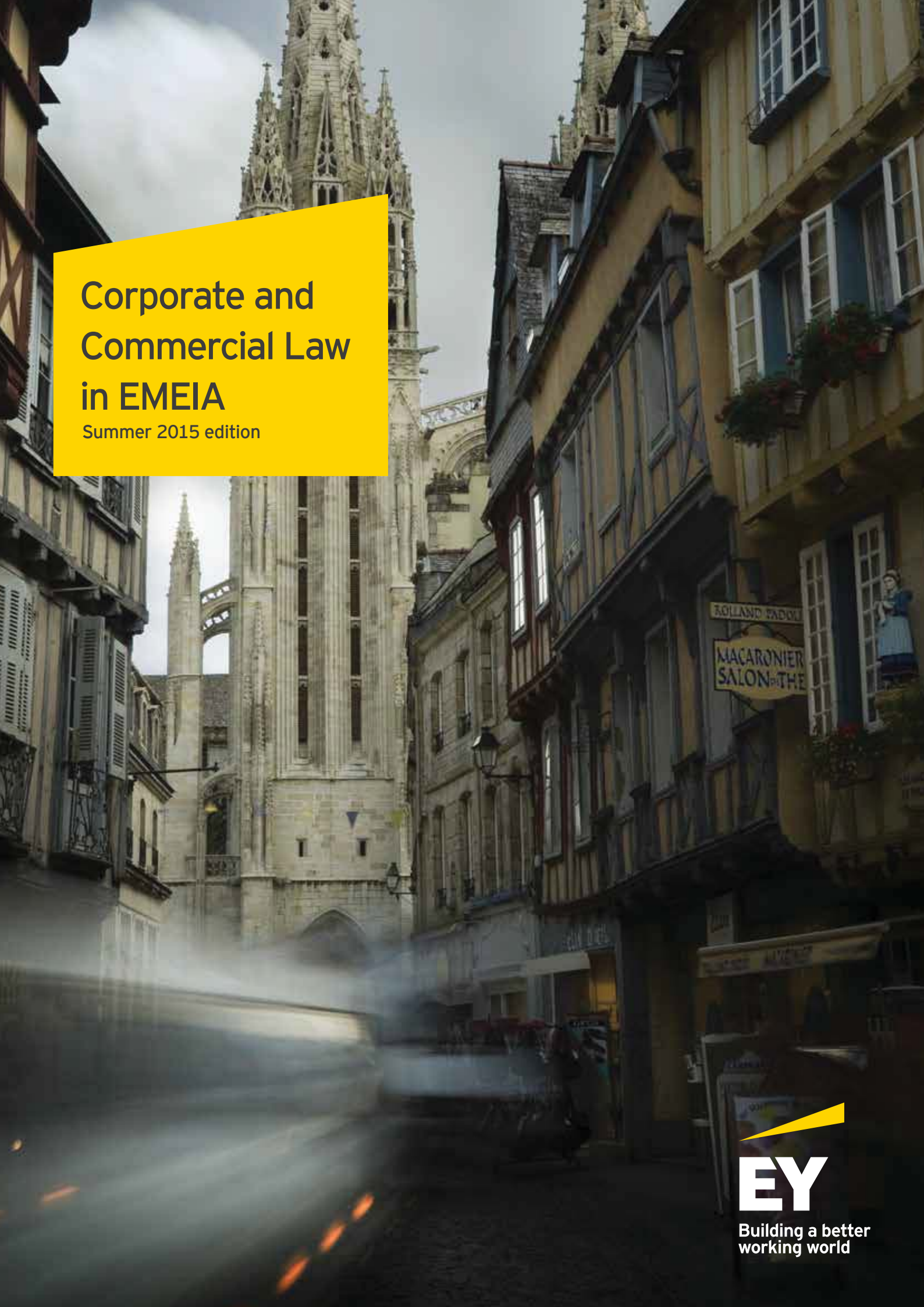

Corporate and Commercial Law in EMEIA

Summer 2015 edition

Building a better working world

In this issue ...

This quarterly publication highlights a range of international corporate law matters and covers recent law developments in specific countries.

Albania

Amendments to the Law on the National Registration Center

On 24 March 2015 the law no. 8/2015, "On some amendments and additions to the Law no.9723 'On the National Registration Center,' as amended" came into force. The most important amendments to the law are as follows:

- The introduction of the electronic window service by the National Registration Center (NRC), through which all applications to the commercial register can now be submitted electronically by an authorized representative of the applicant.
- Self-employed individuals undertaking commercial activity with small volume turnover in specific areas defined by ministerial order, such as agriculture and farming, are exempt from the obligation to register with the NRC.
- Entrepreneurs, simple partnerships, branches and representative offices of foreign companies should register with the NRC before the effective starting date of their activity and not within 15 days as provided before the amendments. Also, legal entities should now register within 30 days of their incorporation, but before the effective starting date of their commercial activity, and not within 15 days of the incorporation as provided before the amendments.
- Subjects that have not submitted financial statements or an audit report before 30 days after 31 March of the following year are obliged to submit these documents before 31 July of that year. Failure to comply with this requirement is subject to a fine of ALL (Albanian lek) 15,000 (approximately €110).

Austria

Reform of partnerships under the Civil Code

On 1 January 2015, new regulations on the partnerships under the Austrian Civil Code (GesbR) entered into force. The GesbR is the oldest corporate form under Austrian laws. Its main regulations were based on the Austrian Civil Code of 1811. As court rulings and doctrines veered away from these old sections, new statutory regulations in the Austrian Civil Code were discussed over a significant number of years.

The GesbR is a very general corporate form that applies when the founders do not select another form (voluntarily or because of a statutory obligation). It is quite common in the case of joint ventures or for cooperations in the building industry.

Unlike partnerships under the Austrian Commercial Code (OG or KG), a GesbR is not a legal entity. Therefore, all shareholders share a common ownership of tangible assets. Intangible assets (such as receivables) can be transferred only when all shareholders act collectively.

The internal powers and limitations have been newly structured so that powers of management and representations are quite similar to those of general and limited partnerships (OG and KG). Thus, in general, each shareholder may decide on ordinary measures of management alone. The remaining shareholders have a right of objection. For extraordinary measures, a resolution of all shareholders is necessary.

Due to the reform of GesbR, more detailed statutory regulations about the change of shareholders, dissolution or management and representation, among other items, exist now. This will help to increase legal certainty about this corporate form. Though there is more legal framework now, shareholders are still free to vary the articles of association, since only a very small number of the statutory provisions are compulsory.

Belgium

Simplified liquidation:

After years of uncertainty on how simplified liquidation (also known as turbo liquidation) can be applied, the Act of 25 April 2014 has brought clarity. Thanks to this new legislation, a company can now be smoothly and efficiently liquidated in Belgium.

Why would a company apply for simplified liquidation instead of ordinary liquidation? Here are the main advantages:

- A liquidator does not need to be appointed.
- There is no intervention from the court.
- **It is a fast and simple procedure** through which the management body proposes the simplified liquidation and the shareholders decide upon it. (Unlike ordinary liquidation, there is no dissolution and closing phase.)
- All debts to third parties need to be paid or consigned before the simplified liquidation. In practice, **consignment has proven to be efficient to complete**, so this may not prevent companies from applying for simplified liquidation.
- **It is less expensive** because the decision to liquidate is made in one day. In an ordinary liquidation, it can sometimes take one year (or even longer).

However, there are two possible disadvantages. First, the shareholders need to vote unanimously. (Consequently, simplified liquidation is a very useful method for intragroup reorganizations.) Second, the management body assumes increased liability, due to the absence of a liquidator.

Bulgaria

Restrictions on the acquisition of agricultural land in Bulgaria

As of 1 January 2014, the restrictions for acquisition of agricultural land in Bulgaria stemming from the Bulgarian accession treaty to the European Union expired, meaning that land could be acquired freely by EU and EEA (European Economic Area)-citizens and legal entities. Later in 2014, however, the Bulgarian Parliament voted for new restrictions through amendments in the domestic legislation. The amendments introduced Bulgarian residence as a criterion for the acquisition of agricultural land.

Under current legislation, agricultural land in Bulgaria can be acquired only by persons and companies who have resided in Bulgaria for at least five years. Newly established Bulgarian companies can purchase land if their shareholders meet this residence requirement. A total ban on the acquisition and holding of ownership over land is imposed on joint-stock companies with bearer shares and companies whose shares are directly or indirectly held by offshore entities. Furthermore, upon purchase of agricultural land, the new owners will have to present a declaration of origin of funds.

Generally, non-EU and non-EEA individuals would have the right to acquire land in Bulgaria under the terms of an international agreement signed between Bulgaria and the respective country. Presently, however, no such international agreements have been signed.

As of 1 October 2015, the restrictions on acquisition and ownership of agricultural land in Bulgaria are reinforced by legal amendments providing sanctions of BGN (Bulgarian lev) 100 (approximately €51) for each 1,000 m2 of agricultural land owned in contradiction of these requirements. If the ownership is not disposed of within three months of the sanction, a new sanction of BGN300 (approximately €153) for each 1,000 m2 of agricultural land will be applied.

Denmark

New guide on target figures and policy for gender composition in governing bodies

Rules on target figures and policies for the underrepresented gender were introduced in December 2012 for approximately 1,200 of the largest Danish limited companies. The rules were adopted as an amendment to the Danish Companies Act to create a more equal balance of women and men in supreme governing bodies as well as other management levels.

On 27 February 2015, the Danish Business Authority published a new guide on target figures and policy for gender composition in supreme governing bodies to explain and clarify the existing rules 2012.

The guide states that the rules have been drafted to ensure necessary development in the area, but in such way that the limited companies concerned have a high degree of freedom to set target figures and policy for gender composition, based on the industry and the conditions in and under which the individual limited company operates. It is emphasized that it remains crucial that all positions in supreme governing bodies and at other management levels are filled on the basis of the skills required by the individual limited company.

The guide specifies that the rules apply to limited companies in which either men or women make up less than 40% of the supreme governing bodies and other management levels, as it is considered an equal gender composition when the balance between women and men is at least 40:60%. The limited companies covered by the rules are required (i) to set target figures on gender composition in supreme governing bodies and (ii) to develop a policy to increase the proportion of the underrepresented gender at other management levels. The target figures and policy must be included as a statement in the limited company's annual report, with a description of how the limited company plans to achieve the target(s).

The requirement for limited companies to set target figures and policy is a statutory obligation that has been effective since 1 January 2013. This means that the limited companies concerned are obliged to follow the rules unless they already comply with the requirement for an equal gender composition in its supreme governing bodies, and other management levels as well. Failure to comply with the requirement to set target figures and policy may result in a fine. However, there is no penalty for failure to reach the limited company's planned targets.

Estonia

New legal regulations in Estonia

As of 2015, remuneration of nonresident members of management bodies of an Estonian company paid by a foreign company for performing the management functions of an Estonian company will be subject to taxation in Estonia. Thus, Estonian companies that have, among their board members, nonresident persons receiving remuneration from a foreign company may require revision of the relevant documentation that forms a basis for the managers' service and remuneration.

Estonia is the first country to offer e-residency worldwide. An e-resident is a natural person who has received an e-resident's digital identity (smart ID card) from the Republic of Estonia. This will not entail full legal residency, citizenship or right of entry to Estonia. Instead, e-residency gives secure access to Estonia's digital services (including the digital Commercial Register) and an opportunity to give digital signatures in an electronic environment. Such digital identification and signing is legally equivalent to handwritten signatures in the EU. Starting from 1 April 2015, applying for e-residency is possible in most Estonian embassies and consular offices around the world.

Amendments to the Commercial Code, taking effect from 1 July 2015, aim primarily to give greater opportunities for undertakings operating in the form of a private limited company (OÜ) to shape their activities, and the relations between its shareholders and investors. Particular attention has been given to the specific wishes of start-up companies. The new provisions improve possibilities for raising capital, applying special rights to shares, creating option programs, etc. The companies, however, have to take into consideration that, in order to exercise many of these rights, they need to amend their existing articles of association.

Finland

Recent Market Court ruling emphasizes the importance of trademark strategy

In a recent case, Company A accused Company B of imitating its textile pattern. The Finnish Market Court stated that the pattern designed by Company B for its winter hunting clothes does not infringe upon Company A's exclusive rights or the Community design registered for A's identical products.

In its decision (MAO: 110-112/15), the Market Court evaluated that the pattern used by Company A had not become established as a trademark, as its appearance varies between company products. Furthermore, the pattern was not regarded as distinctive, since it did not differ significantly from customary patterns seen in the hunting wear industry.

With regard to the registered Community design, it did not provide the necessary protection for Company A's pattern either. The Community design represents a detailed photograph of the Finnish forest in winter, whereas the pattern of Company B is a simple and abstract design.

In addition to comparing the overall expressions of the two patterns, the Market Court determined that Company B had been able to identify the origin of its goods by labeling its products with a distinctive logo registered as a company trademark. The logo was regularly printed on products and was represented visibly in the marketplace and in advertising materials. To conclude, the Market Court stated that the overall commercial image of Company B's products distinguished their origin from Company A's merchandise.

The Market Court's decision emphasized the importance of creating and pursuing a trademark strategy. Trademark protection may be obtained for a distinctive pattern design if the pattern is used uniformly without variations.

Greece

Expanding the non-listed capitalized companies' shareholders' liability

A new law was enacted on 21 March 2015, providing that capitalized companies' shareholders or members owning at least 10% of a company's capital at the time of its dissolution shall be jointly and severally liable, along with the company, to pay off its pending social security debts, without restrictions. Former shareholders or members that owned such a percentage shall be jointly and severally liable for any social security debt **generated during the period that they had such status**.

These provisions are in line with the new Tax Procedure Code, which provides that a company's shareholders or members owning at least 10% of the company's capital at the time of its dissolution shall be jointly liable for any pending tax, **up to the amount of the profits or gains in cash or in kind taken because of their status during the three years preceding the dissolution**. Former shareholders or members that owned such a percentage shall be jointly liable for any tax **generated during the period that they had such status and up to the amount mentioned above**.

These new provisions raise concerns in relation to the character of capitalized Greek companies, namely limited liability companies (LLCs) and societe anonymes (SAs). They override the basic principle of capitalized companies whereby such companies are usually solely liable for the debts incurred in the course of their business.

Hungary

Restrictions on retail activities in Hungary

The Hungarian Government banned retail shops from being open on Sundays, effective from 15 March 2015. According to the official reasoning of the law, the aim of enacting this regulation is to provide sufficient rest periods to workers and to ensure that the trading sector functions within reasonable limits. Businesses in the fast-moving consumer goods (FMCG) sector will find it more complicated to plan their operations, since these companies need to rethink their work organization to adapt to the new law and compensate for the income losses suffered due to the shortened weekly opening period. The ban affects around 60,000 shops and 226,000 workers, and was met with a mixed response from the Hungarian people.

Only a few exceptions to the ban exist. For example, retail shops may be open on the four preceding Sundays before Christmas during the Advent period. Certain businesses do not fall under the ban, provided that the size of their retail area is less than 200 square meters and only the shop owner or a relative performs the retail activity on Sundays. Other shops are exempted from the restriction based on the goods they sell (e.g., dairy and bakery products, flowers and newspapers are available on Sundays). Shops that do not fit any of the exemptions may choose one Sunday a year, when they can be open besides the four weekends of the Advent period.

The new regulation also led to some changes to the Hungarian Labor Code. The code will differentiate between two groups of employees in terms of their Sunday premium. Employees working regularly on Sundays due to an exception are entitled only to the general premium of 50%, while those who work only occasionally on Sundays are entitled to a specific premium of 100%.

Italy

Multiple voting right and double voting right shares

The Italian Law Decree 91/2014 of 24 June 2014, converted into Law 116/2014 of 11 August 2014, has introduced the possibility for Italian joint-stock companies (SpAs) to issue multiple voting right shares (azioni a voto plurimo) and double voting right shares (azioni a voto maggiorato). The newly introduced provisions represent a substantial change in Italian corporate law previously based on the principle "one share – one vote."

Multiple voting right shares

The decree allows non-listed SpAs to issue multiple voting right shares that may attribute up to three votes per share.

The increased voting right can be kept in case the share capital is increased by excluding or limiting the 'option right,' as well as in the case of mergers or demergers.

The issuance of multiple voting right shares is reserved to non-listed SpAs; nevertheless, if these shares are issued before listing on regulating markets, they can be preserved by the company after listing.

Double voting right shares

Listed companies are entitled to issue double voting right shares (loyalty shares), if the issuance is provided by the company's articles of association and each share has been owned by the same shareholders for a continuous period of 24 months or for a longer period provided for in the articles of association. The shareholders who voted against the provision aimed at implementing the double voting right cannot exercise the right of withdrawal from the company, providing for the increase of the voting right attributed to the company's shares.

The increased voting right lapses on transfer of the share (for consideration or on free basis) as well as in the case of a (direct or indirect) transfer of a controlling interest in companies holding double voting shares beyond certain thresholds. However, unless otherwise provided by the company's articles of association, the increased voting right is kept in the case where the shares are transferred mortis causa, as well as in the case of mergers or demergers of the shareholder and is extended to the shares issued upon the increase of the capital on a gratuitous basis using the available reserves.

Luxembourg

The simplified private limited liability company (the simplified Sàrl)

In order to promote innovation, the Grand Duchy has introduced a new draft law on the simplified Sàrl.

The share capital of the simplified Sàrl will range between €1 and €12,394.68 (being the minimum amount of a classic Sàrl) and shall be fully paid up at the incorporation. Each year, at least 5% of the net profits shall be allocated to the creation of an unavailable reserve; such allocation shall cease to be compulsory when the reserve has reached the amount of €12,394.68.

Once the share capital amounts to €12,394.68 (either by creation of this reserve or by ordinary increase of capital), the shareholders may opt for the form of a classic Sàrl.

The corporate object is limited to the scope of Article 1 of the Law dated 2 September 2011, regulating access to the professions of craftsman, retail trader manufacturer, and certain freelance professions. Additionally, the business license should be part of the documents to be provided to the Trade and Companies Register for its registration.

Only individuals may be shareholders of the simplified Sàrl, and an individual can only hold shares in one simplified Sàrl. In the same way, only individuals may be managers of the simplified Sàrl.

A simplified Sarl's incorporation can be made under private seal but the change into the form of a classic Sàrl must be enacted in front of a notary.

Therefore, incorporation costs are considerably reduced and should be affordable to all new entrepreneurs.

Netherlands

Extending the liability of partnerships

According to Dutch law, members of a partnership (except for limited partners) are jointly and severally liable for all liabilities of partnerships. The Dutch Supreme Court has recently rendered two judgments regarding the range of the liability of a partner who joined an existing partnership. The Supreme Court stipulated that this liability also includes the liabilities of partnerships that have arisen prior to the new partner joining the existing partnership. As a consequence of a new partner entering an existing partnership, additional means of redress for any creditor of partnerships are created.

Taking this into account, it is advisable to make a thorough analysis of the partnership's assets and liabilities (including those already arisen liabilities) if a party intends to join an existing partnership. This may lead to guarantees or other contractual arrangements between the existing partners and the new partner to facilitate accession to partnerships.

Central shareholders register (CSR)

In order to counteract money laundering and tax evasion, the Government has announced the introduction of a CSR. The CSR makes the shareholdings in private limited liability companies (BVs) and non-listed public limited liability companies (NVs) visible at one central location. It will be held by the trade register of the Dutch Chamber of Commerce and updated by civil law notaries. The CSR will not be generally available to the public but shareholders and civil law notaries will have access rights. The access of other professions to the CSR is still under discussion and consequently the estimated date of introduction (1 January 2016) may be delayed.

The current obligation by law for the company to keep a physical shareholders' register shall be maintained.

Norway

Public-private partnership in favor

The current Norwegian Government has recently announced that it will use a public-private partnership (PPP) model to finance construction of railways, roads and other infrastructure in Norway to a far greater extent than previous governments. Under the Norwegian PPP model, a private entity assumes full responsibility for delivering public projects or infrastructure, and the traditional risk allocation in a project, as well as the financial incentive, is entrusted to the private entity.

Three major road projects, with a total estimated value of NOK (Norwegian kroner) 14.2 billion (approximately €1.6 billion), are to be commissioned in the near future, based on a PPP model. The Norwegian Public Roads Administration will start the tender process for these contracts at the end of 2015. They will be awarded in accordance with the rules for negotiated tenders in the Norwegian Public Procurement Act.

There is currently no standard contractual framework for PPP contracts in Norway. Work on one is, however, in progress. The intention is to gather "best practice," increase predictability for the parties involved and facilitate the transfer of PPP projects to new owners. The draft contractual framework suggests that it will comprise a PPP project agreement between a government entity and a private entity, under which the private entity will be required to establish a single purpose vehicle (SPV) for the project. The private entity will then be liable to ensure that the SPV enters into back-to-back agreements with entrepreneurs (construction), landowners (ground lease), the user of the facilities (lease) and the operator (operating agreement).

Poland

New regulations in the Polish antimonopoly law

On 18 January 2015, the long-awaited amendments to Polish antimonopoly law entered into force. The main purpose of the implemented changes was to simplify the proceedings conducted by the Office of Competition and Consumer Protection (OCCP) and increase the effectiveness of detection of practices restricting competition.

Personal liability of the management board's members

Personal financial liability of management is a new aspect of Polish antimonopoly law. Now, the OCCP is entitled to impose financial fines (up to approximately €500,000) to managers who intentionally, by action or failure to act, involved the company in a competition-restricting agreement.

Merger control

The amendments introduce a two-stage process for merger control review. Under the new regime, transactions that do not raise significant competition issues should be reviewed within one month. For more complex transactions (restricting competition or requiring a market study), an additional four-month period will be set by the OCCP.

Statement of objection

The OCCP, while reviewing transactions that may significantly restrict competition in the relevant market, is entitled to issue a statement of objection. In consequence, entrepreneurs have a chance to learn of the possible direction of the OCCP's decision, respond to raised objections and propose some modifications to the transaction.

Leniency plus procedure

Another initiative is a leniency plus program. An entrepreneur who informs the OCCP about illegal practices, but is not the first to do so and has been granted immunity, will be able to inform the OCCP about other unknown illegal practices and, in return, be granted a 30% reduction in the fine for the first piece of information, and immunity from the fine for the second.

Portugal

Bonds issue rules revised

On 2 March 2015, Decree-Law No. 26/2015 updated up the bonds issue rules, introducing relevant changes to the Companies Code.

The amendments aimed to simplify the issuance of bonds, to promote them as an alternative means to bank financing.

The key changes are:

1. **Issuance of bonds whose contract is registered for less than a year.**

The list of existing exceptions was extended to cover cases where the issuer's financial information is made available to investors, reported to a date not exceeding three months from the issue.

2. **Limit to bonds issue.**

The quantifiable limit for a bonds issue will no longer be calculated upon the value of equity at the date of issue. Instead, apart from a few exceptions, notably those issuances at least equal to €100,000, it will be calculated on the basis of a certain ratio of performance: the financial autonomy ratio.

3. **Prohibition of capital decrease.**

A capital decrease below the amount that the company ows to the bond is no longer prohibited.

4. **Resolutions of the Meeting of Bondholders and Common Representative.**

4.1. Increasing the burden of the bondholders must be decided by unanimous vote.

4.2. Financial intermediaries and entities authorized to provide investors with representation services in any of the Members States of the European Union may be appointed as a common representative of the bondholders.

4.3. The common representative must now be independent, and cannot be associated with any specific interest group in the company or find itself in a situation likely to affect its impartiality.

4.4. The common representative is now capable of being nominated in the conditions of the issuance.

4.5. The liability of the common representative can now be limited but cannot be less than an amount equal to 10 times its annual fee.

5. **Categories of bonds**

The new scheme expanded the types of bonds that can be issued, including:

1. Bonds convertible to preferred shares (with or without voting rights)
2. Bonds convertible to securities (other than shares)
3. Bonds granting rights to subscribe preferred shares (with or without voting rights)
4. Bonds granting subordinated credit claims over the issuer
5. Bonds resulting from the conversion of other claims of shareholders or third parties over the company
6. Bonds that have special guarantees over assets or revenues of the issuer or third parties

On the other hand, debt securities with the following specific characteristics are created:

1. Conferring rights on the credit issuer with maturity associated to the duration of the company
2. Convertible into shares at the initiative of the issuer or convertible by force into shares under the terms of issuance

Finally, the possibility of issuance of participating bonds of different types from those already established in the code (bonds with supplementary interest or redemption premium) is envisaged.

Russia

Amendments to the Civil Code

Several amendments to the provisions of the Russian Civil Code on the law of obligations were adopted on 8 March 2015 and entered into force on 1 June 2015.

The main amendments are as follows:

- Warranties and representatives can now be included in an agreement. Breaching them results in the payment of damages or agreement termination.
- An indemnity clause can also be included in an agreement. It makes it possible to compensate for losses due to certain circumstances not connected with the breach of an agreement.
- The bad-faith party is obliged to compensate for losses from the negotiation in bad faith.
- New types of securities on performance of obligations are provided: the independent guarantee, which is not automatically included and can be granted by any commercial company, and the security deposit affecting money, securities and fungible goods.
- A new type of agreement, known as an option agreement, is provided. Under an option agreement, one party can provide another party with the right to claim a performance of the obligation.
- A new contract mechanism known as an option on the conclusion of an agreement (irrevocable offer) is provided.
- Inter-loan agreements can now be concluded between the creditors of one person in order to establish the order of satisfaction of their claims.
- Multilateral business agreements can be modified or terminated by unanimous consent or by consent of the majority of participants.
- Performance of the obligation can be subject to potestative conditions (i.e., conditions under the control of one party).

Slovakia

Amendment to the Commercial Code and other laws

The amendment to the Commercial Code (Act No. 513/1991 Coll.) became valid on 29 April 2015. The fundamental changes, effective from 1 January 2016, include the following:

- Based on the decision of a court (the decision on disqualification), a member of the statutory or supervisory body in a company or cooperative, the head of a company or its organizational branch, or an authorized officer, may be excluded from performing their functions for a specified period. In this connection, a register of disqualified persons will also be established.
- Restrictions to related party transactions, as enshrined in Article 59a of the Commercial Code (i.e., the need to elaborate on an expert's opinion, place transaction documentation in the Collection of Documents, or approve a contract by the general meeting) will only apply to joint-stock companies. The amendment also introduces the personal liability of members of the board of directors for returning any advances provided by a company provided that a contract concluded between a company and a related party did not enter into force due to failure to comply with the legal restrictions.
- The amendment introduces the new term of "company in crisis." A company is in crisis if bankrupt (i.e., insolvent or in default) or under threat of bankruptcy (i.e., the share of its equity and liabilities is less than the statutory limit (4:100 to 8:100)). In such a situation, increased requirements for the performance of the statutory body's obligations will be applied, including with respect to its personal liabilities, together with returns of any loans and similar advances accepted by the company.

Spain

New Code of Corporate Governance

On 27 February 2015 a new Code of Corporate Governance for companies listed in Spain was published. This code incorporates, for the first time, specific recommendations related to corporate responsibility.

The code continues with the voluntary basis of its recommendations, which are subject to the principle "comply or explain." Nevertheless, it is mandatory for listed companies to include, in their Annual Report of Corporate Governance, the level of compliance with such recommendations followed by, if applicable, the reasons why the recommendations have not been complied with.

The recommendations of the new code should be read taking in account the recently approved Law 31/2014, of 3 December 2014, amending the Corporation Law to enhance corporate governance.

The code states recommendations about the shareholders' general meetings and the board of directors. Some of the main new characteristics detailed in the Code of Corporate Governance for listed companies are the following:

- The increase of the presence of women in boards of directors of listed companies. The code introduces a recommendation in line with the final aim of reaching a 30% female presence in 2020.
- The specifications in the remuneration policy of executive and non-executive board members. This remuneration policy shall be proposed by the board of directors, and approved by the shareholders' general meeting.

In conclusion, the new framework stated by the Law 31/2014 and the Code of Corporate Governance of listed companies offers an excellent opportunity to review several aspects for companies (both listed and non-listed), and its bylaws.

Sweden

Personal liability for shareholders of a limited liability company

According to the Swedish Companies Act (Aktiebolagslagen), the shareholders of a Swedish limited liability company (Aktiebolag) shall bear no personal liability for the company's obligations.

However, in a recent precedent (T 2133-14 dated 12 November 2014), the Swedish Supreme Court set personal liability for the shareholders of a Swedish limited liability company in a lawsuit against Deloitte.

New shareholders acquired the limited liability company solely to file an action for damages against Deloitte. The company lost the court procedure and was therefore obliged to pay Deloitte's litigation costs, amounting to SEK (Swedish krona) 3.3 million (approximately €350,000). As a result, the company was declared bankrupt. Deloitte sued the shareholders of the company and claimed that they were personally liable for the litigation costs.

The Swedish Supreme Court concluded that, since the shareholders had acquired the company with the main (or possibly only) purpose of filing a lawsuit against Deloitte, the company did not have a real business purpose. The company was also in a poor financial situation and therefore exposed Deloitte to great economic risk. Thus, it was clear that the purpose of the arrangement was to avoid the Swedish regulation regarding liability for litigation costs.

On these grounds, the court decided to set aside the regulation in the Swedish Companies Act, which protects the shareholders of a Swedish limited liability company from personal liability.

Turkey

New incentive for capital increase in equity companies

In accordance with the Commercial Code, companies are divided into two general categories: partnerships and equity companies (mostly being joint-stock companies or AS, and limited companies or Ltd. Sti.). For a capital increase, a company can simply amend its articles of association and conduct the increase through cash, in-kind donations or conversion of internal sources (shareholders' equity items) into capital.

Based on recent macroeconomic projections, increases to equity base amounts are planned. With this new regulation, capital increase amounts will be a deductible item for corporate tax.

On 27 March 2015, the General Assembly proposed the law regarding the amendments to be made to some laws and decrees numbered 6637 (Bag Bill). Article 8 of the Bag Bill added a subsection to Article 10 of the Corporate Tax Law numbered 5520 (CTL), entitled Other Reductions.

For the related fiscal year of equity companies, this subsection aims to encourage capital increase in cash. From 1 July 2015, companies can deduct 50% of the total obtained from multiplying the cash capital increase amount by the Central Bank of Turkey's last announced annual average interest rate on commercial credits.

This tax deduction does not apply to banking and insurance institutions, and government business enterprises. It may be used for each fiscal year, including the fiscal year in which the cash capital increase is realized. When the tax base is not sufficient, the deduction will be carried forward to subsequent fiscal years.

UK

Removal of stamp duty benefit for takeovers effected by cancellation scheme of arrangement

Historically, one of the ways of structuring a takeover of a UK target company has been to undertake a cancellation scheme of arrangement. Under cancellation schemes of arrangement, there is no transfer of UK shares but, instead, a cancellation of all existing shares in the target, in consideration for an allotment of new shares by the target company to the acquiring company, and a second allotment of shares by the acquiring company to the former shareholders of the target company. This meant that there was no UK stamp duty chargeable on the takeover – UK stamp duty is charged at 0.5% of the value of consideration upon transfer of shares.

UK government legislation, the Companies Act 2006 (Amendment of Part 17) Regulations 2015, came into force on 4 March 2015. These regulations prohibit the use of cancellation schemes of arrangement.

The policy rationale behind this is that all takeovers should be on equal footing for tax purposes and, therefore, the amendments essentially mean that all UK takeovers will be subject to UK stamp duty.

The legislation does, however, contain a carve-out to permit a cancellation scheme of arrangement that effects a restructuring, inserting a new holding company into a group structure, provided that all, or substantially all, of the members of the company become members of the new holding company and their proportionate shareholding remains substantially the same. This exception, therefore, allows for cancellation schemes of arrangement as part of transactions to effect intragroup restructurings, de-mergers or capital returns.

As a result of the legislation change, companies effecting a future takeover or merger would be required to use a "transfer" scheme of arrangement or a contractual offer, on which stamp duty is payable. Despite this, schemes of arrangement (in the form of transfer schemes) are still expected to be used within takeovers generally, as the principal benefit of a scheme is to reduce the consent threshold from 90% acceptance (which is required to enable a buyer to compulsorily acquire the entire issued share capital of a target) to 75%.

Ukraine

Disclosure of beneficial owners in the Companies Register

The Ukrainian parliament has recently adopted a law aimed at identifying beneficial owners of Ukrainian companies. The new rules established by the law can be summarized as follows:

- The law extends the list of information that must be filed in the Companies Register during incorporation of a Ukrainian company. It must now include information on a company's ultimate beneficial owners.
- The ultimate beneficial owner (controller) is defined as an individual exercising, directly or indirectly, decisive influence on the management or business activity of a company, regardless of holding any formal right. Ukrainian companies must submit information regarding their beneficial owners (full name, citizenship, place of residence, etc.) to state registrars. Any updates regarding beneficial owners must also be reflected in the Companies Register.
- Failure to file required information regarding beneficial owners triggers the imposition of an administrative fine ranging from UAH5,100 to UAH8,500 (approx. €200 to €330) on a company's director.
- The law is still silent on whether the information regarding beneficial owners will be disclosed in the public domain.

The notion of the ultimate beneficial owner introduced by the law differs from the concept of a beneficial (actual) owner of income used for the purposes of the Tax Code of Ukraine and double tax treaties. However, the official position of Ukrainian courts and state authorities in this respect is yet to be formulated.

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