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

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Amendments to company law

On 7 November 2014, Law no.129/2014 on some changes to the Company Law came into force. The law aims at harmonizing domestic commercial law with the relevant European Union directives.

The most important amendments of the law are as follows:

- It now clearly lays out the grounds for the courts to declare that the incorporation of the company is null and void or to decide on remedial action.

- Significant changes to the law’s provisions on “piercing of the corporate veil” are made, pursuant to which shareholders or directors can be held accountable for matters of the company only upon a final court decision. Their liability cannot exceed the aggregate amount of damage caused to the company.

- The share capital of a limited liability company is now divided into a number of quotas equal to the number of quota holders. The value of each quota is relative to the contribution to the capital made by the quota holder.

- A legal representative who resigns may now register his resignation with the commercial register directly if the company has not updated the register with the name of the person who replaces them in due time.

- New grounds and procedures for the dissolution of commercial companies are provided, and a shorter term for their liquidation procedure is defined.

- New rules apply on mergers, such as terms of the merger agreement and report, and the right of shareholders to obtain documents before merging.
Sanctions for violations of the obligation to maintain a share register

The main aim of the Austrian Company Law Reform Act 2011 (Gesellschaftsrechtsänderungsgesetz 2011) was to rectify transparency shortcomings identified by the Financial Action Task Force (FATF) regarding unlisted stock corporations. Under Sec. 61(1) of the Austrian Stock Corporations Act, (Aktiengesetz – AktG), all corporations with registered shares must maintain a share register listing specific shareholder information (e.g., name and mail address of the shareholder, date of birth, registration number, number of shares or share number, any nominal shares and their nominal value, bank account of the shareholder). Therefore, the owners of registered shares can be traced by the authorities, contrary to bearer shares. To ensure transparent shareholding structures, registered shares have become the standard instrument for unlisted stock corporations, whereas bearer shares are permissible for listed stock corporations only. The transition period for the implementation of the Reform Act 2011 ended on 1 January 2014. Since then, all impermissible bearer shares of unlisted stock corporations are regarded automatically as registered shares.

Nevertheless, in practice, these share registers, which are to be maintained by the management board, are quite often incomplete, incorrect or entirely missing. New legal provisions have now been introduced authorizing, on the one hand, the relevant commercial register to impose fines on the board members for violating their obligations under Sec. 61(1) AktG (Sec. 258(1) AktG). On the other hand, shareholders who do not comply with their notification obligations will now face sanctions as follows:

- Individual share certificates of bearer shares, impermissible after the transition period of the Company Law Reform Act 2011, will be subject to legal cancellation (Sec. 262(33) AktG).
- If their shares are not registered with the share register, shareholders will lose their profit entitlements for the past in the year for which the resolution on the distribution of profits has been passed (Sec. 61(5) AktG).

The new provisions entered into force on 1 October 2014.
The abolition of bearer shares in Belgium entered into a new phase on 1 January 2015. Existing bearer securities had to be converted into registered or dematerialized securities no later than 31 December 2013 (pursuant to a 2005 act relating to the abolition of bearer securities). Since 1 January 2014, bearer securities that were yet to meet these provisions have been converted by law and temporarily registered in the securities trading account or in the shareholders’ register in the name of the issuing company. Any owner who had not converted their bearer securities faced a suspension of their voting and/or dividend rights with respect to such securities.

As of 1 January 2015, each company that has issued bearer securities must now publicly sell all those that are unclaimed (anonymous). Two Royal Decrees of 25 July 2014 set out the specific rules for this forced sale. The securities must be sold on a regulated securities market (listed companies) or on the “market of public auctions” (for non-listed companies). The issuing company itself can acquire its own shares under certain conditions.

Following the sale, all profits and remaining securities as of 30 November 2015 must be passed to the Belgian deposit and consignment office no later than 31 December 2015.

From 1 January 2016, profits flowing from sale of securities (or the unsold securities themselves) can be returned to their rightful owner. However, a levy amounting to 10% of the profit or the value of the securities will be due by the owner. This amount will increase each year by 10%. As of 2025, the former bearer securities will therefore become totally worthless.
Public Register of Shareholders

On 15 December 2014, the new Danish Public Register of Shareholders opened. Its purpose is to increase transparency regarding the ownership of Danish limited companies.

The opening of the Public Register of Shareholders means that public limited companies, private limited companies and limited partnership companies now have to register information on shareholders owning 5% or more of the share capital or voting rights in the company.

The Public Register of Shareholders will also include registration of pledgees who, due to the pledge they hold on shares, can control the voting rights of the shares and intend to exercise such voting rights.

Furthermore, holdings of less than 5% of the share capital or voting rights in the company based on bearer shares must also be registered in a non-public part of the Public Register of Shareholders.

The Public Register of Shareholders will include the following information:

- Name, address and civil registration number of shareholders that are natural persons
- Name, address and registration number of shareholders that are legal entities
- Date of acquisition of shares
- The shareholder’s total holding in the company, divided into shares and voting rights

All companies set up before 15 December 2014 must file the above-mentioned information with the Public Register of Shareholders. Such information will be accessible to the public on 15 June 2015. However, any subsequent changes to the registered information must be filed within two weeks, irrespective of when the company was set up. Companies that were set up on 15 December 2014 or later must also file the information within two weeks from the date of registration. Any noncompliance with the filing obligation is punishable by a fine.
Recent Supreme Court ruling on contractual penalties

In a recent precedent (Supreme Court 2014:16), the Supreme Court of Finland ruled that contractual penalties for delays, paid by the buyer to its customer, were considered as indirect damages. In the case at stake, the seller was not contractually bound to compensate the buyer’s indirect damages. The contractual penalty and resulting financial losses were therefore left to the buyer.

Had the buyer been liable to pay to its customer compensation for the direct damages caused by the delay instead of contractual penalties, the seller would have been liable to compensate the buyer, as the penalties would have been considered to be direct damages. In its reasoning, the Supreme Court noted that there is often a liability to pay contractual penalties even if no actual damages have been incurred.

Also, the obligation to pay contractual penalties, as well as their amount, is more difficult to foresee than a mere liability to compensate for direct damages. Furthermore, the Supreme Court stated that, as a rule of thumb, a party that commits itself to pay contractual penalties should secure its position by including a contractual penalties clause in the agreement with its customer.

The outcome of the recent precedent highlights the importance of carefully managing contractual risks throughout the entire contractual chain. Conclusions drawn encourage companies to ascertain that contractual obligations for contracting parties are always properly aligned. In this way, parties can be safe in the knowledge that any liability for damages will correspond to damages that should be recoverable.
New legal framework applicable to certain sale transactions

The Social and Solidarity Economy Law (ESS Law) of 31 July 2014 creates an obligation to inform employees in the event of the sale of a company, and is applicable to any sale concluded from 1 November 2014. The obligation to inform employees only deals with two kinds of transactions:

- The sale of an ongoing business concern
- The sale of more than 50% of shares of a limited liability company

In either case, the employees have the right to submit an offer to purchase the shares or the business.

This applies to the following:

- Companies that are not required to set up a works council (i.e., companies with less than 50 employees)
- Companies that, at the end of the financial year, employ less than 250 employees and have an annual turnover that does not exceed €50 million or a maximum balance sheet of €43 million

The law does, however, exclude certain scenarios, such as where companies are undergoing a conciliation procedure, a safeguard procedure, a court-ordered reorganization or a liquidation. Intragroup transactions are not exempted. Some transfers of either the majority of the shares or of businesses themselves have to be dealt with carefully since, in certain circumstances, a contribution might be deemed a sale.

Should a company fail to comply with the new provisions, its sale may be canceled at the request of any employee. Any action for invalidity lapses after a two-month time period, starting from:

- The publication of the notice of sale of an ongoing business concern
- The publication of sale of a majority shareholding
- The date on which all the employees are informed of the sale of the shares
Strengthening shareholder rights in the European Union

On 9 April 2014, the European Commission published a proposal for the revision of the Shareholder Rights Directive for European listed companies. It aims at establishing a modern and effective corporate governance framework within the European Union (EU) and helping to strengthen shareholder rights and increase their accountability. Concerning the German (two-tier) corporate system, the new regime would have a profound effect on the respective roles of the supervisory board and the general meeting.

Among other shortcomings, the commission acted on divergent, fragmentary and insufficient Member State rules on related-party transactions (RPTs). Especially in Germany, a lack of transparency and rights prevents shareholders from opposing detrimental transactions between the company and their related parties (e.g., key management personnel and controlled entities).

The EU regulation would require that:

- RPTs representing **more than 5% of the companies’ assets** or transactions that can significantly impact profit or turnover need to be approved by shareholders in advance.
- RPTs representing **more than 1% of the companies’ assets** have to be publicly announced at the time of conclusion and accompanied by a report from an independent third party assessing whether the transaction is on “market terms,” i.e., terms that any willing market participant would accept, as well as fair and reasonable from the shareholders’ perspective.

If the draft rules are passed, companies will face a large compliance burden and may find themselves unable to execute important deals at all or in a timely manner. From a German perspective, positioning the supervisory board as shareholder trustee would evolve, rather than disturb, a functioning check-and-balance system.
Law on restructuring of financial debts of distressed Greek small and medium-sized debtors

A new law was enacted on 15 November 2014 to allow distressed borrowers to benefit from efficient management of indebtedness of businesses. More specifically, the law refers to companies with revenues of up to €2.5 million that did not apply for the regular bankruptcy procedures as stated in Law 3869/2010, did not cease operations, and are not convicted for tax evasion and illegal activities.

The law provides that the amount of debts to be written off cannot exceed more than €500,000 to each creditor and is at least equal to 50% of the creditor’s claim or at least equal to an amount that after write-off the liability is not more than 75% of the net asset position of the borrower. The options provided to debtors for restructuring their debts are the following:

- Debt restructuring through loan modification or partial waiver (for small businesses)
- Special restructuring scheme approved by 50.1% of the creditors (for commercial businesses)
- Special administration of businesses in permanent distress requested by creditors, including at least one bank and representing a minimum of 40% of the total claims against such businesses.

Moreover, following the general trend of stricter supervision of the financial sector, the law provides for the introduction of a committee in charge of monitoring the application of the law, to coordinate and support actions of all stakeholders.
Electronic control system on movement of goods by road

On 1 January 2015, the electronic control system on movement of goods by road (EKAER) was introduced in Hungary to monitor road transportation of goods, with the aim of filtering out chain VAT fraud. The scope of EKAER includes intra-community supplies to Hungary, sales to other EU member states from Hungary and first taxable domestic supplies of goods to non-final customers.

An EKAER number has to be obtained every time goods are transported by road on a vehicle over 3.5 tons. In addition, there is a general obligation to register the transportation of certain goods listed by law, regardless of the weight of the vehicle. Such goods include food and groceries imported into Hungary.

Generally, it is the responsibility of the Hungarian-registered acquirer or the supplier to apply for an EKAER number prior to transportation. The person registering the supply of goods will have to provide detailed information regarding the supplier, the customer, the goods supplied and the means of transport.

Therefore, VAT-registered companies in Hungary should immediately verify the extent to which the introduction of the EKAER system affects their activities, and review their contractual arrangements with their suppliers and customers to ensure that they have all the information needed to comply with the legal requirements. Transporting goods without a valid EKAER number may lead to penalties of up to 40% of the goods’ value and/or seizure of the goods.
Corporate social responsibility

The Companies Act 2013 recently enacted in India provides a definition of corporate social responsibility (CSR) and requires companies to spend 2% of their net profits on CSR activities. These provisions are applicable to every Indian company with a net worth in excess of INR5 billion (£70,000,000), turnover in excess of INR10 billion (£140,000,000) or net profit in excess of INR50 million (£705,000) during any given financial year. The CSR rules also extend application of the act to foreign companies that have branch or project offices in India.

Companies’ CSR policies are to be determined by the directors, based on the recommendations of the CSR committee. Such policies should, inter alia, cater to activities relating to promotion of education, health care, gender equality and environmental sustainability, among other requirements.

In cases where a foreign holding company has a subsidiary in India that is required to carry out CSR activities, the expenditure incurred for those activities will qualify as CSR expenditure if they are routed through the subsidiary. Furthermore, expenditure incurred solely for the benefit of employees and their families – or incurred during the normal course of business – will not qualify as CSR expenditure.

As the implementation of the CSR related provisions is still in its nascent stage, it will have to be monitored diligently to ensure that it attains an effective level of effectiveness.
Corporate and Commercial Law newsletter

Corporate law developments following introduction of the Competitiveness Decree

The Italian Law Decree 91/2014 of 24 June 2014, has now been implemented and has brought substantial changes to Italian Company Law. Some of the more significant developments are set out below.

Minimum share capital amount

The decree lowered the minimum share capital for Italian joint stock companies (SpAs) from €120,000 to €50,000.

Board of statutory auditors in limited liability companies (Srls)

It provides that limited liability companies for which capital exceeds the minimum share capital of SpAs, are no longer required to have a board of statutory auditors.

Small and medium-sized listed companies (SMLCs)

The decree defines SMLCs issuing listed shares as those with a turnover of up to €300 million or those that had an average market capital of less than €500 million in the previous calendar year. The decree also amended certain aspects of the rules governing takeover offers launched over SMLCs and reduced disclosure requirements for significant holdings in SMLCs.

Shares carrying double voting rights (maggiorazione del voto) or multiple voting rights (voto plurimo)

The articles of association of listed companies (or companies to be listed) may provide that one additional vote can be granted to each share that has been owned by the same shareholder for a continuous period of not less than 24 months.

The decree also allows non-listed SpAs to create shares carrying multiple votes, with up to three votes per share. The exercise of the right to multiple votes may be granted in full, conditionally or only in relation to decisions on certain specified matters.
Legal update

New requirement to notarize share purchase transactions

As of 1 January 2015, the amended Civil Code requires that share purchase agreements of private limited liability companies (uždaroji akcinė bendrovė – UAB) should be certified by a public notary and that:

› At least 25% of the issued shares of are transferred.
   Or
› The purchase price exceeds €14,500.

Nevertheless, should the shares of a private limited liability company be registered with the Lithuanian Central Securities Depository, and personal securities accounts of shareholders be kept by licensed account managers, the requirement to have the share purchase agreement certified by a notary does not apply.

Requirement to amend corporate documents following adoption of the euro

Given the adoption of the euro, effective as of 1 January 2015 and 31 December 2016 at the latest, private (UAB) and public (akcinė bendrovė – AB) limited liability companies must amend their updated articles of association and register with the Companies Register by converting the nominal value of their shares and share capital into euros. Companies are also in charge of the following:

› Preparation of a new shareholders list, indicating the amended nominal value of shares and registration on the Companies Register

› Including the new details in the personal securities accounts (if the company’s shares are book entry) or the shareholders register and shareholders certificates (if the company’s shares are certified)

The deadline for implementation of the requirements is 31 December 2016.
Luxembourg

Law on bearer shares

The law applies to commercial companies (under the form of a public company limited by shares and a corporate partnership limited by shares) including investment companies (Société d’Investissement) in risk capital, investment companies with variable capital, investment companies with fixed capital and specialized investment funds. It further applies to contractual vehicles issuing bearer units such as mutual investment funds or mutual securitization vehicles.

The law requires that the bearer shares and units be placed with a professional depository. The depository is appointed by the relevant company and selected among financial institutions and professionals, established in Luxembourg, that are subject to anti-money laundering and terrorism financing legislation. The depository shall record in a register the identification details of the shares or units holders, the number of shares or units held, any transfer of shares or units, any pledge and their conversion into registered shares or units.

Failure to comply with the law triggers a fine of up to €125,000 for the members of the management body of the relevant company. Furthermore, voting and financial rights attached to bearer shares or units that have not been deposited within six months after the entry into force of the law (i.e., by 18 February 2015 at the latest) will automatically be suspended until their deposit. All bearer shares or units not deposited within 18 months after the entering into force of the law (i.e., by 18 February 2016 at the latest) shall be canceled and a corresponding reduction of share capital shall follow.
Restructuring and winding-up reforms in Poland

On 5 November 2014, the Polish Parliament adopted a new draft law on restructuring to improve its insolvency law. The requirement of the new legislation arose in connection with the analysis of the disadvantages in Polish restructuring and winding-up proceedings, conducted by the Ministry of Justice, such as low rates of satisfaction of the creditors’ claims from the bankruptcy estate, or long duration of the proceedings. At the same time, as a result of a recession, an increasing number of entities are, or may potentially be, interested in restructuring.

The reform plans separate the restructuring proceedings from the winding-up proceedings and regulate the restructuring in a separate law. Four types of restructuring procedures will be available, depending on the financial situation of the entity at stake. The common objective of these procedures will be the reorganization of the debtor’s business, including its debts, assets and employment.

The aim of the reform is to limit the role of the court and, at the same time, to increase the influence of the creditors on the proceedings. This will be possible mainly by increasing the powers of the council of creditors. The reform also introduces new measures of preventing actions to the detriment of the creditors, such as the court’s right to refuse to open the restructuring proceedings, if the debtor’s actions indicate that its sole purpose is to hinder the effective debt enforcement. To ease the restructuring and winding-up proceedings, a central register of restructurings and liquidations will be established.

The draft law is now subject of works in the parliamentary commissions. The new law should be enacted at the beginning of June 2015.
New amendments to Accountancy Law

Given the need for transposition in the accounting provisions of Directive 2013/34/EU, the Government Emergency Ordinance no. 79/2014 – which completes and amends Romania’s Accountancy Law – was published in the Official Gazette no. 902 on 11 December 2014.

As the emergency ordinance was issued on 10 December 2014 and entered into force on 1 January 2015, the annual financial statements for the 2014 financial year are being prepared in accordance with the accounting regulations applicable before the effective date of the emergency ordinance.

The main provisions of the emergency ordinance include the following:

- Individuals engaged in activities with the purpose of deriving revenues may opt either for preparing accounting books based on single-entry rules or based on double-entry accounting rules, unless the tax legislation provides otherwise. For this purpose, accounting regulations will be adopted within 60 days from publishing the emergency ordinance in the Official Gazette.

- The possibility to opt for a different financial year to the calendar year has been extended to Romanian legal entities by removing the condition that only consolidated subsidiaries of a foreign parent company could opt for a different financial year to the calendar year.

- Newly established legal entities can opt for a financial year different to the calendar year from the date of their incorporation by filing a written notice to the local Ministry of Finance unit within 30 calendar days following the date of establishment.
General legal charges

**New law for venture capital entities**

A new law applying to venture capital entities and other collective investment companies was passed by the Spanish Parliament on 12 November 2014. The law aims at implementing in the Spanish legal system the Directive 2011/61/EU on Alternative Investment Fund Managers, as applicable to the Spanish legal system. This in turn triggers changes relating to the incorporation, access to market, and mergers and liquidation of these entities, as well as their management and control. It also creates new investment vehicles that can be commoditized internationally. The law’s main purpose is to attract funding for a larger number of companies. To this end, it focuses on finance and investment at the early stages of development and expansion, and also determines the process for authorization with – and supervision from – the regulatory bodies.

**Amendments to intellectual property law**

A law was passed on 4 November 2014 to amend current intellectual property law. This law implements directives 2011/77/UE and 2012/28/UE as applicable within the Spanish legal system. The main amendments introduced are:

- The compensation system for private copying
- New effective measures for monitoring entities that manage intellectual property rights
- Strengthening certain response instruments to prevent legal violations

**Law on corporate governance**

The draft law on improving corporate governance and the related amendment to Spanish corporate law, as referred to in the last edition of this newsletter, was passed on 3 December 2014 and entered into force on 24 December 2014.
Clarification from the Swiss Federal Supreme Court relating to intragroup financing

A Swiss Federal Supreme Court decision of 16 October 2014 has ruled for the first time that a paid-in surplus (or “agio”) is to be treated as part of the statutory general reserve for shareholders’ loans made under a cash pool arrangement. It may therefore be distributed, provided that the general reserve remains higher than half of the share capital.

The court also held that intragroup upstream and cross-stream loans that were not made at arm’s length will cause the freely disposable equity capital used for (dividend) distributions to be blocked in an amount equal to such loans. In respect of Switzerland’s capital protection requirements, upstream and cross-stream loans granted at arm’s length will still be permitted.

With respect to the arm’s length test, the Federal Supreme Court noted that it was “inherently questionable” whether participation in a cash pool would ever pass the test where the participant freely disposes of liquidity. It did not, however, examine this question more closely, as the facts of the case did not deem it appropriate for the Federal Supreme Court to define clear arm’s length guidelines.

It is safe to assume that discussions on intragroup financing will intensify among scholars and practitioners in Switzerland. Cash pools and upstream or cross-stream loans should therefore be carefully evaluated. In particular, if these loans exceed the lender’s freely disposable equity capital, additional collateral should be provided and it will be advisable to monitor the financial circumstances of the parties involved carefully. If appropriate, it may also be worth considering whether to reduce any loan amounts in excess of the freely available equity.
New rules on the representation of companies

Amendments to Turkish labor law and other laws and decrees, in addition to the restructuring of some receivables, were enacted on 10 September 2014. These changes include amendments to Article 371 of the Turkish Commercial Code (TCC), which regulates the representation of companies with representation limits.

The general rule for representation of companies is that legal representatives are permitted by law to represent the company in all corporate, commercial transactions. Limitations of powers are only acceptable as far as joint representation is concerned (e.g., a dual signature to bind the company), or in relation to headquarters/branch representation. Limitations of powers for legal representatives such as monetary or transaction limitations were not accepted by the Trade Registry.

According to a new subsection, the board of directors (BoD) is now allowed to limit the powers of BoD members and even appoint non-BoD members — as long as they are employees of the company — as commercial representatives and assistants with limited representation powers, which is to be specified in an internal directive and registered with the Trade Registry.
UK

Consultation on a public register of persons with significant control of UK companies

At the G8 summit in June 2013, the UK Government announced its proposals to increase transparency in the control and ownership of UK companies. In particular, it announced that it was considering requiring UK companies to obtain and hold information about their ownership and control, and creating a central registry of beneficial owners of UK companies at Companies House.

In July 2014, the draft Small Business, Enterprise and Employment Bill was introduced to Parliament. One of the aims of the bill is to improve the transparency of ownership and control of UK companies. The stated objective is to help deter, identify and sanction those who hide their interests in UK companies to facilitate illegal activities. If introduced, the new legislation will require UK companies to hold and keep available for inspection a register of “persons with significant control” (PSCs). UK companies will have to provide an initial statement about PSCs upon their incorporation and update that information at Companies House at least every 12 months or sooner if a change occurs. Companies will be required to take reasonable steps to identify people they know or reasonably suspect to be PSCs, and individuals are required to notify the company if they are, or suspect that they may be, a PSC. It is proposed that criminal penalties will apply to companies and individuals who fail to provide this information or provide false information.

The bill defines a PSC as an individual who meets one or more of the following tests:

- Directly or indirectly owns more than 25% of the share capital of the company
- Can directly or indirectly remove the majority of a company’s board of directors
- Has the right to exercise significant influence or control over a company
- Exercises or has the right to exercise significant influence or control over the activities of a trust or firm that meets one or more of the preceding four conditions

This bill also includes provisions relating to the abolition of bearer shares and proposes material amendments to the laws relating to corporate directors and shadow directors. It is at draft stage and therefore may be amended by Parliament and/or the House of Lords before it receives Royal Assent and becomes law in the UK.
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