

# Corporate and Commercial Law – global update

Spring 2016 edition



Building a better  
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# Editorial

Dear readers,

We are very happy to share with you the Spring 2016 edition of our Corporate and Commercial Law global update. In this issue, we have a total of 29 articles from 29 different jurisdictions on current legal affairs around the globe.

We recently added Argentina to the Global EY Law Network and are now represented in more than 70 countries.\* The international reach of the Global EY Law Network and the diversity of our service offerings are reflected in this edition. Just to name a few, the article from China reports an abolishment of restrictive rules on registered capital; our Peruvian colleagues provide an update on public private partnerships; the UK article discusses the consumer rights revolution; and the contribution from Poland is centered around the mis-selling of financial products.

We hope you will enjoy reading this new edition of our Corporate and Commercial Law Global Update. If you wish to receive more detailed information on our Global Law Network or the topics discussed in this issue, please feel free to contact us. Contact details for each of the countries covered by our Global Law practice can be found at the back.

Kind regards,



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# Albania

## New law on the National Business Center

The Albanian Parliament recently passed Law No. 131/2015 on the National Business Center, to take effect on 1 April 2016. The law provides for establishing the National Business Center (NBC), which will manage services previously handled by two separate institutions – the National Registration Center (NRC) and the National Licensing Center (NLC). The NBC will function through offices within local governmental units and chambers of commerce throughout Albania.

The NBC will carry out the following functions:

- ▶ Administer the commercial register of companies
- ▶ Accept and process applications for the commercial register
- ▶ Register businesses for fiscal and social insurance and health care, and for labor purposes
- ▶ Issue certificates, abstracts of registrations and certified copies of other filed documents
- ▶ Disclose other registered information on relevant entities to guarantee the public has free access to such data
- ▶ Administer the National Register of Licenses, Authorizations and Permits
- ▶ Manage procedures for issuing, changing and revoking various licenses, authorizations and permits that were previously managed by the NLC
- ▶ Provide free public access to the National Register of Licenses, Authorizations and Permits and inform interested parties about registration and licensing procedures
- ▶ Prepare opinions and studies to assist relevant ministries, the Council of Ministers, and other central and independent institutions with any legal or sublegal initiative related to the licensing and registration of businesses

By serving as a one-stop shop for both registration and licensing, the NBC should help save time for businesses by reducing their administrative burdens.



## Belgium

### Planned amendments to the Belgian Companies Code

In his policy paper of 10 November 2015, the Belgian Minister of Justice suggested to the Chamber of Representatives several important amendments to the Belgian Companies Code, based on proposals made by the Belgian Center for Company Law.

The minister wants to make Belgium more attractive for foreign investments by modernizing and simplifying the Companies Code, reflecting the changes in neighboring countries such as German and the Netherlands.

The first proposal concerns the possibility for associations and foundations to

perform economic activities, provided that the profits are used only for idealistic purposes.

The second proposal concerns the abolition of an important number of company types and maintaining only the partnership, the public (NV) and private (BVBA) limited liability company, and the cooperative company with limited liability (CVBA).

The last three legal forms will undergo meaningful changes. The NV targets large and listed companies, resulting in broader and more flexible rules concerning the management of the company. The BVBA will undergo a far-reaching transformation to become an appropriate entity for all kinds of businesses, small or large, on the

sole condition that they are not listed. The proposal abolishes the rather high capital requirements and installs other means to protect the company's creditors. In contrast to the past, the CVBA will regain focus on the cooperative idea. Finally, in terms of international private law, the proposal sets aside the real seat theory and introduces the statutory seat theory. Because the changes to the Companies Code are so wide-ranging, the transition period should be extensive so Belgian businesses have time to adapt.



# Brazil

## Adoption of the Hague Convention

On 29 January 2016, Decree No. 8.660 was enacted, promulgating the Convention Abolishing the Requirement of Legalization for Foreign Public Documents in Brazil.

The accession to the convention simplifies the international circulation of public documents between Brazil and the other 108 countries that have already signed it. It eliminates the need for consular legalization (also known as consularization or consular seal). Instead, the Hague Apostille will be attached to the public document by the competent authorities of

the country in which it was issued, making it valid in all other states that have signed the convention.

With this change, the demand for consular legalization will cease to exist. This formality is used by diplomatic and consular agents of the country where the document will take effect to certify the authenticity of the signature, the function or title of the document's signatory and, when applicable, the authenticity of its seal or stamp.

The issuance of the Hague Apostille by notary offices will be based on a resolution from the National Council of Justice, which will also be the Brazilian focal point

to address the theme with national and foreign entities.

Regarding situations when two or more of the convention's signatory countries already have regulations or customs to simplify or waive legalization, the convention provides that the only formality that may be required to certify a document's authenticity is affixing the Apostille issued by the competent authority of the state of origin.

Even though the decree was published, the convention will follow the deadlines for becoming effective in Brazil, which will occur on 14 August 2016.



### Draft public procurement law

The project to create a new public procurement law seeks to decrease the administrative burden and the complexity of procedures, reducing the price of contracts while observing the highest principles of transparency, nondiscrimination and fair competition.

The contracting authorities will have the opportunity to conduct preliminary market research in observance of clear

rules and the principle of equality. The rules for assigning shall be determined by economic capacity and professional competence. Technical issues related to how the assigning will take place will be developed in the rules for implementing the law itself so that both enter into force simultaneously.

Enforcement of the law will be provided through a new set of applicable procedures set forth by a regulation of the European

Commission. New applications will be approved by the Executive Director of the Public Procurement Agency.

The law is expected to align the national and European legislation, ease and accelerate the procurement process, mitigate corruption and misuse of public funds, and optimize the work of the national public authorities.



# China

## China abolishes restrictive rules on registered capital

### Introduction

On 28 October 2015, the Ministry of Commerce of China (MOFCOM) issued the Decision on Revising Some Regulations and Normative Documents (Order of the Ministry of Commerce [2015] No. 2). The order, effective immediately, abolished certain restrictive rules on foreign-invested companies, mainly related to the registered capital of companies, and will exert a positive impact on foreign investment.

### The impact on foreign investment

The order deletes or modifies restrictive articles of 29 regulations and standard documents on the establishment, merger or division of a foreign-invested company or a company in certain sectors. The changes focus primarily on the requirements of minimum registered capital, the period of capital contribution, the proportion of the first contribution

and the proportion of cash investment. The order affects foreign investment in various forms and sectors and includes the following:

- ▶ The requirement for the minimum registered capital and the minimum ratio of foreign equity (25%) of a foreign-invested joint stock company is removed, and the deadline for capital contribution is also canceled.
- ▶ Investment companies established by foreign investors (China holding company – CHC) can either take the form of a limited liability company or a joint stock limited company. No minimum registered capital is required.
- ▶ For foreign-funded venture capital companies, the order removes the requirement for minimum subscribed capital, along with the five-year limit for contribution.
- ▶ With the merger or division of foreign-invested companies, the prerequisite that the investors must actually contribute all

the subscribed capital is removed, and a capital verification report is no longer needed when applying for approval of a merger or division.

Other changes affect rules on reinvestment by foreign-invested companies and strategic investment by foreign investors in listed corporations, as well as rules on specific industrial sectors such as auction, oil and construction.

### The significance

The order mainly aims to abolish restrictive rules on capital contribution and to align the rules with the Company Law amended in 2013. Foreign investors will have an easier time starting their business in China and will have more flexibility on the amount, form and timing of capital contributions.



## Liability of legal entities derived from foreign corrupt practices

In February 2016, Law No. 1778 was enacted to establish a punitive regime for legal entities that undertake foreign corrupt practices. The penalties target legal entities that, by means of their employees, contractors, administrators or associates, willfully offer, pay or promise money or another benefit to any person while knowing that it will go toward inducing or influencing foreign officials to perform or omit to perform an act in violation of their lawful duty, or will help secure an improper advantage in a foreign transaction.

The Superintendency of Corporations may penalize any legal entity that condones or performs foreign corrupt practices. Penalties include:

- ▶ Fines of up to 200,000 monthly legal wages (approximately US\$12 million)

- ▶ Prohibition on contracting with the Government
- ▶ Publication of the corrupt practice in the national media and on the company's website for up to a year

These penalties will be listed in the mercantile registry and printed in the company's good standing certificate and, as such, will be made public. The penalties can be reduced if the entity cooperates with the investigation.

Penalties are applicable to all types of entities – branches and corporations alike. They can also extend to parent and controlling companies that consent to or tolerate corrupt practices. Liability may also be transferred to beneficiary or absorbing entities in spin-offs or mergers.

The statute of limitations is 10 years from the date the act was committed. If such behavior entails reprehensible conduct for criminal law or disciplinary

law purposes, the Superintendency will inform the corresponding authorities. The administrative investigation provided for under this law will not forestall other punitive proceedings.

Finally, the Superintendency of Corporations will determine which entities must adopt a business ethics and transparency program, considering their assets, income, number of employees and business purpose.

# Colombia



# Czech Republic

## Draft law on public contracts

The Czech Government has submitted a draft of a new Act on Public Contracts as Parliamentary Bulletin No. 637. The Chamber of Deputies has approved it, and the Senate voted on it at its meeting as of 6 April 2016.

The law proposes the repeal of Acts Nos. 137/2006 Coll. on public contracts and 139/2006 Coll. on concession contracts and procedures (the Concession Act). According to the explanatory memorandum, the law should harmonize Czech and EU legislation governing public contracts. It should also establish clear anti-corruption rules, promote judicious use of public funds, enable

speedy implementation of vital public projects and provide for fair competition among vendors. It should also reduce the administrative work associated with public procurement and help make the process transparent.

Among other new items, the bill introduces:

- ▶ A simplified below-threshold procedure that should be undemanding, quick and transparent, promoting fair competition
- ▶ A wider range of possible reasons for excluding a vendor from a procurement procedure (e.g., if a participant engaged in serious professional misconduct in the last three years that undermines its credibility)

- ▶ Another type of procurement procedure – the innovation partnership procedure – designed to develop an innovative product, service or building work that is new to the market

In compliance with EU legislation, the new law will not apply to all public procurements. These include services pertaining to legal representation of a client by an attorney and to legal advisory.

The main part of the law will take effect on the first day of the third calendar month after its announcement.



## Estonia

### Estonian Commercial Register pays more attention to companies with negative equity

Pursuant to the Estonian Commercial Code, a court can initiate dissolution of a company if the annual report indicates that it has negative equity and it has adopted no measures to solve the issue. Before deleting the company from the Commercial Register, the court issues a regulation demanding a capital adjustment and setting a time limit.

The company's equity is negative if it is less than:

- ▶ Half the share capital
- Or
- ▶ €2,500 (private limited companies) or €25,000 (public limited companies)

The share capital can be increased through either monetary or non-monetary contributions. A shareholder loan can be waived and used as a non-monetary contribution to the equity.

However, only a minor part of the total contribution may be allocated to the share capital, and the rest will go toward share premium or a voluntary reserve.

The Commercial Register has been active in starting dissolution proceedings recently. Therefore, it is crucial to take steps to increase equity, including:

- ▶ A decrease or increase in share capital
- ▶ The creation of a voluntary reserve
- ▶ Dissolution, merger, division or transformation
- ▶ Submission of a bankruptcy petition

If there has been a considerable loss in recent years, the situation might change rapidly. One option is to strengthen the equity beforehand and not wait until negative equity occurs.

Equity is also an indication of the company's solvency. Since even a liquidation requires positive equity, it is important to implement the required measures in a timely fashion to keep the equity in line with legal requirements.



# Finland

## Electronic mortgage deed will soon be the only option in Finland

Current plans call for amending the Finnish Real Estate Code (540/1995) with a pending Government Bill (8/2016) on mortgage deeds. Under the most material changes, new mortgage deeds would be given only in an electronic format, and electronic mortgage deeds would no longer be converted into written form.

The transition period for implementing amendments would end in late 2019. After that, written mortgage deeds could no longer be used to establish a new right of lien.

The bill aims to promote the adoption of electronic mortgage deeds. At present, an electronic deed is an alternative to a written deed, and the mortgage applicant can choose between the two. As a long-term benefit, using only electronic deeds would rationalize operations and lower

the costs of financing. It is also considered important to transition from two competing models to one uniform model.

The bill would include other amendments, e.g., the process of converting written deeds to electronic format would be made easier.

The amendments are expected to take effect on 1 June 2017.



## Reform of French law on contracts

In a long-awaited change, the French law on contracts governing general legal regime and proof of obligations was modified by an ordinance issued on 10 February 2016.

The reform is less a revolution than a rewriting of the principles to improve legal certainty and the preservation of the weakest party, and to reinforce the attractiveness of French law to contracting parties.

The ordinance seeks to adapt the law to business practices, clarify it and remove outdated or little-used provisions. It also codifies rules created by case law and adds provisions inspired by economic law. If Parliament approves the ordinance, the new provisions should take effect on 1 October 2016.

The main benefits include the introduction of a general precontractual information duty under which the parties must disclose material that has a direct and necessary link to the subject matter of the contract. They cannot exclude or even limit this information. If the duty is breached, the defaulting party can be held liable, or the contract can be canceled if the violation causes a serious defect of consent.

The abuse of a state of dependence is now considered a case of duress that vitiates consent – grounds to nullify the contract. According to the new provisions, abuse results when one party gains a manifestly excessive advantage by exploiting the state of dependence of another party to obtain an undertaking to which the other party would not have agreed.

The notion of a significant imbalance between the rights and obligations of

the parties has been introduced in the civil code but is limited to preformulated standard contracts (*contrats d'adhésion*). With these contracts, one of the parties determines the general terms without negotiation. Purchase orders that are simply governed by general terms and conditions will now be subject to significant imbalance. Abusive clauses will be deemed null and void.

The new code also simplifies the assignment of receivable. It is now subject only to the assignee's consent or the assignee's notification or acknowledgment. Notification by a bailiff or assignment through a notarial deed is no longer required.



# Guatemala

## Changes in Guatemalan corporate legislation

In 2015 and early 2016, Guatemala made major changes to corporate legislation:

- ▶ Under Legislative Decree No. 1-2016, dated 19 February 2016, Guatemala signed the Hague Convention, ending the need to legalize public foreign documents that come from member states. Although the decree is in force, it is expected to be applied at the end of 2016. With this action, formalities in public registries for foreign persons will be cheaper and quicker.
- ▶ On 21 August 2015, the Monetary Board of Guatemala published Resolution

JM-73-2015, which includes a new Insurance Mass Marketing Regulation, repealing the former regulation but making only minor changes.

- ▶ On 14 August 2015, the Monetary Board published Resolution JM-70-2015, which amends, through sections 5, 10 and 15, the regulation for disclosing information for offshore companies, companies that specialize in financial services comprising a financial group and exchange banks included in Resolution JM-12-2014. It also abolishes Exhibits V and VI of the regulation.
- ▶ On 12 January 2016, the Ministry of Environment and Natural Resources issued a new regulation for obtaining

environmental evaluation, control and follow-up licenses. Governmental Agreement No. 20-2016 sets a two-year term so companies can adjust to its provisions.

- ▶ On 25 February 2016, the Congress of Guatemala approved Urgency Decree No. 19-2016, which includes the Emerging Employment Preservation Law. It offers a 10-year income tax exemption for the textile industry and call centers.



## India

### Shareholders' duties and derivative suits

In the *Rajeev Saumitra vs. Neetu Singh & Ors* judgment, dated 27 January 2016, the Delhi High Court examined the scope of Section 166 of the Companies Act 2013, which lists the duties of directors. The court expanded the current understanding of shareholders' obligations in India and opened the door to derivative suits, largely unknown to Indian shareholders.

The plaintiff and defendant were both directors and 50% shareholders of Paramount Coaching Centre. The defendant incorporated two other companies carrying out identical businesses, for which she solicited the employees and clients of the original business.

As a 50% shareholder and director of Paramount, the defendant could block any corporate resolutions seeking to proceed against her. In light of this, the plaintiff reasoned he had no alternative but to pursue a derivative suit against the defendant for a breach of Section 166 of Companies Act 2013.

The court stated, "*Ordinarily the directors of the company are the only persons who can conduct litigation in the name of [a] company, but when they are themselves the wrongdoers ... and have acted malafide or beyond their powers ... the majority of shareholders must in such a case be entitled to take steps to redress the wrong.*"

This opens the door for shareholders to pursue derivative suits as another course of action, in addition to the class action suit provisions that are not yet in force.

In relation to majority shareholders, the court said, "*It is true that a share is property, which its owner may treat in any way he desires. A controlling shareholder who wishes to sell his shares owes a duty of loyalty to the company with respect to the sale ... He will be in breach of his duty if he sells his shares to a buyer who to the best of his knowledge will strip the company of its assets and lead to its insolvency.*"

The shareholder's duty to avoid the "stripping of a company" raises questions about the manner of enforcement of commonly employed private equity exit provisions, such as drag-along rights and the right to make strategic sales.



# Italy

## Rules for in-kind contributions

On 24 February 2016, Note No. 276/2015 of the Italian Council of Notaries was published, providing for an analysis of in-kind contributions not used to increase corporate capital.

### The aim of the note

Under the Italian Civil Code, in-kind contributions can be made if an appraisal of the contributed goods is prepared, among other conditions.

However, a huge number of companies in Italy face financial difficulties and are undercapitalized. Because of that, alternative approaches, other than an increase in corporate capital, are used to inject capital into Italian corporations.

Consequently, it is necessary to reduce the risk that alternative contributions will be used to avoid the rules set forth for the composition of corporate capital.

### The main contents of the note

The Italian Council of Notaries clarifies that if the in-kind contribution is not used to increase corporate capital, an appraisal is not necessary. In fact, the general interest of third parties connected to the consistency of corporate capital and the company's net worth would be protected by rules governing the preparation of financial statements and the directors' liability if such principles are violated.

Notably, this applies only when the parties (i.e., the contributor and the beneficiary company) expressly state that the

contribution will not be used to increase corporate capital or, alternatively, do not provide for a specific allocation of the contribution. Otherwise, the appraisal would still be mandatory.

Nevertheless, the courts hold the power to determine – case by case – whether the parties aimed to make a contribution that avoided the applicable rules.



# Japan

## Japan amends Personal Information Protection Act

The Personal Information Protection Act was amended in September 2015 – the first major change since the law was enacted in 2005.

The rationale behind the amendment, set to take effect in September 2017, is the development of information technology that enables companies to collect the activity and buying history of customers. The original definition of personal information was vague and broad, and companies could not use that data efficiently. In addition, the general public was increasingly concerned about the leaking of personal information from the sellers or service providers to third parties.

The main amendments to the act are as follows:

### Definition of personal information

The act provides a detailed definition of “personal information.” It makes clear that

data produced by processing personal information, from which it is impossible to identify the person, is not treated as personal information. Therefore, a corporation can use big data together with third parties for business purposes.

### Provision of information to third parties abroad

Under the current act, companies need the approval of information providers to give personal information to third parties. Such approval is not required in cases of:

- ▶ Outsourcing of items to pursue the purpose of providing information
- ▶ Merger
- ▶ The use of information jointly with other parties (the purpose, the name of the other parties, etc., must be disclosed)

Under the amended act, if the company provides personal information to a third party outside Japan, the third party needs to be in a country listed in a regulation to be provided by the Personal Information Protection Commission, or it needs to meet the requirement set by the commission. Otherwise, the information provider’s consent must be obtained. This change may affect how multinational enterprises handle data.



# Luxembourg

## The legal nature of CPECs

In a judgment dated 23 December 2015 (No. 1648/2015, docket Nos. 145724 and 145725), the District Court of Luxembourg, sitting in commercial matters, took a firm position for the first time on the nature of Convertible Preferred Equity Certificates (CPECs).

This financial instrument – created in the early 2000s, mostly for corporate private equity or hedge fund structures – is treated as debt in Luxembourg and as equity in certain foreign jurisdictions.

In this trial, the court confirmed that CPECs should be seen under Luxembourg law as

a debt instrument that does not, per se, confer the right to a share in the profits of the issuing company. Even though this instrument can be converted into shares, CPECs do not qualify as equity. Indeed, they shall be treated as debt from an accounting point of view, and Luxembourg corporate law provisions shall not apply unless CPECs are converted into shares.

The judge confirmed an analysis that is well established in practice in Luxembourg and other jurisdictions. The ruling will give comfort to numerous professionals in the Luxembourg and international legal marketplace.

This case is already considered a major piece of jurisprudence for 2015 by the Luxembourg legal and tax community. However, an appeal has been lodged against this judgment, allowing the Luxembourg Appeal Court to rule on this interesting question.



# Mexico

## A new type of company

On 14 March 2016, a reform to supplement the General Law of Business Entities was published in the *Official Federal Gazette* – part of efforts to increase entrepreneurship in Mexico and to stimulate investments, business growth and national economic development. The reform adds a new type of company, a simplified shares company (*sociedad por acciones simplificada* – SAS), that provides a simplified mechanism adaptable to the requirements of micro, small and medium-sized businesses. The amendment facilitates their access

to the formal sector of the economy by streamlining incorporation procedures, which will ultimately create jobs. Such businesses represent 99.8% of the economic units in the country.

The reform also creates a mechanism to make it easier to set up a company. Through an electronic system operated by the Ministry of Economy, incorporation is expected to take only a few hours. The process will eliminate the requirement of formalization before a notary public and will enable the online and free registration of companies before the Federal Taxpayers

Registry and the Public Registry of Commerce.

The impact on the Mexican corporate and business environment could be significant, considering that micro, small and medium-sized businesses account for 72% of employment and 52% of the gross domestic product, according to the Intersecretarial Commission on Industrial Policy.



## New Zealand

### Schemes of arrangement vs. the Takeovers Code

In New Zealand, recent high-profile market transactions have been carried out through schemes of arrangement (“schemes”), illustrating that statutory amendments made in mid-2014 have achieved the objective of elevating schemes from dubious “loopholes” to a legitimate and valuable means for undertaking corporate transactions.

Under the New Zealand Companies Act 1993, the schemes are a court-supervised procedure that enables the reorganization of the rights and obligations of shareholders and companies. That includes private companies and code companies – those that trade on the New Zealand stock exchange or that have 50 or more shareholders and 50 or more share parcels. Code companies are also subject to the Takeovers Code, which applies to any takeover bids of a target company that is not a code company.

The Takeovers Code and schemes of arrangement differ on the requirements for takeovers. With schemes, shareholders are given less information and are less involved. The scheme provisions were viewed as undermining the Takeovers Code, and they were seldom used in New Zealand.

To align the two processes, the Companies Act was amended in July 2014. Now, a court may not approve a scheme that affects the voting rights of a company unless:

- ▶ The court is satisfied that using the scheme rather than the Takeovers Code will not adversely affect shareholders.
- Or
- ▶ The company has filed a statement from the Takeovers Panel indicating that the panel does not object to the scheme.

Current market activity demonstrates that past concerns about schemes have been allayed. The availability of a scheme to carry out corporate transactions provides those interested in investing in New Zealand with commercial flexibility on how to approach a target. Anyone considering entering the market should view both options as legitimate commercial alternatives.



# Netherlands

## Miscellaneous corporate law changes

### Shortening of ultimate deadline for filing annual accounts

Beginning with the reporting of financial years that start on or after 1 January 2016, the deadline for preparing annual accounts during the extended period allowed in extraordinary circumstances has been shortened by one month.

As a result of the change in mandatory law, the ultimate deadline for filing annual accounts with the Trade Register has changed from 13 to 12 months after the financial year ends. The standard deadline has not been modified.

Noncompliance with the shortened deadline may lead to an economic offense and the liability of managing directors in cases of bankruptcy.

### New rules on risk section in report of the managing board

Dutch law requires the report of the managing board (*bestuursverslag*) to describe the main risks and uncertainties that a company faces. In practice, the risk section in reports from unlisted companies was rather short.

The Council for Annual Reporting, which seeks to improve external reporting by organizations and companies in the Netherlands, has extended the requirements for the risk section.

As a consequence of these new provisions, it can be argued that listed large and medium-sized enterprises must extend risk sections in their reports as of the 2015 financial year.

Large and medium-sized companies are those that do not meet two of these criteria over two consecutive years:

- ▶ The value of the assets does not exceed €6 million, according to the balance

sheet, with explanation thereto, and based on acquisition and manufacturing costs.

- ▶ The net annual turnover is no more than €12 million.
- ▶ The average number of employees for the financial year is fewer than 50.



# Norway

## New legislation will require separation of activities for energy companies

The Norwegian Parliament has adopted an amendment to the Energy Act that requires energy companies to separate their transmission services from their other activities, both legally and functionally. This requirement already exists for vertically integrated energy companies with more than 100,000 customers; the amendment extends it to all integrated energy companies. Since Norway has almost 150 transmission companies, only 8 of

which have over 100,000 customers, the amendment has far-reaching implications.

A company's transmission services must be organized as a separate legal entity, and the executive management of the transmission company cannot participate in the management of associated companies owned by the same parent company. The legislation allows cooperation between transmission and production or district heating companies on common operating facilities, provided that the transmission company manages and controls the transmission functions. The parent company can also influence

the transmission company's economic framework, but it cannot instruct the transmission company on its day-to-day operations or on decisions related to investments in the grid.

The amendment is intended to reduce the risk of cross-subsidization and to increase transparency and neutrality in parts of the business that are open to competition. The legislation follows up on a Government-commissioned report, published in 2014, on the organization of the Norwegian grid.

Energy companies must comply with the new rules by 1 January 2021.



## Public-private partnerships in Peru

In December 2015, a major legal modification entered into force in Peru regarding the establishment of a new legal framework for public-private partnership (PPP) (Legislative Decree No. 1224 and its regulations). A PPP is a form of private investment participation that involves knowledge, equipment, technology, and distribution of risks and resources. The goal is to create, develop, improve, operate or maintain public infrastructure; to provide public services or services related to those required by the Government; and

to develop projects of applied research and technological innovation.

The most important modifications are seen as:

- ▶ The creation of a National Private Investment Promotion System for the development of PPPs, composed of principles, standards, technical guidelines and regulatory procedures
- ▶ The appointment of the Ministry of Economy and Finance as the governing body whose approval is required for all PPP contracts and feasibility studies

This milestone in Peruvian PPP regulation comes as the Government tries to close

the “infrastructure gap”. According to the Association for the Promotion of Peruvian National Infrastructure, an investment of more than US\$159 billion is required to close the gap for 2016-25. However, the agency has identified projects for only about US\$66 billion. Considering this and recommendations from the Organisation for Economic Co-operation and Development (OECD), Peru seeks a simplified regulatory framework for promoting private investment. PPPs should help the economy to recover, create productive employment and enhance Peru’s competitiveness.



# Poland

## New regulation on mis-selling financial products in Poland

New Polish regulations prohibiting the mis-selling of financial products took effect on 17 April 2016. Specifically, sellers cannot urge consumers to buy financial services that do not suit their needs or offer products in a way that is inappropriate to their nature (e.g., the sale of complex financial products over the phone). The new regulations seek to protect average consumers when they cannot properly assess the nature and suitability of complex financial or

insurance products. The rules also require entrepreneurs to analyze whether a service actually meets consumers' needs.

The regulations give the Polish Office of Competition and Consumer Protection (the UOKiK) new tools to detect and challenge consumer abuses (e.g., using mystery shopping to gather evidence). The UOKiK can also issue administrative decisions on abusive clauses in consumer contracts.

Under the regulations, the UOKiK can publish free communications in public media to warn consumers about behaviors or practices that threaten their interests.

In addition, the regulations enable the UOKiK to issue an "interim decision" that would require an entrepreneur to refrain from certain acts, even though the proceedings are still ongoing. An appeal of the decision would not prevent it from being executed.

Taking these changes into account, entrepreneurs offering financial products in Poland should analyze such transactions and possibly adjust sale or distribution policies for some products.



# Russia

## Recent changes in Russian laws

### New rules: recycle or pay

Starting on 1 January 2015, producers were given extended responsibility for waste recycling. Producers and importers of goods must either recycle a certain quantity of goods and packaging waste, or pay an ecological fee. With packaging, the responsibility for recycling is imposed on the producer (importer) of the packaged goods.

To demonstrate compliance, producers and importers must file a declaration with the regulator on the volume of produced (imported) goods and a report on compliance with recycling targets. Although the recycling target for 2015 was set at 0%, the declaration and report must still be filed by 1 April 2016. Reporting for 2016 is due by 1 April 2017.

Although no specific sanctions have been set for non-compliance, 2016 may be regarded as a pilot year for producers and importers to examine the requirements and properly organize record-keeping.

Producers and importers are strongly encouraged to comply with the filing requirements.

### LLC shareholders may have to visit a Russian notary

Starting in January 2016, Russian notaries have a broader role in attesting certain corporate actions in a limited liability company (LLC). The following actions now require notarization before a Russian notary:

- ▶ An offer to sell an LLC share to a third party
- ▶ A resolution to increase the charter capital
- ▶ A shareholder's notice of exit from the company

As formal as it may seem, this requirement could substantially complicate corporate restructurings because it is often impractical for representatives of foreign shareholders to visit Russia to perform a simple corporate action. A practical approach is issuing power of attorney to someone in Russia who can attend the

meeting with the notary. Furthermore, various regulators have conflicting opinions on whether the new notarization requirements apply to LLCs held by a single shareholder.

Finally, when LLC shares are transferred, the purchaser now legally becomes the owner of the shares when the transaction is recorded in the public register, rather than when the transaction is notarized.

### Ban on foreign software

Since 1 January 2016, the use of computer programs and databases originating from abroad for state and municipal needs is forbidden. The new rules allow foreign software only if no Russian analog has the required functional, technical and operational characteristics. The software is recognized as Russian only if its details are filed with the new Unified Register of Russian Computer Programs and Databases.



# Serbia

## New Merger Clearance Decree

As of 2 February 2016, a new Merger Clearance Decree is in force, with the aim of aligning with EU rules the procedure for notifying the Serbian Competition Authority of mergers. The main novelty is the introduction of a simplified form of notification and the formal possibility for a pre-notification meeting with the authority.

As a general rule, the simplified form can be submitted:

- ▶ When there is no horizontal overlap between the parties and no vertical relationship
- ▶ When there is a horizontal relationship but the combined market share of all parties does not exceed 20%

- ▶ Where there are vertical relationships but the individual or combined market shares of the undertakings do not exceed 30%
- ▶ When a party is to acquire sole control of an undertaking over which it already has joint control
- ▶ When horizontal mergers have a combined market share of less than 40% and the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the merger is below 150

Companies will be obliged to use the regular notification form if the circumstances of the particular case indicate that the conditions for merger clearance are

not met. According to the decree, those circumstances include when the authority lacks the relevant practice to define the relevant market, or when a party to a merger enters or could enter the relevant market.



# Singapore

## Amendments to the Companies Act

The Singapore Companies Act (CA) is the primary legislation regulating corporate entities in Singapore.

Amendments to the CA were passed in 2014 and took effect in phases from July 2015 to January 2016. The revised CA aims to reduce the regulatory burden on companies, ease compliance and promote business flexibility while safeguarding a transparent corporate environment that maintains investor confidence.

### Key reforms under the revised CA

#### Reducing regulatory burden on companies and easing compliance

- ▶ Scales down audit requirements for small companies and grants exemptions

- ▶ Relaxes requirements for companies' annual general meetings, including the use of proxies and the passing of resolutions

#### Promoting business flexibility

- ▶ Provides more flexibility in capital maintenance, including the financing, acquiring and transferring of shares
- ▶ Makes it easier to extend loan arrangements
- ▶ Relaxes requirements for director compensation upon termination and allows companies to indemnify directors against potential liability

#### Safeguarding a transparent corporate environment to maintain investor confidence

- ▶ Introduces an electronic register where the public can access registered companies' records anytime

- ▶ Provides a tighter company striking-off regime and a new director debarment regime
- ▶ Extends directors' duties of disclosure to CEOs
- ▶ Enhances safeguards against the improper use of position by company officers

#### Foreign companies

- ▶ Brings the rules governing foreign companies closer in line with those governing local companies, including stricter financial reporting standards and a tighter striking-off regime



## Slovakia

### “Company in crisis” – amendment to the Slovak Commercial Code

An amendment to the Slovak Commercial Code that took effect on 1 January 2016 introduced the term “company in crisis.” A company is in crisis if it is bankrupt (i.e., insolvent or in default) or under threat of bankruptcy (i.e., the ratio of its equity and liabilities is less than 4:100 in 2016, a threshold that will change in subsequent years).

The new regulation applies to limited liability and joint stock companies, as well as limited partnerships whose general partner is not an individual, with a few exceptions (e.g., banks and insurance and reinsurance companies).

If a company is in crisis, the actions of its statutory body are bound by stricter requirements. Statutory bodies that have concluded a company is in crisis – or could have done so in light of all the circumstances – must take all measures to overcome the crisis that would have been taken by another reasonably diligent person in a similar position.

In line with the new regulation, loans or comparable aid provided to a company during its crisis by related parties (e.g., shareholders) after 1 January 2016 cannot be repaid if the company is already in crisis or if doing so would reduce its status to crisis. If this rule is broken, the unlawfully returned funds must be repaid to the company, and the members of the statutory body will be jointly and severally

liable toward the company and its creditors for return of the funds. The rule also applies to loans or comparable aid provided to the company before its crisis (i.e., before the end of 2015) if their maturity would be deferred or extended during the crisis.

Moreover, if a related party secures the obligation of a company in crisis, the related party as guarantor must settle the secured obligation regardless of whether the company is able to settle the secured obligations.



## Turkey

### Turkey enacts law on protection of personal data

After a long waiting period, the Turkish Parliament adopted the Law on the Protection of Personal Data on 24 March 2016. The law will take effect once it is published in the *Official Gazette*. Before now, personal data rights were protected by some provisions of general laws such as constitutional law, the Turkish Civil Code and the Turkish Criminal Code. The new law establishes a set of rules specifically aimed at protecting personal data, and it regulates the procedures and principles for processing personal data, as well as the rights and obligations

of persons and legal entities. It largely reflects the EU Data Protection Directive (95/46/EC).

Under the law, personal data can be processed with the open consent of the relevant person. The law mainly defines the concepts of personal data, sensitive data and data controller; regulates the transfer, processing and deletion of personal data; imposes rules on data controllers for retaining data; and regulates the establishment of the Data Protection Authority. The law describes exceptions that would be outside its scope, such as cases of public order, economic safety and national security.

This is a major step in aligning Turkey's legislative framework with the EU's, and it is expected to have significant implications for the persons and legal entities that perform transactions that include data processing (i.e., selling and purchasing, leasing, and service operations). To adapt to the law, they should harmonize their operations, obtain open consent when necessary, and appoint someone to organize internal systems and establish connections with the Data Protection Authority.



UK

## Consumer rights revolution in the UK

The Consumer Rights Act 2015 took effect on 1 October 2015 with the aim of simplifying and reforming UK statutes and regulations governing relations between businesses and consumers. For the most part, the act has consolidated existing UK legislation; however, the opportunity to update consumer laws has not been missed. The act applies to contracts (verbal, written or implied from the parties' conduct) between a trader and a consumer when goods, digital content or services are provided. The changes are relevant to every business that sells directly to consumers and pursues its activities in, or directs its activities to, the UK.

### Key changes:

- ▶ A new standard has been introduced for goods: they must now match a model seen or examined previously. Remedies for unmet standards have also been updated. For example, consumers now have a right to reject goods and receive a refund within 30 days.
- ▶ For the first time, rights on digital content have been formalized in legislation. Consumers now have a right to have faulty digital content repaired or replaced, including online games, apps and e-books. The law had previously been unclear, and this change has aligned protection for digital products with that for other goods.
- ▶ The act clarifies what should happen if a service is not provided with reasonable

care and skill or as agreed. The business that provided the service must bring it in line with what the customer agreed to, or, if this is not practical, must refund some money.

- ▶ The act clarifies and harmonizes unfair terms by capturing terms that have been individually negotiated (previously exempt from being deemed unfair).
- ▶ The act also introduces important changes that enable consumers and small businesses to obtain damages for breaches of competition law.



## Ukraine

### Lingering process of “big” privatization in Ukraine takes a step forward

On 6 March 2016, a new law took effect that streamlines privatization in Ukraine, aligns local procedure with international standards and paves the way for foreign investors.

Under the law:

- ▶ The mandatory sale of 5%-10% of an enterprise’s shares on the Ukrainian stock exchange prior to privatization was canceled. This will speed up the procedure and help avoid the dilution of shares.
- ▶ Disputes under a privatization agreement may be resolved through international commercial arbitration. The use of this provision is at the discretion of the

Ukrainian privatization authority. If the parties cannot agree on a dispute settlement body, the dispute must be solved based on the arbitration rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

- ▶ The Government is explicitly allowed to select, on a competitive basis, external advisors for privatizing its strategic enterprises. The advisors may be involved in audit, accounting compliance, independent valuation, analysis of performance and investment potential, and the search for potential investors. Their fees will be paid by the state or the international organizations.
- ▶ Potential investors must disclose information on their ultimate beneficial owner(s).

- ▶ Certain companies and individuals cannot participate in privatization, including:
  - ▶ Companies in which the Ukrainian Government holds more than 25% of shares
  - ▶ Individuals and companies that are subject to sanctions under Ukrainian laws or that have certain connections to countries that the Ukrainian Parliament has deemed aggressor states

These standards may apply to the privatization of almost 350 state enterprises that the Government reportedly intends to sell in 2016.



# Vietnam

## Representative offices and branches of foreign business entities in Vietnam

Decree No. 07/2016/ND-CP (Decree 07) on representative offices (ROs) and branches of foreign business entities in Vietnam has been in force since 10 March 2016, replacing the old legislation.

Below are substantially positive changes pertaining to the licensing procedures of Decree 07:

▶ **An additional agency eligible to issue establishment licenses**

In addition to the provincial Departments of Industry and Trade (DOITs), Decree 07 makes another agency eligible to issue establishment licenses for ROs – the management board of an industrial

zone, export processing zone, economic zone or high-tech zone. DOITs are in charge of licensing ROs outside the zones, and the management board is responsible for ROs within the zones. This change reduces the DOITs' workload and increases the management board's administrative supervision over ROs inside the zones.

▶ **Clarification on renewed establishment licenses**

Decree 07 provides a fixed term for renewed establishment licenses that must be the same as the current term. The renewal term will no longer be at the discretion of the licensing authority.

▶ **Shorter timeline**

Applications for an establishment license will now take only 7 business days from

the date the valid application dossier is submitted, instead of 15.

▶ **Reduction of bureaucracy**

Decree 07 abolishes these two post-licensing steps, which had to be completed whenever a new RO or branch was established:

- ▶ Publishing information about the RO or branch in three consecutive issues of a written or electronic newspaper legally published in Vietnam
- ▶ Sending notification of operation commencement to the licensing authority

These key changes create a more straightforward licensing procedure for foreign business entities to establish ROs and branches in Vietnam.



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