

# Corporate and Commercial Law – global update

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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 25 jurisdictions on current legal affairs around the globe, covering Western Europe, South 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 from the global EY network 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 countries where EY member firms offer Law services at the back of this publication.

Across the global network of EY member firms today, there are more than 3,500 qualified professionals providing services for the legal function within 85 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, Tax, Transactions and Advisory. 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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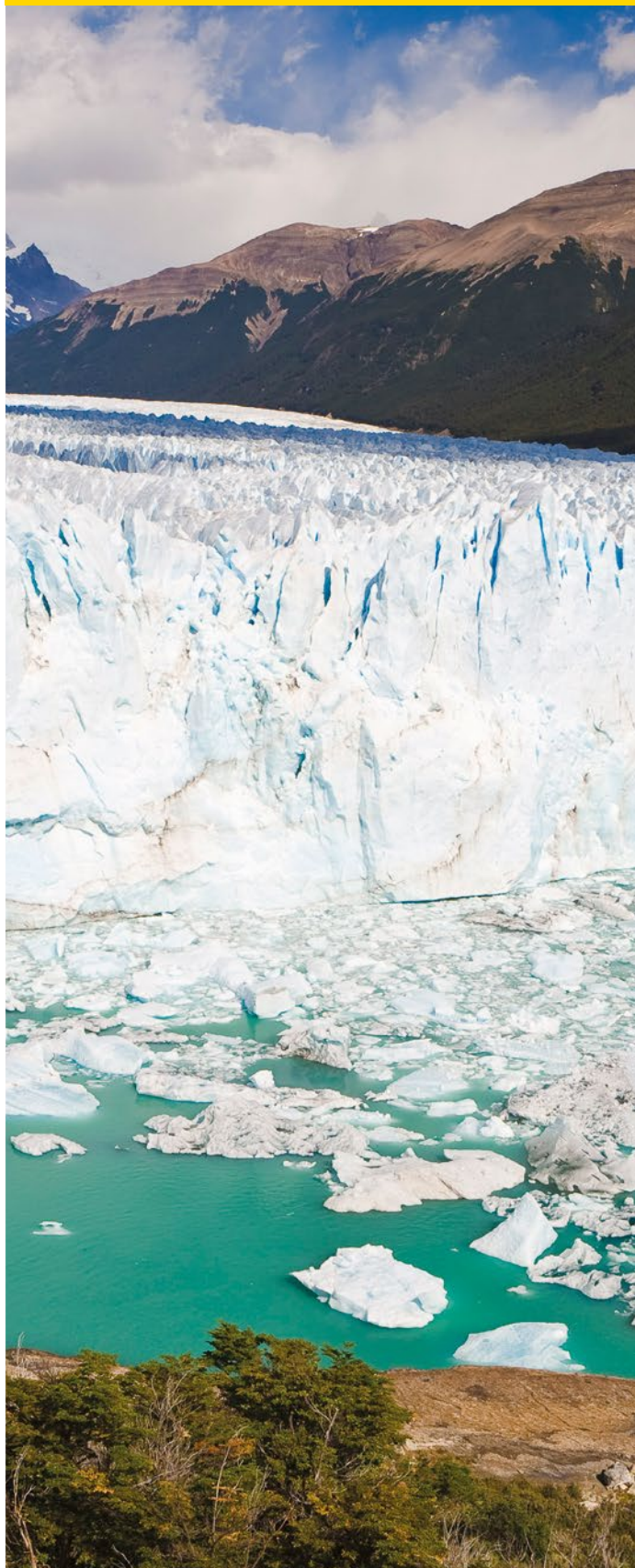
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# Argentina



## Crowdfunding becomes regulated

By the General Resolution No. 717-E/2017, Comisión Nacional de Valores (CNV) – the national administrative enforcement authority in charge of regulating financial markets and stock exchanges – approved Section 5 of Law 27,349, which refers to equity crowdfunding. Crowdfunding operations were not previously regulated in Argentina.

The resolution, which came into effect in January 2018, contemplates the steps and requisites to be fulfilled by companies that intend to operate a crowdfunding platform (as defined by Law 27,349). Crowdfunding platforms are the means by which the larger public can invest in projects within limits set by applicable laws (i.e., Law 27,349 and the resolution).

Entrepreneurs seeking financing through equity crowdfunding may adopt any of three schemes: (i) issuing shares in a limited-liability company or in a simplified-shares company; (ii) participating in a nonfinancial trust; or (iii) issuing convertible bonds.

Some of the main obligations imposed by the resolution for entrepreneurs are:

- ▶ Providing systematic information and complying with reporting duties to the CNV.
- ▶ Providing adequate and sufficient information to potential investors in connection with projects uploaded on the crowdfunding platforms. Such information refers both to the specifications of the business and to corporate information and precedents.
- ▶ Being transparent with investors regarding the potential risks of participating in the crowdfunding platform.
- ▶ Ensuring adequate communication channels with the investors.

Furthermore, to protect nonqualified investors, specific limitations have been established:

- ▶ They are not allowed to invest, within a given calendar year, an amount exceeding 20% of their annual gross income
- ▶ No investor may participate in more than 5% of a project or in an amount exceeding AR \$20,000 (approximately USD 500) in the same project – whichever is lower

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# Australia



## Increasing applications for Australia's foreign-investment regime

Australia's foreign-investment laws are complex. They require detailed consideration, and the penalties for breach are strict. A "foreign person" may need to seek approval from Australia's Foreign Investment Review Board (FIRB) to conduct a wide range of transactions, including reorganizations, acquisitions of shares, interests in trusts, profit-sharing arrangements and buying land.

In recent years, there has been an increased focus on compliance with Australia's investment laws. In December 2015, the Australian Government introduced changes to the Foreign Acquisitions and Takeovers Act 1975 and the Foreign Acquisitions and Takeovers Regulations 2015. The application of certain changes implemented in the 2015 rewrite, however, are still unclear and open to interpretation.

Since December 2015, the focus on foreign investment in Australia has continued to strengthen. The most recent changes to the law include:

- ▶ A new reporting requirement for media assets. Starting 1 September 2018, foreign persons who hold an interest of 2.5% in an Australian media company must notify the Australian Communications and Media Authority.
- ▶ An open and transparent sale process for agricultural land. In February 2018, the Australian Government introduced a requirement that foreign investors seeking the FIRB's approval to acquire an interest in Australian agricultural land would need to demonstrate there has been an "open and transparent" sale process. Surprisingly, in September 2018, the FIRB revised its guidance regarding an "open and transparent" sale to loosen certain requirements.

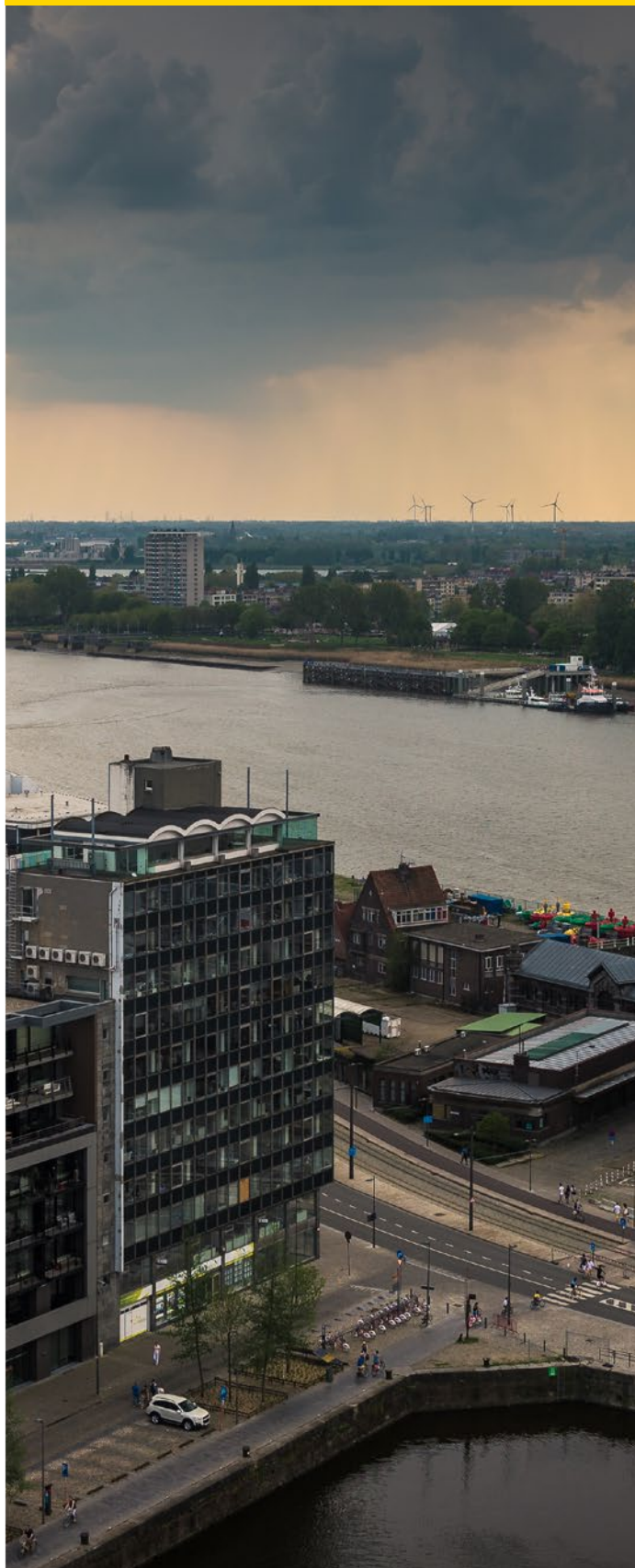
Australia's foreign-investment laws are only becoming more complex. In order for company directors or office holders to have full confidence that a proposed transaction is permissible under Australia's foreign-investment laws, companies should obtain legal sign-off early.

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# Belgium



## Belgium's deadline for the new UBO register has been extended

As consequence of the European Union's Fourth Anti-Money Laundering Directive, companies, nonprofit organizations, foundations and partnerships based in Belgium must register specific information on their ultimate beneficial owners (UBOs) in the Belgian UBO register. The register is a central database of the natural persons who have significant participation in various legal entities.

Although the obligation for Member States to put in place a national UBO register arises from European legislation, there are some differences in the Belgian approach. For example, the registration requirements in Belgium also apply to listed companies. Furthermore, all intermediary entities between the Belgian legal entity and the UBO must be identified and described in detail in the Belgian UBO register.

The initial deadline to complete the Belgian UBO register was 30 November 2018 and was extended to 31 March 2019. However, due to uncertainties regarding the UBO legislation and the fact that the online UBO application was not fully operational, this extension has proven to be insufficient. A new deadline has been set for 30 September 2019.

The obligations stemming from the UBO register legislation may require legal entities to perform in-depth research to identify their UBOs and gather the necessary information. While this identification process may prove to be a straightforward exercise for some legal entities, others may need professional assistance in this regard.

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In this issue, similar topics are covered in the sections dedicated to Serbia, Luxembourg, Mexico and Ivory Coast.

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# Brazil



## New data- protection legislation

The Brazilian General Personal Data Protection Law (Law 13709/2018, or LGPD) was published on 15 August 2018 and amended at the end of the year by Provisional Measure No. 869/2018. It is inspired by the European Union's General Data Protection Regulation, and it brings significant changes to the processing of personal data in Brazil.

### Key aspects of the LGPD

- ▶ **Applicability:** the LGPD is applicable to personal-data processing operations performed by natural or legal persons (public or private) in Brazil, or by those whose purpose is the provision or supply of goods or services or the processing of data from individuals located in Brazil.
- ▶ **Lawfulness of processing:** the grounds for legal processing include consent of the data subject, compliance with legal or regulatory obligations, performance of the contract, and legitimate interests from the data controller or third parties.
- ▶ **Consent requirements:** the data subject must freely give consent in advance for specific purposes. Consent must be informed and unequivocal, and it may be revoked at any time.
- ▶ **Rights of the data subject:** the data subject has the right to be informed about the processing (including the sharing of data with third parties); the possibility to give or withdraw consent; the right to rectify, oppose processing or erase the data; and the right to portability. Note: the processing of data based on legal requirements and public policies will no longer be subject to the transparency obligation.
- ▶ **Data-protection officer:** businesses are required to appoint an officer responsible for the processing of personal data. It may be a natural person or a legal entity.
- ▶ **Sensitive data:** there are specific requirements for the processing of sensitive data relating to racial/ethnic, religious, political, sexual and even biometric and genetic data, as well as data concerning children. However, the sharing of health data will be allowed, even only for economic advantage, provided that such communication is necessary for the provision of health services.
- ▶ **Decisions made based on automated data processing:** the law no longer requires such decisions to be reviewed by a natural person.
- ▶ **The sharing of personal data from public to private sectors:** such sharing is allowed, subject to conditions that include the existence of legal grounds; whether the data-protection officer is appointed; and according to the security and integrity of the data subject. In addition, the requirement to inform the National Data Protection Authority (ANPD) has been removed.
- ▶ **The National Data Protection Authority:** the ANPD is organized as a regulatory, supervisory, judicial and enforcement authority for the LGPD.
- ▶ **Notifications:** security incidents should be reported to the ANPD and, in some cases, to the data subjects.
- ▶ **Liability and noncompliance:** noncompliance with the LGPD may result in fines up to 2% of the company's (including the group or conglomerate) annual turnover in Brazil of the preceding financial year.
- ▶ **Entry into force:** the deadline to comply with the LGPD was already postponed from February 2020 to August 2020.

Despite being immediately in force, the provisional measure depends on approval from the National Congress. Thus, the final version of the LGPD may still be subject to amendments.

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# China



## Promotion of foreign investments

On 23 December 2018, a draft of the Foreign Investment Law of the People's Republic of China was deliberated at the seventh session of the Standing Committee of the 13th National People's Congress. The legislator hopes the 2018 draft will meet the requirements of China's economic development and basic national conditions and comply with the requirements of international common rules. Ideally, this will offer more stable, transparent and predictable laws for foreign investment. The draft describes:

### Promotion of foreign investment

Foreign investment will enjoy national treatment – i.e., equal application of all policies on the development of domestic enterprises and equal participation in standardization work and government-procurement activities. It is also possible that foreign investors may enjoy preferential policies.

### Protection of foreign investment

China aims to protect foreign investors' investments, earnings and other legitimate rights and interests in China, according to the law. First, the 2018 draft prohibits the expropriation of foreign investment unless it is for public benefits under special circumstances and after fair compensation has been paid. Second, foreign investors are entitled to free repatriation of capital contributions, profits, capital gains, royalties and other compensation in RMB or a foreign currency. Third, intellectual-property transfers and technology transfers of foreign-invested enterprises are protected. In addition, China will establish a complaint mechanism for foreign-invested enterprises through which they may appeal to the appropriate authority when they are adversely affected by governmental conduct.

### Management of foreign investment

Foreign investment is regulated by the management system of preestablishment national treatment, plus a negative list. The negative list provides easier access to China's markets for foreign investors. China will establish a foreign-investment information reporting system that requires foreign investors to submit certain information to government authorities and a national-security review system; the latter will require a separate government review of foreign investments whenever national-security concerns arise.

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In this issue, similar topics are covered in the sections dedicated to France and Russia.

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# Czech Republic



## A conflict between the right to protect a company's name and the right to trademark

In a recent decision, the Czech Supreme Court dealt with whether the right to a trademark can prevent a counterparty from exercising rights to a business name. In this case, a court had already ruled that use of the trademark was unfair competition and a violation of the right to the business name – although the trademark has not yet been stricken.

The Supreme Court ruled that an obligation to refrain from using a registered trademark may be imposed, among other ways, in the form of an interim order. The Supreme Court added that rights arising from a registered trademark and the right to a business name are of equal standing, assuming that exercising the right is in line with business practices, good morals and economic competition. Naturally, this does not apply to cases of anti-competitive conduct.

The Trade Marks Act has been recently amended to incorporate the Directive (EU) 2015/2436 of the European Parliament and of the Council into Czech law.

One of the most important changes is the abolition of the substantive public-law review of trademarks by the Industrial Property Office upon registration of a new trademark. The office will no longer be able to reject an entry because the registered designation contains elements of an older trademark that has already been applied for or registered by another owner. In these cases, owners of earlier registered trademarks will have to defend themselves by lodging objections against applications for similar trademarks within three months of their publication. Trademark owners will thus have to be more prudent when it comes to the registration of new designations, and they should consistently monitor new trademark applications.

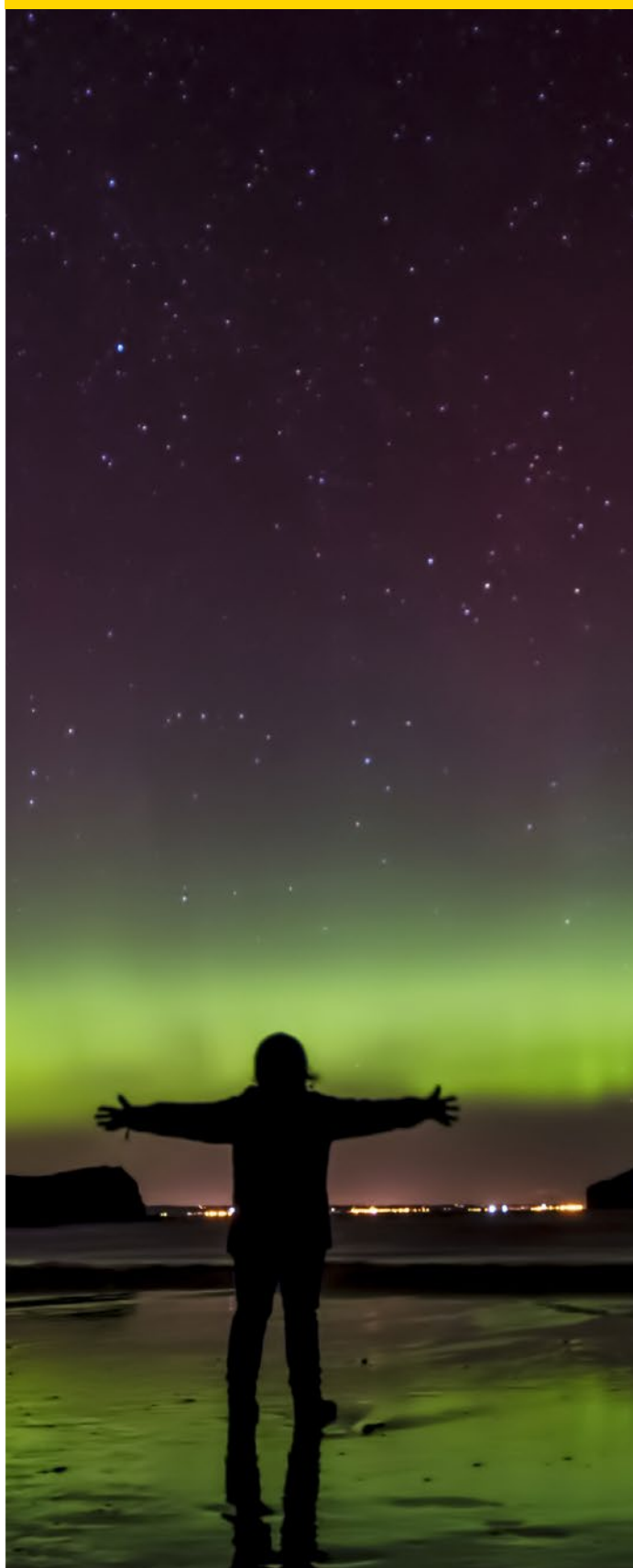
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# Denmark



## New rules on share-option schemes

On 1 January 2019, an amendment to the Danish Share Option Act entered into force. The amended act will apply to agreements concluded or amended after that date.

### Increased freedom of contract

The amended act abolished the distinction between good leavers and bad leavers in relation to non-exercised share options upon employment termination.

Prior to the amended act, good leavers (i.e., employees who are terminated without cause, retire or terminate their employment due to a fundamental breach by the employer) were entitled to keep non-exercised share options. Furthermore, good leavers retained the right to a proportionate share of any future share options, which the employee would have been entitled to if he or she had been employed at the end of the financial year or the grant date.

Pursuant to the amended act, no mandatory distinction between good leavers and bad leavers applies to share-option schemes. Consequently, it can be agreed that non-exercised share options lapse at the time of employment termination, regardless of the cause. Accordingly, the amended act creates a far greater degree of freedom for employers regarding the design of employee share-option schemes.

### Repurchase of shares at market price

Upon the employee's termination, the employer may not repurchase below market price the shares acquired by the employee by way of a share-option scheme under the amended act. However, according to the explanatory notes, this restriction only applies to shares that are negotiable on "the open market." For non-negotiable shares on "the open market," any repurchase must be in accordance with general contract-law principles.

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In this issue, similar topics are covered in the section dedicated to Sweden.

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# Estonia



## Alternative-banking arrangements for companies establishing themselves in Estonia

As of January 2019, founders and shareholders can make contributions to share capital and enter into the Estonian commercial register using a payment account from an institution anywhere in the European Economic Area (EEA).

Before this date, founders and shareholders who wanted to establish a company registered in Estonia or increase its share capital could only use an Estonian credit institution to make contributions. The amendment that entered into force in January now provides shareholders and founders with more freedom, making it easier to conduct their economic activities.

Nonresidents and e-residents (those who have registered for a transnational digital identity in Estonia) have found it difficult to open an account with Estonian commercial banks due to strict know-your-customer (KYC) principles and their wish to meet clients in person. This led to a situation where founders were able to establish a company online but were forced to travel to Estonia simply to open a bank account so they could make their required share-capital contributions. Opening an account for this sole purpose required substantial time and resources from founders and banks alike – but now this burden has been lifted.

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In this issue, similar topics are covered in the section dedicated to Finland.

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# Finland



## The minimum share capital for private companies has been abolished

The current Finnish Limited Liability Companies Act requires a minimum share capital of EUR 2,500 for private companies. A minimum share capital this high is exceptional in the European Union, as 19 Member States allow registration of a private company without any share capital or with a minimum share capital of one euro. The abolishment of share-capital requirements has been an international trend in recent years.

A Government proposal from November 2018 suggests abolishing the minimum share-capital requirement for all private companies. The new rule would also apply to existing companies, provided that rules of the Limited Liability Companies Act, regulating the share capital reduction, are observed. This would include, among other items, limitations to the right to pay dividends for a three-year period.

The proposed changes regard only limited-liability companies. Public companies will continue to be required to have a share capital of the minimum EUR 80,000.

The aim of the Government proposal is to simplify the incorporation process of a company and reduce burdens when establishing a private company. Consequently, it also proposes to renounce the requirement to provide payment evidence of a company's share capital.

To guarantee equal treatment for all entities, irrespective of the legal form, similar changes are proposed in the Finnish acts on housing companies and the act on cooperatives.

For foreign investors establishing subsidiaries in Finland, these changes would lead to a more straightforward establishment process, as there would be no need to set up a bank account for the Finnish subsidiary in the incorporation phase.

The proposed amendments will come into force 1 July 2019.

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In this issue, similar topics are covered in the section dedicated to Estonia.

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# France



## Reinforced control over foreign investments

France is keen to facilitate foreign investments. Capital transfers and payments made between France and other Member States are generally not subject to restrictions to keep the French economy largely open.

However, in France, direct investments made by foreign investors in sectors deemed sensitive for French national strategic interests are subject to the prior consent of the European Commission's Ministry of Economy (MOE). The list of sectors was expanded in 2018.

The trend of reforms in various European countries toward reinforced government control has seen the European Union itself introducing a new regulation on foreign direct investments. The regulation aims to enhance Member States' cooperation in screening investments by non-EU investors. This will not come into effect until 18 months after its publication in the official journal. France is bucking this trend with a long-debated bill on business growth and transformation, which is currently being discussed by Parliament.

This bill would extend the coercive and injunctive powers of the MOE to ensure compliance with the regulation. Currently, the coercive powers of the MOE (which generally adopts a rather pragmatic and business-oriented approach) are rarely used. It can require the investor to alter or abandon its investment, or to restore the pre-investment situation at its own expense. Only failure to request an authorization, however, can lead to civil fines or potential criminal sanctions, with the amount of the fine being in proportion to the gravity of the offense. Following the adoption of this bill in its current form, the powers of the MOE would be extended if, for example, an investor is in breach of the contractual commitments requested by the MOE at the time of approval for the new investment.

Activities that are subject to the prior-approval procedure include those likely to jeopardize public order, public safety or national defense interests, especially related to:

- ▶ Supply of electricity, gas, oil or other energy sources
- ▶ Operation of transport networks and services
- ▶ Protection of public health

Other subjects that require prior approval also include:

- ▶ Research in and production or marketing of weapons, ammunition or explosives
- ▶ Equipment supply for the ultimate benefit of the French Ministry of Defense
- ▶ Cryptology
- ▶ Aerospace and civil-protection sectors
- ▶ Research and development in cybersecurity
- ▶ Artificial intelligence
- ▶ Robotics
- ▶ Semiconductors
- ▶ Data hosting of certain sensitive data

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In this issue, similar topics are covered in the sections dedicated to China and Russia.

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# Georgia



## Mandatory tender offer

The Law of the Republic of Georgia on Entrepreneurs, from 28 October 1994, provides that if a stockholder or group of stockholders acquire shares in a joint-stock company equal to more than half of the voting rights, they are obliged to make a tender offer no later than 45 days after this fact. Alternatively, they must reduce the total amount of their controlling shares to below half within the same time frame. Such a tender offer must be made in line with provisions set by the Law of Georgia on Securities Market.

At first glance, it is arguable whether the above requirements apply only to publicly traded joint-stock companies or if they also apply to those that have not issued publicly held securities.

The mandatory tender offer is considered to be one of the mechanisms for takeover when a joint-stock company has several minority shareholders. Mandatory tender offering is usually exercised in publicly traded companies. One of the arguments raised is that the procedure for these offerings appears in the securities law; the 1994 entrepreneurs' law does not address the matter. Moreover, under the securities law, the process for offering is controlled by the National Bank of Georgia.

Georgian law is based on EU law in respect to the issue in question. Therefore, if one refers to the respective principles of the EU law, it is obvious that mandatory-tender-offering rules shall apply to only publicly traded joint-stock companies. However, further development of the case law is required to have a clear interpretation and unified approach to this subject.

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# Germany



## Information flow in the de facto equity group

The essential features of a de facto equity group include the dependency of a subsidiary on a parent company and consolidation under uniform management without an existing agreement between the two companies – as defined by Section 291 of the German Stock Corporation Act (AktG).

### I. Cases of information flow regulated by law

#### 1. Shareholder's right to information pursuant to the AktG's Section 131

A shareholder has the right to the same information as any other shareholder, even if such information was provided during or outside the annual general meeting (called the "right to subsequent information").

In the de facto group, due to the differing interests of the majority shareholder, the prevailing opinion and the courts restrict the right to subsequent information being provided to the parent company. Any other consideration would make the exchange of information between the group companies considerably more difficult or make effective control practically impossible.

#### 2. Rights to information and submission related to consolidated financial statements

The obligation to prepare consolidated financial statements in accordance with Section 290 (and its subsequent sections) of the German commercial code (HGB) is only required if the parent company receives specific accounting-related information from the subsidiary.

The subsidiary must immediately provide the parent company, upon request, with the documents necessary for consolidation, which are required to fulfill disclosure obligations.

However, this regulation does not constitute a legal basis for general monthly group reporting, which typically reaches further.

The right of other shareholders to provide supplementary information to the parent company is excluded by law if it is outside the annual general meeting.

### II. Further exchange of information without legal basis

Outside this regulated area, there is no legal right to information from the subsidiary. The parent company has no right to information to fulfill its legal obligations. However, the board of directors of the parent company is required to take all reasonable steps to obtain information if required to perform group-related duties. Nevertheless, the corporate law instruments for enforcing requests for information are lacking in the de facto group.

The management board of the subsidiary may provide information to the parent company on a voluntary basis. This includes group reporting and establishing group-wide monitoring systems. The management board's decision to consider the matter should be documented. In this case, the remaining shareholders have no right to subsequent information.

Information may not be given if it violates the law. Any action taken by the subsidiary management board at the instigation of the parent company must result either in no disadvantage or only in a compensable disadvantage. This provision is an additional obstacle to the transfer of information.

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# Greece

## The new regime of public-limited companies

Within the framework of legislation relating to entrepreneurship, a new law was adopted for the “reform of the law of sociétés anonymes” (Law 4548/13 June 2018).

The new law introduced innovative provisions and abolished most of the previous regime’s articles in an attempt to modernize and simplify the société anonyme, or public-limited company, for local businessmen and to make it more attractive for foreign investors.

An important change is the separation of the provisions governing accounting, audit, mergers and acquisitions (M&A) and the publicity system. These are already or will be addressed in distinct legislative pieces.

The new law also encourages and provides a means to create increased intercompany relationships. This approach is seen in various aspects, such as the possibility for a public-limited company to issue new types of titles (e.g., warrants), the possibility to resolve in writing (in some cases even without the convention of a shareholders’ meeting) and the right for shareholders to form unions, which may be granted legal personality (e.g., minority shareholders may exercise their rights in the name of the union but on behalf of union members).

As a result, the new regime indirectly impacts statutory requirements that previously were more restrictive. Hence, by enlarging the freedom to establish intercompany relationships, many matters that were until recently dealt with only by extra-company agreements can now be covered in the bylaws.

As a conclusion, at a theoretical level, the reform of the company law is a positive step toward the modernization of Greek law. The effectiveness of the new changes and the degree to which foreign investors will be attracted will be ultimately confirmed in practice.

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# India



## No stamp duty payable for foreign-award enforcement in India

The Supreme Court, in a recent landmark judgement, has held that that a foreign award is not required to be stamped for the purpose of enforcement in India.

Until recently, the enforcement of foreign awards was often challenged in courts on the ground that they were not stamped as required by the Indian Stamp Act, 1899 (“Act”). In order to settle this position, the Supreme Court analysed the applicability of the Act to foreign awards, the law relating to arbitration at the time when the Act was enacted and the definition of the term “award” under the Act.

The court explained that foreign awards existed even when the act first came into effect. However, the act, at the time of enactment and even today, only refers to an “award” and not a “foreign award” for the purpose of levying a stamp duty. Even Indian arbitration laws have always treated an award and a foreign award separately.

Therefore, the usage of the term “award” under the act only shows the intention has always been to extend the levy of stamp duty to domestic awards and not foreign awards, and an assumption to the contrary is not warranted.

Accordingly, the only requirements for the enforcement of a foreign award as per Indian arbitration laws include the production of the original or duly authenticated copy of the award and the original or duly certified copy of the arbitration agreement – evidence proving that the award has become final before the court.

This judgment is, therefore, a step toward a clearer, more comfortable and arbitration-friendly India.

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# Italy



## New requirements for controlling bodies

On 14 February 2019, the decree enacting the new Corporate Crisis and Insolvency Code was published in the Italian Official Gazette.

The purpose of the code is to identify a corporate crisis at an early stage. This may impact a significant number of limited-liability companies, as cases for the mandatory appointment of a controlling body have been extended.

According to the amendment of Article 2477 of the Italian Civil Code (ICC), the appointment of a controlling body is mandatory if the company:

- a) Is required to draft consolidated financial statements
- b) Controls a company under the obligation to appoint an auditor
- c) Exceeds, for at least two consecutive financial years, one of the following thresholds:
  - ▶ Total assets in the balance sheet: 2 million euro (currently EUR 4,400,000);
  - ▶ Revenues from sales and services: 2 million euro (currently EUR 8,800,000);
  - ▶ Average number of employees per year: 10 units (currently 50 units).

The obligation to appoint a controlling body ceases if, for two consecutive fiscal years, the limits mentioned in letter c have not been exceeded.

Moreover, the bylaws of limited-liability companies that are not compliant with the new provisions will be amended within nine months from the code's entry into force. The Italian Civil Code's Article 2477 will be effective 30 days after its publication in the Official Gazette.

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# Ivory Coast



## Obligations related to company registers

The OHADA (Organization for the Harmonization of Business Law in Africa) Uniform Act on corporate law requires the obligation of public-limited companies (SA) and simplified joint-stock companies (SAS) to keep a register of registered shares issued by the company. Statutory auditors are also required to ensure their respective companies' compliance with this obligation. It also establishes an obligation for each SA and SAS to keep a register of bearer shares.

From a local perspective, the tax schedule for financial year 2019 – for the purposes of transparency and to fight against corruption and tax evasion – extends this requirement to other commercial and civil companies.

Furthermore, the tax schedule introduces the obligation for all commercial and civil companies to keep a register of their beneficial owners. The notion of beneficial owner refers to the natural persons who ultimately own or control a legal entity or a legal arrangement, as defined by Law No. 2016-992 of 14 November 2016 on the fight against money laundering and anti-terrorist financing.

Failure to comply with these new obligations is subject to a fine of CFAF 5,000,000 per register. The same fine applies for failing to deliver a register to the tax administration.

This fine is increased up to CFAF 500 per month from the expiration date set by the tax administration to answer the request. Any mistake or omission in the registers may be fined CFAF 500 per mistake or omission.

The same sanction is applicable for noncompliance with the obligation for public-limited and simplified joint-stock companies to keep a register of registered shares.

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In this issue, similar topics are covered in the sections dedicated to Belgium, Luxembourg, Mexico and Serbia.

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# Luxembourg



## New law implementing the UBO register

In the wake of increasing transparency obligations for business players, on 13 January 2019 Luxembourg issued a new law implementing the EU's fourth and fifth Anti-Money Laundering Directives (2015/849 and 2018/843, respectively) and created a new register of ultimate beneficial owners (RBE).

All Luxembourg entities are required, since 1 March 2019, to provide the RBE with relevant information on their ultimate beneficial owners (UBO). All duly registered entities with the Luxembourg trade and companies' registry are concerned (commercial companies, partnerships, funds, trusts, foundations, civil companies, nonprofit associations, branches of foreign entities and more).

Once an individual UBO has been identified as a Luxembourg entity (either by directly or indirectly holding at least 25% of its share capital or voting rights or by controlling the entity through any other means), he or she must provide the following information to that entity: name, date and place of birth, citizenship, country of residence, address, ID number and the nature and extent of the interest held.

Luxembourg companies whose shares are listed on certain stock exchanges, however, only need to provide the name of their respective market instead of providing UBO information.

This online register is freely accessible to the authorities, professionals and members of the public; nevertheless, the public will not have access to the ID number and address of the UBO.

The law offers the possibility for an entity to submit a special request to restrict access of UBO information only to national authorities, financial institutions and some professionals; members of the public won't have access to it. Such requests can be submitted in cases where the UBO is exposed to risks (fraud, violence, blackmailing, kidnapping, etc.).

All existing entities will need to file the above information by 31 August 2019. New entities have one month before proceeding with UBO filings.

Failure to comply with these obligations may result in fines for the legal entities or their UBOs, ranging from EUR 1,250 up to EUR 1,250,000.

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In this issue, similar topics are covered in the sections dedicated to Belgium, Serbia, Mexico and Ivory Coast.

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# Mexico



## New disclosure obligations for commercial companies

In accordance with the amendments to articles 73 and 129 of the Corporate Business Corporations Act, effective on 15 December 2018, the *Sociedades de responsabilidad limitada* (S. de R.L. by its acronym in Spanish) and the *Sociedades anónimas* (S.A.) will publish a notice in the Electronic System of Publications of Corporate Entities of the Ministry of Economy (PSM). This notice addresses entries made in stockholders' books or stock-registry books related to equity-holding, the transfer of shares and membership interests.

The new rules will require the name, nationality and address of each equity holder, as well as an indication of the holder's contributions and the transfer of corresponding quotas or shares.

For S. de R.L. entities, the entries in the stockholder's book may be reviewed by any person with a legitimate interest. The book should be under the care of the company's directors, who shall be personally and severely liable for the setup and accuracy of the information contained in it.

In the case of S.A. entities, the Ministry of Economy shall ensure that the name, nationality and address of the shareholders contained in the notice are kept confidential, except in cases where information is requested by a judicial or administrative authority in certain contexts.

It is important to note that the amendments do not provide a mandatory time frame, nor sanctions or other penalties for not proceeding with the information disclosures.

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In this issue, similar topics are covered in the sections dedicated to Belgium, Serbia, Luxembourg and Ivory Coast.

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# Netherlands



## The Dutch Protection of Trade Secrets Act

On 23 October 2018, the Dutch Protection of Trade Secrets Act came into force. The act is the Dutch implementation of the June 2016 European directive on the protection of undisclosed know-how and other business information from unlawful acquisition, use and disclosure.

Valuable know-how or similar information that is undisclosed and intended to remain confidential is referred to as a trade secret. Trade secrets have a significant role in protecting the exchange of knowledge between businesses in the areas of development, innovation and research.

Dutch law does not provide specific regulations for the protection of trade secrets. Trade secrets are protected by instruments derived from labor, contract or criminal law. With this act, the Dutch legislator attempts to reduce this fragmentation and establish an improved legal framework.

The act contains material measures and remedies that consist of taking actions against the unlawful acquisition of trade secrets and preventing the use or disclosure of trade secrets.

Additionally, the implementation of the act has triggered the introduction of a new Title 15A in the Dutch Code of Civil Procedure, which provides sufficient guarantees to the confidentiality of trade secrets during legal proceedings; it also expands enforcement possibilities.

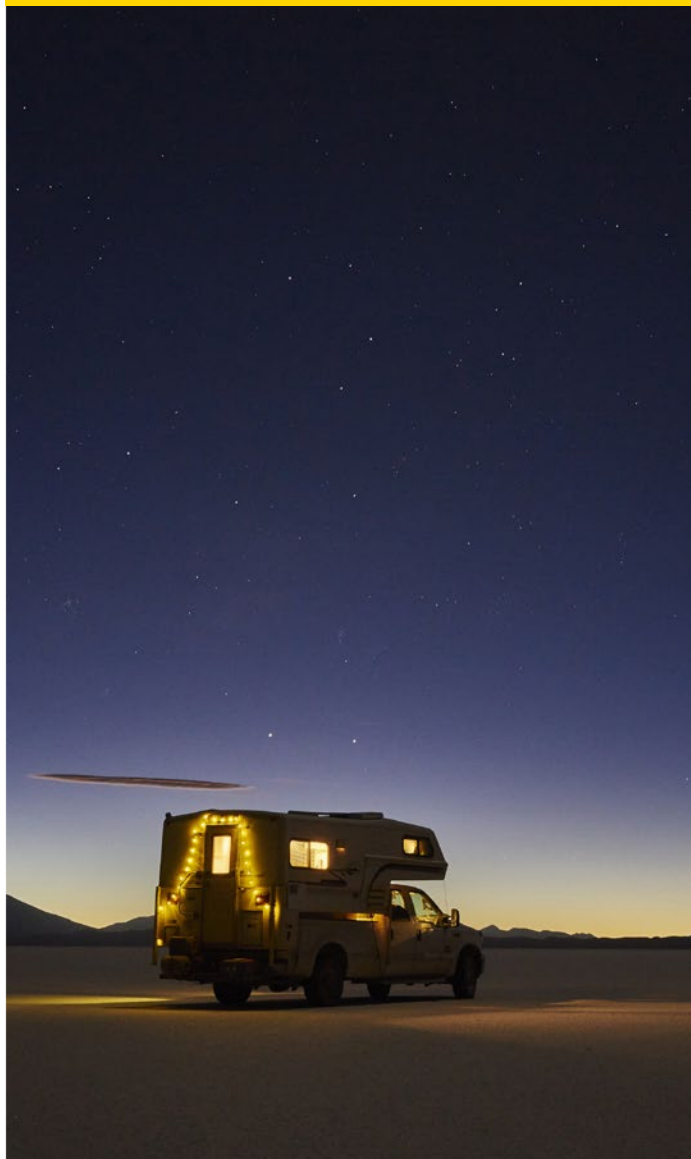
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# Russia



## Green light for the re-domiciliation of foreign companies

Russia has recently adopted the Law on International Companies, whose primary aim is the re-domiciliation of foreign companies in Russia. Any foreign company is now allowed to be reregistered in Russia as a Russian entity if it chooses one of the two special economic zones (i.e., the Primorsky Region or Kaliningrad Region) and meets certain criteria.

In particular, a foreign company that intends to apply for re-domiciliation must:

- ▶ Carry out business activities in several countries (including Russia, for example, through its controlled entities)
- ▶ File an application to become a participant of a special economic zone

- ▶ Commit to invest at least 50 million RUB (approximately USD 763,000) in Russia
- ▶ Be registered in a country that is a member or observer of the Financial Action Task Force (FATF) or a member of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

Once registered in Russia as per the above, a foreign company becomes an international company with a special status. In principle, such a company will be regulated by Russian law. However, neither the Russian Law on Joint-Stock Companies, nor the Law on Limited Liability Companies are to be applied to the international company. Furthermore, the international company may choose to apply a foreign law to which it was historically subject.

The registration of a foreign company in Russia does not lead to the termination or alteration of any rights or obligations the company had prior to the re-domiciliation. Thus, the company may keep, unchanged, all of its rights and obligations, including corporate and shareholders' rights, contractual rights, property rights (including those abroad), titles to shares and other financial instruments, intellectual property rights, licenses, etc.

Consequently, a company can change its location to Russia but is not required to substantially change its legal status. Moreover, the re-domiciliation triggers additional benefits. Although the company is registered in Russia, it is considered as a nonresident for currency-control purposes. It may also benefit from several tax incentives.

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# Serbia



## Serbia's Law on Centralized Records of Beneficial Owners

In line with the requirements of the European Union's fourth Anti-Money Laundering Directive, the Law on Centralized Records of Beneficial Owners became effective on 8 June 2018, introducing obligations for legal entities related to collecting and registering information on ultimate beneficial owners (UBOs). The main purpose of this law is to establish transparency over the ownership of legal entities in the Republic of Serbia.

The law regulates the registration of UBOs and the establishment of the Centralized Records of Beneficial Owners for legal entities and other entities registered in Serbia.

The law introduces an obligation for representatives of locally based companies, branches and other listed legal forms to record information in the UBOs Register, managed by the Serbian Business Registers Agency. The legal term to comply with this obligation is 15 days from the date of the legal entity's registration or its change in ownership structure, as the case may be.

According to the law, entities established by 31 December 2018 were required to record relevant information by 31 January 2019. As the UBOs Register was established only at the end of 2018, and considering the technical issues of the platform since its establishment, unofficially the Serbian Business Registers Agency extended the deadline until the end of February 2019 (i.e., noncompliance with the provision is in principle tolerated for one more month).

Finally, the law sets out severe penalties for noncompliance with the foreseen obligations – there is liability for criminal offense and imprisonment from three months to five years for those who, by willful misconduct, do not register or register incorrectly the relevant data with the UBO Register. In addition, a monetary fine of RSD 500,000 to RSD 2,000,000 (approximately EUR 4,200 to 16,800) may be applied for noncompliance with the provisions of the law.

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In this issue, similar topics are covered in the sections dedicated to Belgium, Luxembourg, Mexico and Ivory Coast.

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# Singapore



## New rules allow dual-class shares to be listed on the Singapore Exchange Mainboard

On 26 June 2018, the Singapore Exchange (SGX) announced new rules to allow the listing of dual-class shares (DCS) on its Mainboard with immediate effect. This is the biggest change to its listing rules to date. The rules are aimed at helping the SGX compete for listings of high-growth companies, especially technology firms.

The SGX's chief executive officer, Loh Boon Chye, said that SGX "joins global exchanges in Canada, Europe and the US, where companies led by founder entrepreneurs who require funding for a rapid ramp-up of the business while retaining the ability to execute on a long-term strategy are able to list. Investors who understand and agree with the business model and management of DCS companies will also have more choice."

### Safeguards in Mainboard rules

First, to prevent founders from entrenching themselves, each multiple voting share (MVS) must not carry more than 10 votes and is limited to MVS holders and permitted holder groups specified at the initial public offering (IPO). The issuer must also have provisions where a MVS will automatically be converted into an ordinary voting share (OVS) on a one-for-one basis under prescribed circumstances.

Next, to preclude founders from expropriating key rights of OVS holders, certain matters must undergo an enhanced voting process, where one MVS is limited to one vote: e.g., this could be in regards to the appointment and removal of independent directors and auditors; a reverse takeover, winding up or delisting of the issuer; changes to the issuer's Articles of Association or other constituent documents; and variation of rights attached to any class of shares.

Further, to align MVS holders' interests with those of OVS holders, a moratorium is imposed on the transfer or disposal of MVS holders' shareholdings for at least 12 months after listing.

Finally, the majority of an issuer's audit, nominating and remuneration committees, including the respective chairpersons, must be independent.

To date, there have not been any DCS listings on the SGX Mainboard.

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# Spain



## Amendments to Spanish laws may impact companies

The Spanish Law 11/2018 was approved on 28 December 2018. It amends the Commercial Code, the Spanish Companies Act and the Audit Act, and it introduces important changes in requirements related to the nonfinancial information and diversity of Spanish companies. This law is a consequence of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, which amended Directive 2013/34/EU on the disclosure of nonfinancial and diversity information by certain large undertakings and groups. These changes include:

- ▶ The amendments of the Commercial Code refer to Spanish companies' consolidated accounts. More precisely, from now on they will include a nonfinancial-information consolidated statement within the consolidated management report, whenever specific thresholds are met. Such a statement will comprise:

- i) The necessary information to understand the evolution, the results and the situation of the group
  - ii) The impact of its activity related to environmental and social issues, human rights and the fight against corruption and bribery
  - iii) The impact of its activity as it relates to personnel, including adopted measures to promote equal treatment and opportunities between men and women, the nondiscrimination and inclusion of disabled people and universal accessibility
- The information included in the statement will have to be verified by an independent expert.
- ▶ The most important amendments of the Spanish Companies Act are:
    - i) The inclusion of the above nonfinancial information in a specific statement – which could be part of the management report or a stand-alone document – is also applicable to individual accounts if specific thresholds are met. Although not expressly set forth in the act, the Spanish Institute of Accountants and Auditors suggests that statements for individual accounts also need to be verified by an independent expert.
    - ii) The maximum term for the effective payment of dividends is 12 months from the date of the corresponding resolution.
    - iii) There is a possibility of excluding or modifying, through the bylaws, the separation right of shareholders in cases where there is a lack of dividend distributions. (iv) For listed companies, diversity of the board of directors will refer to knowledge, experience, age and disability, in addition to gender.
  - ▶ Finally, the Audit Act was amended to include the auditor's role in connection with the nonfinancial-information statements. More precisely, the auditor has the obligation to verify that the statement is included in the management report or that it refers to the statement if drafted separately.

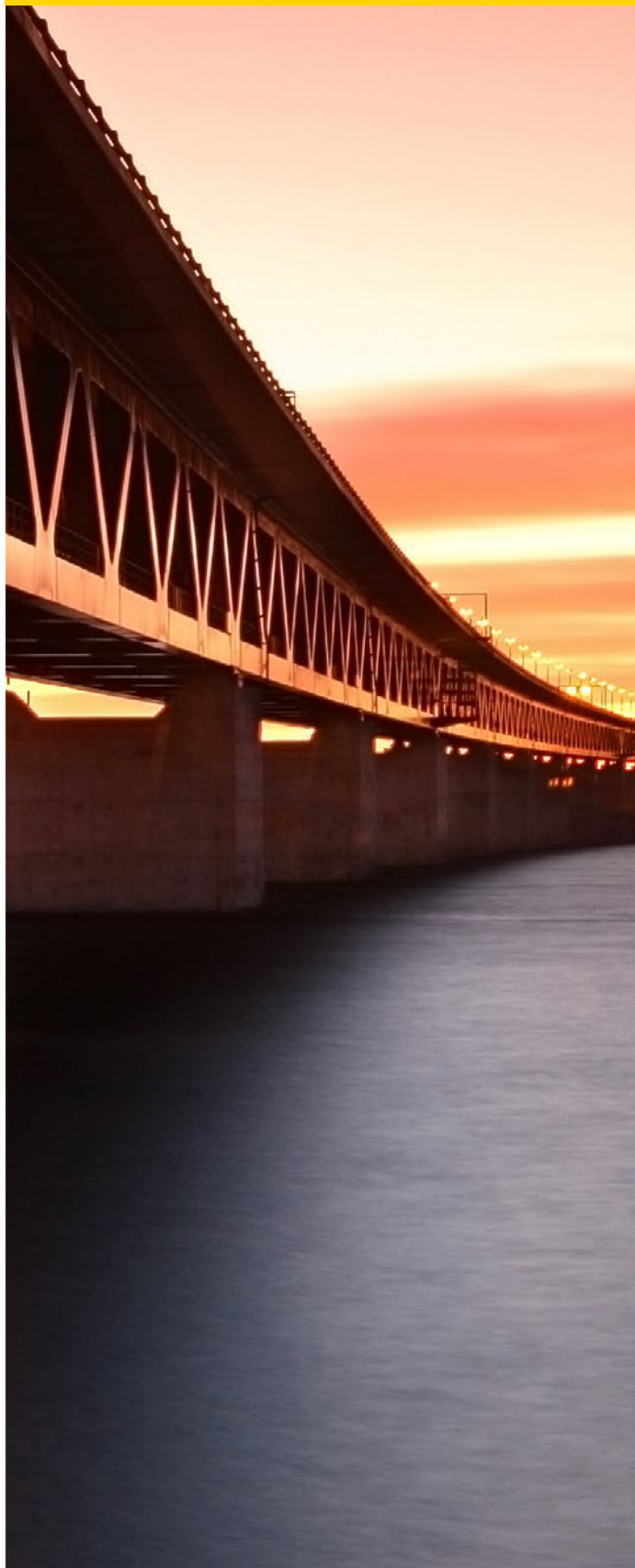
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# Sweden



## New rules on contractual stock options for startups and early-stage companies

Sweden has introduced the possibility for companies to issue a new type of qualified employee stock options (QESOs). The new stock-option scheme is designed to allow early-stage companies and startups to issue stock options to its key employees in a more tax-efficient way than those issued by larger companies, in accordance with the Swedish Companies Act. On the contrary, these new stock options are issued only as contractual options between the company and the employee – in other words, without approval from company shareholders. The benefit is that, upon the sale of shares resulting from the QESOs, the employee will be subject to a capital-gains tax (as opposed to income tax), and the company is not subject to social charges, which could otherwise have applied on traditional options issued by the company.

If the company and the employee meet certain criteria, the company can give stock options to the employee for free, which gives the employee the right (but not the obligation) to purchase newly issued shares in the company for a fixed price at a fixed date in the future. The eligibility criteria for these new QESOs are designed to capture startups and early-stage companies (e.g., the company may not be older than 10 years, its turnover cannot exceed SEK 80 million and it cannot have more than 50 employees on average during the preceding financial year). Some types of companies, e.g., certain regulated entities, are not eligible to issue QESOs.

There are further requirements on employees, as these stock options are tied to employment and cannot be sold; they are purposely designed not to constitute a transferable security. Further, the employee must remain employed by the company for at least three years and work at least 30 hours per week on average during the entire employment. If an employee quits earlier than three years from the date the stock options were issued, the stock options will become void.

As previously mentioned, the stock-option program is set up by way of an agreement between the company and the employee. However, a general shareholders' meeting will be required to issue the shares once the employee exercises the options.

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In this issue, similar topics are covered in the section dedicated to Denmark.

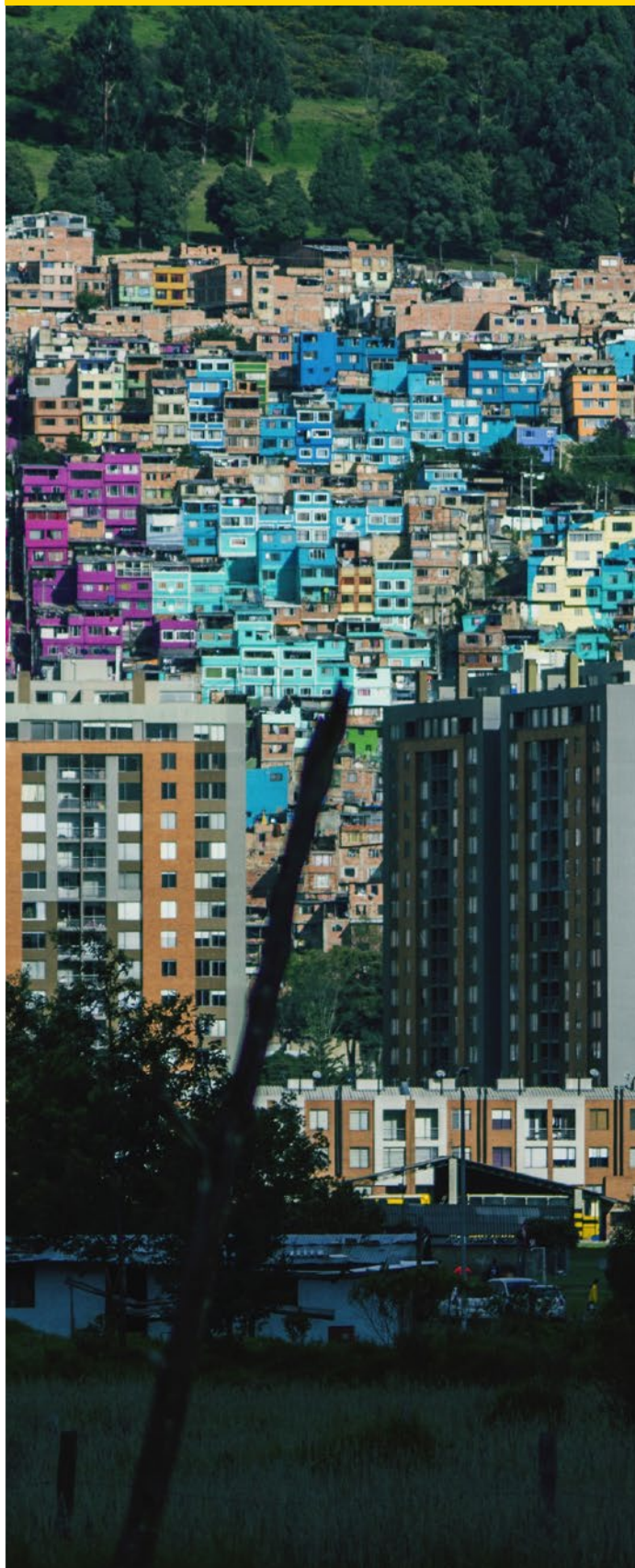
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# Ukraine



## New law on lending resumption

On 4 February 2019, the On Amendments to Certain Legal Acts of Ukraine on Resumption of Lending law came into force. The law sets out legal mechanisms aimed at improving cooperation between creditors and borrowers, filling in existing gaps in the regulation of lending and precluding courts from taking contradicting legal positions in lending disputes.

The law gives creditors a greater level of comfort by providing new tools to improve the lending process and more efficient security for loans. This should ensure the protection of creditors' rights, which were not adequately protected before the changes.

In particular, the law provides for the following:

- ▶ Termination of a loan within the borrower's liquidation does not lead to termination of a mortgage or pledge, provided that the creditor made a claim or filed a lawsuit regarding foreclosure before the liquidation procedure commenced.
- ▶ The procedure for changing an interest rate in loan agreements is more streamlined.
- ▶ State registration of a vehicle can be made only after confirming there are no encumbrances over it.
- ▶ Banks can now access the state register of civil-status acts upon a request to the competent authorities.
- ▶ If mortgaged property is reconstructed without authorization, the reconstructed parts would be mortgaged as well.
- ▶ Any encumbrances over mortgaged property registered after the mortgage should not preclude foreclosure or registering the creditor holding the mortgage as a new owner of the property.

This long-awaited law is expected to raise trust in banks, further promote lending and positively affect the Ukrainian banking system.

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<sup>4</sup> Including Benin, Burkina Faso and Niger.

<sup>5</sup> Including Mali.

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