelines specify that the setting-up of a French entity by a foreign entity (also known as greenfield investment) is not subject to French FDI regulatory control.

3. The target must be active in a “sensitive sector.” Consequently, the guidelines specify that the activities may be subject to a sensitivity test. This test takes into account several factors such as:

- ▶ The clients of the target entity
- ▶ The nature, specification and applications of products/ services/know-how offered
- ▶ The risky nature of the activities, etc.

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# Georgia



## Legal framework governing virtual assets

In September 2022, the government of Georgia introduced a legislative package on virtual assets (crypto assets) that will enter into force on 1 January 2023.

- ▶ A virtual asset is defined as a digital representation that can be replaced, digitally traded or transferred and is used for investment and/or payment purposes.
- ▶ The legislative package aims to regulate and supervise legal persons providing virtual asset services to prevent the increased risks of money laundering and terrorism financing.
- ▶ Virtual asset service includes the exchange of convertible virtual assets into national or foreign currency, another virtual asset, or a financial instrument. The virtual asset service provider is a person who carries out the above-mentioned activities for another person's benefit.
- ▶ The National Bank of Georgia (the NBG) will be authorized to supervise, inter alia, the registration as a virtual asset service provider, deregistration and determination of administrators' eligibility criteria.
- ▶ The legislative package extends the scope of the activities of commercial banks, microfinance organizations and brokerage companies, allowing them to provide virtual asset services for the benefit of another person.
- ▶ Transactions with virtual assets for personal benefit and "mining" are excluded from the virtual asset services.
- ▶ Making payments with virtual assets is prohibited. The NBG has the authority, however, to make certain exceptions.
- ▶ Virtual assets that cannot be transferred or exchanged and are not used for payment and/or investment purposes are not subject to regulation.

In summary, the legislative package creates a framework recognizing virtual assets and is a step forward in keeping up with the modern transactional methods of the digital era.

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# Germany



## Eleventh amendment to the Act against Restraints of Competition

On 15 September 2022, over a year and a half after the 10th amendment to the Act against Restraints of Competition (GWB-Novelle) came into force, the Federal Ministry of Economics and Climate Protection published the draft of the 11th GWB novella.

While the previous amendment, in addition to adjustments in the areas of merger control and antitrust law, essentially focused on expanding the powers of the antitrust authorities in dealing with the digital economy, the 11th GWB has a very different focus.

First, it aims to revise the instrument of sector inquiry. The timeline for sector inquiries will be tightened so that it will be possible to take measures immediately following such an inquiry. To this end, the Federal Cartel Office will have the power to order behavioral and structural remedial measures following a sector inquiry if a significant disruption of competition has been identified. Irrespective of any anticompetitive behavior, the draft law includes the option of splitting up the respective companies as a last resort. The “new” sector inquiry, as its results are a direct prerequisite for any powers of intervention by the agency, would be of much greater importance for the companies in the economic sector examined than it is today.

The 11th amendment to the GWB is also intended to make the skimming-off of benefits more effective. This instrument had already been included in the GWB in 1999 but had hardly played a role in practice due to several legal hurdles. The requirements will now be lowered to prevent economic advantages gained through antitrust violations for the companies that committed the violations.

Ultimately, the GWB amendment is intended to support the effective enforcement of Regulation (EU) No. 2022/(Digital Markets Act or DMA). The Federal Cartel Office will be authorized to carry out investigations with a view to violations of Articles 5, 6 and 7 DMA. In addition, the provisions to facilitate private enforcement in cartel matters are to be declared applicable with respect to Articles 5, 6 and 7 DMA.

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# Greece



## Greek General Commercial Registry (GEMI) Law 4919/2022

The operating regime of the One-Stop Shop Office (YMS) for the incorporation of companies and the General Commercial Registry (GEMI) was amended by Law 4919/2022 (Government Gazette 71/A/07.04.2022, hereinafter the Law), which also incorporated Directive (EU) 2019/1151 of the European Parliament and the Council into Greek Law. According to its provisions, the time and cost associated with the establishment of companies is reduced through the use of digital tools for all relevant procedures and the interconnection of the information systems of GEMI, YMS and other state registers, as well as the business registers of other EU member states.

The Law is part of the general modernization framework of Greek corporate law that has been developing over the last few years, with the goal of improving the business environment as well as reducing the time and cost in the commencement of financial activities, particularly by the extensive use of digital tools and procedures.

At the same time, a simplified framework is established for the registration and publication on GEMI of companies' documents and details requiring commercial publicity, as well as the creation of a Register of Non-Commercial Economic Activity (MMEOD) to enable the registration of the country's economic activity in electronic registers.

As a whole, the provisions of the Law are evaluated positively as it is expected that the new rules will facilitate the establishment of new businesses of any legal form in Greece, including branches of foreign entities as well as the day-to-day transactions of the legal entities already registered in GEMI.

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# Hong Kong



## Revised Hong Kong listing regime for foreign issuers

The Hong Kong Stock Exchange enacted on 1 January 2022 a revised regime for issuers incorporated in any foreign jurisdictions. Previously, listing applicants had to be incorporated in recognized jurisdictions (Hong Kong, Mainland China, Cayman Islands and Bermuda) or in jurisdictions accepted by the Stock Exchange. The new regime removes the distinction between recognized and acceptable jurisdictions. All issuers now have to meet the core standards of shareholder protection, which cover different aspects including directors, proceedings at shareholders' general meetings, variation of rights, amendment of constitutional documents, auditor appointment, removal and remuneration, proxies and corporate representatives, inspection of branch register, and voluntary winding up.

Such protections should be set out in the issuer's constitutional documents unless the relevant domestic laws and regulations provide the same protections. Existing listed issuers must fully comply with the new core standards or make necessary amendments to their constitutional documents by their second annual general meeting following 1 January 2022.

The new regime introduces a revised Chapter 19C in the Main Board Listing Rules to consolidate secondary listing requirements for overseas issuers primary listed on a qualifying exchange (i.e., New York Stock Exchange, Nasdaq or Main Market of the London Stock Exchange).

The new Chapter 19C also sets out the eligibility for dual primary listing by a Grandfathered Greater China Issuer (i.e., an overseas issuer with its center of gravity in Greater China primary listed (a) on a qualifying exchange on or before 15 December 2017 or (b) on a qualifying exchange after 15 December 2017 but on or before 30 October 2020, and controlled by corporate beneficiaries as of 30 October 2020 under a weighted voting rights structure) and a Non-Greater China Issuer with a weighted voting rights or variable interest entity structure that does not meet the usual primary listing requirements.

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# India



## New Overseas Direct Investment Regime in India

The Indian Overseas Direct Investment Regime has been amended with effect from 22 August 2022 (New Regime). The New Regime prescribes the manner in which overseas investments may be made by persons resident in India.

It has introduced various new definitions like foreign entity or Overseas Portfolio Investment (OPI) Control. This regime has segregated Overseas Direct Investment (ODI) from OPI, which was not present in the preceding regime. The New Regime clarifies that any investment or financial commitment outside India made in compliance with the preceding regime shall be deemed to be compliant with the New Regime.

It has introduced additional legal compliances in respect of ODI in startups outside India. It provides that a person resident in India is now permitted to invest in a foreign entity that has invested or invests into India directly or indirectly, without obtaining approval from the Reserve Bank of India (RBI), provided that such investment does not result in the Indian entity having more than two layers of subsidiaries.

The New Regime puts a blanket restriction on ODI in foreign entity engaged in (a) real estate activity; (b) gambling in any form; and (c) dealing with financial products linked to the Indian rupee without specific approval of the RBI. The New Regime also has extended the pricing guidelines to ODI transactions. This has only allowed a registered trust/society engaged in the educational sector or that has set up hospitals in India to undertake ODI in a foreign entity engaged in the same sector as the registered trust/society (earlier a registered trust/society engaged in manufacturing was also allowed to undertake ODI).

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# Ireland



The EY European Attractiveness Survey published in May 2022 shows that Ireland holds its position as a top 10 foreign direct investment destination in Europe. Many global multinational companies have established their European headquarters based in Dublin. In proposing the Screening Bill, the Irish Government is attempting to balance its responsibility to protect Ireland against the potential strategic and other risks posed by certain third country investments against the desire to maintain Ireland's attractiveness to foreign investors.

Under the Screening Bill, transactions shall be notifiable to the Minister based on certain criteria, including the following:

- ▶ A party to the transaction is a third country (i.e. non-EU/EEA) undertaking, or a connected person to such an undertaking.
- ▶ The value of the transaction exceeds €2,000,000 or such other value as the Minister may prescribe.
- ▶ The transaction directly or indirectly relates to certain key strategic areas, including critical infrastructure and the supply of critical inputs such as food security.
- ▶ The transaction relates, directly or indirectly, to an asset or undertaking in Ireland, and
- ▶ The percentage of share or voting rights changes (i) from 25% or less to more than 25%, or (ii) from 50% or less to more than 50%.

If a transaction is notifiable it will impact on the deal timeline and could also result in conditions being imposed by the Minister.

As well as mandatorily notifiable transactions, a range of transactions can also be screened, or “called in”, at the discretion of the Minister. Non-notifiable transactions can be called in up to 15 months after they are completed. The Screening Bill also allows for transactions completed up to 15 months before the Bill (if enacted) comes into force to be called in. This will bring the timing of enactment into particular focus, and create a level of uncertainty, for parties who have already completed transactions that potentially fall within the regime.

It is anticipated that the Bill will be brought into Irish law in early 2023.

## Ireland's first FDI regime

Ireland's first foreign investment screening regime is being introduced in the form of the Screening of Third Country Transactions Bill 2022 (the “Screening Bill”). The Screening Bill will be implemented alongside the EU Screening Regulation, which had been initiated in response to concerns about the acquisition by third country entities of certain strategic EU assets.

Once introduced, the Screening Bill will empower Ireland's Minister for Enterprise, Trade and Employment (the Minister) to protect Ireland's security and public order from threats posed by certain types of foreign investment, and to prevent or mitigate such threats. The Minister will be able to assess, investigate, authorize, condition or prohibit investments from outside of the EU in certain critical Irish industries and sectors based on a range of security and public order criteria.

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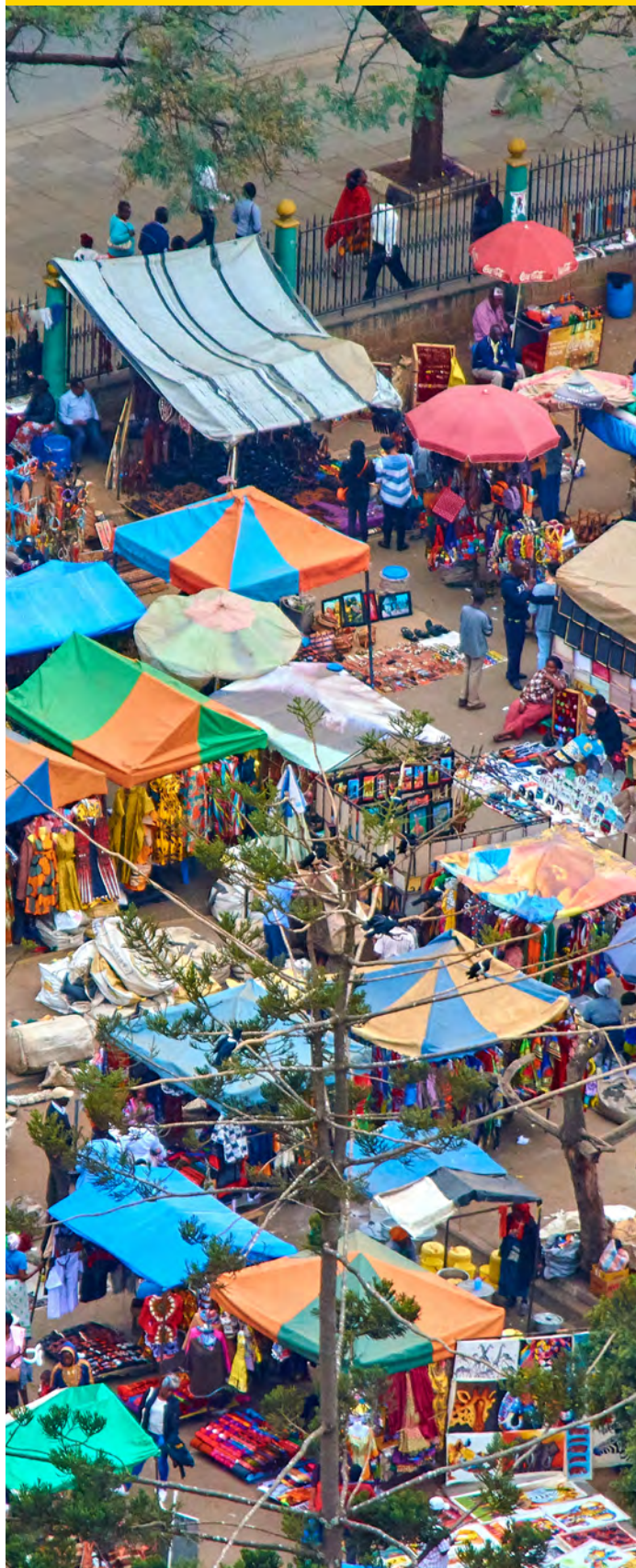
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# Kenya



## New law introduced on registration of digital credit providers in Kenya

In a bid to enhance transparency in the digital credit business, Kenya passed the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022, which provides for licensing and oversight of digital credit providers (DCPs) by the Central Bank of Kenya.

Prior to the enactment of the Regulations, digital credit providers were unregulated and there was public outcry on the debt collection strategies employed by digital credit providers and violations of data protection principles. The Regulations now prescribe how DCPs should be operated.

For instance, the Regulations extend the application of the in duplum rule to digital credit providers. This means that digital credit providers can only recover the principal owed when the loan becomes non-performing, interest not exceeding the principal owed when the loan becomes non-performing and reasonable expenses incurred in recovering the outstanding amounts.

In addition, digital credit providers are required to comply with data protection principles, confidentiality rules and good corporate governance practices. Further, digital credit providers are now required to notify their clients of the terms and conditions before advancing a loan to them. Borrowers must be notified of any changes to the terms at least 30 days before their effective date. Moreover, digital credit providers are prohibited from introducing a new digital credit product to the market or change the features of an existing product without the Central Bank of Kenya's prior written approval.

All significant shareholders, directors, chief executive officers or senior officers of digital credit providers must be approved by the Central Bank of Kenya. Any proposed investments into digital credit businesses must be reported to the Central Bank of Kenya.

Non-compliance with the Regulations may result in the digital credit provider facing penalties and other administrative sanctions as provided in the Regulations, including revocation of the digital credit provider's licence.

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# Latvia



## Amendments to the Commercial Law

On 16 June 2022, several amendments to the Commercial Law of the Republic of Latvia were adopted that will enter into force in July 2023. The most vital ones are outlined in this article.

From 1 July 2023, shareholders of capital companies are obliged to disclose their true beneficiaries. Amendments also provide for sanctions for non-compliance with the obligation of disclosure. Therefore, companies are advised to develop a methodology for how and how regularly they will verify that there have been no changes in true beneficiaries. If a company registered in Latvia is located at the bottom of a holding pyramid structure, then a duly legalized document confirming the existence of the company and the composition of its members will be submitted for each company within the holding.

The amendments also provide for significant changes in the procedure for the establishment of companies and payment of the share capital. According to the current regulatory framework, when submitting an application to the Enterprise Register (ER) for the formation of a company, the capital must be fully signed but not fully paid; hence, the amendments provide for the presence of fully paid capital.

Joint-stock companies will be allowed to issue only one type of shares, either registered or dematerialized. By 2024, companies will have to apply to the Commercial Register Office for amendments to the Articles of Association, which provide that all shares of the company are either registered or dematerialized shares.

Also, joint-stock companies must maintain a register of shareholders and record the details of the shares and the holders. In particular, if a joint-stock company has not submitted the current register of shareholders of the company to the ER by 2024, the ER will terminate the activities of the company.

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# Lithuania



## Amendments on the Law on Companies

The amendments on the Law on Companies, approved on 17 November 2022, include the following changes:

- ▶ **Mandatory redemption or sale of the shares of the company.** A shareholder acting independently or together with other shareholders and holding at least 95% of the shares of the company (majority shareholder), will have the right to demand that all other shareholders of that company sell their shares (redemption right) and vice versa - the minority shareholder will have the right to demand that the majority shareholder redeem shares held by the minority shareholder (same provisions are applied when redeeming convertible bonds, which can be converted to shares that grant voting rights). Previously, such rights were recognized only for public limited liability companies whose shares are traded on a regulated market.
- ▶ **Minimum amount of the share capital.** Currently, when establishing a private limited liability company, it is mandatory to form a share capital of at least EUR2,500. Once the amendments to the Law on Companies come into force, the minimum required share capital will be EUR1,000.
- ▶ **Procedure for payment of shares.** The amendments to the procedure for payment of shares provide for the possibility of different issue prices during one issue of shares. This is a solution to a situation when investors are attracted during one investment round and invest at different share issue prices.
- ▶ **Liberalization of share classes.** Before the amendments of the Law on Companies were adopted, preference shares could only be with a cumulative or non-cumulative dividend, with voting rights or without, and could constitute one-third of the total number of shares of the company. Now, the Articles of Association may provide for other types of preference shares (i.e., not only those indicated in the Law on Companies). Moreover, only the amount of preference shares without voting rights is limited - they cannot constitute more than half of the total number of shares of the company.
- ▶ **Possibility to exclude the right of first refusal.** Once the amendments to the Law on Companies come into force, the Articles of Association will provide that the right of first refusal does not apply in the case of a sale of shares in a private limited liability company.

The aforementioned amendments will come into force as of 1 May 2023.

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# Luxembourg



## Creation of a new procedure of administrative dissolution without liquidation

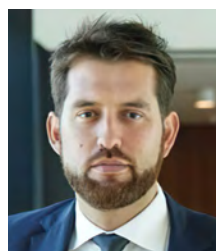
On 18 October 2022, the Luxembourg Parliament adopted a law creating a procedure for administrative dissolution without liquidation, to eliminate empty shell companies in a timely and cost-efficient manner. This new procedure is an alternative to the already existing judicial liquidation, which represented a significant administrative burden on the courts. The law will enter into force on the first day of the third month following its publication in the Official Journal, the publication is expected by 1 February 2023.

Three cumulative conditions must be fulfilled for a company to fall within the scope of this new procedure:

1. The company must be a commercial company whose activities breach criminal law or seriously contravene the provisions of the law of 10 August 1915, on commercial companies, as amended and restated, the commercial Code or the law of 2 September 2011 on the access to the professions of craftsman, trader, industrialist and certain liberal professions.
2. The company has no employees.
3. The company has no assets.

This new procedure of administrative dissolution without liquidation will not apply to entities subject to prudential supervision such as credit institutions and investment firms, insurance and reinsurance undertakings, specialized investment funds, reserved alternative investment funds, and payment institutions and electronic money institutions.

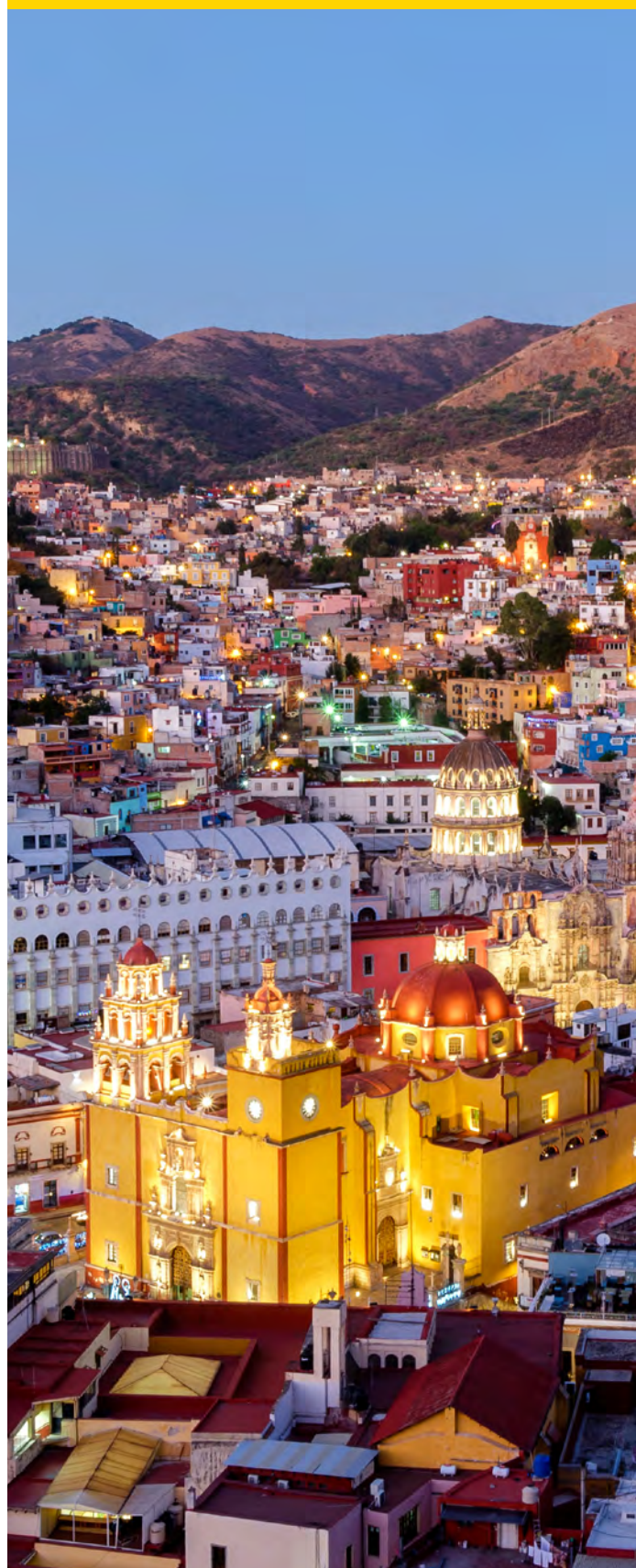
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# Mexico



## New obligation for legal entities and trusts to maintain records of controlling beneficiaries

As a result of the reforms to the Federal Fiscal Code and the Rules of the Miscellaneous Tax Resolution for 2022, as of January 2022, (i) legal entities, (ii) trustees, settlors or beneficiaries, and (iii) any other contracting or integrating parties of any other vehicle, must collect, preserve, verify and update, as part of their accounting records, the information corresponding to their controlling beneficiaries, and to keep this information available for tax authorities.

A controlling beneficiary is any natural person(s) who, directly or indirectly, (i) obtains a benefit derived from their participation in a legal entity, trust or other legal form, or (ii) ultimately exercises the rights for the use, possession, exploitation or disposition of an asset or service or on whose behalf a transaction is carried out, including in a contingent manner; or (iii) directly, indirectly or contingently, exercises control of the legal entity, trust or any other legal figure.

To comply with the aforementioned legal provisions, legal entities, trustees, settlors or beneficiaries contracting or integrating parties of other vehicles, notaries and other persons involved in the execution of legal acts that give rise to the incorporation of legal entities or execution of trusts or other legal forms must implement and document internal control procedures to obtain and maintain, among others, the information that allows them to:

- ▶ Identify, verify and properly validate the controlling beneficiaries of legal entities, trusts or any other legal figure.
- ▶ Obtain, preserve and keep available complete, accurate and updated information about the identity data of the controlling beneficiaries, including data related to percentage of participation and the relationship or chain of ownership or control of such participation.
- ▶ Provide the tax authorities timely access to the information, records, data and documents related to the controlling beneficiaries.

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# Netherlands



## Temporary Act Transparency Turbo Liquidation in the Netherlands

On 12 July 2022, the bill for the Temporary Act Transparency Turbo Liquidation (the Act) was submitted to the Dutch House of Representatives. This Act relates to the amendment of the current articles of the Dutch Civil Code that regulate the dissolution of legal entities under Dutch law.

Under the current Dutch Civil Code, a legal entity that does not own any assets at the time of its dissolution can be dissolved without a liquidation procedure through a turbo liquidation. The legal entity will cease to exist upon the resolution of the shareholder(s) to dissolve the legal entity. The underlying idea is that the legal entity is terminated quickly and easily as it does not own any assets to be liquidated. The turbo liquidation route, in general, may even be applied if the legal entity does not own any assets but is in debts. In recent years, there has been criticism on the turbo liquidation scheme as this method of dissolution could adversely affect the position of creditors. The turbo liquidation does not give creditors the opportunity to object to a dissolution. The Content Act imposes an additional transparency obligation in relation to turbo liquidations. Pursuant to this transparency obligation, the former board of the legal entity dissolved by turbo liquidation must file the following with the Dutch Chamber of Commerce within 14 days of the date of its dissolution:

- ▶ A balance sheet and a statement of income and expenses relating to the financial year in which the legal entity was dissolved
- ▶ The annual accounts for the financial years preceding the financial year in which the legal entity was dissolved, insofar as these have not yet been published by the legal entity
- ▶ A description of the cause of the lack of assets at the time of dissolution, the manner in which the assets of the legal entity were realized and the proceeds distributed, and the reasons why a creditor was wholly or partially unpaid

After the former board makes the filing, it must notify any creditors in writing. Failure to comply with this accountability requirement constitutes an economic offense. With the proposed Act, creditors are better protected but do not gain a new ground of appeal. The creditor could take action against the dissolution of the legal entity:

- ▶ The creditor can request reversal of the dissolution through the court and liquidation of the legal entity if there were still debts in the legal entity after the decision to dissolve.
- ▶ The court can reverse the dissolution and declare bankruptcy.
- ▶ If warranted, the creditor can hold the former board of the dissolved legal entity personally liable.

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# New Zealand



## Changes to New Zealand commercial law

Two significant changes were made recently to New Zealand's commercial law:

- The unfair contract terms regime under the Fair Trading Act 1986 that previously applied only to consumer contracts now apply to business-to-business contracts.
- A new prohibition on "unconscionable conduct" was added to the Fair Trading Act 1986.

The unfair contract terms regime now apply to "small trade contracts" entered into after 15 August 2022. If a contract term is ruled unfair by a court, it is an offense to include the term in standard-form small trade contracts or to seek to enforce or rely on the term.

A contract is (broadly) a "small trade contract" if it is part of a trading relationship that had an annual value of less than NZD250,000 at the time the relationship arises.

The unconscionable conduct prohibition creates a new offense with a financial penalty for companies of up to NZD600,000.

The term "unconscionable conduct" is not defined, but it is expected to give a right of action against conduct that while not otherwise illegal falls outside the expected norms of commercial conduct. Case law under an equivalent Australian prohibition will provide guidance on how the prohibition may be applied in New Zealand.

These changes introduce a new element of uncertainty into business contracts.

It will no longer be enough for businesses to consider whether a term is effectively incorporated into their contract or whether they are acting within their rights. Businesses now also need to consider whether those terms are fair and whether their conduct might be unconscionable.

Both provisions require fact-specific analysis, and a reliance on case law means that businesses are likely to need guidance from experienced advisers to navigate these risks.

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# North Macedonia



## Convertible loan for all limited liability companies is introduced with amendments to the Macedonian company law

Before the amendments to the Company Law of 21 April 2022, convertible loans in North Macedonia were recognized only with respect to limited liability companies established by a sole shareholder. The amendments now allow all limited liability companies to use a convertible loan to finance their businesses in addition to banks and equity finance. Shareholders and investors in limited liability companies are also permitted to convert the loans into equity.

The loan conversion into equity will be performed through a procedure of share capital increase. The convertible loan granted by a shareholder or a third party (as an investor) may be converted into shares. The procedure of conversion must be completed within three years from the signing of the convertible loan agreement.

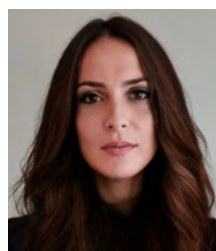
The law also provides that the following terms of the convertible loan agreement are mandatory to benefit from the above-mentioned regime:

- ▶ The total amount of the convertible loan
- ▶ The repayment terms
- ▶ The terms for converting the convertible loan into share capital
- ▶ The period during which the convertible loan can be converted into share capital
- ▶ The percentage of share capital issued via the conversion of the convertible loan or the method of calculating the same (if the percentage of the share capital issued cannot be foreseen on the day of entering into of the convertible loan agreement)

The convertible loan agreement must be notarized and signed by the borrower as well as by the lender, and approved by the shareholders of the lender.

Finally, the completion of the capital increase procedure is subject to registration with the Macedonian Commercial Registry.

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# Poland



## Holding law – changes affecting all companies, not only capital groups

On 13 October 2022, the broadest amendments to the Polish Commercial Companies Code (holding law) in recent years were implemented. They set out provisions regarding the capital groups as well as day-to-day operations of companies.

The holding law regulates the rules of operation of groups of companies, consisting of a parent company and its subsidiaries. Such provisions allow for the whole capital group to be governed by a common economic strategy, allowing for prioritizing the interests of the capital group over the interests of subsidiaries. The previous provisions did not allow for such actions, as this would risk personal liability of the members of the management board. Participation in the group of companies is disclosed in the commercial register of both the parent company (only if it is a Polish entity) and subsidiaries.

The establishment of a group of companies allows the parent company to issue binding instructions that its subsidiaries are required to follow. Acting in line with such instructions results in the lack of liability of members of the management board for damage caused by its execution. Additionally, new ownership control mechanisms were introduced – the parent company may, through members of the supervisory board or the management board, review the books and documents of its subsidiary.

Another important issue that concerns all companies is the implementation of the business judgment rule. It revises the rules regarding the liability of management board members when the decision was justified and supported by an analysis or opinion provided by an expert(s). Such members of the management board will not be liable to the company even if their business decision turns out to be wrong (permissible risk).

All capital groups that operate in Poland should consider the above regulations with regard to business activities.

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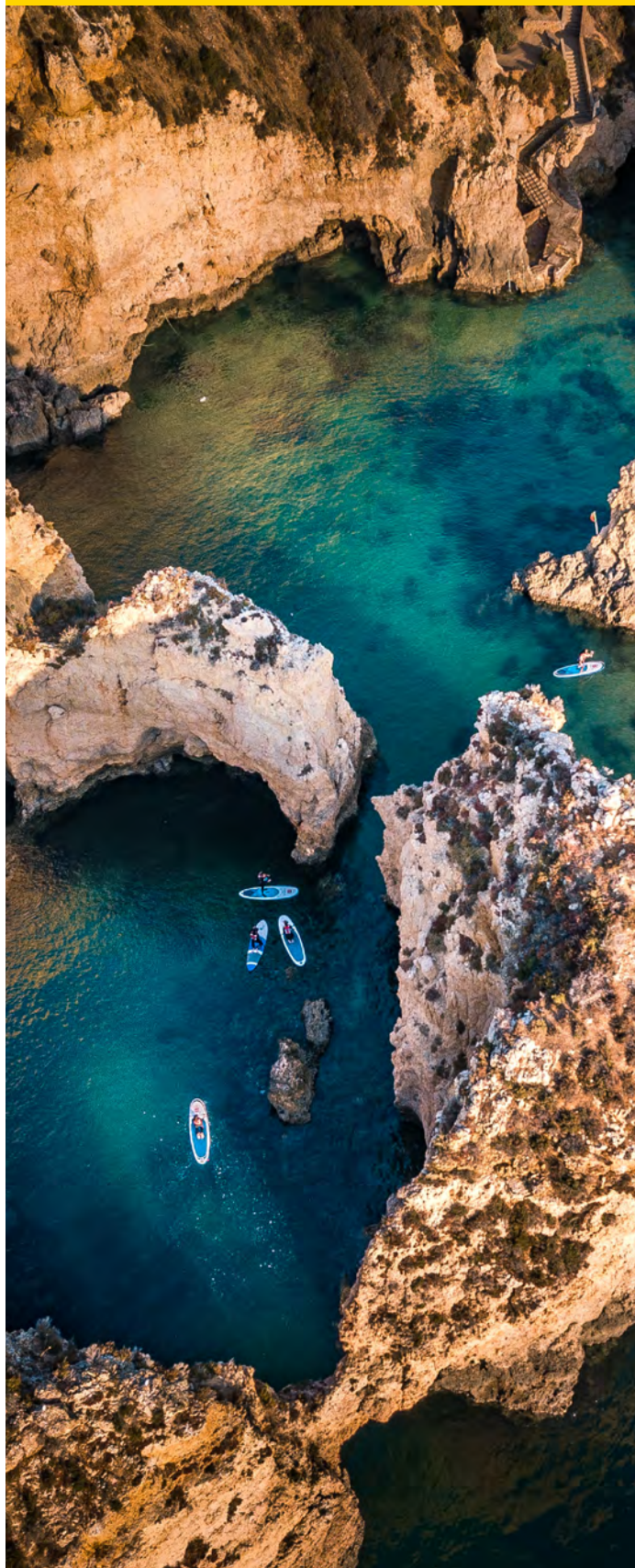
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# Portugal



## Portuguese regulator takes a position on SPACs

Following the success of Special Purpose Acquisition Companies (SPACs) between 2019 and 2021 in the United States and other European jurisdictions, in April 2022 the Portuguese Securities Market Commission (CMVM) issued a formal position (entendimento) on the admissibility of SPACs in Portugal.

SPACs are companies with no operational activity that are admitted to trading with the purpose of acquiring a business within a determined period of time. SPACs are seen as alternatives to the typical public offer, and admission to the trading process mitigates the high costs and complexity highlighted by companies as obstacles to becoming listed.

Considering the above and envisaging the dynamization of capital markets, the purpose of CMVM's position may be summarized as follows:

- ▶ Clarifying that the current Portuguese legal framework already enables the creation of SPACs in accordance with the key characteristics adopted in other jurisdictions.
- ▶ Setting out the conditions to be fulfilled by SPACs for the CMVM to waive the requirement that limits the admission to trading to companies with a minimum three-year operational and financial track record. The CMVM requires that the following elements are covered:
  - ▶ Mechanism for the protection of funds collected in the public offer of securities
  - ▶ Deadline for the business combination approval
  - ▶ Shareholders' right to approve the business combination
  - ▶ Information rights with respect to the business combination and additional financing
  - ▶ Shareholders' exit rights
  - ▶ Additional requirements applicable to SPACs targeting non-professional investors

In our opinion, this position will likely fail to have the intended impact (i.e., to endorse the creation of SPACs and foster Portuguese capital markets) due to, among other reasons, the public scrutiny and increased cases of unsuccessful SPACs in the US or the current global market conditions.

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# Spain



## Law for the creation and growth of companies

A new law, the Law for the Creation and Growth of Companies (18/2022 of 28 September 2022) (the Law), entered into force on 19 October 2022, with a few exceptions. The Law aims to facilitate the creation of companies, to reduce regulatory obstacles, to fight against defaulting, and to drive their growth and expansion, improving the access to finance.

The key features are as follows:

- ▶ The minimum share capital for limited liability companies is set at EUR1 (as opposed to the previous minimum of EUR3,000). As a counterpart to the reduction of the required minimum amount, the Law introduces specific rules to safeguard interest of creditors or third parties that enter into contracts with the company as long as the share capital does not reach EUR3,000: (i) at least an amount equal to 20% of the profits should be allocated to legal reserves until the amount of such reserves together with the subscribed share capital reaches EUR3,000; and (ii) in case of liquidation, provided that the wealth of the company is not enough, the shareholders will be jointly and severally liable for the difference between EUR3,000 and the subscribed share capital.
- ▶ Promotion of the possibility of incorporation of limited liability companies by electronically. Through CIRCE (an internet system to set up companies), entrepreneurs can carry out the procedure by electronically, reducing the time needed and notary and registry costs. Additionally, new templates of standardized notarial deeds of incorporation, bylaws and simplified templates of Powers of Attorney will be subject to regulation development.
- ▶ Recognition of companies of benefit and common interest provided that the company's bylaws state:
  - ▶ The company's commitment to promoting a positive impact at a social and environmental level through its activities
  - ▶ The company's acceptance of a higher transparency level and accountability in the performance of those social and environmental objectives, taking the stakeholders into consideration in the relevant decisions

The criterion and methodology of this type of company will be developed by the corresponding regulations.

- ▶ Possibility of recording of civil companies with the Commercial Registry.
- ▶ Strengthening of the duty of information for listed and unlisted companies that file unabridged annual accounts. These companies should include, in addition to the average payment period for suppliers, among others, the monetary volume and the number of invoices paid within a period of time below the maximum established in the defaulting regulations, as well as the percentage it represents of the total number of invoices and of the total monetary payments to their suppliers. In the case of listed companies, this information shall be published on their website. Companies that do not comply with the legal payment deadlines will not be eligible for public subsidies.
- ▶ Consideration as an unfair competition act the repeated unfulfillment of fighting against defaulting rules in commercial operations.
- ▶ General adoption of electronic invoices in commercial relationships between entrepreneurs and professionals to guarantee greater traceability and control of payments.
- ▶ Measures to improve access to finance:
  - ▶ The regime for crowdfunding platforms is adapted to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.
  - ▶ New amendments to the Spanish regulations on collective investment institutions and venture capital, including among others: (i) the recognition of debt funds; (ii) the inclusion of the possibility for venture capital institutions to invest in debt instruments; and (iii) the commercialization of venture capital fund's shares, allowed from now to retail investors provided that they access the investment through the advice of an entity authorized to provide these services and, additionally, when the retail investor's financial assets do not exceed EUR500,000, the initial investment is not lower than EUR10,000 euros (and this minimum is maintained) and does not represent more than 10% of its financial assets.

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# Sweden



## New Swedish regulation regarding cross-border conversions, mergers and divisions

On 27 November 2019, the EU adopted Directive (EU) 2019/2121 regarding cross-border conversions, mergers and divisions (the Directive). The Directive was adopted in the light of the fundamental principle of freedom of establishment that applies within European Union law.

The freedom of establishment encompasses a right of a company or firm formed in a member state to, pursuant to certain conditions, convert itself into a company or firm governed by the laws of another member state (i.e., the right to change domicile).

The Swedish government recently proposed changes in the Swedish Companies Act to implement the Directive. The government bill is expected to enter into force on 31 January 2023.

The most noteworthy observation is that the government has not proposed any transitional provisions for cross-border mergers. This will affect cross-border mergers that have been initiated under the existing legal framework but is not complete by 31 January 2023. The absence of transitional provisions entails ongoing mergers to be restarted after 31 January 2023. This is explicitly stated in the government bill and will lead to significant inconveniences for some clients and market players.

The new regulations also include an obligation for the Swedish Companies Registration Office to undertake an impropriety examination on cross-border conversions, mergers and divisions. The impropriety examination aims to counter criminal or improper objectives that lead to circumvention of Swedish law or Union law, such as the formation of “shell” or “front” companies for illegitimate purposes.

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# Switzerland



## Global overview of the new Swiss corporate law

The new Swiss corporate law will enter into force on 1 January 2023. The aim of this important reform is to modernize the Swiss corporate law, in particular for a limited company by shares (SA/AG/Ltd). The main changes are the following:

- ▶ **Shareholders' meetings and resolutions:** The new corporate law will allow (i) shareholders' meetings to be held simultaneously in several locations, (ii) virtual and hybrid shareholders' meetings if a relevant statutory basis is inserted in the articles of association and (iii) written shareholders' resolutions. A meeting may be held outside Switzerland if the articles of association allow it.
- ▶ **Share capital:** The share capital may be denominated not only in CHF, but also in EUR, USD, GBP or JPY if this is the corporation's functional currency. Moreover, companies limited by shares may also introduce a capital range under which the board of directors is authorized to increase and/or decrease the share capital during a five-year period within the limits of the fluctuation band.
- ▶ **Interim dividends:** The new company law explicitly allows the shareholders' meeting to decide the distribution of interim dividends based on (audited) interim financial statements.
- ▶ **New restructuring provisions:** The duty of the board of directors to monitor solvency and initiate restructuring measures in the event of imminent insolvency is expressly provided for in the new law. Furthermore, the conditions under which the notification of the bankruptcy court can be omitted in case of over-indebtedness of the company are now clearly defined (maximum duration of 90 days to implement remedy measures before the competent court must be notified).
- ▶ **Strengthening shareholders' rights:** Thresholds for several minority rights are lowered regarding the convening of a shareholders' meeting: the right to demand that an item be placed on the agenda or to consult certain company's documents and the institution of a special examination.

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# Taiwan



## Amendments to the Business Mergers and Acquisitions Act

The Business Mergers and Acquisitions Act of Taiwan (the Act) has been amended and will come into effect as from 15 December 2022 (the 2022 Amendment). The amended provisions relate to “whale-minnow” mergers and are noteworthy.

Currently, a resolution for a cash-out merger will be adopted by a majority vote at the general meeting attended by shareholders representing two-thirds or more of the total number of the issued shares of the surviving company unless “the total amount of shares, cash or other the total value of the assets delivered to the shareholders of the dissolved company will not exceed more than two percent of the net value of the surviving company.”

To facilitate the merger procedure in a “whale-minnow” merger, the amended provisions of the Act state that a resolution for a cash-out merger does not have to undergo a general shareholders meeting of the surviving company if “the total amount of shares, cash or other the total value of the assets delivered to the shareholders of the dissolved company will not exceed more than twenty percent of the net value of the surviving company.” This is, without a doubt, a considerable change.

The 2022 Amendment also enhances the protection of minority shareholders and implements several tax benefits for individual shareholders of the merged company or the new company that receives stock consideration as a result of the merger.

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# UAE



## The Gulf Cooperation Council – the Silicon Valley of the Middle East

There is a vibrant startup scene in the Gulf Cooperation Council (GCC), a group of six countries in the Persian Gulf: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE).

This is a result of several government-led initiatives, the emergence of incubators, a growing interest from local and global investors, and an expanding ecosystem catering to the specific needs of startups. As a result, an increasing number of ventures are now electing to set up their operations in the GCC, and there has been an emergence of local pools of capital solely or mainly dedicated to venture capital investments.

As with other jurisdictions, the significant risks associated with venture capital investing result in a balancing act between sophisticated venture capital investors requiring a degree of protection and oversight with the startups seeking to raise capital in an efficient manner without losing control or being overly diluted. Most of the financing instruments available to the local market were, unsurprisingly, developed in the US.

Considering the different legal frameworks in the Middle East, which, to some extent, are still not sufficiently developed to adequately cater to the complex mechanisms in venture capital financings, the choice of jurisdiction is crucial. To attract capital, it is vital for founders to set up the holding structure for their startup business in a jurisdiction that allows the issuance of preferred shares and where the enforcement of complex investment and shareholding arrangements will be recognized.

The UAE is home to free zones with common law-based frameworks including the Dubai International Financial Centre and Abu Dhabi Global Market, which are recommended for this purpose. The GCC has successfully adapted typical US funding instruments for use in the local market from the pre-seed stage (including Simple Agreements for Future Equity, also known as SAFEs, or other similar contractual entitlements to future equity upon completion of a funded round of financing), to convertible loan notes (together with equity kickers in the form of cashless warrants), and Series C and beyond preferred stock rounds.

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# Uruguay



## Bill proposing substantial amendments to the Uruguayan Commercial Companies Law is under study

A bill was entered in June 2022 aiming to introduce important amendments to the Commercial Companies Law, No. 16,060, in force since 1989.

Its main purpose is the modernization of corporate vehicles and governance, making them more effective and adapted to the current needs of national and foreign companies alike by simplifying their functionality, introducing information and communication technologies, and reducing costs, time and management of corporate conflicts through alternative means like arbitration.

Among these changes, the possibility of incorporating entities by a single person, whether natural or legal, would become available.

The bill would also provide more flexibility in determining the rules applicable to the internal operations of the company, with more independence and freedom, overcoming the imperative nature of the current law.

The Limited Liability Companies (Sociedades de Responsabilidad Limitada) may be the most affected commercial vehicle, since the changes follow the trends currently applicable to other corporate types such as the simplification of formalities for the transfer of quotas or the possibility of attending virtual meetings.

Furthermore, and in compliance with the global tendencies, entities that issue bearer shares may be finally excluded from the Uruguayan legal system.

The liability regime may also become simplified, with a unique - personal - regime provided for administrators and legal representatives.

Moreover, foreign companies registered in Uruguay to carry out activities regularly would be regarded as “permanent establishments” in line with fiscal provisions while subject to legal consequences for the non-observance of such requirements (e.g., liability of the administrators and legal representatives for omissions).

Finally, it is important to note that the bill is currently being actively discussed, and many of the proposed changes could be excluded or amended.

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