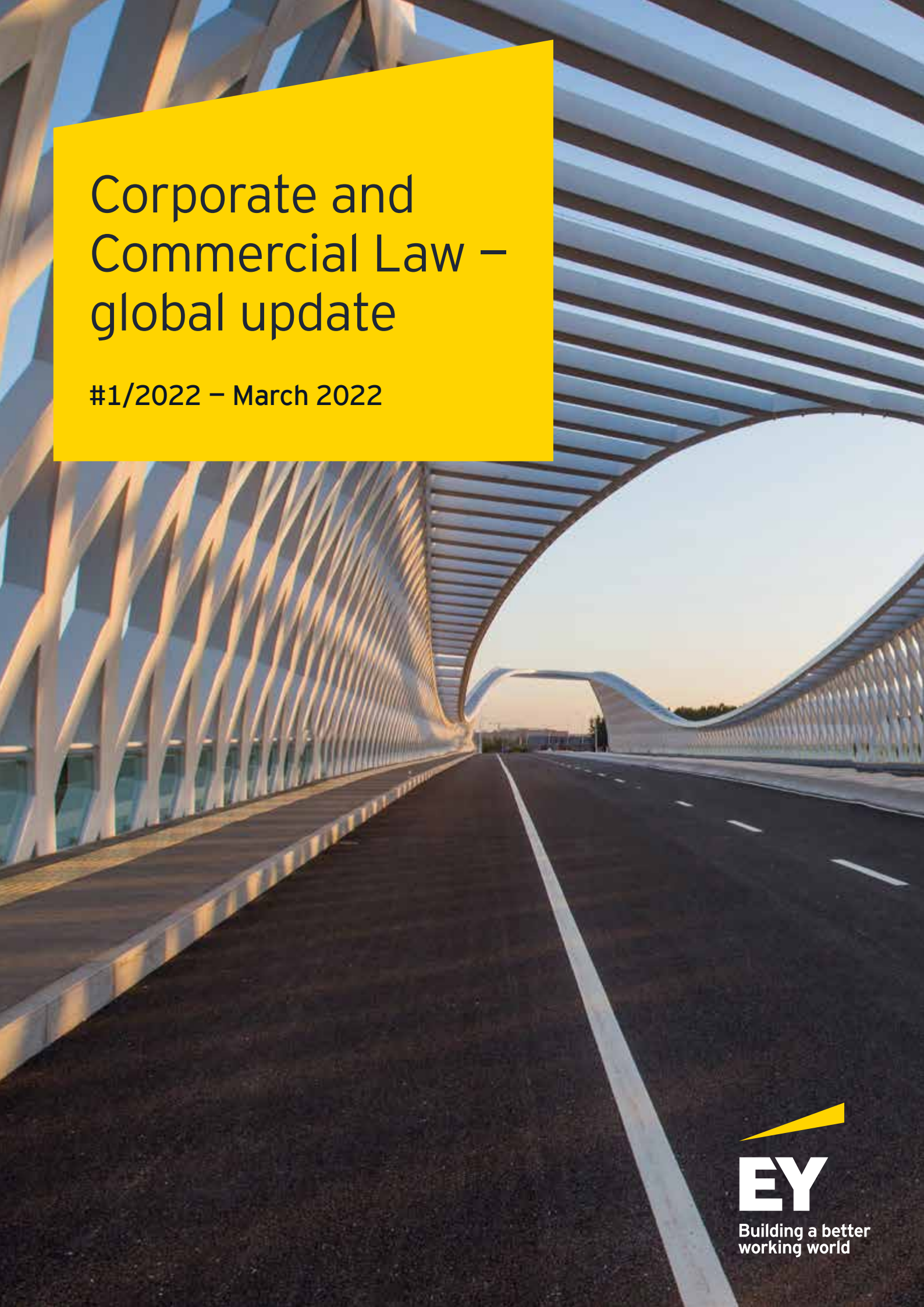

Corporate and Commercial Law – global update

#1/2022 – March 2022

Building a better working world

Editorial

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 22 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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In this issue

The Corporate and Commercial Law global update highlights a range of international corporate law matters and covers recent law developments in specific jurisdictions.

Albania

Protection of consumer rights in Albania

In Albania, violations of consumer rights have been observed mostly in the banking, telecommunications, aviation and retail industries. Such violations are identified by the Consumer Protection Commission, either ex-officio or upon review of the consumers' complaints regarding the sale, supply or promotion of goods and/or services.

To strengthen and increase the effectiveness of consumer protection-related provisions, the Albanian Parliament is expected to soon approve a law on collective lawsuits, a new facet of the legal ecosystem where previously the collective lawsuit was not recognized as a legal remedy.

The collective lawsuit and the collective indemnity are expected to facilitate the access of individuals to justice and reduce court congestion. Generally, a case may be brought to court by individuals who have suffered a damage arising from the same illegal actions, a representative of these individuals or a not-for-profit organization whose activity is related to the nature of the rights and interests of the group of people whose rights have been violated.

The individuals may be included in a collective lawsuit either by means of the inclusion mechanism, in which case they must make the affirmative step of joining the collective lawsuit to be included; or the exclusion mechanism, in which case they are by default included in the lawsuit unless they take an affirmative step to opt out of the lawsuit.

In Albania, this new legal remedy will not be regulated by the Code of Civil Procedure but through a special law whose entry into force is expected to encourage consumers to initiate legal actions against large corporations that so far appear to be unaffected by allegations of violations through sporadic individual lawsuits.

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Argentina

New restrictions to foreign companies registered with the PRC of the City of Buenos Aires, and anti-money-laundering measures

The Public Registry of Commerce of the City of Buenos Aires (PRC) through General Resolution No. 8/2021 has included the following restrictions for foreign companies that do business or want to do business in Argentina, especially investment vehicles (SPV):

- The status of SPVs must be declared when requesting registration with the PRC. If a foreign company is not registered as an SPV from the very beginning, then it cannot change to such status after its registration.
- The registration of more than one single SPV per group is not allowed.
- The registration of SPVs will not be admitted if their direct or indirect parent company is registered in Argentina as a foreign company.
- The registration of SPVs resulting from a chain of control between successive sole-shareholder corporation will not be admitted.
- The registration of a sole-shareholder corporation whose shareholder is only a company incorporated abroad as a sole-shareholder corporation, whether or not it is a vehicle, will not be admitted.

When foreign companies file their registration request with the PRC, they will include an investment plan with a list of the companies in which they intend to hold participation in Argentina and information about these companies.

Regarding new anti-money-laundering measures imposed by the Financial Information Unit (UIF) dependent from the Argentine government, the PRC amended the definition of Ultimate Beneficial Owner (UBO) through its General Resolution No. 17/2021. The PRC considers a UBO to be any natural person who holds at least 10% of the capital or voting rights of a legal person, trust, investment fund, endowment and/or any other legal structure; and/or any person who otherwise exercises ultimate control over them.

If it is not possible to identify a UBO, the PRC will consider as such the person in charge of the management of the legal entity.

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Australia

Electronic signature and virtual/hybrid annual general meetings on the way to becoming permanent in Australia

Under the existing provisions of the Corporations Act 2001, companies were required to sign documents with wet ink signatures by two directors, a director and a company secretary or by a sole director (if a sole director company). Companies were also required to convene their annual general meetings in person.

Temporary relief was granted during the COVID-19 pandemic and extended on 14 August 2021. The temporary legislation will lapse on 31 March 2022. Permanent measures are currently before the Parliament and are expected to be made law prior to 31 March 2022.

Australian-registered companies may now electronically sign documents (including agreements and resolutions of directors and shareholders) and may hold virtual or hybrid annual general meetings.

The Australian Securities and Investments Commission has issued guidance for holding online or hybrid virtual meetings that states:

- The technology must enable the meeting to be run without interruption.
- The way the meeting is normally conducted in person should be followed to preserve a genuine interaction between the members and the board.
- Members should be given a reasonable opportunity to ask questions.
- The company should be able to gather questions in advance (if applicable) and the selection should be balanced and representative. There must also be a transparency with the questions and answers.
- Members who are entitled to vote on resolutions should have the opportunity to consider responses to questions and debate before voting.
- The notice of the meeting must include clear explanations on how to use technology, vote or make comments, and can be provided to the members virtually.

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Belgium

Belgium as entry point for cross-border conversions to the EU

The new Belgian Companies and Associations Code entered into force on 1 May 2019. One of the main purposes is to facilitate cross-border corporate mobility. Besides the switch from a real seat to a statutory seat regime, a legal framework has been implemented following European case law for the cross-border conversion of companies, both for the immigration and emigration, without distinction between EU and non-EU countries.

Important points include:

- Corporate conversion must be allowed in the foreign state (i.e., a legal framework exists).
- A Belgian notary public must be involved.
- The foreign company will convert into a Belgian equivalent company type as a consequence of the conversion.
- At the time of conversion into a Belgian company, a balance sheet (drawn up according to BE GAAP) must be deposited.

The immigration procedure is a low-barrier procedure, flexible and cost-efficient. After this procedure, the Belgian company can be further migrated if required by any other EU country or it can easily obtain corporate presence by other means in the rest of Europe (e.g., branch). Over the past 12 months, there has been a significant increase of non-EU-based companies that use Belgium as an entry point to further move inside the EU in a next phase.

The emigration procedure is comparable to the cross-border merger procedure, requiring a conversion proposal, an interim balance sheet (maximum four months old), board report, report by a Belgian auditor, two-month mandatory waiting period (creditors' protection) and shareholders' meeting before a notary public.

Even if no legal framework exists in the foreign state that would allow a conversion into a Belgian company, a cross-border merger between the foreign and Belgian companies may still be an option to enter Belgium. The Belgian legislation does not make a distinction between EU and non-EU countries.

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Bulgaria

The new standard contractual clauses Transfer of personal data to third countries

By Commission Implementing Decision (EU) 2021/914 of 4 June 2021[1], new standard contractual clauses (SCCs) for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council have been adopted. The new SCCs will ensure a reinforced level of protection based on safeguards to the fundamental rights and freedoms of the data subjects. This will be obtained by determining certain responsibilities and obligations for data exporters and data importers, and by addressing the potential negative effects of the laws and practices of the third country of destination. Importantly, the parties to the SCCs are responsible for assessing and documenting the specific circumstances of the transfer as well as the laws and practices of the third country of destination to adopt supplementary measures if necessary and to provide warranties on this subject.[2]

Given the tight time window (deadline is 27 December 2022 for those who rely on the old SCCs), some data exporters have already started to distribute lengthy questionnaires to partners, suppliers and clients. How long that process would take is strictly individual. Other data exporters have not embarked on the journey, lacking even a comprehensive mapping of their transfers.

Unless the data exporter and the data importer are confident that their assessment is of due quality, scope and level of detail, and is appropriately documented, additional safeguards may need to be designed and introduced.

[1] Entry into force 27 September 2021

[2] See edpb_edps_jointopinion_202102_art46sccs_en_1.pdf (europa.eu) 2.2 General presentation of the Draft Decision and Draft SCCs and interplay with the EDPB Recommendations on supplementary measures.

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Chile

Consumer and data protection conflicts

On 11 August 2021, the Chilean Congress passed a bill that will amend the Consumer Protection Act.

Among other matters, the bill proposes to (i) incorporate a pro-consumer principle pursuant to which the Consumer Protection Act's provisions will always be interpreted in favor of consumers; (ii) increase the legal warranty term from three to six months; (iii) recognize new rights to consumers within the context of e-commerce relationships such as the non-waivable nature of the right to cancel; and (iv) grant the Chilean Consumer Agency powers to enforce the protection of consumers' personal data.

Although the bill was subject to a veto from the President of the Republic (particularly in connection with certain non-banking cards' discounts restrictions that were approved by the Congress), these matters are not expected to be subject to further discussions.

From a data protection perspective, the amendments to the Consumer Protection Act mean that consumers will be entitled to file class action proceedings against suppliers if their personal data privacy is infringed, granting the Chilean Consumer Agency powers to, for example, supervise and ensure suppliers' compliance with the Data Protection Act.

The new regulation will have practical consequences considering that prior to the proposed amendment to the Consumer Protection Act, there was no administrative agency with powers to enforce data subjects' rights. Another bill is also being discussed that seeks to replace the Data Protection Act to align it to the General Data Protection Regulation. The creation of a National Agency of Personal Data with monitoring and enforcing powers stands out in the bill.

Chile will soon have two governmental agencies with faculties to enforce consumers' personal data matters. Which one will be ultimately empowered to decide a case? Unless it is resolved by law, the responsiblity of each agency will likely be decided by Chilean courts.

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Cyprus

Cypriot UBO Register established as of 16 March 2021

To further align with the European Union Fourth, Fifth and Sixth Anti-Money Laundering Directives, Cyprus amended its domestic laws on the prevention of money laundering and financing terrorism in early 2021, introducing new and expanding existing principles, goals and solutions in fighting against these financial crimes. One is establishing the Central Registry of Beneficial Owners of Companies and other legal entities (UBO Register) within the Registrar of Companies in Cyprus.

The main purpose of this register is to establish transparency over the ownership of legal entities in Cyprus by imposing an obligation for representatives of companies and other legal entities to record information in the UBO Register via an electronic platform maintained by the Registrar of Companies.

The collection of details began on 16 March 2021, although for pre-existing companies the deadline for the submission is 12 March 2022. New entities registered after 12 March 2021 have to file information electronically within 30 days from their incorporation date. If there is a change of the beneficial owners or their information, the UBO Register should be updated within 14 days.

Access to the current interim UBO Register is available only to the Cyprus Competent Supervisory Authorities, the Cyprus FIU, the Cyprus Customs Department, the Cyprus Tax Department and the Cyprus Police. From 12 March 2022 onwards, members of the public can access the UBO Register for a small fee.

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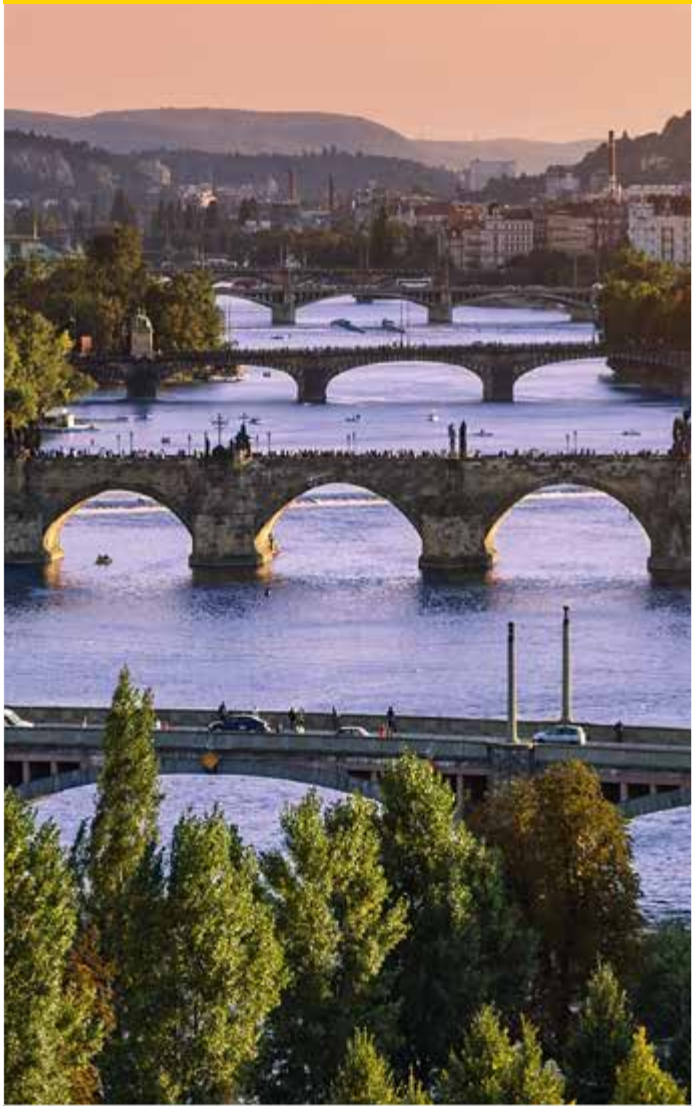

New UBO legislation and sanctions for non-compliance introduced in the Czech Republic

In the Czech Republic, new legislation containing updated rules on determination of ultimate beneficial owners (UBOs) of legal persons entered into force as of 1 June 2021.

Under the former UBO legislation, members of the statutory body of a legal person were to be registered in the UBO Register as so-called substitute UBOs if there was no individual person meeting the criteria of UBO.

However, the new legislation sets out that if there is no individual fulfilling the criteria of UBO, each member of the governing body (or senior management) of a legal entity at the top of the group structure (ultimate mother company) will be registered in the UBO Register, provided that such persons ensure the day-to-day business or regular management activities of such a mother company.

Apart from the new UBO determination criteria, the new legislation also introduced public and civil sanctions if there is a discrepancy between the data in the Register and the factual state. Those sanctions include mainly:

Public sanctions:

- A fine of up to CZK500,000 that can be imposed on the Czech legal entity if it does not remedy irregularity and/or on all persons meeting the criteria of UBOs if they fail to provide necessary cooperation with identification and/or registration of the factual UBOs
- Exclusion from the public procurements in the case of missing UBO registration

Civil sanctions:

- Suspension of voting rights of shareholders (UBOs) at the general meeting of the company in the case of missing UBO registration
- Prohibition of payment of dividends to a shareholder (UBO) who will be but is not registered as UBO or to a shareholder whose UBO is a not-registered person
- Liability of statutory body members for potential damages since a statutory body is responsible for payment of a share on profit and convening general meetings in accordance with law

Legal persons who were compliant with the former legislation had a grace period to update their registration in the UBO Register until 1 December 2021. Legal persons who were not already compliant with former legislation are, however, facing potential sanctions described above since the effective date of the new legislation (i.e., from 1 June 2021).

For the above reasons, it is advisable for every legal person incorporated in the Czech Republic to review UBO compliance.

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Whistleblowing

The implementation of the national Whistleblower Act (Act) based on the EU Whistleblower Protection Directive (Directive) has been delayed, but companies are nevertheless busy preparing for the Act. Based on the current information, the Act is expected to be introduced to the Parliament in early 2022. The Act will obligate companies and other legal persons with at least 50 employees to have an internal reporting channel where observed misconduct and malpractice within the scope of application can be reported. The scope of application is not likely to be much broader than that in the Directive (i.e., it will consist mainly of breaches of EU law).

If no internal reporting channel is in place or if use of the same may subject the employee to retaliation, the whistleblower may use the external reporting channel to be maintained by the council of States Chancellor of Justice.

The Act shall provide protection to persons reporting on observations on breaches within the scope of application.

The preparation of the Act has brought the governance of the companies into spotlight. The management of the company is responsible for responding appropriately to suspected misconduct. Depending on the case, the company may be required to take urgent contractual, labor or company law measures. With the Act's entry into force, it is of high importance to properly agree and document possible division and delegation of liability within the management. Otherwise, for example, a board member may be held personally liable for a matter that is not within his or her field of expertise or of which there is no actual access to information.

In addition to the obligations set forth under the Act on Co-operation within Undertakings, the obligations in the data protection legislation should also be taken into consideration when introducing the whistleblower channel. Inter alia the implementation of the whistleblower channel requires a data protection impact assessment to be performed and privacy policies to be updated.

As the implementation of the Directive varies from country to country, international groups of companies are also struggling with the national requirements' impact on the possibility to establish a shared channel for the group.

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Georgia

The new law on entrepreneurs

On 1 January 2022, the new Law on Entrepreneurs (New Law) entered into force, replacing the one effective since 1994. Almost twice as extensive as the former, the New Law clarifies significant ambiguities, covering matters like the corporate governance, incorporation, operation and reorganization of companies. The need to change the current legislation also derives from the obligations of Georgia undertaken under the EU-Georgia Association Agreement.

The New Law introduces and alters several crucial aspects of the business environment in Georgia:

- The New Law provides the opportunity for companies to use a standard charter, the form of which will be approved by the Ministry of Justice.
- The New Law envisages the conclusion of agreements between persons with management authority and the companies they manage. Those agreements are referred to as mandate agreements, and labor law provisions will not apply to them.
- The New Law introduces the new regime concerning the shares held in a limited liability company, allowing its shareholders to hold different classes of shares.
- The New Law increases the standard of protecting the minority shareholders and introduces rules on conflict of interest.
- Importantly, the New Law sets out the requirements for the issued capital of a joint-stock company, which must not be less than GEL100,000 at the time of registration.
- According to the New Law, the performance of work and supply of services may not be capital contributions to a joint-stock company.

In summary, the adoption of the New Law aims to create a modern, effective corporate law framework, which is expected to improve conditions for both companies and investors and positively impact the economic environment of Georgia.

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Germany

More women in management positions in the private sector – Second Management Positions Act in force

The Second Management Positions Act promulgated on 11 August 2021 includes (1) a mandatory minimum participation of women and men – at least one man and one woman – for management boards of listed companies with equal codetermination consisting of at least four members; (2) the extension of reporting requirements on the reasons for the selection of a specific self-imposed flexible quota for the proportion of women on the management board, supervisory board and at the two highest management levels below the management board and the degree of target achievement in this respect; and (3) a form of entitlement to time off for management board members for an important personal reason (e.g., parental leave, care of a relative) to the effect that the executive board member is entitled to be dismissed and subsequently reappointed has been established by law.

An innovation in this context is the newly introduced right of members of an executive body consisting of several persons to request the supervisory board to revoke their appointment if they are temporarily unable to fulfill the duties of their appointment due to maternity leave, parental leave, care of a relative or illness.

In principle, the supervisory board is obliged in this case to reappoint the temporarily departing executive board member once the special situation no longer applies. The new provision aims to relieve board members who are temporarily unable for certain personal reasons to exercise their mandate of the duties and the associated liability that would generally continue to apply if the appointment were to continue for this transitional period. From the perspective of the executive board member, this avoids the uncertainties associated with an unconditional revocation.

The act came into force in principle on 12 August 2021. However, some statutory provisions will not enter into force until later.

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Hong Kong

Re-domiciliation regime for foreign investment funds and open-ended fund companies

The new regime for re-domiciling foreign investment funds and open-ended fund companies to Hong Kong took effect on 1 November 2021 via the Limited Partnership Fund Ordinance and the Securities and Future Ordinance. The objective is to introduce a commercially viable mechanism for foreign funds to be relocated to Hong Kong while preserving the identity and continuity of such funds. The re-domiciliation will not give rise to any Hong Kong stamp duty.

Under the new regime, a fund established outside Hong Kong in the form of a limited partnership is eligible to be registered as a "limited partnership fund" in Hong Kong, provided it meets the same eligibility requirements for Hong Kong established limited partnership funds. Similarly, a fund established outside Hong Kong in corporate form is eligible to be registered as a Hong Kong "open-ended fund company" if the Hong Kong eligibility requirements are met.

The re-domiciliation will not create a new legal entity or affect the fund identity or continuity. The prior rights, functions, liabilities, obligations, contracts, property and resolutions of the fund will not be affected.

After the Companies Registry of Hong Kong registers the offshore fund as a re-domiciled limited partnership fund or re-domiciled open-ended fund company, the migrated fund has to de-register from its original place of establishment or incorporation (whichever case may be) within 60 days of issuance of the Hong Kong certificate of registration.

The new measures demonstrate the determination of the government to develop Hong Kong as a major fund domicile by strengthening and simplifying Hong Kong's fund vehicle regime, and potentially encourage more offshore funds to go onshore. It is also clear that lawmakers are looking to strike a balance between sufficient regulatory oversight and efficiency of fund re-domiciliation.

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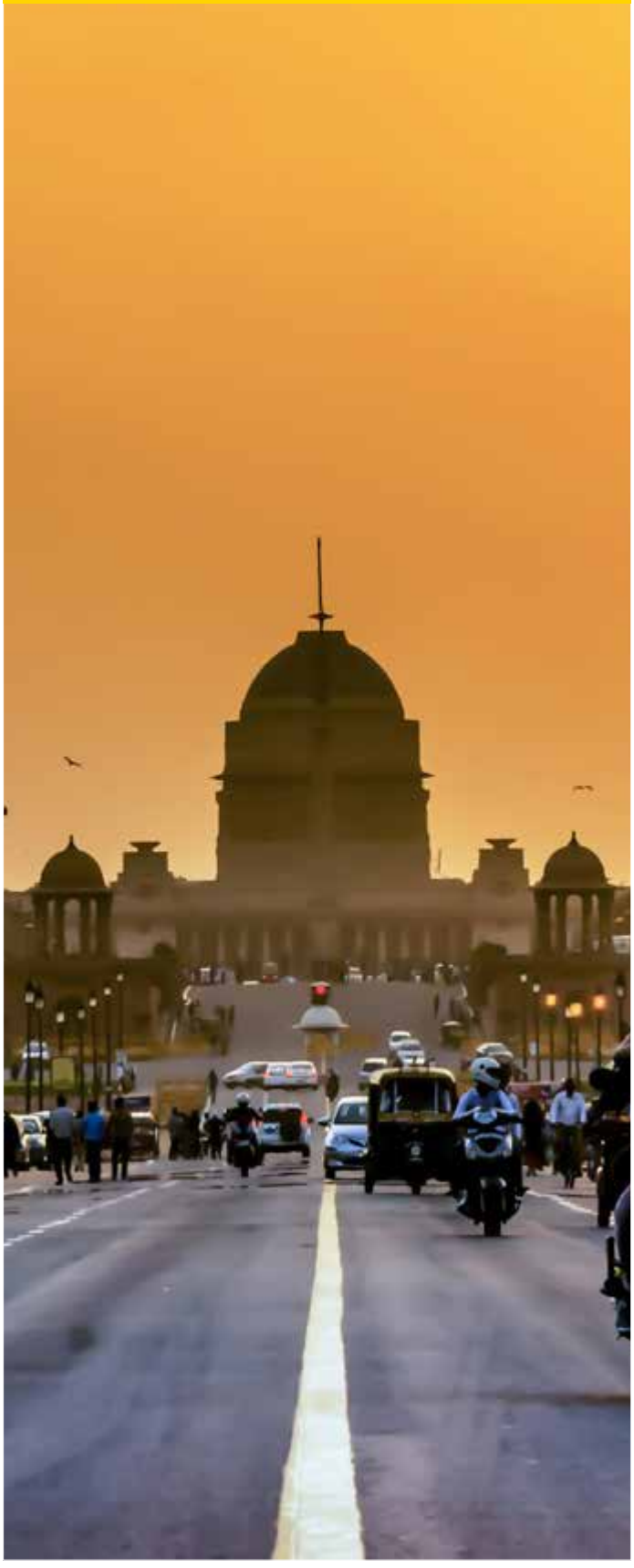

Forthcoming privacy law in India: Personal Data Protection Bill, 2019

The Indian legislature is in the process of approving its first comprehensive law on data protection, the Personal Data Protection Bill, 2019 (PDP Bill). It will become an act once it is approved by both houses of parliament and receives the president's assent.

After the right to privacy was recognized as a fundamental, inalienable right guaranteed by the state through the recent decision of the Supreme Court of India in the case of Justice K.S. Puttuswamy (Retd.) and Anr. v. Union of India and Ors., there was a need for a data privacy statute.

Currently, there is no law in India for the express purpose of data privacy. However, there are rules under the Information Technology Act, 2002 (i.e., the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (SPDR)) that govern the sharing and processing of personal data, including sensitive personal data (i.e., data relating to health, finance, sexual orientation and political views). The SPDR, compared to other data privacy regulations such as the General Data Protection Regulation (EU) 2016/679, is not as comprehensive.

The PDP Bill provides for controls in respect to the processing of data of Indian citizens and includes provisions for the collection, storage, use, processing and international transfer of data (extending extra-territorial jurisdiction). There are specific provisions in the PDP Bill that seek to protect the rights of children. Further, the PDP Bill envisages the setup of a data protection authority.

The penalty provisions prescribed under the PDP Bill are quite stringent and set out significant fines for non-compliance. It is imperative that businesses dedicate resources for ensuring compliance with this law.

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Japan

2021 amendments to the Companies Act of Japan

On 1 March 2021, a number of amendments to the Companies Act of Japan went into effect. Among other things, the amendments included changes to the corporate governance of joint stock companies (*kabushiki kaisha*), the conduct of shareholders' meetings and abuse by shareholders of their proposal rights. The amendments also introduced a new corporate reorganization facility under the statutory share delivery scheme.

Improved corporate governance

Under the amendments, a joint stock company is now able to have indemnification agreements in place with its directors as well as maintain D&O insurance for the benefit of its directors. This means companies should be better able to recruit directors. In the past, some were reluctant to serve as a director due to potential stringent director liability under the Companies Act. Separately, the amendment also added new rules obligating listed companies to have at least one non-executive independent director.

Conduct of shareholders' meetings

The Companies Act now permits companies to send meeting materials to shareholders via the internet, which is environment- and energy-conscious, and helps companies save substantial costs associated with holding shareholders' meetings.

Shareholder proposal rights

Prior to the amendments, the Companies Act provided very favorable shareholder proposal rights. The amendments address some of the abuse by shareholders of their proposal rights by allowing companies to limit the maximum number of proposals by a shareholder as well as refuse shareholder proposals under certain circumstances to prevent abusive exercise by shareholders of their proposal right.

New corporate reorganization with statutory share delivery

The amendments created a new corporate restructuring facility with the introduction of a statutory share delivery scheme (*kabushiki kofu*). In Japan, stock-for-stock exchanges are rarely used for a number of reasons, including the requirement that the target company must be made a wholly owned subsidiary, and a third-party valuation report, etc. The new share delivery scheme will now enable partial takeovers via stock exchange without the requirement that the target become a wholly owned subsidiary.

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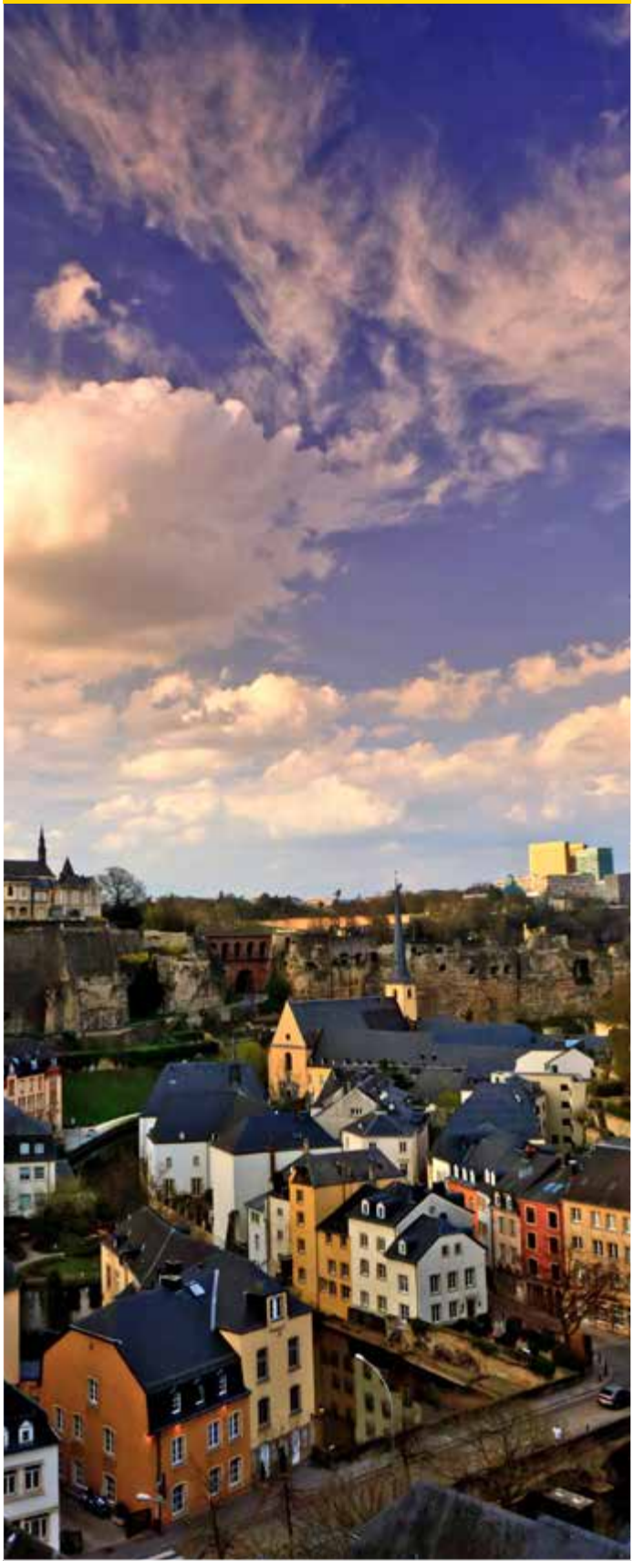

Clarification of the rules on financial assistance for Luxembourg limited liability companies (S.à r.l.s)

Under Luxembourg law, a corporation (SA or société anonyme) may not directly or indirectly advance funds or make loans or provide security with a view to the acquisition of its own shares by a third party unless it satisfies a specific authorization procedure with funds allocated to a special reserve account.

Since the major reform of the Luxembourg law on commercial companies (Company Law) in 2016, the revised article 1500-7 seemed to imply that the prohibition of granting of financial assistance was also applicable to limited liability companies (S.à r.l. or société à responsabilité limitée), because it erroneously referred to the term part sociales, which are shares issued by limited liability companies.

On 16 August 2021, a law entered into force to clarify the rules on financial assistance by deleting the reference to parts sociales.

As a consequence, financial assistance is not prohibited for Luxembourg limited liability companies but will be cautiously considered by the managers (gérants) in view of the corporate interest of the company.

This amendment has been expected by practitioners since 2016. It rectifies a clerical error and puts an end to an unnecessary controversy and enhances the attractiveness of Luxembourg for cross-border transactions, especially in the restructuring and leveraged buyout markets.

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Netherlands

New Dutch law: Act on Management and Supervision of Legal Entities

On 1 July 2021, the Act on Management and Supervision of Legal Entities (*Wet Bestuur en Toezicht Rechtspersonen*) (the Act) came into force. The Act entails an amendment of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*). Certain transitional arrangements are applicable.

The Act aims to improve the quality of the management and supervision of various Dutch legal entities, such as associations, cooperatives and foundations. The Act, inter alia, contains new rules regarding the liability of directors and supervisory board members in the event of improper performance of their duties.

The most important changes regulated by the Act are the following:

- The Act provides a statutory basis for the establishment of a supervisory board by foundations and associations.
- The Act facilitates the choice by foundations, associations, cooperatives and mutual insurance companies of a two-tier or one-tier model.
- Associations, cooperatives and mutual insurance companies will become subject to the same conflict-of-interest rules as NVs and BVs. Foundations will be subject to slightly different rules.
- The Act constitutes uniform rules on the liability of directors and supervisory board members in the event of bankruptcy.
- For NVs, BVs, foundations, associations, cooperatives and mutual insurance companies, the Act introduces uniform requirements for provisions in the articles on absence or inability to serve.
- The Act provides that a given director or supervisory board member cannot cast more votes than the other directors or supervisory board members combined. As such, there is a limit on the exercise of multiple voting rights.
- The Act introduces more extensive grounds for the removal of directors and supervisory board members of foundations.

Two items regulated by the Act will enter into force at a later date pursuant to the amended Act of 11 June 2021: the one-tier management model for associations, cooperatives, mutual insurance societies and foundations; and the rules on absence and inability to act applicable to the board members of an NV.

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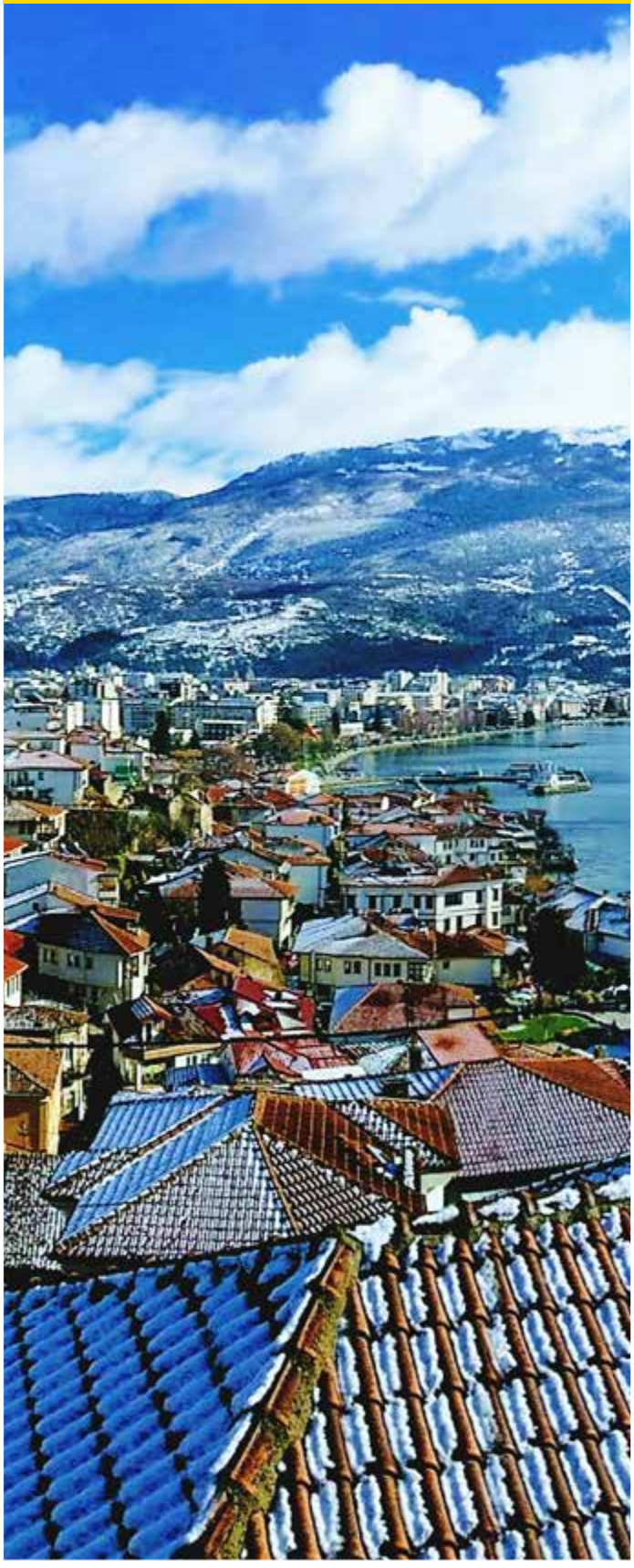

New data privacy law

Striving to harmonize with the EU General Data Protection Regulation (GDPR), North Macedonia adopted a new Data Privacy Law at the beginning of 2020, which entered into force on 24 February 2020 with a transitional period of 18 months. Following the transitional period, Macedonian authorities allowed a few more months in 2021 for training and educating the business sector to adjust business operations to the new law. Starting from 2022, enhanced monitoring and controls over data privacy compliance are expected.

The current law is in harmonization with the GDPR and regulates the protection of personal data and the right to privacy in relation to the processing of personal data, and particularly the principles related to processing of personal data; the rights of the individuals; position of the controller and processor; data privacy officer (DPO); transfer of personal data to EU and non-EU countries; the formation, status and competencies of the Agency for Personal Data Protection; special operations of personal data processing; legal remedies and responsibilities in the processing of personal data; supervision over personal data protection, and offense procedures in this area.

All companies acting in the capacity of controller or processor of personal data, regardless of size (including NGOs and other legal entities), are obliged to comply with the data privacy requirements of the law, risking monetary fines for non-compliance ranging between 2% and 4% of the total annual revenues reached in the previous financial year.

In addition to the training organized by the Data Privacy Agency in this field, an additional resource was made available to assist companies in complying with the requirements for appointment of a DPO – DPO Corner, a platform for the exchange of knowledge and experience and to support the execution of tasks of DPOs.

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Portugal

Revision of Portuguese Securities Code

Among other important changes, a revision of the Portuguese Securities Code approved in November 2021 allowed companies to issue shares with plural voting or to convert existing ordinary shares into such a new class of shares. This special legal regime will apply to companies with shares already admitted to trading on a regulated market or a multilateral trading facility or whenever such listing occurs.

Private companies are still forbidden from issuing shares with plural votes under the rules of the Portuguese Companies Code. For these companies, the one-share- one-vote principle prevails, although tempered by some deviations, notably the possibility of enacting voting caps or non-voting preferred shares.

Plural voting is limited to up to five votes per share. Plural voting shares will correspond to a new class, resulting from either a share capital increase or a conversion of existing shares. In existing companies, the issuance or conversion of shares requires approval by the same qualified majority required to approve changes to the companies' bylaws. The new legal regime does not provide for either a transition period or any sunset provisions.

On a macro perspective, this change is another in a series of steps taken toward the promotion of the Portuguese capital markets and the capitalization of Portuguese companies.

In particular, it has been asserted that this voting structure will facilitate the access of Portuguese companies to capital markets, allowing them to raise equity financing, increase the liquidity of their shares and improve their investment opportunities without the respective shareholders giving up control over the company.

This is particularly relevant given that the majority of Portuguese companies are small and medium-size enterprises, mostly controlled by their founders or family structures.

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Romania

Legislative amendments concerning the transfer of shares and the share capital of limited liability companies

The enactment over one year ago of the law on the simplification and reduction of bureaucracy with respect to the transfer of shares and the payment of the share capital by amending Companies' Law No. 31/1990 brought important changes concerning limited liability companies. These changes referred mainly to the simplification of the transfer of shares toward third parties and the removal of the requirement regarding the minimum share capital of RON200.

The procedure for transferring the shares to third parties in limited liability companies was simplified by removing the two-step procedure that could have taken approximately 60 days. Thus, currently, the transfer of shares toward third parties can be done in one step, without having to observe a 30-days opposition period as was previously required. The operation can be registered with the Commercial Registry Office within three business days from the date the complete file is submitted.

Another significant change was the removal of the minimum share capital and the removal of the minimum nominal value of a share in limited liability companies. By the time this legislative change entered into force, any limited liability company incorporated in Romania had to have a share capital of minimum RON200, divided into shares with a minimum nominal value of RON0. Currently, the only requirement in this respect is to have the share capital divided into equal shares. Therefore, the National Commercial Registry Office published a clarification statement: "The value of the share capital of a limited liability company cannot be lower than RON1 … ."

At the same time, the obligation to submit with the competent Commercial Registry Office the evidence of the share capital subscription upon the incorporation of a limited liability company was removed.

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Spain

Amendments to the Corporate Companies Act

Law 5/2021 of 12 April (the Law) transposes into the Spanish legal system the Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC regarding the encouragement of long-term shareholder engagement in listed companies.

The Law aims to improve the corporate governance of listed companies and to a large extent is aimed at improving the long-term financing these companies receive through the capital markets. The Law also introduces relevant changes that affect all capital companies, not only those that trade their shares on regulated markets. It mainly amends the Corporate Companies Act and the Securities Market Act.

The following are highlights:

1. Right to identify shareholders and ultimate beneficial owners. The Law recognizes the right of listed companies to identify not only the formal shareholders (those who appear legitimized in the accounting records) but also the ultimate beneficial owners of the shares (those on whose behalf the several intermediaries in the chain act from the formal shareholders).

2. Say on pay. The Law reinforces the right of shareholders in listed companies to express their opinion on directors' remuneration by introducing several amendments regarding the remuneration policy that must be submitted for approval by the General Shareholders' Meeting at least every three years.

3. The regulation of related-party transactions. The Law extends the concept of a related person to the director for all capital companies (considering the significant shareholder is represented by the director on the management body) and introduces rules of competence for the approval of related-party transactions. In addition, for listed companies, certain transparency requirements are introduced that affect related-party transactions of the company or entities of its group that amount to or exceed 5% of total assets or 2.5% of annual turnover.

4. Proxy advisors. The Law imposes, for the first time, certain transparency obligations on proxy advisors.

5. Other regulatory improvements.

a) The possibility is provided for all capital companies to hold meetings exclusively by telematic means without the physical attendance of shareholders or their representatives if provided for in the articles of association and when agreed by the management body in the notice of meeting, subject to certain requirements.

b) The duty of diligence of the directors of all capital companies is reinforced, expressly stating that they must subordinate their private interests to the interests of the company.

c) It is prohibited, for reasons of transparency and good corporate governance, for directors of listed companies to be legal persons, apart from legal persons belonging to the public sector who enter the board of directors in representation of a part of the share capital.

d) "Loyalty shares" with additional voting rights are introduced, allowing listed companies to include them in their articles of association subject to certain requirements.

e) The content to be included in the non-financial information statement of capital companies is developed, in particular regarding information on social and personnel matters, in order to detail the mechanisms and procedures available in the company to promote the involvement of employees in the management of the company, in terms of information, consultation and participation.

f) Amendments are introduced to simplify and streamline the process of raising capital on the market by listed companies and companies with shares admitted to trading on multilateral trade repositories.

g) The concept of listed companies (public limited companies whose shares are admitted to trading on a Spanish regulated market) and the legal regime applicable to Spanish companies listed exclusively on foreign stock markets are clarified.

h) The requirement to establish an audit committee is adjusted for public interest entities when they are subsidiaries in group structures.

i) The obligation for companies whose shares are listed on regulated markets to publish quarterly financial information is eliminated.

j) The annual directors' remuneration report is included among the information that the auditor must verify when analyzing the management report of listed companies.

k) Entities other than public limited listed companies issuing securities traded on regulated markets that are domiciled or operating in a Member State are exempted from the obligation to prepare the annual corporate governance report.

6. Institutional investor engagement policy. The Law obliges institutional investors to prepare and publish an engagement policy that must explain, among other aspects, the way in which they integrate shareholder engagement into their investment policy and how they have exercised, where applicable, their voting rights at the general shareholders' meetings of the companies in which they invest, an explanation of the most significant votes and, where applicable, the use of the services of proxy advisors.

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UK

UK National Security and Investment Act 2021

The National Security and Investment Act 2021 came into force on 4 January 2022 and effects a major overhaul of the way in which transactions and investments are reviewed on national security grounds in the UK.

Key features of the new regime are:

- It will apply to the acquisition of "material influence" (e.g., a shareholding of around 15%) in or control of a legal entity or control over assets, including land and IP, which may give rise to national security concerns in the UK.
- A mandatory notification obligation (and a corresponding standstill obligation) will apply to certain transactions involving target entities (not assets) in 17 specified sectors that involve:
  - The acquisition of a shareholding/voting rights of more than 25% or an increase in an existing stake that results in the investor's shareholding or voting rights crossing the 25%, 50% or 75% thresholds.
  - The acquisition of voting rights in an entity that enables the investor to secure or prevent the passage of any class of resolution governing the affairs of the entity.
- The 17 specified sectors include energy, transport, communications, defense, artificial intelligence and other tech-related sectors.
- The Government has an extensive call-in power, enabling it to call in qualifying transactions in any sector for review. Acquirers will also have a corresponding option to voluntarily notify a qualifying transaction to obtain clearance.
- The Government will have extensive powers to prohibit transactions that it believes pose a risk to national security.
- Qualifying acquisitions that are part of a corporate reorganization are covered.
  - The regime may capture acquisitions of non-UK entities or assets in certain circumstances.
  - The Government will have retroactive powers to call in for review any qualifying transaction completed between 12 November 2020 and 3 January 2022.

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Uruguay

Uruguay introduces changes to corporate governance

COVID-19 in Uruguay has triggered legislative changes at the level of the Commercial Companies Law No. 16,060, a regulation in force – and practically unchanged – since 1989.

In particular, and concerning the governance of corporations, namely Sociedades Anónimas in Uruguay, there are two key legislation changes introduced in the last Budget Law for 2020–2024, No. 19,924: the "auto-call" of shareholders in closed corporations and the approvals – for the second time within the legal order – of virtual shareholders' assembly meetings, which was already regulated for the new Simplified Stock Companies, introduced in 2019.

Regarding the shareholders' meetings of closed corporations – the most common legal vehicles in Uruguay – the possibility is provided for this corporate body to meet and deliberate without the need for a formal call by the administration body, either by summons or publication, provided that shareholders who represent the 100% of the paid-in capital are present ("auto-call"). The new rule does not distinguish between shareholders with or without voting rights, so it could be interpreted that all capital must be present.

Likewise, the new regulations provide the possibility of holding assembly meetings by videoconference – or any other means of simultaneous communication – provided that the method grants sufficient certainty about the identity of the participants, as well as the bilateral or plurilateral connection in real time (image and sound) of the remote assistants. Regarding formal aspects, the minutes corresponding to these deliberations must be drafted and copied in the (hardcopy) Book of Assembly Minutes within 30 days. Additionally, the means of communication used must be expressly disclosed. Although not required by law, a good practice could be the videorecording of the assemblies as support documentation and proof.

Although these new provisions are an important step forward, there is still a pending matter of the inclusion of similar solutions for other corporate bodies, such as the administrative body (e.g., board of directors), as well as for other company types such as Uruguayan Limited Liability Companies, or Sociedades de Responsabilidad Limitada.

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Further reading

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What regulations govern returning to the office as we enter the "beyond" phase. | EY – Global

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Why understanding FDI obligations is critical for global organizations

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[2] Including Cameroon, Central African Republic, Chad, Guinea Conakry.
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