Chambers | Practice Guides

Corporate & Commercial 2026

Definitive global law guides offering comparative analysis from top-ranked lawyers

Contributing Editors
Brad Ross & Emily Hamovitch
Goodmans



Chambers

Practice Guides

Corporate & Commercial

Contributing Editors

Brad Ross and Emily Hamovitch

Goodmans LLP

2026

Chambers Practice Guides

For more than 20 years, Chambers Global Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets.

Disclaimer: The information in this guide is provided for general reference only, not as specific legal advice. Views expressed by the authors are not necessarily the views of the law firms in which they practise. For specific legal advice, a lawyer should be consulted.

Content Management Director Claire Oxborrow
Content Manager Jonathan Mendelowitz
Senior Content Reviewers Sally McGonigal, Ethne Withers, Deborah Sinclair, Stephen Dinkeldein, Vivienne Button and Sean Marshall
Content Reviewers Lawrence Garrett, Marianne Page, Heather Palomino, Alison Moore, Adrian Ciechacki and Michael Irvine
Content Coordination Manager Nancy Tsang
Senior Content Coordinators Carla Cagnina and Delicia Tasinda
Content Coordinator Joanna Chivers
Head of Production Jasper John
Production Coordinator Genevieve Sibayan

Published by
Chambers and Partners
165 Fleet Street
London
EC4A 2AE
Tel +44 20 7606 8844
Fax +44 20 7831 5662
Web www.chambers.com

Copyright © 2026
Chambers and Partners

CONTENTS

INTRODUCTION
Contributed by Brad Ross and Emily Hamovitch, Goodmans LLP p.5

ARMENIA
Law and Practice p.9
Contributed by MB Legal

ASIA PACIFIC-WIDE
Trends and Developments p.31
Contributed by Llinks Law Offices

BRAZIL
Law and Practice p.37
Contributed by BVA – Barreto Veiga Advogados

CANADA
Law and Practice p.60
Contributed by Michael, Evrensel & Pawar LLP
Trends and Developments p.83
Contributed by Michael, Evrensel & Pawar LLP

CANADA – BRITISH COLOMBIA
Trends and Developments p.89
Contributed by Sangra Moller

CAYMAN ISLANDS
Law and Practice p.94
Contributed by Walkers

CHINA
Law and Practice p.115
Contributed by Hylands Law Firm
Trends and Developments p.135
Contributed by Hylands Law Firm

COLOMBIA
Law and Practice p.141
Contributed by Parra Rodríguez Abogados

COSTA RICA
Law and Practice p.164
Contributed by Deloitte Legal

DOMINICAN REPUBLIC
Law and Practice p.184
Contributed by Alburquerque Abogados – Consultores

ECUADOR
Law and Practice p.206
Contributed by VIVANCO & VIVANCO
Trends and Developments p.229
Contributed by VIVANCO & VIVANCO

EGYPT
Law and Practice p.235
Contributed by ADSERO-Ragy Soliman & Partners
Trends and Developments p.257
Contributed by ADSERO – Ragy Soliman & Partners

EU
Trends and Developments p.263
Contributed by Machas & Partners

FINLAND
Law and Practice p.271
Contributed by DKCO

FRANCE
Law and Practice p.289
Contributed by Axipiter
Trends and Developments p.306
Contributed by Axipiter

GERMANY
Law and Practice p.313
Contributed by MTR Legal Rechtsanwälte

GHANA
Law and Practice p.332
Contributed by Egality Law

GREECE
Law and Practice p.355
Contributed by Hahalis & Kounoupis P.C.

HONG KONG SAR, CHINA
Law and Practice p.371
Contributed by Hill Dickinson LLP

JAPAN
Law and Practice p.394
Contributed by Chuo Sogo LPC
Trends and Developments p.416
Contributed by Atsumi & Sakai

CONTENTS

LATIN AMERICA-WIDE
Trends and Developments p.422
Contributed by DeForest Abogados

LUXEMBOURG
Law and Practice p.427
Contributed by Brucher Thieltgen & Partners
Trends and Developments p.449
Contributed by Brucher Thieltgen & Partners

MAURITIUS
Law and Practice p.456
Contributed by Eversheds Sutherland (Mauritius)

MEXICO
Law and Practice p.483
Contributed by Treviño Chávez
Trends and Developments p.500
Contributed by Treviño Chávez

MONTENEGRO
Law and Practice p.505
Contributed by Kinstellar

NEW ZEALAND
Law and Practice p.525
Contributed by Wynn Williams Lawyers

PHILIPPINES
Law and Practice p.547
Contributed by Cruz Marcelo & Tenefrancia
Trends and Developments p.569
Contributed by Cruz Marcelo & Tenefrancia

PORTUGAL
Law and Practice p.577
Contributed by Gil Figueira & Devillet Lima

SAUDI ARABIA
Law and Practice p.599
Contributed by Al Akeel and Partners
Trends and Developments p.623
Contributed by Khalid Nassar & Partners

SERBIA
Law and Practice p.631
Contributed by Kinstellar

SINGAPORE
Trends and Developments p.653
Contributed by DBS Bank Limited

SWITZERLAND
Trends and Developments p.660
Contributed by Binder Legal

USA
Law and Practice p.667
Contributed by Wuersch & Gering LLP
Trends and Developments p.688
Contributed by Wuersch & Gering LLP

USA – CALIFORNIA
Trends and Developments p.694
Contributed by Paracuellos Law Group PC

USA – FLORIDA
Trends and Developments p.700
Contributed by Shaw Lewenz

USA – GEORGIA
Trends and Developments p.707
Contributed by Thrift McLemore

USA – ILLINOIS
Trends and Developments p.713
Contributed by AnchorPoint Legal Partners PLLC

USA – NEW YORK
Trends and Developments p.718
Contributed by Wolofsky PLLC

USA – NORTH CAROLINA
Trends and Developments p.723
Contributed by Wagner Hicks PLLC

USA – OHIO
Trends and Developments p.730
Contributed by Rooney IP

ZIMBABWE
Law and Practice p.737
Contributed by Dube Manikai & Hwacha Legal Practitioners
Trends and Developments p.759
Contributed by Dube Manikai & Hwacha Legal Practitioners

INTRODUCTION

Contributed by: Brad Ross and Emily Hamovitch, **Goodmans LLP**

Goodmans LLP is internationally recognised as one of Canada's leading law firms for M&A, capital markets, securities and finance, private equity, real estate, tax, restructuring, litigation and dispute resolution, and other business-related specialties. Its clients are business leaders, innovators, entrepreneurs and investors who need counsel from a law firm that is as enterprising, forward-thinking and direct as they are. It works hard to develop the most appropriate solution for any situation and provides clear, concise and straightforward advice to solve some of the most complex and demanding legal issues.

Contributing Editors



Brad Ross is a partner in and a head of a business law group at Goodmans. His practice is transaction-based, with particular emphasis on corporate finance, mergers and acquisitions and private equity transactions. Brad often represents issuers, private companies and underwriters, with a focus on both public and private equity sponsored companies executing on aggressive growth strategies. Brad also assists companies with their corporate governance and continuous disclosure obligations.



Emily Hamovitch is a partner in a business law group at Goodmans. Her practice is transaction-based and focuses on M&A and securities law. She acts for both public and private companies, with a particular emphasis on public and private mergers and acquisitions, private equity transactions, public offerings, debt and equity financings, private placements and corporate reorganisations. Emily also advises on matters relating to continuous disclosure obligations, corporate governance, legislative compliance and general corporate and securities law.

Goodmans LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto
Ontario
M5H 2S7
Canada

Tel: +1 416 979 2211
Email: info@goodmans.ca
Web: www.goodmans.ca

INTRODUCTION

Contributed by: Brad Ross and Emily Hamovitch, **Goodmans LLP**

Trends Shaping Legal Considerations for Boards and Businesses

Corporate and commercial legal practice is evolving alongside significant opportunities and challenges for businesses worldwide. Unpredictable global markets, geopolitical tensions, rapid technological innovation and shifting regulatory regimes are prompting businesses to reconsider their business strategy and risk management approach. The Corporate & Commercial 2026 Global Overview Practice Guide examines the key trends shaping legal considerations for boards, management teams and their advisers in this developing environment.

A shifting governance focus

Over the last decade, corporate governance has shifted from a focus on board structure, financial performance, shareholder rights and fiduciary duties to an emphasis on risk oversight, regulatory compliance and decision-making that considers stakeholder expectations, rapid technological development and sustainability. Directors are now expected to weigh these considerations, along with long-term impacts, where relevant to the corporation's best interests.

This includes understanding how environmental, social and governance (ESG) issues affect enterprise value and risk, with governance expectations extending to climate risk, sustainability strategy, human capital management, supply chain ethics and diversity. After several years of focus on these matters, geopolitical tensions and regulatory developments have resulted in a tempering of (and in some cases backtracking on) ESG-related governance efforts in many jurisdictions. It remains to be seen where the ESG pendulum shifts from here.

While cybersecurity, data breach prevention and crisis management planning have been on the radar of boards for some time, AI governance is emerging as the next major technology-focused area of board oversight. AI introduces new digital vulnerabilities that carry heightened enterprise risk. Although legislative regimes for AI adoption and use are still developing, regulatory and market practice are coming to expect companies to have AI governance frameworks in place. Boards are expected to be AI-literate and able to articulate how AI is governed within the organisation.

More broadly, directors are facing growing scrutiny over expanding disclosure and reporting obligations around cyber incidents, AI use and related risk factors and governance controls, causing increased pressure to justify major strategic decisions and demonstrate a robust decision-making process.

Rising shareholder activism

Shareholder engagement continues to be a central aspect of corporate governance worldwide. Shareholder activism has become increasingly transnational, with investors playing a more active role in influencing corporate strategy, governance and board accountability across jurisdictions. Activist shareholders are willing to challenge board decisions, vote against directors' re-election, campaign for changes to corporate strategy or governance, and advance or support litigation where they believe directors have failed in their duties. This trend is no longer confined to the largest public companies, as mid-market and even private companies are seeing a more engaged shareholder base.

Regulatory scrutiny and complexity

Shifting regulatory frameworks are prompting businesses to adapt quickly across multiple jurisdictions. After several decades of governments promoting globalisation, the past few years have seen a renewed focus on economic sovereignty, with regulatory regimes adapting accordingly. These tensions present challenges to businesses balancing international growth with compliance across shifting regulatory regimes. Regulators are taking a more active approach to corporate governance and individual accountability, with greater emphasis on transparency, risk disclosure and governance controls.

Antitrust authorities worldwide are intensifying enforcement, particularly in relation to digital markets, data-driven business models and concentrations of market power involving large technology and AI platforms.

Jurisdictions are taking markedly different approaches to AI, and active compliance regimes are only

Contributed by: Brad Ross and Emily Hamovitch, **Goodmans LLP**

slowly taking shape. In the meantime, multinational businesses are navigating a patchwork of dedicated legislation, consumer protection enhancements, and privacy rules related to AI.

Cross-border transfers of personal data are increasingly subject to legal restrictions, prompting businesses to map their data flows carefully and put contractual and technical safeguards in place. Regulators are showing greater willingness to enforce, and non-compliance can result in both financial penalties and reputational harm.

Anti-money laundering, sanctions, and anti-corruption enforcement have become increasingly prevalent, with regulators co-ordinating internationally. Businesses with international dealings are adopting compliance programmes that can be updated swiftly, as well as screening designed to identify exposure at an early stage.

Environmental obligations are following a similar trajectory, with climate-related litigation emerging as a source of legal risk.

Securities regulators are refining continuous disclosure requirements, insider trading rules, and shareholder disclosure thresholds as public markets globally seek to attract investment without compromising investor protection. Internal controls and whistle-blower protections remain a consistent area of regulatory focus.

The new deal environment

Recent developments have altered how businesses conduct transactions and manage transaction risk. Rising geopolitical tensions and economic security concerns have led countries to increase scrutiny of foreign investments. Certain jurisdictions have introduced unique outbound foreign investment regulatory regimes. Cross-border mergers, acquisitions, joint ventures and investments are now subject to significantly greater national security review and antitrust clearance, and governments that historically encouraged foreign investment have expanded foreign direct investment screening regimes to protect critical infrastructure, sensitive technologies, data assets, semiconductors, telecommunications, AI and energy resources.

Tariffs and shifting trade policy are adding a further layer of uncertainty to cross-border transactions and supply chain arrangements. Businesses are increasingly factoring tariff exposure, export restrictions and the potential for retaliatory trade measures into deal pricing, supply agreements and long-term sourcing strategies, while also monitoring currency volatility and its effect on cross-border deal value and financing costs.

Transactional diligence has expanded beyond traditional financial and legal reviews to also cover geopolitical exposure, sanctions risk, cybersecurity, AI governance, data privacy, supply chain resilience, ESG issues, human rights compliance, workplace culture and regulatory readiness. Transaction agreements now include more robust representations, warranties, covenants, indemnities, closing conditions, termination rights and purchase price adjustment mechanisms.

Similar risk allocation measures are finding their way into everyday commercial agreements. Licensing, data rights and ownership of outputs generated using AI tools are now routine points of negotiation in supply, services and collaboration agreements, and these agreements now allocate responsibility for AI-related liability, including which party bears the risk of inaccurate, infringing or otherwise defective AI-generated outputs, and what indemnification obligations apply as a result.

Data governance terms, such as data residency, permitted use and security requirements, are appearing in routine supply, distribution and services agreements that would once have addressed data only in passing. Commercial agreements of all types are increasingly specifying minimum security standards, breach notification timelines, and co-operation obligations in the event of a cybersecurity incident.

Supply chain governance is following a similar path, with ESG-related supplier codes of conduct, representations and warranties, and audit and inspection rights now appearing in routine supply and distribution agreements.

Contributed by: Brad Ross and Emily Hamovitch, **Goodmans LLP**

Sanctions compliance and export control provisions are also appearing as standard terms even in commercial agreements that do not otherwise involve cross-border or regulated activity. Representations regarding sanctioned party status, export control compliance, and termination rights tied to a counterparty's sanctions exposure are commonly included.

A tightening financial landscape

Access to financing has become a pressing challenge for businesses in this environment, as rising interest rates have increased the cost of capital and tightened credit conditions, prompting traditional bank lenders to apply more conservative underwriting standards and, in some cases, retreat from certain sectors altogether. This has accelerated the rise of private credit and other non-bank lenders as a significant source of financing for acquisitions, growth capital and refinancing, offering borrowers greater flexibility and speed of execution, often at a higher cost of capital and with further restrictive contractual terms.

At the same time, both traditional and private lenders are requiring robust covenants in credit agreements, including tighter financial maintenance covenants, enhanced information and inspection rights, and greater contractual control over borrower operations and future indebtedness, to protect their position in a higher-rate, higher-risk lending environment. Consequently, borrowers face more heavily negotiated debt commitment letters and credit agreements, increased financing conditionality in acquisition agreements, and closer scrutiny of covenant compliance, default and remedy provisions as part of deal structuring.

Preparing for what lies ahead

For businesses, these developments call for governance frameworks, compliance programmes and transaction structures capable of adapting to a shifting regulatory, geopolitical and technological landscape. Resilience in risk oversight, financing strategies and deal structuring tends to leave boards and management teams better placed to manage disruption and pursue opportunities for growth. Well-documented decision-making processes capable of withstanding scrutiny from regulators, shareholders and other stakeholders also play a role.

Against this backdrop, corporate and commercial legal advisers are called on for more than technical legal expertise. They are providing legal analysis with commercial and geopolitical judgement, helping clients structure transactions, manage risk and pursue growth in a complex and interconnected global environment. This favours legal advisers who remain current across multiple, often overlapping regulatory regimes, co-ordinate closely with colleagues in other jurisdictions and practice areas, and integrate fast-moving legal and geopolitical developments into actionable advice.

ARMENIA



Law and Practice

Contributed by:
Mesrop Manukyan, Grigor Grigoryan, Anahit Sargsyan, Maria Petrosyan, Vanik Avagyan and Alina Danielyan
MB Legal

Contents

1. Business Entities P.12
1.1 Business Organisations p.12
1.2 Incorporation and Ongoing Compliance p.12
1.3 Share Issuances p.13
1.4 Distributions and Return of Capital p.13
1.5 Control Person Reporting p.14

2. Corporate Governance P.14
2.1 Legal Framework p.14
2.2 Directors' Duties and Liabilities p.15
2.3 Board Composition and Independence p.15
2.4 ESG and Disclosure Obligations p.16
2.5 Conflicts of Interest and Related-Party Transactions p.16

3. Shareholder Rights and Agreements P.17
3.1 Shareholder Rights p.17
3.2 Shareholder Agreements p.17

4. Mergers and Acquisitions P.18
4.1 Legal Framework p.18

5. Capital Markets P.19
5.1 Securities Regulation and Public Offerings p.19
5.2 Continuous Disclosure p.20
5.3 Insider Trading p.20
5.4 Shareholder Disclosure p.20
5.5 Internal Controls and Whistle-Blower Regimes p.21

6. Secured Transactions P.21
6.1 Transaction Financing and Security Interests p.21

7. Commercial Contracts P.22
7.1 Contract Formation and Enforceability p.22
7.2 Termination and Remedies p.23
7.3 Intellectual Property in Commercial Transactions p.23
7.4 Consumer Protection p.24

8. Foreign Investment P.24
8.1 Competition and Merger Control p.24
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.25

9. Regulatory Compliance P.25
9.1 Privacy and Data Protection p.25
9.2 Anti-Money Laundering, Sanctions and Corruption p.26
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.26
9.4 Artificial Intelligence p.27
9.5 Other Regulatory Compliance Requirements p.27

10. Employment and Labour P.28
10.1 Employment Standards and Workplace Regulation p.28
10.2 Executive Compensation and Restrictive Covenants p.28

11. Real Property and Commercial Leasing P.29
11.1 Requirements for Land Ownership p.29
11.2 Commercial Real Estate Transactions p.29

MB Legal is a full-service Armenian law firm headquartered in Yerevan, with an office in Tbilisi, Georgia, and is the Armenian member firm of Multilaw. Its team of more than 15 lawyers advises domestic and international clients across the corporate and commercial spectrum, covering company formation and corporate governance, mergers and acquisitions, shareholder arrangements, commercial contracts, capital markets and investment funds, competition, employment, intellectual property, data protection, and licensing and regulatory compliance. The corporate practice works alongside the firm's dispute resolution, tax and criminal defence teams, so that complex mandates are handled in-house from structuring through to enforcement. Recent engagements include advising on bank and investment company licences, initial public offerings on the Armenian Securities Exchange, debt restructurings for international financial institutions, multi-jurisdictional mergers and acquisitions, private fund registrations, and gambling and iGaming licensing. A majority of instructions involve foreign counterparties across the APAC, EMEA and Americas regions.

Authors



Mesrop Manukyan is a founding partner at MB Legal, with over seven years of experience in transactional and technology law. His career includes serving as general counsel for a Shanghai-based technology firm and leading the legal function at the Foundation for Armenian Science and Technology. Mesrop advises international clients on mergers and acquisitions, corporate restructuring, joint ventures and shareholder arrangements, alongside intellectual property, telecommunications and emerging technology regulation, and he represents corporate clients in commercial arbitration. He holds an MBA from London Business School and an LLM from the University of Cambridge.



Anahit Sargsyan is a junior partner at MB Legal, where her practice focuses on corporate and business law, with particular expertise in investment structures, including SAFE agreements, IPOs, investment funds, and the regulatory framework applicable to financial companies. She also advises on international commercial arbitration and mediation. Anahit is a licensed mediator in Armenia and has completed specialised mediation training at the Singapore International Mediation Centre, as well as professional courses organised by IRZ and GIZ. She is a member of the Chamber of Advocates of Armenia and holds an LLM from the American University of Armenia.



Grigor Grigoryan is a partner at MB Legal, with more than 13 years of experience. His practice covers commercial and corporate matters, contract law, loan and financing agreements, labour disputes, civil and administrative litigation, and public procurement. He has advised on a bond issuance for a major mining company operating in Armenia, led the Armenian legal team on a government public-private partnership project, and acted on significant M&A transactions. Grigor holds a PhD in Law and an LLM from the Russian-Armenian University. He is a licensed advocate, and serves as an arbitrator at the Arbitration Institution of the RA Chamber of Commerce and Industry.



Maria Petrosyan is a senior lawyer at MB Legal, with over seven years of experience in corporate law, dispute resolution and legislative reform. She advises on corporate governance, commercial contracts and complex transactional analysis, and specialises in the development of arbitration and mediation frameworks. She previously served as the Armenian national correspondent for the European Commission for the Efficiency of Justice (CEPEJ). Maria is a member of the Chamber of Advocates of the Republic of Armenia and a licensed mediator, and she frequently acts as a coach and arbitrator for international commercial arbitration platforms.

Contributed by: Mesrop Manukyan, Grigor Grigoryan, Anahit Sargsyan, Maria Petrosyan, Vanik Avagyan and Alina Danielyan, **MB Legal**



Vanik Avagyan is a senior lawyer at MB Legal, which he joined in June 2024, and has over six years of legal experience. He specialises in corporate law, intellectual property and judicial protection, advising companies on commercial documentation, corporate structuring and the treatment of intangible assets in commercial transactions. He has also acted as an arbitrator in civil, administrative and bankruptcy matters. Vanik graduated from the Armenian-Russian University, holds a master's degree from the Academy of Public Administration of Armenia, and continues his legal education at the RA Law Academy.



Alina Danielyan is a lawyer at MB Legal, which she joined in 2024. Her practice covers corporate and business law, with a particular interest in digital law and the regulatory questions raised by emerging technologies. She graduated from the Russian-Armenian University in 2024 and is pursuing an LLM in International and European Law at the same institution. During her studies, she took part in an exchange programme at Humboldt University of Berlin, focusing on human rights and artificial intelligence. Alina competes in international moot courts, including the Nuremberg Moot Court on International Criminal Law and the Model EAEU.

MB Legal

37 Hanrapetutyan Street, 4th Floor
Yerevan 0010
Armenia

Tel: +374 41 241244
Email: info@mblegal.am
Web: mblegal.am

1. Business Entities

1.1 Business Organisations

Principal Organisational-Legal Forms

The State Register of Legal Entities within the Ministry of Justice maintains the corporate registry and recognises several organisational-legal forms for commercial activity. Local and international businesses overwhelmingly use the limited liability company (LLC) and the joint stock company (JSC), with the latter established as either a closed or an open corporation. The Civil Code also recognises general partnerships and limited partnerships, but these are rare in modern commercial practice because general partners have no liability shield.

Limited liability companies

The LLC is the most common vehicle, valued for its flexibility, ease of establishment and the statutory cap on member liability: participants are not liable for the company's debts beyond their registered contributions. Under the Law on LLCs, an LLC may have no more than 49 participants; if that number is exceeded, the company must convert into a JSC or a co-operative within one year or face judicial liquidation. There is no statutory minimum charter capital unless industry-specific licensing rules impose one.

Joint stock companies

A closed JSC restricts the purchase of shares by granting existing shareholders and/or the company a right of first refusal, in accordance with the applicable statutory and charter provisions. The shareholder base is also limited to 49. Where a shareholder intends to sell its shares to a third party, the applicable pre-emption procedure must first be followed, allowing the existing shareholders and the company to exercise their respective rights before the shares may be transferred to the proposed third-party purchaser.

An open JSC, by contrast, allows shares to be transferred without the restrictions applicable to a closed JSC and may conduct both non-public and public subscriptions. An open JSC is also the mandatory corporate form for listing shares on the Armenian Securities Exchange (AMX).

The choice between a closed JSC and an LLC will generally depend on:

- the desired corporate governance structure;
- the need to accommodate multiple classes of shares and shareholders;
- the applicable rules for transferring ownership interests; and
- the possibility of raising capital through the securities market or pursuing an eventual public listing.

Tax and Regulatory Drivers

Companies generally fall under the general tax regime, with 18% corporate income tax and 20% VAT, while eligible businesses may use simplified regimes such as turnover or micro-enterprise tax. In some sectors, the general regime is mandatory by law. LLCs and closed JSCs may use turnover tax if their annual turnover is below AMD115 million, generally reducing the tax and accounting burden. Scrutiny is heavier for JSCs, whose share registers must be kept with the Central Depository of Armenia or a licensed registrar, whereas LLC participation transfers are recorded directly in the State Register, giving small and medium-sized enterprises a simpler and cheaper compliance regime.

1.2 Incorporation and Ongoing Compliance

Incorporation Requirements

Incorporation is centralised and swift. Founders must execute a foundation agreement, approve the charter and determine the initial management structure. LLCs and closed JSCs may be registered in person at the State Register, online through www.e-register.am using Armenian electronic signatures, or through an authorised representative under a paper-based power of attorney, without the founders' personal attendance.

Procedure, Timelines and Fees

Where founders adopt the model charter templates published by the Ministry of Justice, registration is completed immediately and free of state duty. Customised charters and paper filings take up to two working days and attract a nominal duty under the Law on State Duty. Where the founder is a non-resident legal entity, the relevant corporate documents must be notarised, apostilled (where applicable) and translated into Armenian in accordance with the appli-

cable requirements. Where a legal entity is the founder, the registration procedure generally takes up to three working days, due to the additional verification of the founding entity's documents. The State Register issues the taxpayer identification number and the social security registry code automatically, connecting the new entity to the State Revenue Committee. No capital needs to be paid into a bank account before registration of a standard LLC or JSC.

Ongoing Compliance Obligations

Ongoing compliance is relatively light for LLCs, which must hold an annual general meeting and notify the State Register of changes to the executive body, registered address or charter. JSCs carry a heavier burden: an annual general meeting must be held within six months of the financial year end, and the share register must be maintained with the Central Depository of Armenia as the exclusive registrar. All entities must also submit annual ultimate beneficial owner (UBO) declarations and periodic tax and statistical reports.

1.3 Share Issuances

Charter Capital and Share Structure

The capital structure of JSCs is governed by the Law on JSCs. The charter must specify the number and nominal value of the shares acquired by shareholders, and may also specify the number and nominal value of authorised shares, being those the company may place over and above the placed shares (in an open JSC, the number of authorised shares should be mentioned in the charter). Placement and payment are distinct: shares placed on foundation must be paid up in full within the period fixed by the founding decision, agreement or charter, and in any event no later than three months after state registration.

Increasing and Reducing Capital

Any alteration of charter capital requires a general meeting resolution. Capital may be increased by raising the nominal value of existing shares or issuing additional shares within the authorised limit, with the increase taking effect against third parties upon registration with the State Register. An increase through nominal value may only be made from the company's own resources and is subject to statutory limits. Capital may not be increased through fundraising if previously issued shares remain unpaid. Capital may be reduced by lowering the nominal value of shares or repurchasing and cancelling shares. The reduction process is creditor-protective, requiring individual written notice and public announcement, and allowing creditors to demand early performance of obligations.

Convertible Loans

The Law expressly recognises convertible loan agreements for LLCs and JSCs, allowing principal and/or interest to convert into equity. LLC conversion generally requires unanimous approval, a charter-capital increase within 60 days, and charter authorisation for third-party contributions. For JSCs, unanimous approval is generally required, unless the charter permits a threshold of at least three quarters of voting shares; shares must be issued and placed within 60 days. Foreign currency amounts are converted at the Central Bank of Armenia (CBA) average rate on the conversion-request date.

Classes of Shares and Attached Rights

The Law on JSCs permits common (ordinary) and preferred shares. Common shares carry equal voting rights (subject to a charter-imposed ceiling of up to ten votes per share), dividend rights based on performance, and a proportionate share of assets on liquidation. Preferred shares confer priority to fixed or variable dividends and priority on liquidation but generally carry no vote. Preferred shareholders do acquire voting rights on matters directly affecting them, such as charter amendments restricting their privileges, or where the company has failed to pay guaranteed preferred dividends for three consecutive years.

1.4 Distributions and Return of Capital

Dividends and Distribution Procedure

Distributions to shareholders, principally dividends, are subject to solvency tests and formal corporate procedures under both the Law on JSCs and the Law on LLCs. Dividends may be declared quarterly, semi-annually or annually out of net accumulated after-tax profit. The decision falls within the exclusive competence of the general meeting, acting on the recommendation of the board of directors: the board sets the maximum amount, and the general meeting may approve or reduce it, but may not increase it.

Solvency Restrictions

A company is prohibited from declaring or paying dividends where:

- the charter capital has not been fully paid up;
- net assets are less than the charter capital plus the reserve fund, or would become so as a result of the distribution; or
- the company shows signs of insolvency or would do so as a direct consequence of the distribution.

In a JSC, payment of common dividends is additionally conditional on full payment of accrued preferred dividends, preserving strict priority between classes of capital.

Repurchase, Redemption and Cancellation

Share repurchases, redemptions and cancellations are closely regulated. A JSC may repurchase its own shares either to reduce charter capital or to hold them as treasury shares, which must be sold or cancelled within one year. Repurchase is prohibited where the company is insolvent or where the transaction would take net assets below the statutory minimum.

The law also applies financial assistance rules, prohibiting a company from lending, guaranteeing or granting security to a third party for the purpose of financing the acquisition of its own shares.

1.5 Control Person Reporting

The UBO Disclosure Regime

Beneficial ownership disclosure is a cornerstone of Armenia's corporate transparency and anti-money laundering framework. Under the Law on State Registration of Legal Entities and the Law on Combating Money Laundering and Terrorism Financing, every company registered must identify and keep current records of its UBOs. A UBO is any natural person who ultimately owns or controls the entity through a direct or indirect holding of 20% or more of its shares or voting rights, or who otherwise exercises dominant influence over the entity's management and decisions.

Initial Declaration and Reporting of Changes

A UBO declaration must be filed with the State Register of Legal Entities on incorporation, stating the UBO's full name, citizenship, date of birth, residential address, identity document details and the exact legal basis and percentage of ownership or control. Where the ownership structure changes (for example, on a share transfer that alters the identity of the beneficial owners), an updated declaration must be filed within 40 days of the change becoming known, or of when it ought to have been known, to the executive body.

Annual Confirmation and Sanctions

Separately from ad hoc reporting, every registered legal entity must carry out an annual review of its beneficial ownership and file an annual confirmation or updated declaration with the State Register by February 20th each year, reflecting the position as at December 31st. Failure to comply, filing false information or missing the annual deadline can result in administrative fines, suspension of state services and, in serious cases, grounds for the State Register to seek judicial liquidation of the entity.

2. Corporate Governance

2.1 Legal Framework

Statutory Framework

Corporate governance rests on a statutory framework supplemented by voluntary best-practice codes. The principal legislative acts are the Civil Code, the Law on JSCs and the Law on LLCs. Together they establish the mandatory corporate organs and delineate their competences:

- the general meeting of shareholders (or participants) as the supreme organ;
- the board of directors (supervisory board) as the oversight body; and
- the executive body, comprising a general director or a management board, responsible for day-to-day operations.

The 2024 Corporate Governance Code

In 2024, the Ministry of Economy approved the Corporate Governance Code, replacing earlier guidelines and aligning the jurisdiction more closely with the OECD Principles of Corporate Governance. It applies to all commercial organisations on a voluntary basis but is strongly promoted for listed entities, state-owned enterprises and financial institutions.

'Comply or Explain'

The operational hallmark of the 2024 Code is the 'comply or explain' principle. A company that adopts the Code must either implement its recommendations in full or disclose and justify each deviation in its annual corporate governance declaration. This gives smaller and family-owned businesses the flexibility to scale governance to their operations while giving investors and regulators the transparency needed to assess risk profile and internal controls.

2.2 Directors' Duties and Liabilities

Fiduciary Duties of Loyalty and Care

Directors and executive officers owe fiduciary duties of loyalty and care to the company and its shareholders. Under the Civil Code, the Law on JSCs and the Law on LLCs, they must act in good faith, professionally and reasonably, and in the best interests of the company. The duty of loyalty requires directors to avoid actual and potential conflicts of interest, to refrain from competing with the company and to prioritise corporate opportunities over personal gain; the duty of care requires diligent preparation for and active participation in board oversight.

The Standard of Care

The statutory standard of care is that of a reasonably prudent person in comparable circumstances. Courts have increasingly applied these standards in corporate disputes, moving away from purely formalistic review of board resolutions, and now examine whether a decision rested on adequate information, professional advice and a reasonable belief that the action would benefit the company. This approach mirrors the business judgement rule, shielding directors from liability for honest, informed commercial risks that produce losses, absent bad faith or self-dealing.

Personal Liability

Directors may incur personal, joint and several liability to the company and, in defined cases, to third-party creditors. Liability is triggered by wilful misconduct, gross negligence or transactions concluded in breach of fiduciary duty, such as unauthorised related-party transactions or unlawful dividend distributions. Under the Law on Bankruptcy, where insolvency is caused directly by the acts or binding instructions of a director or controlling shareholder, the court may impose subsidiary liability, making those persons personally answerable for the company's outstanding debts if corporate assets prove insufficient.

2.3 Board Composition and Independence

Formation and Composition of the Board

The board of directors is the principal supervisory organ, and its formation is mandatory for any JSC with 50 or more shareholders. A board is optional for LLCs and smaller JSCs, and its supervisory functions are typically exercised directly by the general meeting. There is no legal local residency requirement for board members, so foreign nationals may sit on the boards of domestic companies, which facilitates foreign direct investment and cross-border group structures.

Independence Standards

Independence criteria appear in the Law on JSCs and are elaborated in the 2024 Corporate Governance Code. An independent director must have no familial, financial or material commercial relationship with the company, its controlling shareholders or its executive management, and must not have been employed by the company in the preceding three years. The Code recommends that at least one-third of the board be independent, and in any event no fewer than two members.

Listed Companies and Financial Institutions

The regulatory divide between private companies and listed entities or institutions supervised by the CBA is sharp. Under CBA regulations and AMX listing rules, listed companies must:

- maintain a higher proportion of independent directors;
- establish audit, nomination and remuneration committees chaired by independent members; and
- comply with disclosure rules on board remuneration and evaluation.

The Code also encourages boards to consider gender, professional background and age diversity in nomination processes. For regulated financial institutions, members of management are subject to CBA registration or approval requirements.

2.4 ESG and Disclosure Obligations

The Emerging ESG Framework

ESG considerations are moving from voluntary corporate social responsibility towards structured regulatory requirements – a shift led by the 2024 Corporate Governance Code and by sector-specific regulation. The Code introduces sustainable corporate development as an express concept, expecting companies to integrate environmental protection, social responsibility and ethical governance into core business strategy rather than treating them as reporting exercises.

Climate-Related and Sustainability Disclosure

Comprehensive climate-related financial disclosure aligned with the TCFD or ISSB frameworks is not yet mandatory for private companies, but listed entities and financial institutions face expanding ESG disclosure duties. The CBA and the AMX require listed issuers to include non-financial disclosures in annual reports covering environmental impact, energy consumption, employee health and safety, and anti-corruption measures, largely in response to demand from international institutional investors for standardised sustainability data.

Directors' Duties and Stakeholder Interests

The scope of directors' duties has widened accordingly. In assessing the best interests of the company, directors are expected to look beyond short-term shareholder return and weigh the long-term effect of decisions on employees, communities, creditors and the environment. Judicial practice supports this multi-stakeholder reading, treating environmental and social compliance as elements of the duty of care.

Best Practices for Board Oversight

Boards should:

- delegate sustainability oversight to a dedicated ESG or risk committee;
- commission periodic environmental and social risk audits;
- ensure full compliance with environmental impact assessment obligations under the Law on Environmental Impact Assessment and Expertise; and
- maintain internal whistle-blowing channels.

Treating ESG as a strategic matter rather than a compliance burden improves resilience, widens access to international financing and reduces regulatory exposure.

2.5 Conflicts of Interest and Related-Party Transactions

Definition of a Related Party

Related-party transactions (RPTs) and conflicts of interest are governed by preventative and remedial rules in Chapter IX of the Law on JSCs and the corresponding provisions of the Law on LLCs. A related party is defined broadly to include board members, executive officers, shareholders holding 20% or more of the voting shares, and their close relatives and business affiliates. Such persons must disclose any direct or indirect interest in a proposed transaction to the board without delay.

Approval Requirements

The approval regime protects minority shareholders against asset diversion and transfer pricing. In a JSC with fewer than 500 shareholders, an RPT must be approved by a majority of the disinterested, non-executive directors; in a JSC with 500 or more shareholders, approval rests exclusively with the independent, disinterested directors. Where the transaction exceeds 10% of the company's book assets, or where every board member is interested, the matter must go to the general meeting and be approved by a majority of the disinterested voting shares.

Disclosure, Valuation and Consequences

An approved RPT must still be concluded at fair market value, supported by an independent appraiser's valuation. JSCs must disclose related-party transactions in their annual reports, identifying the related party, the nature of the interest and the terms. A transaction concluded in breach of these rules may be declared void by a court on the petition of the company or of shareholders holding at least 1% of the shares, and the interested parties are liable for the resulting damage and must account to the company for any profit.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Voting Rights

Shareholders in JSCs hold a broad suite of statutory rights. The principal right is the vote, with each common share carrying one vote on all matters put to the general meeting. Shareholders are also entitled to dividends in proportion to their holding and, on dissolution, to a pro rata share of the remaining liquidation assets under the Law on JSCs.

Access to Information

Access to information is a further statutory right. A shareholder of any size may inspect core corporate documents, including the charter, the registration certificate, minutes of general meetings and annual financial statements. Shareholders holding 5% or more of the voting shares may demand an independent audit of the company's financial and business operations at their own cost, and may access more detailed internal records such as minutes of board and management board meetings, which are otherwise closed.

Approval of Fundamental Changes

Fundamental corporate changes require elevated majorities, protecting minorities against unilateral action by controllers. Charter amendments, capital reductions, major transactions involving assets exceeding 50% of book value, reorganisations and voluntary liquidation all require approval by three-quarters of the voting shares represented at the general meeting. Shareholders who vote against or abstain on such matters may require the company to buy back their shares at fair market value.

Statutory Remedies

Statutory remedies address mismanagement and majority oppression. Shareholders holding at least 1% of the shares may bring a derivative claim against directors or executive officers to recover loss caused to the company by breach of fiduciary duty. Any shareholder may sue to invalidate a resolution of the general meeting or of the board adopted in breach of the law or the charter, provided the claim is brought within the applicable limitation period.

Board Representation

Shareholders holding at least 10% of the voting shares are entitled to appoint themselves or their representatives to the board of directors without election by the general meeting, as provided by the Law on JSCs.

Share Repurchase Rights

Shareholders may also require the company to repurchase their shares at fair market value in a broad range of cases provided by the Law on JSCs, including:

- certain fundamental corporate decisions;
- amendments restricting shareholder rights;
- persistent corporate governance failures;
- prolonged failure to distribute dividends;
- abuse of rights by the controlling shareholder; and
- other cases determined by the court.

3.2 Shareholder Agreements

Use of Shareholder Agreements

Shareholder agreements (SHAs) are recognised and are widely used by local and international investors to tailor governance and operating rules. The charter remains the public, foundational document filed with the State Register, while the SHA is a private contract addressing matters such as voting arrangements, board representation, funding commitments, dividend policy and dispute resolution. SHAs are enforceable if their terms do not contravene mandatory provisions of law or reduce statutory minority protections.

Share Transfer Restrictions

Transfer restrictions are a central feature. SHAs commonly contain rights of first refusal and first offer, tag-along rights protecting minorities, and drag-along rights facilitating exit. The Law on LLCs and the rules governing closed JSCs already provide a statutory right of first refusal, but an SHA allows the parties to refine procedural timelines, fix valuation formulas such as EBIT multiples, or bar transfers to competitors. For JSCs, these restrictions should be reflected in the charter and noted in the share register in order to ensure enforceability.

Dispute Resolution and Oppression Claims

The law offers both judicial and extrajudicial mechanisms for shareholder disputes and oppression claims. Disputes may be resolved through the state

courts or, where agreed by the parties, through mediation or commercial arbitration. Chapter 25 of the Civil Procedure Code created a dedicated proceeding for corporate disputes (those arising from the creation or management of a legal person or from participation in its charter capital), covering, among others:

- challenges to decisions of management bodies;
- the liability of directors;
- title to shares;
- the convening of general meetings; and
- the expulsion of a participant.

Under the Law on LLCs, participants holding at least 10% of the charter capital may petition the court to expel a participant whose acts or omissions seriously obstruct the company's operations or cause material damage. In JSCs, the principal remedy is the derivative claim available to holders of at least 1% of the shares, alongside actions to invalidate transactions concluded in conflict of interest.

Winding-Up and Dissolution

Winding-up is a remedy of last resort. Under the Civil Code and the Law on Bankruptcy, shareholders may petition the court to dissolve and liquidate a company where deadlock among shareholders or management has paralysed operations, or where net assets remain negative over consecutive years. Parties frequently designate commercial arbitration as the exclusive forum, relying on the Law on Commercial Arbitration to obtain confidential, binding awards enforceable internationally under the New York Convention.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Laws and Regulations

M&A are governed by the Civil Code, the Law on JSCs, the Law on Limited Liability Companies and the Law on Protection of Economic Competition. For transactions involving listed companies, the Law on Securities Market and the regulations of the CBA also apply. The framework accommodates both private transactions structured as share or asset acquisitions, and public M&A in the form of tender offers, mergers of listed companies and hostile takeovers.

Statutory Forms of Reorganisation

Corporate law permits five forms of reorganisation:

- merger;
- accession (absorption);
- division;
- separation; and
- conversion.

A merger consolidates two or more entities into a newly created legal entity, while an accession involves the absorption of one or more companies by an existing company, which survives. Both require a merger or accession agreement, approval by a 75% majority at the general meeting of each participant, and the transfer of all assets and liabilities by way of a transfer act.

Commonly Used Deal Structures

Share purchases and accessions dominate in practice. Share purchases are favoured for private acquisitions because they avoid transfer tax exposure and the need to novate contracts and licences individually, while accession is typically used for group consolidation. Armenia has no statutory scheme of arrangement or court-sanctioned plan for squeezing out minorities. Instead, squeeze-outs in JSCs proceed through tender offers: under the Law on JSCs, an acquirer reaching 95% of the voting shares may compulsorily purchase the balance at fair market value, while shareholders holding no more than 5% may require the company to repurchase their shares.

Recent Regulatory Developments and Case Law

Recent developments have centred on merger supervision and transparency. The Competition Protection Commission (CPC) has intensified its oversight of concentrations, lowering filing thresholds and tightening reporting requirements, while mandatory UBO disclosure (see **1.5 Control Person Reporting**) has reduced the use of nominee holdings in transactions. The courts have also been active, with recent decisions confirming that accession agreements cannot be used to defeat creditor rights, and that creditors must be formally notified and given the opportunity to demand early repayment.

Public Acquisitions and Disclosure

Public acquisitions are subject to strict disclosure timelines. A party intending to acquire a significant shareholding in a listed company must declare its intention and publish a prospectus approved by the CBA, and the target's board must issue a formal recommendation to shareholders on the offer price and terms. This dual oversight is intended to secure fair treatment of minority investors and to prevent insider trading and greenmailing during a bid.

Escrow and Warranty Protection in Private M&A

In private M&A, escrow arrangements and warranty and indemnity insurance are increasingly built into deal structures. Escrow accounts, typically operated through domestic commercial banks, hold back part of the purchase price against post-closing liabilities and tax indemnities. Courts have shown themselves willing to enforce contractual indemnities and post-closing covenants where these are clearly drafted in the share purchase agreement and do not conflict with mandatory public policy under the Civil Code.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework and Supervisory Bodies

Capital markets are governed by the Law on Securities Market, with the CBA acting as the single integrated financial regulator. The CBA's tasks include:

- licensing market participants, including investment companies, custodians and the exchange;
- registering securities;
- approving prospectuses; and
- enforcing the market abuse regime.

Listed securities trade on the AMX, which works alongside the Central Depository of Armenia for clearing and settlement.

Public Offerings and Prospectus Requirements

An initial or follow-on public offering requires a prospectus to be prepared under the Law on Securities Market and CBA regulations, setting out the issuer's financial condition, corporate governance, risk factors and the rights attaching to the securities. The prospectus must be registered and approved by the CBA – a process that typically takes 20 to 30 working days from submission. Once approved, it must be published on the issuer's and the underwriter's websites, and the securities must be admitted to trading on the AMX within the prescribed timelines.

Prospectus Exemptions

The Law on Securities Market provides exemptions allowing capital to be raised without a full public offering. These cover:

- offers addressed solely to qualified investors;
- offers addressed to fewer than 150 non-qualified investors;
- offers with a minimum subscription per investor of at least the AMD equivalent of EUR100,000; and
- small offers where the total consideration does not exceed the CBA-defined threshold over a 12-month period.

Exempt issuers must still file a simplified notification with the CBA within 15 days of completing the offering.

Resale Restrictions

Securities placed under an exemption are subject to resale restrictions preventing circumvention of the disclosure rules. They may not be resold to the public nor admitted to a regulated market unless a prospectus is subsequently registered or the secondary transfer itself falls within an exemption, such as a transfer between qualified investors. A non-compliant resale is treated as an unauthorised public offering: the transactions are void, the issuer and underwriters face administrative fines, and investors may demand rescission and restitution.

Stock Exchange Listing Requirements

AMX listing requirements operate alongside CBA regulation. Issuers must satisfy qualitative and quantitative criteria set by both, including a minimum free float, minimum market capitalisation and a record of profitable operations or sound corporate assets. AMX rules also give effect to the Corporate Governance Code, requiring premium-tier issuers to establish board committees and publish regular compliance declarations.

5.2 Continuous Disclosure

Periodic Financial Reporting

Issuers listed on the AMX are subject to continuous disclosure obligations designed to maintain market transparency. Under the Law on Securities Market and CBA normative acts, such issuers must prepare and publish annual audited financial statements, together with quarterly or semi-annual interim reports. Annual statements must be prepared in accordance with International Financial Reporting Standards and audited by an independent licensed audit firm.

Material Events and Inside Information

Listed entities must also disclose material events and inside information as they arise. A material event is any development, decision or occurrence that could reasonably be expected to affect the market price or value of the issuer's securities significantly. This includes:

- changes in executive management;
- major acquisitions or disposals;
- the commencement of material litigation;
- default on debt obligations;
- changes in controlling shareholdings; and
- decisions on dividend distribution.

Timing and Manner of Disclosure

Disclosure must be made immediately – generally within 24 hours of the event or of the issuer becoming aware of it – and in a manner ensuring rapid, comprehensive and non-discriminatory public access. The issuer must publish an announcement on its corporate website, submit the disclosure to the CBA and distribute it through the AMX's official disclosure channels. Delayed disclosure of inside information is permitted only in exceptional circumstances, and requires prior notification to and approval from the CBA.

5.3 Insider Trading

The Market Abuse Prohibition

Market abuse, comprising insider dealing and market manipulation, is strictly enforced in order to preserve market integrity and to protect public investors. Under the Law on Securities Market, inside information is precise, non-public information relating directly or indirectly to one or more issuers or financial instruments which, if made public, would be likely to have a significant effect on the price of those instruments or of related derivatives.

Prohibited Conduct

A person in possession of inside information is prohibited from:

- dealing, directly or indirectly, in the securities to which the information relates;
- disclosing that information to another person other than in the normal course of employment or professional duties; or
- recommending or inducing another person to deal on the basis of such information.

Issuers must also maintain a current insider list and formally notify those persons of their obligations and of the penalties for breach.

Enforcement Powers of the CBA

The CBA holds broad enforcement powers. It may:

- conduct on-site inspections;
- require the production of telephone and data traffic records;
- suspend trading in the affected securities on the AMX; and
- impose administrative fines on individuals and companies.

Where an investigation discloses elements of criminal conduct, the CBA must refer the matter to the Prosecutor General's Office for prosecution under the Criminal Code, which provides for imprisonment and asset forfeiture in serious cases.

5.4 Shareholder Disclosure

Notification Thresholds

The Law on Securities Market requires the disclosure of substantial shareholdings in listed companies. Any natural or legal person who directly or indirectly acquires or disposes of voting shares in a listed domestic company must notify both the issuer and the CBA when its holding of voting rights reaches, exceeds or falls below the statutory thresholds, which are set at 5%, 10%, 20%, 50% and 75% of total voting rights.

Form and Content of the Notification

Notification must be given in the CBA-prescribed form within four working days of the transaction date, specifying:

- the shareholder's name;
- the transaction date;
- the previous and current percentages of voting rights; and
- where the holding is indirect, the chain of controlled undertakings through which the shares are held.

The issuer must then publish the information through the AMX's official disclosure platforms within three working days of receipt.

Consequences of Non-Compliance

The consequences of non-disclosure are severe. A shareholder who fails to report the crossing of a threshold in time is deprived of the voting and dividend rights attaching to the undeclared shares until the obligation is discharged. The CBA may also impose administrative fines and order divestiture of the undeclared shares, and resolutions of the general meeting adopted with the votes of non-compliant shares may be invalidated.

5.5 Internal Controls and Whistle-Blower Regimes

Internal Controls and Compliance Programmes

Internal control and compliance programmes are mandatory for financial institutions and strongly recommended for all commercial companies under the Civil Code and the Corporate Governance Code. Under the Law on JSCs, the board of directors approves the company's internal control and risk management frameworks and appoints an independent internal auditor, who reports to the board's audit committee to ensure objective oversight of financial operations and regulatory compliance.

The Whistle-Blowing Framework

Whistle-blowing is governed by the Law on the Whistle-Blowing System. Mandatory participation in the state-run system applies principally to public sector bodies and state-owned enterprises, but the Corporate Governance Code expects listed companies and larger private enterprises to operate internal reporting channels. Those channels must guarantee the confidentiality of the whistle-blower's identity, provide secure reporting mechanisms such as dedicated electronic portals, and protect employees against retaliation.

Managing Compliance Risk

Companies are advised to structure compliance around three lines of defence:

- operational management;
- a dedicated compliance officer; and
- an independent internal audit function.

The programme should include:

- a code of ethics;
- regular compliance training;
- periodic risk assessments focused on AML/CFT;
- anti-bribery and data privacy; and
- a defined corrective action protocol.

A structured framework of this kind reduces regulatory exposure, protects corporate reputation and mitigates directors' personal liability.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Governing Law and Types of Security

Secured transactions and debt financing are governed principally by the Civil Code, the Law on State Registration of Rights to Property and the Law on State Registration of Movable Property Rights. The framework gives lenders a predictable environment and supports a range of security interests. The most common in commercial practice are pledges of movable property, covering equipment, inventory, receivables and shares, and mortgages over real property.

Perfection and Priority

Perfection determines both enforceability and priority. A real estate mortgage is perfected by a notarised mortgage agreement, followed by state registration with the Cadastre Committee. A movable property

pledge, including a pledge of shares, bank accounts or contractual rights, must be registered with the State Register of Legal Entities in the case of corporate shares, or recorded in the movable property registry, in order to secure statutory priority. Priority between competing secured creditors is determined strictly by the date and time of registration.

Acquisition Financing and Security Packages

Acquisition financing packages typically combine asset-backed pledges with corporate guarantees. A standard package includes:

- a mortgage over target real estate;
- a pledge over the shares of the target;
- a pledge of the target's bank accounts and receivables; and
- parent or affiliate guarantees.

Lenders commonly use intercreditor agreements to organise subordination, payment waterfalls and joint enforcement, although registered security remains the basis of statutory priority. Convertible loans are available for LLCs and JSCs; see **1.3 Share Issuances**.

Recent Legislative Developments

Recent reforms have improved the financing environment. Electronic registration of movable property pledges and mortgages has streamlined perfection, reducing transaction costs and closing timelines. Amendments to the Civil Code have also clarified the enforcement of share pledges, permitting out-of-court enforcement and direct transfer of ownership of the pledged shares to the lender on default, provided such mechanism is expressly agreed in the pledge contract.

Secured Creditors in Insolvency

The position of secured creditors in insolvency has likewise been reinforced. Under the Law on Bankruptcy, assets subject to a registered pledge or mortgage are carved out of the general liquidation pool, and the secured creditor holds a priority claim over the proceeds of the sale of the collateral, subject only to direct administration and preservation costs.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Principles of Contract Formation

Commercial contracts are governed by the Civil Code, which adheres to freedom of contract, private autonomy and the equal standing of the parties. Parties may conclude contracts freely, combine elements of different contract types into mixed contracts and set their own terms, provided they do not contravene mandatory statutory norms. Contracts are interpreted according to the literal meaning of the words used and, in case of ambiguity, by reference to the mutual intention of the parties and the contract as a whole.

Essential Terms and Formal Requirements

Valid formation requires agreement on all essential terms, reached in the form prescribed by law. Unlike common law systems, civil law does not require consideration: a unilateral promise or an agreement without mutual exchange of value is enforceable provided the requirements as to form and capacity are met. The parties must have full civil capacity, and the contract must be in the proper form, generally in writing as a single signed document or by exchange of electronic communications, or notarised where the law so requires.

Grounds for Invalidity

Invalidity is structured around void and voidable transactions. A contract is void where it contravenes a mandatory statutory prohibition, lacks required state registration or notarisation, or is concluded for an unlawful purpose. A contract is voidable, and may be set aside by a court, where it was concluded under the influence of fraud, duress or material misrepresentation, or where it is an unconscionable transaction concluded by taking unfair advantage of the other party's extreme necessity or distress.

Good Faith and Interpretation

Enforceability and interpretation are shaped by the overarching duty of good faith, which applies to negotiation, conclusion and performance alike. Liability may be limited or excluded by agreement, but any clause excluding liability for intentional breach is void. Unconscionable terms in standard-form contracts of adhesion may also be challenged by the weaker com-

mercial party where they are disproportionately one-sided and deprive that party of rights conventionally granted in comparable transactions.

7.2 Termination and Remedies

Remedies for Breach

The Civil Code gives the non-breaching party a range of remedies aimed at restoring it to the position it would have occupied had the contract been performed. The principal remedies are:

- specific performance;
- recovery of damages, covering both direct loss and lost profit; and
- contractual penalties or liquidated damages, which must be agreed in writing to be enforceable.

Termination and Wrongful Termination

A contract may be terminated by agreement, by court order on the application of one party following a material breach, or unilaterally where the law or the contract expressly confers that right. A material breach is one that deprives the innocent party of what it was reasonably entitled to expect under the contract. Wrongful unilateral termination, without statutory or contractual basis, is itself a material breach and exposes the terminating party to liability for all resulting direct and indirect loss.

Force Majeure

Force majeure is recognised as an exemption from liability for non-performance. The event must be extraordinary and unavoidable in the circumstances, such as a natural disaster, military action or government prohibition. Force majeure does not terminate the contract; it suspends liability for delay or non-performance while it continues. Where the event persists so that performance becomes permanently impossible, the contract terminates for frustration of purpose, and both parties are released from liability.

Hardship and Changed Circumstances

The law also recognises hardship, permitting modification or termination where circumstances change materially. The change must be so fundamental that, had the parties foreseen it, they would not have concluded the contract or would have done so on entirely different terms. If the parties cannot agree an adjustment, either may apply to the court to modify or terminate the contract, and the court will balance the equities to avoid unfair prejudice.

7.3 Intellectual Property in Commercial Transactions

Assignment of IP Rights

Intellectual property is governed by the Civil Code, the Law on Copyright and Related Rights, the Law on Trade Marks and the Law on Geographical Indications. IP rights may be assigned or licensed by written agreement. Assignments of trade marks, patents and industrial designs must be registered with the Intellectual Property Agency of the Ministry of Economy to take effect against third parties, whereas copyright assignments require no registration and are effective on signature.

Licensing

Licences may be exclusive, sole or non-exclusive. Licences of registered IP such as trade marks and patents must also be registered with the Intellectual Property Agency to be enforceable. Trade secrets and confidential proprietary information are protected under the Civil Code and the Law on Protection of Economic Competition; because no registration is available, commercial parties must rely on well-drafted non-disclosure agreements and internal security measures.

Ownership of IP Created in a Commercial Relationship

Ownership of IP created within a commercial relationship follows statutory defaults. For employee-created works, copyright and patent rights vest in the employer unless the employment contract provides otherwise, although the employee retains the non-transferable moral right of authorship. For commissioned works, rights remain with the creator, and the commissioning party receives a licence to use the work for its intended purpose, unless the commission contract expressly transfers ownership.

Remedies for Infringement

Remedies for infringement are readily available. A right holder may seek an injunction restraining the infringing activity, demand seizure and destruction of counterfeit goods and production equipment, and recover

damages. In copyright and trade mark disputes, right holders may claim statutory compensation instead of proving actual loss, which is an efficient tool against commercial piracy. The Customs Service also applies border measures to intercept and seize counterfeit imports.

7.4 Consumer Protection

Principal Consumer Protection Laws

Consumer protection is governed by the Law on Protection of Consumer Rights and the Law on Trade and Services. These establish non-excludable consumer rights that override contrary contractual terms, so any clause restricting or waiving them is void. The framework also imposes mandatory disclosure duties on sellers, requiring clear and accurate information in Armenian on pricing, specifications, origin and safety.

Cooling-Off Periods

Mandatory cooling-off periods apply to certain transactions. In distance and off-premises contracts, including e-commerce, consumers may withdraw and return the goods within 14 days without giving reasons and without penalty, subject to limited exceptions. Sellers must notify consumers of this right; failure to do so extends the withdrawal period to three months.

Misleading Advertising and Unfair Practices

Misleading advertising and unfair commercial practices are prohibited. Under the Law on Advertising and the Law on Protection of Economic Competition, advertising or marketing that misleads consumers as to the characteristics, geographical origin, price or availability of a product is treated as unfair and anti-competitive. Regulators monitor campaigns closely in the pharmaceutical, tobacco, alcohol and financial services sectors, where strict labelling and warning requirements apply.

Enforcement

Enforcement lies principally with the CPC and the market supervisory body, alongside consumer claims in court. The CPC may:

- open administrative investigations;
- conduct test purchases;
- issue binding orders to cease unfair practices; and
- impose administrative fines.

Consumers may also use the Financial System Mediator, which is an independent out-of-court body providing a free and binding mechanism for claims against banks, insurers and investment firms.

8. Foreign Investment

8.1 Competition and Merger Control

Legal Framework and Regulator

Merger control and antitrust are governed by the Law on Protection of Economic Competition, enforced by the CPC as an independent administrative authority. The law regulates concentrations, which comprise:

- mergers of independent companies;
- accessions (absorptions);
- the direct or indirect acquisition of 20% or more of the shares or voting rights of another company; and
- the acquisition of more than 20% of a company's assets.

Notification Thresholds

A concentration must be notified to and cleared by the CPC before implementation where the participants' financial metrics exceed the statutory thresholds, which are based on the combined or individual asset values or revenues of the participants in the financial year preceding the transaction. The CPC applies a substantive test, assessing whether the concentration would create or strengthen a dominant position, or would otherwise significantly restrict or prevent competition in the relevant market.

Review Process and Substantive Test

Review proceeds in two phases: a preliminary assessment completed within 90 days of a complete filing, followed where necessary by a detailed investigation of up to a further 90 days for complex transactions. Failure to notify a reportable concentration before implementation is a serious violation: the CPC may declare the transaction void, order divestiture or the splitting of the merged entities, and impose fines of up to 10% of the non-compliant company's annual revenue.

Anti-Competitive Conduct and Penalties

Anti-competitive conduct is actively pursued, including cartels, price-fixing, market sharing, bid-rigging and abuse of dominance. The CPC has extensive investigative powers, including unannounced dawn raids, inspection of corporate premises and compelled production of internal communications. Companies face substantial financial penalties and public censure, and their directors may incur criminal liability under the Criminal Code for intentional distortion of the market.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

A Liberal Investment Regime

Armenia maintains a liberal and open investment regime, regulated principally by the Law on Foreign Investments. The law applies the principle of national treatment, guaranteeing foreign investors the same rights to establish businesses, acquire assets and invest capital as domestic persons. Foreign individuals and legal entities may own 100% of the shares or participatory interests in Armenian companies, with no general requirement for a local shareholder or director, except in a limited number of regulated sectors. The law also:

- provides statutory guarantees against nationalisation and expropriation;
- ensures unrestricted repatriation of profits, capital and assets; and
- protects investors against adverse legislative change for a period of five years.

Investment Review and Approval

There is no general foreign investment review or approval process for standard private acquisitions, which makes Armenia one of the more accessible jurisdictions in the region. Sector-specific rules do apply in strategically sensitive industries, and foreign persons are barred from owning land, holding it instead through leasehold or by using a domestic company (see **11.1 Requirements for Land Ownership**).

Regulated Sectors

Regulated industries such as telecommunications, broadcasting, financial services, energy and medical/pharmaceuticals require licences from bodies such as the Public Services Regulatory Commission (PSRC), the CBA, the Ministry of Health and the Commission on Television and Radio of the Republic of Armenia (CTR). Broadcasting is subject to a specific ownership restriction under the Law on Visual Media: foreign shareholding in a television or radio broadcasting company may not equal or exceed 50% of the voting rights. These limits are enforced at the licensing stage, and an unauthorised transfer of control results in revocation of the licence.

National Security Review

A targeted national security review applies to investments in critical infrastructure, defence and public utilities. Under recent legislative amendments, any foreign investment resulting in direct or indirect control over a utility provider, such as an energy, gas or water supply company, or over a licensed telecommunications operator, requires prior approval from the PSRC and the Ministry of Hi-Tech Industry, which assess the effect of the transaction on national security and public order.

Investment Incentives

Armenia offers a range of incentives to attract foreign direct investment. Operators in free economic zones are exempt from corporate income tax, VAT, customs duties and property tax. Companies in the hi-tech sector may qualify for tax holidays and reduced payroll tax rates, and the government provides support and grants for large-scale agricultural and manufacturing projects. Recent policy has focused on digitising the investment environment and strengthening investor support through the Enterprise Armenia agency.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The Data Protection Framework

Privacy and data protection are guaranteed by the Constitution and regulated by the Law on Protection of Personal Data, which largely follows the GDPR. The Personal Data Protection Agency under the Ministry of Justice supervises compliance, investigates complaints and imposes administrative sanctions.

Consent and Processing Obligations

Controllers must ensure lawful, proportionate and purpose-limited processing and data accuracy. Express written or electronic consent is generally required, unless processing is necessary for a contract, a legal obligation or the protection of vital interests. Special categories of data require specific consent and enhanced security.

Cross-Border Transfers and Localisation

Armenia has no strict data localisation requirement. Data may be stored abroad if transfer rules are met. Transfers to countries with adequate protection, including EU/EEA states and parties to Convention 108, require no prior authorisation. Transfers elsewhere require prior Agency approval or the data subject's explicit, informed consent.

Data Breach and Security Requirements

Controllers must implement appropriate measures against unauthorised access, alteration and leakage. Where a material breach creates significant risks for data subjects, organisations should promptly notify the Agency and affected individuals, describing the breach and mitigation measures.

9.2 Anti-Money Laundering, Sanctions and Corruption

The AML/CFT Framework and Reporting Entities

Armenia's AML/CFT framework is established by the Law on Combating Money Laundering and Terrorism Financing and follows the FATF Recommendations. Reporting entities comprise financial institutions, including banks, credit organisations and securities dealers, together with designated non-financial businesses and professions such as notaries, lawyers, independent accountants, audit firms and real estate agents.

Customer Due Diligence and Reporting

Reporting entities must:

- conduct customer due diligence, verifying the identity of customers and their ultimate beneficial owners;
- monitor transactions on an ongoing basis to detect unusual or suspicious activity;
- retain due diligence and transaction records for at least five years; and
- file suspicious transaction reports with the Financial Monitoring Centre of the CBA, which acts as the national financial intelligence unit.

Sanctions Compliance

Sanctions compliance is a regulatory priority. Reporting entities must freeze the funds and financial assets of persons designated on national or international sanctions lists, including those of the UN Security Council, without prior notice. Armenia also operates export controls on dual-use items and military equipment, which require licences from the Ministry of Economy. Breach of AML/CFT and sanctions obligations carries administrative penalties, licence revocation and criminal prosecution under the Criminal Code.

Anti-Corruption and Anti-Bribery

Anti-corruption obligations are enforced by the Anti-Corruption Committee and the Corruption Prevention Commission. Companies may not offer, promise or give bribes or improper advantages to public officials or private counterparties. To manage this risk, businesses should maintain anti-corruption compliance programmes covering gifts and hospitality, whistleblowing channels, due diligence on third-party intermediaries and periodic compliance audits.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Impact Assessment

Environmental regulation is governed principally by the Law on Environmental Impact Assessment and Expertise and the Law on Atmospheric Air Protection. Any commercial or industrial project falling within the statutory categories, such as mining, energy generation, manufacturing or large-scale construction, must undergo an environmental impact assessment (EIA) and obtain a positive expert opinion from the Ministry of Environment before operations begin.

Contaminated Sites and Environmental Liability

Under the polluter pays principle, companies bear strict liability for environmental damage, including the clean-up and remediation of contaminated sites and the payment of ecological damage compensation.

Armenia has no domestic carbon pricing or carbon tax mechanism at present, but it participates in international climate initiatives and is developing rules to monitor and limit greenhouse gas emissions, particularly for heavy industry and energy operators.

Health and Safety Obligations

Health and safety obligations arise under the Labour Code, which requires employers to provide safe and healthy working conditions, and imposes full liability for occupational hazards. Employers must adopt workplace safety policies, conduct regular training and supply protective equipment. The Health and Labour Inspectorate enforces these obligations, conducting inspections, investigating workplace accidents and imposing sanctions or ordering the suspension of operations in serious cases.

Licensing and Industry-Specific Regulation

Sector-specific regulation has a direct bearing on transactions. Armenia operates a strict licensing regime under the Law on Licensing for sectors including energy, financial services, pharmaceuticals and telecommunications. Licensed energy sector entities are regulated by the PSRC, and any change of control requires prior PSRC approval. The Ministry of Health regulates drug registration and clinical trials, while the CBA monitors capital adequacy and shareholder suitability in the financial sector.

9.4 Artificial Intelligence

Absence of a Dedicated AI Framework

Armenia has no standalone legislative act or regulatory framework dedicated to the governance of artificial intelligence. The rapid adoption of AI across the technology and financial sectors has, however, prompted policymakers and regulators to review existing frameworks to ensure they can address the specific issues raised by automated decision-making.

Application of General Law to AI Systems

In the absence of AI-specific statutes, the use of AI systems is governed by general principles of law, data protection and consumer rights. The Law on Protection of Personal Data applies directly where an AI application processes personal information, imposing transparency obligations on controllers. Where an AI system makes automated decisions that significantly affect a data subject, such as credit scoring, the organisation must inform the individual, explain the logic involved and provide a right to human intervention.

Liability, Transparency and Non-Discrimination

Organisations deploying AI are also subject to general liability and non-discrimination principles under the Constitution and the Civil Code, and must design and train algorithms so as to prevent unlawful bias and discriminatory outcomes. As Armenia positions itself as a hi-tech hub, the Ministry of Hi-Tech Industry is working with international bodies on strategic guidelines and policy frameworks for AI ethics, focused on accountability, safety and transparency.

9.5 Other Regulatory Compliance Requirements

The Crypto-Assets Regime

Armenia has established a structured compliance regime for digital assets under the Law on Crypto-Assets. The statute governs the issuance, exchange and custody of crypto-assets and brings virtual asset service providers (VASPs) under the direct regulatory and supervisory authority of the CBA.

Authorisation and Operational Requirements

Any entity intending to provide crypto-asset services in or from Armenia must obtain authorisation and register with the CBA. VASPs must meet operational requirements, including minimum capital buffers, IT and cybersecurity protocols and customer disclosure rules, and must publish detailed White Papers for asset-referenced or utility tokens they issue or admit to their platforms.

AML/CFT Obligations for Service Providers

The Law on Crypto-Assets applies Armenia's AML/CFT regime directly to the virtual asset sector. VASPs are reporting entities and must perform full customer due diligence, identify beneficial owners and operate automated transaction monitoring to detect and report suspicious activity, integrating digital asset operations into the formal financial sector.

Electronic Documents and Digital Signatures

Separately, businesses must comply with the Law on Electronic Document and Electronic Digital Signature,

which establishes the legal equivalence of a qualified electronic signature to a handwritten one and enables paperless contracting and corporate filings. Entities engaging in distance contracts, online commerce or regular interaction with government portals must obtain an authorised electronic signature from a designated national certification authority.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

The Labour Code

Employment relations are regulated principally by the Labour Code, which sets minimum standards for working conditions, employee rights and employer obligations. The Code is protective of employees and its provisions are non-excludable: any term of an employment contract less favourable than the statutory standard is void. Employment contracts must be concluded in writing and may be signed either on paper or electronically.

Core Working Standards

The Labour Code sets core working standards, including:

- a 40-hour standard working week;
- mandatory rest periods;
- overtime payable at a premium rate; and
- a minimum of 20 working days' paid annual leave.

The minimum monthly wage is set by the Law on Minimum Monthly Wage. Employers are responsible for calculating and withholding payroll taxes, including income tax and social security contributions, and for reporting to the State Revenue Committee.

Grounds for Termination

Termination is closely regulated and permitted only on defined statutory grounds, which include:

- liquidation of the company;
- redundancy;
- the employee's long-term illness or poor health;
- lack of professional qualification; and
- material or repeated breaches of labour discipline.

Unilateral termination by the employer for convenience is not permitted and constitutes wrongful dismissal.

Redundancy and Wrongful Dismissal

On redundancy, the employer must give at least two months' written notice and pay statutory severance. An employee who is wrongfully dismissed may challenge the termination in court, and the court may order reinstatement, payment of full back wages for the period of forced idleness and additional compensation. Constructive dismissal (where an employee is forced to resign by the employer's unlawful conduct or a hostile working environment) is also recognised, with the burden of proof falling on the employer.

10.2 Executive Compensation and Restrictive Covenants

Structuring Executive Compensation

Structuring executive pay requires a balance of corporate flexibility, tax planning and statutory compliance. Under the Law on JSCs and the Labour Code, packages typically combine a fixed base salary with performance-based bonuses, fringe benefits and equity incentives. Employee share ownership plans and stock option grants are increasingly common, particularly in the technology sector, and are usually implemented through authorised option pools.

Change-of-Control Provisions

Executive contracts frequently include change-of-control provisions guaranteeing enhanced severance where employment is terminated or the role materially altered following an acquisition or merger. For tax purposes, all cash compensation, including bonuses and severance, is subject to flat-rate income tax, currently 20%, and social security contributions, while equity grants can be structured to improve the executive's tax position under specific rules.

Non-Compete and Non-Solicitation Covenants

Post-employment restrictive covenants are difficult to enforce. Under the Constitution and the Labour Code, every citizen has an unqualified right to free choice of labour and professional activity, and courts routinely invalidate broad post-employment non-compete clauses as an unlawful restriction of that right, even

where the executive received compensation for the restriction.

Confidentiality Covenants

Confidentiality and non-disclosure covenants, by contrast, are readily enforceable both during and after employment. Employers may enforce strict confidentiality agreements, and unauthorised disclosure of trade secrets by a former executive can give rise to injunctive relief, damages under the Civil Code and criminal liability under the Criminal Code for industrial espionage. Non-solicitation of clients and employees occupies a grey area, although narrow and reasonable clauses are sometimes upheld where tied to the protection of confidential data.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership

Under the Land Code, land ownership takes three forms:

- state ownership;
- municipal (community) ownership; and
- private ownership by individuals and legal entities.

Ownership of real property, and the transfer, pledge or lease of land and buildings, must be registered with the Cadastre Committee to be valid and enforceable, with priority determined strictly by the timing of registration.

Foreign Ownership of Real Estate

Armenia is liberal towards foreign investment in real estate, allowing foreign individuals and companies to purchase, hold and sell buildings, residential houses and commercial structures without prior licensing, residency requirements or discriminatory taxation. Armenia generally permits foreign individuals and companies to acquire, hold and dispose of real estate. Although foreign citizens and stateless persons are generally restricted from owning land, Article 4 (3.1) of the Land Code provides exceptions for household and gardening plots, as well as land intended for the construction and maintenance of private residences, public or production facilities and apartment buildings. Accordingly, foreign ownership of land is permitted for these categories, subject to applicable registration and land use requirements.

The Agricultural Land Restriction and Leasehold

The restriction is given effect through defined mechanisms. Foreign persons may hold land only under leasehold rights of up to 99 years or rights of use. In practice, foreign investors incorporate a domestic Armenian company, which is treated as an Armenian entity even if it is wholly foreign-owned and may freely own non-agricultural commercial, industrial and residential land.

11.2 Commercial Real Estate Transactions

Transaction Formalities and Land Registration

Commercial real estate transactions are regulated by the Civil Code, the Land Code and the Law on State Registration of Rights to Property. A transaction requires a written contract, which must be notarised and then registered with the Cadastre Committee within 30 business days of signing in order to transfer legal title.

Due Diligence

Thorough due diligence is essential. Buyers should obtain an up-to-date clean title certificate from the Cadastre Committee, disclosing registered owners, cadastral dimensions and any encumbrances, mortgages, easements or pending litigation. Environmental risk also warrants attention: certain commercial and industrial sites require clearances under the Law on Environmental Impact Assessment and Expertise, and a new owner may assume liability for pre-existing contamination.

Commercial Mortgage Financing

Commercial mortgage financing is perfected by a notarised mortgage agreement registered with the Cadastre Committee, with priority between mortgages determined by the chronological order of registration. On default, lenders may enforce through judicial foreclosure or, where expressly agreed, through an out-of-court process allowing the lender to sell the property or take title directly.

Commercial Leases

Commercial leases are governed by the Civil Code and require notarisation and registration with the Cadastre Committee where the term is one year or longer. Registration protects the tenant, making the lease enforceable against third parties and allowing it to survive a subsequent transfer of ownership. Leases commonly address:

- rent adjustment mechanisms;
- renewal rights;
- assignment and subletting, which conventionally require the landlord's prior written consent; and
- default remedies.

Recent Regulatory Developments

Regulatory developments have focused on spatial planning, zoning and taxation. Urban development legislation has tightened building code and zoning compliance, preventing land allocation or construction that bypasses approved municipal spatial plans. The move under the Tax Code from low cadastral values to market-based valuations for property tax has increased the holding cost of premium commercial assets, prompting investors to focus on operational efficiency and sustainable yields.

ASIA PACIFIC-WIDE

Trends and Developments

Contributed by:
Alex Huang, Candice Du and Yiran Zheng
Llinks Law Offices

Llinks Law Offices is a leading PRC firm renowned for cross-border transactions and IPOs, delivering high-quality legal services and innovative solutions to complex issues. It fosters a collegial culture where young lawyer development is central to our success. The firm's professionalism has consistently earned an industry-wide recognition. With 70 partners and nearly 350 legal professionals across four practice departments (financial services, capital markets, corporate & M&A and dispute resolution), Llinks stands apart from traditional partnerships by operating under a fully integrated "corporate-style" management model. Through cross-regional and cross-practice collaboration, the firm provides seamless, high-quality services to domestic and international clients.

Authors



Alex Huang (Hai) is the managing partner of Llinks' Shenzhen office. Blending transactional expertise with dispute resolution prowess, he resolves commercial conflicts with a transaction-oriented approach and preempts risks through a litigator's lens. He has served as presiding or sole arbitrator in over 300 arbitration cases, facilitating substantive dispute settlements. As lead counsel, he has represented clients in hundreds of civil and commercial litigation and arbitration matters, delivering full-cycle support from property preservation to enforcement of final judgments.



Candice Du (Mengyang) is a partner at Llinks' Shenzhen office. Ms Du specialises in cross-border investment, financing and M&A, advising listed companies, large groups and financial institutions on complex commercial disputes with practical, constructive solutions. In private equity and venture capital, she represents a diverse clientele, from global investment funds and multinationals to start-ups and high-growth companies, across consumer goods, TMT, healthcare, advanced manufacturing, new energy and other sectors.



Yiran Zheng focuses on civil and commercial dispute resolution and corporate legal advisory services, with extensive experience in private equity/VC disputes, corporate and real estate litigation and employment matters. She provides ongoing legal counsel to major enterprises including Kingkey Intelligent Agriculture, China Resources Leasing and Eastern Group, while also leading the team's litigation portfolio across a wide range of contentious cases.

Contributed by: Alex Huang, Candice Du and Yiran Zheng, **Llinks Law Offices**

Llinks Law Offices

18F, China Resources Tower
2666 Keyuan South Road
Nanshan District
Shenzhen
China

Tel: +86 755 3391 7666
Web: www.llinkslaw.com

Adjudication Divergence, Enforcement Dilemmas and Risk Mitigation Regarding Redemption Waterfall Clauses in Multi-Round VAM Agreements: Introduction

In private equity multi-round financing transactions, the "later-round priority" redemption waterfall clause (also referred to as the redemption procedure clause or insufficient funds clause, hereinafter collectively the "redemption waterfall clause") has become a common arrangement in investment agreements. Its commercial intent is to prioritise the exit interests of later-round investors when the redemption obligor's solvency is limited, thereby balancing risk and return among investors of different rounds. However, in judicial practice, the wording of such clauses often leads to varying interpretations, creating uncertainty as to whether later-round investors can truly achieve priority exit.

This article starts with real cases, compares and analyses different arbitral tribunals' interpretations of redemption waterfall clauses, dissects divergences across arbitral awards and examines the associated risks in enforcement proceedings. Based on this, it proposes practical risk prevention and control suggestions for investors and financiers from the perspectives of agreement drafting, dispute response and enforcement remedies.

Is Redemption Priority a Precondition for Investors to Exercise Their Rights or Merely an Order of Satisfaction?

Case I: arbitration case between an investment institution and a well-known e-commerce company regarding equity redemption

The redemption waterfall clause in the investment agreement stipulated:

- "*If the assets of the redemption obligor are insufficient to redeem all the shares requested for redemption by the investors at that time, the redemption price shall be paid first to the Series A-3 investors who have requested redemption; if there are remaining assets, it shall be paid first to the Series A-2 and A-1 investors who have requested redemption; if there are still remaining assets, it shall be paid to the Series A investors who have requested redemption...*"

The Claimant in this case was a Series A investor of the target company. The redemption conditions for Series A were triggered and the Claimant initiated arbitration to exercise its redemption right, but the claim was ultimately dismissed. The arbitral tribunal held:

- "*The redemption waterfall clause granted Series A-3, A-2 and A-1 investors priority over Series A investors in requiring the obligor to redeem shares. Without evidence proving whether the obligor's assets can fully satisfy the payment requirements of Series A-3, A-2 and A-1 investors once they request share redemption, the arbitral tribunal*

cannot override the order of exercising redemption rights agreed upon in the investment agreement to support the Claimant's requests..."

In this case, the arbitral tribunal interpreted the redemption waterfall clause as making the exercise of redemption rights by later-round investors a precondition for earlier-round investors. Regardless of whether the later-round redemption conditions were met or whether later-round investors chose to exercise their rights, earlier-round investors had to wait until the later-round investors exercised their rights before they could demand redemption.

Case II: series of arbitration cases between multiple well-known investment institutions and a founder regarding equity redemption

The redemption waterfall clause in the investment agreement stipulated:

- "*When the investors exercise their redemption rights simultaneously and the redemption obligor does not have sufficient funds to redeem all the shares requested for redemption, the funds available for redemption shall be distributed as follows: (i) first, fully pay the redemption price to the Series C investors for their shares; (ii) after fully paying the Series C investors the redemption price for their shares, fully pay the redemption price to the Series B investors for their shares; (iii) after fully paying the Series B investors the redemption price for their shares, fully pay the redemption price to the Series A investors for their shares. Before fully fulfilling all the aforementioned rights and interests of the Series C investors, the redemption obligor shall not assume any redemption obligations for anyone else's rights and interests.*"

After the redemption conditions were triggered, Series A, B and C investors, respectively, initiated arbitration against the founder, seeking to exercise their redemption rights. Cases for each round of investors were heard by different arbitral tribunals.

The founder attempted to raise a defence, as explained below.

Apart from other disputed issues, regarding the redemption waterfall clause, the founder attempted to defend against the cases brought by Series A and B investors by arguing that Series C investors were the first-priority redemption right holders and had already initiated arbitration. The founder's assets were insufficient to pay the Series C investors' redemption price; under the redemption waterfall clause, the founder was not required to perform the redemption obligation to Series A and B investors.

In the case brought by Series B investors, the arbitral tribunal interpreted the redemption waterfall clause as:

- "*The redemption waterfall clause stipulated in the investment agreement targets the order and proportion of the distribution of the respondent's executable funds after the investor's rights are confirmed by an effective award and does not affect the adjudication of the scope of equity redemption in this case. Similarly, the respondent's financial situation relates only to enforcement issues after the award takes effect. Therefore, the arbitral tribunal held that the respondent's financial situation does not affect the scope of equity for which the claimant can exercise the redemption right.*"

In the case brought by Series A investors, the arbitral tribunal interpreted the redemption waterfall clause as:

- "*Regarding the redemption waterfall clause stipulated in the investment agreement, its essence is an agreement on the order of satisfaction for the redemption claims enjoyed by each investor. This agreement is merely an arrangement made by the parties to the investment agreement regarding the order of property distribution when the redemption obligor performs the redemption obligation and cannot be used to oppose or deny the later-priority investors' exercise of redemption rights. Therefore, because the redemption conditions have been fulfilled, the arbitral tribunal supported the claimant's request to exercise the redemption right in this case. The issue of the order of satisfaction of the redemption obligor to the redemption right holders or how the redemption obligor's property is distrib-*

uted, *can be resolved in future stages such as the performance of the arbitral award and enforcement procedure*."

In both cases, the arbitral tribunals held that the redemption waterfall clause addresses how the redemption obligor's property should be distributed during enforcement and does not prevent investors from exercising their redemption rights.

Divergence in arbitral tribunal opinions and legal analysis

From the aforementioned cases, it is clear that different arbitral tribunals have interpreted similarly worded redemption waterfall clauses in fundamentally different ways. The core divergence lies in whether the "later-round priority" redemption waterfall clause constitutes a precondition for exercising the redemption right or merely an order of payment distribution among multi-round investors. This interpretation directly affects whether an earlier-round investor can obtain a winning award.

- Case I – the arbitral tribunal interprets redemption priority as a precondition to exercising rights. Under this view, even if the earlier-round investor's own redemption conditions have been fully met, as long as the later-round investor has not completed the exercise of rights or has not received full redemption payment (regardless of whether the later-round redemption conditions are triggered or whether the later-round investor chooses to exercise its rights), the earlier-round investor cannot make a redemption claim. This interpretation raises the threshold for earlier-round investors to exercise their rights and may leave their exit rights suspended indefinitely. That is, if later-round investors choose to delay or waive redemption for commercial reasons or if the later-round redemption conditions are never triggered, earlier-round investors – even if they have met all redemption requirements – will lose their ability to exit through redemption.
- Case II – the arbitral tribunal limits redemption priority to the order of satisfaction distribution, which does not impede the exercise of rights. Once the redemption conditions are met, the investor has the right to exercise the redemption right. The redemption waterfall clause only resolves the sequence of payment distribution during the enforcement stage when multiple investors make redemption requests and the redemption obligor's property is insufficient to cover all debts. It cannot be used to deny the qualification of a single investor to exercise rights independently. Under this logic, whether the redemption obligor's property is sufficient or whether the later-round investors' redemption payments have been fully paid is not an element in judging the validity of the redemption request during the trial stage; instead, it is addressed in the performance and enforcement stages after the award takes effect.

In this regard, from a legal interpretation perspective, Article 142 of the Civil Code of the People's Republic of China requires interpreting disputed contract terms comprehensively, considering the text, related clauses, transaction purposes and commercial customs. The commercial intent of setting redemption priority in multi-round financing transactions is mainly to balance the exit interests of investors in different rounds and implement the private equity commercial practice of "last in, first out" in scenarios where resources are limited and multiple rounds of investors exercise their rights collectively. It is not a tool to unilaterally undermine the exit rights of earlier-round investors. If the agreement does not use clear and explicit wording stating that "earlier-round investors shall not exercise the redemption right before later-round investors exercise their rights / receive satisfaction," directly interpreting the waterfall clause as a precondition for exercising rights constitutes an expansive interpretation of the clause, which does not conform to the purpose and customs of investment and financing commercial transactions.

Therefore – unless the parties agree otherwise – the redemption waterfall clause should not become an obstacle to the exercise of rights by earlier-round investors.

How is the Redemption Waterfall Clause Applied in Enforcement Proceedings?

If the arbitral tribunal adopts the opinion of Case II, determining that the redemption priority only belongs to the order of satisfaction and does not constitute an

obstacle to exercising rights, the issue of the order of satisfaction among investors of different rounds will be left to be handled in the award performance stage or enforcement proceedings. After the award takes effect, if the founder voluntarily performs the redemption obligation and investors of all rounds agree on the order of payment, there will be no dispute and no need to enter enforcement proceedings.

However, in practice, the founder often fails to perform the redemption obligation under the award and their assets are insufficient to cover the redemption prices owed to all investors. In such cases, investors of each round will separately apply to the court for enforcement against the founder. Once the founder's property enters the judicial auction process, all investors can apply to the court of first seizure that disposes of the property to participate in the distribution. Disputes are prone to arise among the parties regarding the order of distribution of the enforcement proceeds.

Based on our case experience, courts generally conduct a formal review. They usually do not voluntarily obtain or review the redemption waterfall clause in the investment agreement, nor directly formulate a distribution plan according to the priority order agreed in the agreement. Instead, they are more likely to formulate a property distribution plan based on the effective legal documents held by each investor and the Civil Procedure Law of the People's Republic of China, in proportion to each creditor's claim amount relative to the total amount of claims participating in the distribution.

After the court formulates the distribution plan, it will serve it on all investors applying for enforcement and the founder. If later-round investors disagree with the distribution result of proportional satisfaction, they can file a written objection. If other investors do not accept this objection, the enforcement procedure cannot directly adjust the distribution plan. The relevant dispute must be resolved in a lawsuit challenging the distribution plan, initiated by the investors. This litigation will further extend the case period, causing investors to incur additional time costs and litigation expenses, thus significantly delaying repayment.

Nevertheless, should the investors obtain a favourable award, the redemption waterfall clause remains difficult to enforce in proceedings. In addition, if earlier-round investors apply for property preservation and seize the founder's core property first, even if later-round investors enjoy priority satisfaction, this internal agreement cannot directly prevent the investor who seized it from disposing of the property in judicial proceedings. When the redemption obligor is a company and its assets are insufficient to repay the full redemption price, the case may be transferred to bankruptcy proceedings. It is also unclear whether the redemption waterfall clause applies in bankruptcy proceedings.

Risk Mitigation Suggestions

Investment agreement drafting

When drafting a redemption waterfall clause in an investment agreement, it is essential to explicitly differentiate between the prerequisites for exercising redemption rights and the order in which payments are to be distributed. If the true intention of the parties is merely to give priority to payment when property is insufficient, it is advisable to clearly state in the clause: "This redemption waterfall clause applies only to the enforcement and satisfaction distribution stages when the redemption obligor's property is insufficient to repay all redemption price and does not affect the independent exercise of the redemption right by investors of each round when the redemption conditions are met." This excludes the possibility of interpreting the priority as a precondition to exercising rights from the text, preventing the interpretation seen in Case I of this article.

Conversely, if the parties do have a special commercial arrangement agreeing that earlier-round investors shall not claim redemption rights at all before later-round investors receive full satisfaction, it can be stipulated as: "Before the later-round investors receive full satisfaction of their entire redemption price, earlier-round investors shall not make redemption requests, nor initiate judicial procedures to claim redemption rights," to prevent subsequent disputes over clause interpretation.

Strategies for dealing with disputes

For earlier-round investors, when the redemption conditions are triggered and the investor initiates arbi-

tration proceedings, if the founder raises a defence related to redemption priority, the earlier-round investor can combine the tribunal's opinions in Case II of this article to fully explain to the arbitral tribunal that the redemption priority is only an order of satisfaction distribution and not a prerequisite threshold for exercising the redemption right.

In addition, regardless of whether they are earlier-round or later-round investors, they should apply for property preservation promptly to avoid having no property available for enforcement after winning the case and to prevent other creditors from taking control of the redemption obligor's main property first.

Enforcement remedy

It is recommended that investors in each round continuously follow up on the enforcement and property disposal process and prepare response plans for different situations, such as participation in distribution and bankruptcy. If there is any objection to the distribution plan or the property distribution order in the corporate bankruptcy proceedings, it should be raised promptly and relevant supporting documents, such as the investment agreement, should be submitted to facilitate the effective implementation of the transacting parties' commercial intent regarding the order of satisfaction.

In summary, the redemption waterfall clause in investment agreements reflects the commercial balance of private equity multi-round financing, but this clause may face certain risks in substantive adjudication and enforcement. Investors should carefully draft investment agreement clauses and prepare risk plans for arbitration and enforcement in advance to maximise the achievement of commercial purposes.

BRAZIL



Law and Practice

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho
BVA – Barreto Veiga Advogados

Contents

1. Business Entities P.40
1.1 Business Organisations p.40
1.2 Incorporation and Ongoing Compliance p.40
1.3 Share Issuances p.40
1.4 Distributions and Return of Capital p.41
1.5 Control Person Reporting p.41

2. Corporate Governance P.42
2.1 Legal Framework p.42
2.2 Directors' Duties and Liabilities p.42
2.3 Board Composition and Independence p.42
2.4 ESG and Disclosure Obligations p.43
2.5 Conflicts of Interest and Related-Party Transactions p.43

3. Shareholder Rights and Agreements P.43
3.1 Shareholder Rights p.43
3.2 Shareholder Agreements p.44

4. Mergers and Acquisitions P.44
4.1 Legal Framework p.44

5. Capital Markets P.45
5.1 Securities Regulation and Public Offerings p.45
5.2 Continuous Disclosure p.46
5.3 Insider Trading p.46
5.4 Shareholder Disclosure p.46
5.5 Internal Controls and Whistle-Blower Regimes p.47

6. Secured Transactions P.47
6.1 Transaction Financing and Security Interests p.47

7. Commercial Contracts P.48
7.1 Contract Formation and Enforceability p.48
7.2 Termination and Remedies p.49
7.3 Intellectual Property in Commercial Transactions p.49
7.4 Consumer Protection p.50

8. Foreign Investment P.51
8.1 Competition and Merger Control p.51
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.51

9. Regulatory Compliance P.52
9.1 Privacy and Data Protection p.52
9.2 Anti-Money Laundering, Sanctions and Corruption p.53
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.54
9.4 Artificial Intelligence p.54
9.5 Other Regulatory Compliance Requirements p.55

10. Employment and Labour P.56
10.1 Employment Standards and Workplace Regulation p.56
10.2 Executive Compensation and Restrictive Covenants p.57

11. Real Property and Commercial Leasing P.58
11.1 Requirements for Land Ownership p.58
11.2 Commercial Real Estate Transactions p.59

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho,
BVA – Barreto Veiga Advogados

BVA – Barreto Veiga Advogados is a full-service law firm, recognised for its track record in complex transactions and high-stakes projects. Known for its dynamic and innovative approach, BVA is driven by a passion for delivering personalised, top-tier legal services. The team is composed of nearly 90 professionals. With headquarters in São Paulo, the firm is strategically positioned to support clients in Brazil and abroad. With a forward-thinking mindset, the lawyers foster the growth and development of businesses, from enabling ideas and investments to structuring mergers and acquisitions, resolving disputes and expanding operations internationally. They work alongside entrepreneurs, investors, shareholders, executives, board members, family-owned businesses and corporations, guiding them through their most strategic challenges and empowering them to achieve lasting success.

Authors



Gustavo Fiuza Quedevez is a partner at BVA, leading its commercial contracts, real estate, secondment and legal operations, and data protection practices. With 20 years of experience in Brazil and internationally, he advises clients across diverse industries on contracts, real estate transactions, infrastructure projects, M&A, corporate governance, privacy, compliance and internal investigations. Gustavo combines technical expertise with a pragmatic, business-focused approach, including structuring customised secondment teams. He holds an LLB in Tax Law, an MBA and qualifications from Insper and Bucerius Law School. An NCMA member, he authored "Contract Governance – Practical Elements" and regularly contributes to legal publications worldwide.



Lorena Guimarães has over 15 years' experience in advising companies on strategic, highly complex corporate agreements. Recognised for leading sophisticated negotiations, she combines legal certainty with commercial insight to balance interests, identify risks and develop tailored solutions. Her cross-sector experience spans technology, manufacturing, healthcare, franchising, fashion and luxury goods, including landmark distribution, licensing, franchise and retail projects in Brazil. Lorena has developed particular expertise in the rapidly growing wellness sector, advising on supplier and professional agreements, franchises, licensing, advertising, influencers and Tax Reform impacts.



Pablo Arana is a transactional attorney with nearly 20 years' experience in advising corporations, start-ups, financial institutions and investment funds on sophisticated domestic and cross-border transactions. His practice encompasses M&A, private equity, joint ventures, foreign investment, capital markets, corporate restructurings, special situations and wealth planning, and he has particular expertise in infrastructure, oil and gas, energy, mining and technology. Pablo previously practised at Skadden in São Paulo, Gibson Dunn in New York, and Lefosse in Brazil, handling high-stakes transactions across the Americas, including public offerings and project finance. He is admitted to practise in both Brazil and the State of New York.



Flávio Yoshida has over 20 years' experience in tax law, advising clients on tax planning in Brazil and abroad, credit recovery, sophisticated tax-driven transactions, and complex direct and indirect tax matters. His practice spans highly regulated and innovative industries, including pharmaceuticals, life sciences, technology, retail and consumer goods. He advises national and multinational groups on structured transactions, corporate reorganisations, transfer pricing, financing, tax incentives and other strategic tax matters. Recognised among Brazil's leading tax advisory lawyers, Flavio is ranked by Chambers and Partners for Tax: Non-Contentious.

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho,
BVA – Barreto Veiga Advogados



Felipe Barreto Veiga is the founder and managing partner of BVA – Barreto Veiga Advogados and a senior partner in the M&A, private equity, debt capital markets and venture capital practices. Recognised as one of Brazil's most active transactional lawyers, he has led hundreds of domestic and cross-border transactions, including complex acquisitions, private equity investments, venture financings and high-profile restructurings. He advises Brazilian and international clients – public and private companies, start-ups, investment funds, banks and high net worth individuals – on mid-cap and high-value deals, with particular strength in technology, financial services, infrastructure and cross-border strategic transactions involving Brazilian and foreign investors.



Leonardo Carvalho is a partner at BVA and a recognised leader in labour and social security law. He advises domestic and international companies on the full range of employment matters, from complex negotiations with unions and labour authorities to strategic workforce reorganisations and executive compensation. He is especially sought after for structuring incentive and compensation schemes and handling high-stakes disputes. Leonardo has a Master's in Labour Law from PUC-SP and extensive specialisations, and is ranked in Band 1 by Chambers and Partners for Labour & Employment: Mid-Market.

BVA – Barreto Veiga Advogados

Rua Fidêncio Ramos, 308
4th floor – Tower A
Sao Paulo/SP
Brazil

Tel: +55 11 4081-1900
Email: marketing@bvalaw.com.br
Web: www.bvalaw.com.br

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho,
BVA – Barreto Veiga Advogados

1. Business Entities

1.1 Business Organisations

Brazilian law offers several vehicles for conducting business. The two principal forms are:

- the *sociedade limitada* (Ltda), which is governed by the Civil Code and is commonly used for closely held businesses, joint ventures and Brazilian subsidiaries of foreign groups, as its governance is simple and customisable through the articles of association and shareholders' (or quotaholders') agreements; and
- the *sociedade anônima* (S.A.), which is governed by the Corporations Law and can be private or publicly held. It is generally preferred where the business needs more sophisticated capital and governance arrangements, including different classes of equity securities, debenture issuances, broader investor participation or capital markets access.

Both may be incorporated and operate with a single shareholder.

Other forms, including partnerships, exist but are less common due to their governance features and, in some cases, partners' exposure to personal liability. Entities engaged in intellectual professions of a scientific, literary or artistic nature, such as law firms, are subject to specific regimes and may not operate as Ltdas or S.A.s; their members may therefore be held liable if the entity lacks sufficient assets.

The choice between Ltda and S.A. is driven mainly by:

- governance requirements;
- fundraising plans;
- regulatory constraints;
- transfer and exit mechanics;
- administrative costs; and
- tax considerations.

Shareholders' liability in both structures is generally limited to subscribed capital, although shareholders and managers may be exposed exceptionally under specific statutory rules or where the corporate veil is pierced. Certain regulated activities may also require a specific corporate form.

1.2 Incorporation and Ongoing Compliance

Incorporation generally requires execution of the organisational documents – the *contrato social* for a Ltda or *estatuto social* for an S.A. (similar to articles of incorporation or association) – and registration with the competent State Commercial Registry (*Junta Comercial*). The company must also obtain a *Cadastro Nacional de Pessoas Jurídicas* (CNPJ) taxpayer registration and, depending on its activities, state or municipal registrations and operating or sector-specific licences. Most filings are electronic, and processing times vary by state and filing complexity; straightforward incorporations can often be completed within five to ten business days once documentation is in order.

Foreign shareholders or quotaholders must appoint a representative resident in Brazil and comply with the applicable foreign investment registration and reporting framework. Since the modernisation of the Central Bank's regulations, foreign direct investment has been reported through the SCE-IED electronic system, subject to applicable events and thresholds.

Ongoing compliance includes:

- maintaining corporate books and records;
- holding an annual shareholders' or quotaholders' meeting within the statutory period to approve management accounts and financial statements; and
- registering amendments, management changes and other corporate acts with the Commercial Registry.

S.A.s are subject to additional requirements regarding corporate books, financial statements and, where applicable, publication. Publicly held companies are also subject to the periodic and event-driven disclosure regime of the *Comissão de Valores Mobiliários* (CVM).

1.3 Share Issuances

Creating, issuing or altering a Brazilian company's share capital generally requires a shareholders' or quotaholders' resolution amending the relevant *con-*

trato social or *estatuto social* (articles of association or by-laws).

For an S.A., the *estatuto social* may set an authorised capital limit within which the board may approve increases without further by-law amendment; increases beyond that limit generally require shareholder approval. Shares may have par value or no par value, but not both at once. Contributions may be made in cash or in assets capable of valuation, with in-kind contributions subject to the statutory appraisal procedure.

S.A.s may issue common and preferred shares. Preferred shares may carry economic preferences, such as priority in dividends or capital reimbursement, and may have restricted voting rights, subject to mandatory statutory protections. Non-voting or restricted-voting preferred shares may not generally exceed 50% of total issued shares. Closely held S.A.s have greater flexibility in creating share classes, whereas publicly held companies must also consider CVM regulations, B3 rules and minority protection requirements.

Ltdas may not have authorised capital, although preferred quotas – similar to preferred shares in an S.A. – are permitted. A Ltda's articles may provide for different classes of quotas and differentiated economic or political rights, subject to mandatory law and, where the Corporations Law applies supplementarily, its relevant rules.

In both Ltdas and S.A.s, the rights, privileges and restrictions attached to each class of shares or quotas – including rights of first refusal, tag-along, drag-along and other transfer restrictions – are key to the governance framework and can significantly affect control allocation and minority protections.

1.4 Distributions and Return of Capital

For S.A.s, dividends are paid from profits determined under the Corporations Law and the company's financial statements. The by-laws normally set the mandatory dividend; if not, the statutory rule generally entitles shareholders to 50% of adjusted net income. Payment may be withheld where incompatible with the company's financial condition, and interim dividends may be declared when statutory and by-law requirements are met.

Ltdas offer greater flexibility. Unless the articles provide otherwise, profits and losses are allocated proportionally, but a properly approved resolution may allow disproportionate distributions, provided no quotaholder is excluded from profits altogether. Distributions must be supported by available profits; unlawful distributions may give rise to restitution and officer liability.

An S.A. may acquire its own shares subject to the Corporations Law and, for publicly held companies, CVM rules on treasury shares, reserves and equal shareholder treatment. Shares may also be redeemed, amortised or cancelled, as permitted by law. A capital reduction returning capital to shareholders is generally subject to a 60-day creditor opposition period.

A Ltda may reduce capital to absorb irreparable losses or where capital is excessive for its purpose; a reduction for excess capital requires publication and a 90-day objection period for unsecured creditors. Brazil has no general financial assistance prohibition, but capital maintenance, fiduciary duty, conflict-of-interest and insolvency rules may constrain acquisition financing involving the target.

1.5 Control Person Reporting

Brazil does not maintain a general public register of beneficial owners or "control persons" for private companies. Corporate ownership information is nevertheless recorded through the relevant corporate registrations, and Brazilian tax rules require entities within the scope of the CNPJ regime to provide ultimate beneficial owner (UBO) information to the Federal Revenue Service, subject to statutory exemptions and the applicable criteria for identifying the individual who ultimately owns, controls or exercises significant influence over the entity. This information is not generally maintained in a public UBO register.

Additional identification and record-keeping obligations apply in regulated sectors under anti-money laundering (AML) and know-your-customer (KYC) rules. Publicly held companies are subject to separate CVM disclosure requirements regarding controlling shareholders, management and holders of relevant equity interests; see **5.4 Shareholder Disclosure**.

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho,
BVA – Barreto Veiga Advogados

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Brazil is governed primarily by the Corporations Law (Law 6,404/1976) for S.A.s and the Civil Code (Law 10,406/2002) for Ltdas. Publicly held corporations are also subject to the Securities Law (Law 6,385/1976) and CVM regulations, including Resolution 80 on issuer registration and disclosure. Companies listed in B3's special segments, such as *Novo Mercado* and Level 2, must also comply with the relevant B3 listing regulations, which impose enhanced requirements on governance, minority protections, board composition, disclosure and dispute resolution.

Best-practice guidance is strongly influenced by the Brazilian Institute of Corporate Governance's Code of Best Practices for Corporate Governance and the Brazilian Corporate Governance Code for Listed Companies, which operates on an "apply or explain" model.

Market participants are also subject to ANBIMA's self-regulatory codes covering public offerings, fund distribution, asset management and other capital market services. These codes are contractual and applicable mainly to adherents, but they establish governance, conduct and investor protection standards that are widely observed in the Brazilian market.

These non-statutory standards are frequently considered by boards, controlling shareholders and institutional investors when designing governance arrangements, even where not legally mandatory.

2.2 Directors' Duties and Liabilities

Directors and officers of an S.A. owe statutory duties under the Corporations Law, including duties of care, loyalty and confidentiality, as well as duties to act within the company's purpose and avoid conflicts of interest. They must act in the company's interest and may not subordinate it to a controlling shareholder, the shareholder who elected them or any third party.

The CVM and courts tend to focus on the integrity of the decision-making process and generally afford greater deference to informed, good-faith, disinterested business decisions.

A manager is generally not personally liable for obligations regularly undertaken on the company's behalf, but may be liable for losses caused by negligence, wilful misconduct or breach of the law or by-laws. Liability can also arise under specific tax, labour, environmental, consumer, insolvency and regulatory regimes, each with its own requirements distinct from the general veil-piercing test under Article 50 of the Civil Code.

D&O insurance and contractual indemnification are common, particularly in larger and listed companies, but remain subject to public policy and corporate law limits, and should not insulate managers from consequences for fraud or wilful misconduct.

2.3 Board Composition and Independence

Under the Corporations Law, a board of directors is mandatory for publicly held S.A.s and S.A.s with authorised capital, and optional for most closely held S.A.s; where established, it must have at least three members. Board members need not reside in Brazil, but non-resident directors must appoint a Brazil-based representative. Ltdas are not generally required to have a board and may be managed by one or more officers, although more sophisticated Ltdas often create boards or advisory bodies by contract.

There is no general statutory independence requirement for private companies, but listed issuers are subject to CVM disclosure requirements and applicable B3 rules. Under *Novo Mercado*, the board must have at least two independent directors or 20% independent directors, whichever is greater, and the chair and CEO roles are generally separated.

Brazilian best practice goes beyond minimum requirements. Larger companies increasingly:

- use a skills matrix;
- seek meaningful independent representation;
- separate the chair and CEO roles;
- establish audit and other committees;
- conduct periodic evaluations; and
- adopt succession and conflict-of-interest policies.

Diversity in gender, professional background and experience is increasingly treated as part of board

effectiveness, and is reflected in the disclosure framework for listed issuers.

2.4 ESG and Disclosure Obligations

Brazil has no single ESG statute. ESG-related obligations arise from corporate, securities, environmental, labour, consumer, anti-corruption and sector-specific rules, while listed issuers face progressively more detailed sustainability disclosures. CVM Resolution 193 introduced sustainability-related financial disclosure based on ISSB standards, incorporated in Brazil through the *Comitê Brasileiro de Pronunciamentos de Sustentabilidade* (CBPS – Brazilian Sustainability Pronouncements Committee) standards.

In May 2026, CVM Resolution 244 removed the previously scheduled mandatory adoption of International Sustainability Standards Board (ISSB) reporting and retained a voluntary regime. Entities that opt to report must comply with the applicable CBPS/ISSB standards and, from 1 January 2026, obtain reasonable assurance from a CVM-registered auditor. From 2027, a listed company opting not to report must disclose and justify that decision via market announcement.

The Corporations Law does not create a standalone duty to maximise an ESG metric. Directors must pursue the company's interests and observe its corporate purpose and social function, while environmental, labour, consumer and other mandatory regimes may make ESG-related risks directly relevant to board duties.

Best practice allocates responsibility for material ESG risks at board or committee level, integrates them into strategy and enterprise risk management, establishes reliable internal controls over sustainability data, and ensures external statements are supported by verifiable information, particularly given growing scrutiny of greenwashing.

2.5 Conflicts of Interest and Related-Party Transactions

Brazilian corporate law requires managers to disclose conflicts of interest and, where conflicted, to abstain from the relevant decision. The Corporations Law also restricts abusive control by a controlling shareholder and requires transactions involving managers, controlling shareholders or other related parties to be conducted in the company's interests and through appropriate corporate procedures. A transaction breaching these duties may expose the responsible persons to liability and, depending on circumstances, may be challenged or annulled.

For listed companies, related-party transactions are also subject to CVM disclosure requirements and the company's internal governance policies; B3's special segments may impose additional standards. In practice, material related-party transactions are commonly reviewed by disinterested directors or a dedicated committee, with independent advice where appropriate.

The approval route depends on the transaction, the company's governance documents and the nature of the conflict, and material transactions involving listed issuers may require specific market disclosure.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholders of an S.A. have statutory rights that include:

- participation in profits and in the company's assets on liquidation;
- supervision of management;
- pre-emption rights in the circumstances prescribed by law;
- voting rights attached to their shares; and
- withdrawal rights in specified fundamental transactions.

Shareholders with voting rights vote on matters reserved for the general meeting, including:

- amendments to the by-laws;
- the election and removal of directors, where applicable;
- the approval of annual accounts; and
- specified reorganisations.

The Corporations Law also grants information, meeting-convocation and board-election rights to minority

shareholders once the relevant statutory thresholds are met.

Statutory remedies include:

- actions to annul unlawful shareholder resolutions;
- claims against managers and controlling shareholders;
- derivative actions for losses caused to the company; and
- appraisal or withdrawal rights in the situations provided for by law.

Minority shareholders may also use statutory mechanisms for cumulative or separate board elections and, in appropriate circumstances, seek urgent judicial relief.

Quotaholders of a Ltda have analogous core rights under the Civil Code, including:

- participation in profits;
- voting on matters reserved for quotaholders;
- access to accounts and information;
- pre-emption rights on capital increases; and
- the right to challenge unlawful resolutions.

The precise voting thresholds and shareholder rights depend significantly on the articles of association, including rules on the transfer of quotas, the exclusion of quotaholders, withdrawal and dissolution, which makes careful drafting particularly important in closely held companies.

3.2 Shareholder Agreements

Shareholders' agreements are expressly regulated by Article 118 of the Corporations Law and are widely used to govern:

- voting arrangements;
- transfer restrictions;
- pre-emption, tag-along and drag-along rights;
- reserved matters;
- board nomination rights;
- deadlock procedures; and
- exit mechanisms.

When an agreement concerning Article 118 matters is filed at the company's registered office, the company must observe it, and votes cast in breach of it may be disregarded under the statutory mechanism; specific performance is expressly available.

Ltdas also make extensive use of quotaholders' agreements, which are enforceable principally under the Civil Code, the articles and general contract law; where the articles adopt the Corporations Law supplementarily, Article 118 may also apply. For enforceability against the company, key governance and transfer provisions are commonly reflected in the articles and formally acknowledged by the company.

Shareholder and quotaholder disputes are frequently submitted to arbitration where the governing documents contain a valid clause; arbitration is mandatory for companies listed in certain B3 segments.

Judicial remedies remain available where arbitration does not apply, including:

- specific performance;
- interim relief;
- annulment of resolutions;
- damages claims;
- manager liability claims; and
- in closely held companies, partial dissolution recognised by the Civil Code and case law.

Brazil has no single statutory "oppression remedy"; minority protection is instead provided through these mechanisms.

4. Mergers and Acquisitions

4.1 Legal Framework

Brazilian M&A is governed by the Corporations Law, the Civil Code, the Competition Law and, for listed companies, CVM and B3 rules; sector-specific approvals may also apply.

Private acquisitions are primarily contractual, while corporate reorganisations – mergers (*incorporação*), spin-offs (*cisão*) and share-for-share mergers (*incorporação de ações*) – follow statutory procedures. Brazil

has no general court-sanctioned scheme of arrangement comparable to common law jurisdictions.

The most common private structures are:

- purchases of shares or quotas;
- asset or business acquisitions;
- primary investments through capital increases;
- joint ventures; and
- combinations via statutory reorganisations.

The choice depends on tax treatment, succession of liabilities, licences, financing, minority rights and regulatory approvals. Transactions frequently use earn-outs, deferred consideration, escrow or hold-back arrangements and indemnification mechanisms to allocate risk.

Public company transactions are subject to the Corporations Law and CVM rules on disclosure, tender offers and shareholder protection. A change of control generally triggers a mandatory tender offer under Article 254-A, entitling non-controlling voting shareholders to at least 80% of the price paid for control-block shares.

Delisting and other statutory tender offers are governed by CVM Resolution 215, effective since 1 October 2025, which consolidated the tender offer framework.

Merger clearance from the Administrative Council for Economic Defence (*Conselho Administrativo de Defesa Econômica*, or CADE) is suspensory once thresholds are met, and regulated businesses may need approvals from authorities such as the Central Bank, the National Electric Energy Agency (ANEEL), the National Telecommunications Agency (ANATEL), the National Supplementary Health Agency (*Agência Nacional de Saúde Suplementar*, or ANS) or the Brazilian National Agency of Petroleum, Natural Gas and Biofuels (*Agência Nacional do Petróleo*, *Gás Natural e Biocombustíveis*, or ANP), making conditions precedent and regulatory risk allocation central to transaction documents.

Recent developments have been predominantly regulatory: CVM Resolution 215 modernised the tender offer regime, while CADE refines its approach to gun-jumping and pre-closing coordination.

Public court decisions on sophisticated private M&A disputes are comparatively limited given the wide use of arbitration; where disputes reach the courts, case law generally gives significant weight to the risk allocation negotiated by sophisticated parties, subject to mandatory law and good faith.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Brazilian capital markets are primarily regulated by the Securities Law (Law 6,385/1976), the Corporations Law and CVM regulations. The CVM is the principal securities regulator, while B3 operates the main organised markets and imposes listing and self-regulatory requirements. The Central Bank and other authorities may also have jurisdiction, depending on the issuer, intermediary or instrument.

Public offerings are principally governed by CVM Resolution 160, which provides ordinary and automatic registration procedures. The applicable procedure depends on the security type, the issuer's registration status and the target investor base. A prospectus and other offering materials are required, as prescribed by CVM Resolution 160. Automatic registration may be obtained without prior substantive CVM review once requirements are met, whereas the ordinary procedure is subject to CVM review and can take longer for first-time equity issuers.

An IPO also requires registration as a publicly held company with the CVM and compliance with B3's listing requirements. Companies electing a special B3 segment, such as *Novo Mercado*, assume governance obligations beyond securities law, including board composition, free float, disclosure and arbitration rules.

CVM Resolution 160 sets differentiated requirements by security type, issuer and investor base, including offerings to professional or qualified investors where prior CVM review is not required. These are not blan-

ket exemptions: eligibility, disclosure and trading rules vary by route and security.

Offerings by qualifying small businesses through electronic participatory platforms, without registration, are governed separately by CVM Resolution 88. Securities under either regime may carry eligibility or trading restrictions; non-compliance may result in CVM enforcement, suspension or administrative sanctions.

5.2 Continuous Disclosure

Publicly held companies are subject to periodic and event-driven disclosure under CVM Resolution 80 and the material fact regime under CVM Resolution 44. A material act or fact capable of influencing the price of securities, an investor's decision to buy, sell or hold them, or the exercise of rights attached to them must be disclosed to the market through the applicable official systems. The investor relations officer is responsible for the disclosure, without prejudice to the duties imposed by law and regulation on controlling shareholders, shareholders, directors, officers, members of the fiscal council and members of other technical or advisory bodies.

Disclosure of a material act or fact may exceptionally be withheld where the controlling shareholders or management reasonably consider that publication would jeopardise a legitimate corporate interest, but only while confidentiality is preserved. The information may remain confidential only while secrecy is preserved. If the information escapes the company's control or if atypical movements occur in the price or trading volume of the issuer's securities or related instruments, the material act or fact must be disclosed immediately.

Periodic obligations include annual and interim financial information, the reference form and other corporate, governance and meeting materials prescribed by CVM regulations. Listed companies must also comply with B3 disclosure rules applicable to their listing segment.

5.3 Insider Trading

Insider trading, market manipulation and other abusive practices are prohibited under the Securities Law and CVM regulations, particularly CVM Resolution No 44. Trading while in possession of material non-public information may give rise to administrative liability and, where the statutory elements are met, criminal liability under Article 27-D of Law No 6,385/1976. The rules apply not only to formal corporate insiders but also, depending on the facts, to persons who obtain privileged information and know or should know that it is confidential and material.

The CVM has broad supervisory, investigative and sanctioning powers, including the authority to:

- investigate trading activity;
- commence administrative enforcement proceedings;
- impose fines and restrictions or disqualifications; and
- enter into settlement agreements where legally appropriate.

Conduct amounting to a criminal offence may also be referred to the Public Prosecutor's Office, and affected investors may pursue civil remedies where the requirements for liability are met.

5.4 Shareholder Disclosure

CVM Resolution No 44 requires a direct or indirect shareholder, or a group of shareholders acting together or representing the same interest, to disclose the acquisition or disposal of a relevant participation in a publicly held company. As a general rule, disclosure is triggered when the position reaches or crosses 5% of a class or type of shares and upon each subsequent 5% increase or decrease. The disclosure must include the information prescribed by the regulation, including the purpose of the participation and relevant agreements or instruments affecting the securities.

The regime also takes into account certain rights over shares and derivative instruments for the purposes of calculating and disclosing relevant positions. Controllers, directors, officers and members of specified corporate bodies are subject to additional periodic disclosure rules concerning their holdings of and transactions in the issuer's securities and related instruments.

Failure to comply may result in administrative enforcement proceedings and sanctions by the CVM, and may create disclosure, governance and transactional

risk, particularly in takeover or change-of-control situations. Separate, more granular reporting requirements apply during certain public tender offers under CVM Resolution No 215.

5.5 Internal Controls and Whistle-Blower Regimes

Brazil does not impose a single internal control framework on all companies; requirements vary according to a company's type, size and regulated activity. Publicly held companies are subject to CVM governance and disclosure requirements, while financial institutions, insurers and other regulated entities are subject to sector-specific risk management, compliance and internal control requirements.

The Anti-Corruption Law (Law No 12,846/2013) and Decree No 11,129/2022 do not make a compliance programme universally mandatory, but an effective integrity programme is an important mitigating factor in enforcement and leniency contexts.

Decree No 11,129/2022 identifies the factors used to assess an integrity programme, including:

- senior management commitment;
- standards of conduct;
- risk assessment;
- training;
- third-party diligence;
- accounting controls;
- procedures for interactions with public authorities;
- reporting channels and measures to protect good-faith reporters;
- disciplinary measures; and
- continuous monitoring.

Regulated sectors may impose more specific reporting channel or escalation requirements.

As a matter of governance practice, companies commonly allocate compliance oversight to senior management with reporting access to the board of directors or an audit or compliance committee, maintain confidential reporting channels, establish investigation and anti-retaliation procedures, perform periodic risk assessments and monitor remediation efforts.

The design of the compliance framework should be proportionate to the company's size, sector, geographic footprint and exposure to public authorities and regulated activities.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Legal Framework and Forms of Security Available in Brazil

Secured transactions are principally governed by:

- the Civil Code;
- the Code of Civil Procedure;
- the Public Registries Law (Law 6.015/1973);
- the Bankruptcy and Judicial Reorganisation Law (Law 11,101/2005);
- the fiduciary ownership of real estate law (Law 9,514/1997); and
- the Corporations Law (Law 6,404/1976).

The principal security interests are:

- mortgages over real estate;
- pledges over movable assets, shares, quotas and financial instruments;
- fiduciary transfers of movable and immovable assets; and
- fiduciary assignments of receivables.

Financing structures also commonly include personal guarantees, particularly sureties (*fianças*) and avals.

Fiduciary security transfers defeasible ownership to the secured creditor until the obligations are discharged, and is generally preferred as it facilitates enforcement and offers stronger insolvency protection: fiduciary collateral is generally excluded from the debtor's estate, although measures selling essential capital assets may be suspended during the statutory stay period.

Requirements for Creating, Enforcing and Ranking Security Interests

Security documents must adequately identify the secured obligations and collateral, which may cover

present and future obligations, including third-party obligations, if sufficiently described.

Mortgages and fiduciary transfers of real estate must be registered with the competent Real Estate Registry. Security over movable assets and receivables is generally registered with the Registry of Deeds and Documents, while specific assets may require registration with specialised registries. Security over shares and quotas should be recorded in the corporate books and, where applicable, filed with the Commercial Registry, and receivables assignments should be notified to the debtors in order to bind them.

Perfection requirements are generally necessary for third-party effectiveness and priority, which follows the order of filing, subject to statutory preferences and insolvency law. Intercreditor agreements regulate creditors' contractual rights but do not alter priority against third parties.

Traditional pledges are generally enforced judicially, unless an extrajudicial sale is contractually and legally permitted. Mortgages may be enforced judicially or extrajudicially under Law 14,711/2023. Fiduciary security may also benefit from statutory extrajudicial procedures, including consolidation of title, repossession and sale, subject to applicable rules on default, notice, registration, valuation and sale.

Acquisition Financing and Security Packages

Acquisition financings commonly combine security from the acquisition vehicle with guarantees from other group companies, including:

- pledges or fiduciary transfers over the vehicle's shares or quotas and, post-completion, the target's;
- assignments of receivables and material contract rights;
- controlled accounts and cash sweeps; and
- security over material assets.

Brazilian law imposes no general prohibition on financial assistance by non-regulated companies, but upstream, downstream and cross-stream guarantees must be assessed against corporate authority, purpose, directors' duties and insolvency risk. A company may not accept its own shares as collateral except to secure its officers' management.

In syndicated financings, a security agent commonly holds and administers the security. Intercreditor agreements regulate voting, enforcement control, standstill arrangements, subordination and distribution of proceeds, co-ordinated with perfection and registration, since contractual subordination alone does not determine priority against third parties.

Recent Legislative Developments

Law 14,711/2023 (the Legal Framework for Guarantees) is the principal recent development. It expressly recognised security agents, expanded successive fiduciary security over real estate, permitted existing mortgages to secure new obligations to the same creditor, and expanded extrajudicial enforcement for mortgage-backed and fiduciary security claims. The reforms have increased structuring flexibility and strengthened out-of-court enforcement, particularly in syndicated financings, although their effectiveness remains subject to statutory requirements and to interpretation by registries and courts.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Brazilian commercial contracts are primarily governed by the Civil Code (Law No 10,406/2002), the main principles of which are freedom of contract, the binding force of agreements, objective good faith and the social function of contracts. Contracts are presumed to involve parties on an equal footing, and courts should respect the agreed allocation of risks. Judicial revision is exceptional and limited.

A valid contract mainly requires:

- legally capable parties;
- valid consent;
- a lawful and possible subject matter that is determined or determinable; and
- compliance with a mandatory form, where applicable.

Consideration is not a general requirement. Most commercial contracts do not require a particular form, and electronic contracting is generally recognised upon the establishment of consent, authorship and document integrity. Specific transactions – including copyright assignments and certain real estate dealings – require additional formalities (Articles 104 and 107–108 of the Civil Code and Article 10 of Provisional Measure No 2,200-2/2001).

Contracts are interpreted according to the parties' expressed intention, good faith, commercial practices, subsequent conduct and the transaction's economic purpose. Good faith requires disclosure, co-operation and consistent conduct throughout the contractual relationship. Clear drafting of deliverables, dependencies, acceptance criteria and risk allocation therefore materially improves enforceability.

Invalidity may arise from:

- an unlawful subject matter;
- incapacity;
- failure to observe essential formalities;
- sham transactions or defects such as material mistake;
- fraud;
- duress; and
- gross disparity arising from urgent need or inexperience.

Negotiated liability limitations are generally permissible, subject to mandatory rules and scrutiny for abuse; unequal bargaining power alone does not invalidate them. Consumer contracts and adhesion contracts receive additional protection, including controls on unfair terms and advance waivers of essential rights (Articles 138–171 and 423–424 of the Civil Code).

7.2 Termination and Remedies

A party affected by a breach may seek performance or termination, together with recoverable damages. Courts may order delivery, performance or the cessation of prohibited conduct, supported by interim relief and coercive fines. Damages generally cover actual losses and reasonably established lost profits, subject to causation and proof; an ordinary breach does not automatically justify moral damages. Contractual penalties may be enforced without proof of actual loss but cannot exceed the principal obligation, and can be reduced in the event of partial performance or manifest excess. Additional damages generally require an express contractual reservation and proof of the excess.

Contracts may end through expiry, mutual agreement, permitted unilateral notice or a sufficiently serious breach. Termination must comply with applicable notice and cure requirements, and substantial investments may postpone the effectiveness of termination without cause. Wrongful termination may trigger damages, penalties or the temporary preservation of the relationship. Fixed-term service contracts require particular attention, as Article 603 of the Civil Code may apply between legal entities, providing for the payment of compensation already due, plus half of the compensation payable until the agreed end date.

Force majeure and fortuitous events generally exclude liability for losses resulting from effects that could not be prevented or avoided, unless the affected party assumed the relevant risk. They do not automatically terminate the agreement nor excuse unaffected obligations (as per Article 393 of the Civil Code). Hardship provisions allow exceptional judicial adjustment or termination where supervening circumstances satisfy the applicable requirements (Articles 317 and 478–480 of the Civil Code). Frustration of purpose concerns the loss of the contract's objectively identifiable purpose despite performance remaining possible. Although not expressly regulated as a standalone doctrine in the Civil Code, its recognition is supported by non-binding Federal Justice Council Statement No 166, based on Article 421.

7.3 Intellectual Property in Commercial Transactions

Commercial transactions involving intellectual property are principally governed by the Industrial Property Act (Law No 9,279/1996), the Copyright Act (Law No 9,610/1998) and the Software Act (Law No.9,609/1998). Agreements should distinguish assignments (which transfer ownership) from licences (which authorise specified uses). The essential terms include:

- the protected assets;
- territory;
- duration;
- exclusivity;
- sublicensing;
- improvements; and
- rights following termination.

Patent and trade mark transactions may require registration with the INPI to produce effects against third parties. Copyright assignments must be in writing and are interpreted restrictively; payment for a deliverable does not itself transfer all economic rights. Moral rights are generally non-transferable and non-waivable, subject to the specific software regime. Trade secrets depend on confidentiality obligations, effective access controls and unfair competition protection.

Ownership of newly created intellectual property depends on the applicable statutory regime and contractual arrangements. Employment-related inventions and software developed within assigned duties generally belong to the employer or commissioning party under the relevant statutory conditions. Other commissioned copyright works do not follow a universal automatic transfer rule. Joint development agreements should expressly allocate pre-existing assets, new results, improvements and exploitation rights.

AI-generated content remains an area of uncertainty. Brazilian copyright law centres authorship on natural persons, making an identifiable human creative contribution relevant to protection. Contractual permission to use an output does not itself establish copyright, originality or exclusivity. Agreements should address authorised inputs, confidentiality, human review and infringement responsibility.

Statutory remedies for infringement of intellectual property include:

- injunctions;
- seizure or removal of infringing material;
- damages; and
- for specified conduct, criminal sanctions.

Lost profits in industrial property cases may be assessed through the injured party's lost benefits, the infringer's benefits or a hypothetical licence fee, applying the most favourable statutory criterion rather than cumulatively.

7.4 Consumer Protection

The Consumer Protection Code (CDC, Law No 8,078/1990) establishes mandatory rules governing consumer relationships, supplemented by sector-specific legislation and the e-commerce rules set out in Decree No 7,962/2013. Together, they establish mandatory protections that prevail over conflicting contractual terms. Unfair practices and abusive clauses are prohibited. Contractual labels cannot exclude the CDC where its substantive requirements apply.

Suppliers must provide clear information about essential characteristics, risks, prices and contractual conditions. Sufficiently precise offers bind the supplier, and ambiguities are interpreted in the consumer's favour. For typical online purchases, consumers have seven days to withdraw, counted from the day the contract is signed or the day the product or service is received, with reimbursement of the amounts paid.

The *Secretaria Nacional do Consumidor* (SENACON), consumer protection agencies (PROCONs) and competent sector regulators may investigate infringements and impose administrative sanctions, including fines, suspension measures and corrective advertising. Consumers may seek individual relief, while authorised bodies and associations may bring collective proceedings. Available remedies include:

- repair;
- replacement;
- price reduction;
- reimbursement;
- performance; and
- damages, depending on the breach and applicable statutory conditions.

Courts and regulators assess the practical effect of business conduct, including whether consumers could make an informed choice. Misleading advertising includes material omissions, and advertisers bear the burden of substantiating their claims. Unsolicited supply, tying and the exploitation of consumer vulnerability are also prohibited.

E-commerce compliance extends to the entire customer journey. Suppliers must:

- disclose their identity, total charges and material restrictions;
- enable the correction of ordering errors;
- provide accessible contractual records; and
- maintain effective support and withdrawal mechanisms.

Businesses should align marketing, contracting, billing and customer service while ensuring that personal data processing also complies with the General Data Protection Law (Law No 13,709/2018).

8. Foreign Investment

8.1 Competition and Merger Control

Merger control is governed by Law No 12,529/2011 and enforced by CADE.

Transactions meeting the statutory concept of a concentration transaction must be notified where, in the financial year preceding the transaction, at least one economic group had gross turnover in Brazil of BRL750 million or more and another economic group had gross turnover in Brazil of BRL75 million or more. The regime is mandatory and suspensory: parties may not consummate a notifiable transaction before obtaining clearance.

Simple transactions may qualify for CADE's summary procedure, which is designed for cases that are unlikely to raise competition concerns, while ordinary reviews may take substantially longer. The statutory review period is up to 240 days, subject to the extensions permitted by law.

CADE assesses whether a transaction is capable of eliminating competition in a substantial part of the relevant market, creating or strengthening a dominant position or otherwise resulting in dominance of a relevant market, while considering efficiencies and the statutory exceptions that may justify approval.

CADE may clear a transaction unconditionally, impose remedies or prohibit it.

Gun-jumping may lead to fines ranging from BRL60,000 to BRL60 million, the potential nullity of acts implemented before clearance and an administrative investigation.

Anti-competitive conduct is subject to a separate enforcement regime. Companies may face significant turnover-based fines and behavioural or structural remedies, and individuals may also be sanctioned. Cartels may additionally give rise to criminal liability. CADE operates leniency and settlement mechanisms for qualifying conduct.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Brazil has no general foreign investment screening regime or national security review mechanism comparable to CFIUS. In most sectors, foreign investors may acquire Brazilian businesses on substantially the same basis as domestic investors.

However, foreign direct investment is subject to Central Bank reporting requirements under the foreign exchange and capital framework, including through SCE-IED where applicable thresholds are met. This is generally a declaratory regime rather than an approval process.

Restrictions and prior approvals remain relevant in specific sectors. The acquisition or lease of rural land by foreign individuals, entities and certain foreign-controlled Brazilian entities is subject to statutory restrictions, and application can depend on the investor and transaction structure.

Broadcasting companies face constitutional limits on foreign participation, and nuclear and defence-related activities face constitutional or statutory restrictions. Financial institutions may need Central Bank or sector regulator approval for changes of control, while sectors such as civil aviation have been materially liberalised and no longer operate under the historical foreign ownership cap.

There is no general threshold triggering a national filing requirement across the economy. Where sector-specific approval is required, procedures and timings are set by the relevant regulator and may run in parallel

with CADE's merger review. Foreign investors should also assess restrictions affecting border areas, rural land and activities reserved to the State.

Foreign investors generally have access to the same investment incentives as domestic investors, including the Manaus Free Trade Zone, regional development incentives and financing programmes for qualifying infrastructure and innovation investments.

Recent policy developments have focused more on modernising the foreign exchange and capital reporting framework than on creating a screening mechanism. Law 14,286/2021 and subsequent Central Bank regulations have simplified several procedures, with reporting migrating to the SCE systems.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The LGPD Framework

Brazil's data protection regime centres on the *Lei Geral de Proteção de Dados* (LGPD, Law 13,709/2018), which is modelled in part on the EU's GDPR but with its own enforcement architecture. It applies to any processing of personal data carried out in Brazil, or aimed at offering goods or services to individuals in Brazil, regardless of where the controller, processor or data is based. Enforcement sits with the Brazilian Data Protection Authority (ANPD), which has steadily expanded its regulatory and sanctioning activity.

Sector-specific regimes layer additional obligations onto particular industries:

- financial institutions answer to Central Bank cybersecurity and data-sharing rules (including Open Finance);
- telecoms operators to Anatel;
- health data handlers to the Ministry of Health; and
- credit-related processing to the Positive Credit Register statute.

Employers must also reconcile LGPD compliance with labour and union oversight of workplace monitoring.

Legal Bases, Consent, Collection, Use and Disclosure

Processing requires a valid legal basis; consent is only one of ten bases, alongside legitimate interest, contractual necessity and legal obligation. Consent must be free, informed, unambiguous and purpose-specific, with the burden of proof resting with the organisation. Sensitive data (health, biometric, racial, religious or political, among others) is subject to a narrower list of bases and heightened care.

- Purpose limitation and data minimisation govern collection and later use; any new purpose generally requires a fresh legal basis or consent.
- Controllers must maintain processing records, adopt a privacy governance programme and appoint a data protection officer (*Encarregado*) as a point of contact with the ANPD.
- Disclosure to third parties, including intragroup sharing, is a distinct activity requiring its own legal basis and, where relevant, a data processing agreement.

Data Breach Notification

The LGPD requires controllers to notify the ANPD – and the individuals themselves where risk to data subjects is significant – of incidents creating relevant risk or damage, assessed on a case-by-case basis rather than against a fixed deadline. Well-advised organisations treat any incident as requiring an internal risk assessment within days, with notification following once its scope is reasonably understood.

Cross-Border Data Transfers and Localisation

The LGPD permits international transfers through defined mechanisms, including:

- transfers to countries or bodies recognised by the ANPD as adequate;
- standard contractual clauses;
- binding corporate rules approved by the ANPD;
- specific consent; and
- other statutory hypotheses, such as international legal co-operation requests.

The ANPD has progressively formalised this framework to give companies a clearer path than the LGPD's original, open-ended text.

Brazil imposes no general data localisation requirement; data may generally be processed and stored abroad if a valid transfer mechanism applies. Certain sectors layer additional constraints, such as Central Bank expectations on financial system infrastructure. Multinational groups should map intragroup data flows and formalise the applicable transfer mechanism as part of their LGPD governance programme.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering and Counter-Terrorist Financing

Brazil's AML regime is anchored in Law 9.613/1998, as amended, which criminalises money laundering and establishes preventative obligations for regulated entities. *Conselho de Controle de Atividades Financeiras* (COAF) is the central financial intelligence unit, receiving suspicious activity reports and setting cross-sectoral policy, while the following sector regulators issue their own rules:

- the Central Bank for banks;
- the CVM for capital markets;
- *Superintendência de Seguros Privados* (SUSEP) for insurers; and
- professional bodies for lawyers, accountants and real estate brokers.

Obliged entities must implement KYC procedures, transaction monitoring, record-keeping and reporting of suspicious or high-value transactions, with AML policies calibrated to risk. Beyond the financial sector, the regime reaches designated non-financial businesses, including dealers in high-value goods, real estate agents and certain legal and accounting activities.

Sanctions, Trade Restrictions and Export Controls

Brazil implements UN Security Council sanctions through federal decrees, and Law 13.810/2019 provides the mechanism for freezing designated individuals' and entities' assets. Brazil has no autonomous sanctions programme comparable to the US or EU, but internationally active Brazilian companies remain exposed to extraterritorial foreign sanctions, and must screen counterparties accordingly.

Export and import controls are administered mainly by the Ministry of Development, Industry, Trade and Services through the Siscomex system, with sensitive, dual-use and defence-related goods subject to licensing by specialised bodies. Companies in regulated sectors typically build sanctions and export control screening into onboarding and due diligence.

Anti-Corruption and Anti-Bribery

The Clean Company Act (Law 12.846/2013) is the principal anti-corruption statute, establishing strict administrative and civil liability for legal entities engaging in acts against domestic or foreign public administration, including bribery, tender fraud and obstruction of investigations. Liability does not require proof of intent or fault, making a well-documented compliance programme central to risk mitigation and leniency negotiations.

- Companies typically structure compliance programmes around risk mapping, a code of conduct, third-party due diligence, training, confidential reporting channels and periodic audits, per Decree 11.129/2022.
- A robust, demonstrably effective integrity programme is an express mitigating factor in calculating fines, and can support a leniency agreement with the Comptroller General of the Union (CGU) or the relevant state or municipal authority.
- Individual criminal liability for bribery runs in parallel under the Criminal Code and specific statutes, pursued separately from corporate administrative liability.

Enforcement Powers

The CGU leads federal administrative enforcement, with power to investigate, negotiate leniency agreements and impose fines reaching a significant percentage of gross revenue, alongside publication of the sanction. The Federal Prosecution Service and Federal Police pursue parallel criminal investigations, while the *Tribunal de Contas da União* (TCU) and CVM oversee public contracting and listed companies respectively, so a single set of facts can trigger simultaneous proceedings before different bodies.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulatory Framework

Brazilian environmental law operates on three levels of government, with the National Environmental Policy Act (Law 6.938/1981) setting overarching principles, and federal, state and municipal agencies sharing licensing and enforcement authority, depending on the activity's scope. Environmental licensing is the central compliance mechanism for most industrial, infrastructure and real estate projects, typically comprising sequential preliminary, installation and operating licences, each requiring studies proportionate to impact.

Environmental liability in Brazil is strict, joint and several, and unlimited in time, so a purchaser of contaminated land or an acquirer of a business can inherit remediation obligations regardless of fault or timing. This makes environmental due diligence, including licensing history review and soil and groundwater assessments, standard in M&A and real estate transactions involving industrial sites. Carbon pricing has recently taken shape through the Brazilian Emissions Trading System (SBCE, Law 15,042/2024), which will progressively require large emitters to monitor, report and surrender allowances for emissions.

Climate-Related Litigation and Corporate Environmental Liability

Climate litigation has grown steadily, with cases brought against the government, seeking enforcement of climate commitments, and against private companies, testing corporate responsibility for deforestation, emissions and supply chain impacts. The Superior Courts have increasingly treated a stable climate as a legal interest tied to constitutional environmental protections, encouraging actions against companies in carbon-intensive and land use sectors.

For businesses, exposure runs beyond direct liability to disclosure and due diligence risk: lenders, investors and trading partners increasingly expect documented deforestation-free and low-carbon supply chains, particularly for commodities linked to agribusiness and mining. Companies in these sectors typically pair legal compliance with proactive ESG documentation to manage both litigation and counterparty risk.

Health and Safety Obligations

Occupational health and safety is governed principally by the Consolidation of Labour Laws (CLT) and the Ministry of Labour's Regulatory Standards (NRs), covering risk management programmes, protective equipment, ergonomics and psychosocial risk. Employers must maintain health and safety programmes, provide periodic medical examinations and report workplace accidents to social security, with non-compliance exposing companies to inspection fines, civil liability and, in serious cases, criminal liability.

Licensing and Sector-Specific Regulatory Regimes

Beyond general environmental and safety rules, many activities require sector-specific authorisations on top of standard licensing:

- energy projects require ANEEL concessions or, for oil and gas, ANP authorisation;
- financial services require Central Bank or CVM authorisation;
- healthcare products and services require ANVISA (the Brazilian Health Regulatory Agency) registration and, in some cases, prior inspection; and
- activities with environmental impact often require both an operating licence and industry-specific permits.

Businesses entering a new sector should map this layered landscape early, since its timelines often drive deal or launch schedules more than general formalities.

9.4 Artificial Intelligence

Current Legal Landscape

Brazil has no dedicated, fully enacted AI statute. AI systems processing personal data fall within the LGPD's existing framework, including provisions on automated decision-making, which give individuals the right to request the review of decisions taken solely on that basis and, on request, meaningful information about the criteria used. The ANPD has begun issuing AI-specific guidance, and general consumer protection, civil liability and anti-discrimination laws apply to AI-driven products in the absence of AI-specific rules.

The Proposed AI Framework (Bill 2338/2023)

The principal legislative vehicle is Bill 2338/2023, approved by the Senate and pending further debate in the Chamber of Deputies. As drafted, it adopts a risk-based approach broadly comparable to the EU AI Act, classifying systems by risk level, imposing heightened obligations (impact assessments, human oversight, enhanced transparency) on high-risk uses, and prohibiting certain harmful applications outright.

- The bill would create rights for individuals affected by AI systems, including the right to be informed when interacting with one and to obtain an explanation of automated decisions that significantly affect them.
- Developers and deployers would face differentiated obligations by role in the AI value chain, with heavier documentation and governance duties for high-risk systems.
- Enforcement is expected to build on the data protection authority's structure, with civil society and industry debating the scope of a dedicated AI regulator's powers.

Sectoral and Self-Regulatory Approaches

In parallel, sector regulators have begun addressing AI within existing mandates: the Central Bank has issued guidance on AI in financial services, and consumer protection authorities have applied existing rules to algorithmic pricing and recommendation systems. Many organisations have adopted internal AI governance frameworks ahead of the statute, to manage LGPD exposure and prepare for its enactment.

Practical Obligations for Organisations

Pending a dedicated AI statute, organisations deploying AI in Brazil should treat LGPD compliance – a documented legal basis for training or operating data, transparency towards affected individuals, and a process for reviewing automated decisions – as the immediate baseline. Building basic AI governance now, including an inventory of AI use cases, bias assessment and documented human oversight, positions companies to adapt once Bill 2338/2023 or a successor statute is enacted.

9.5 Other Regulatory Compliance Requirements

Consumer Protection

The Consumer Defence Code (Law 8.078/1990) imposes strict liability on suppliers, reverses the burden of proof in favour of consumers in specified circumstances, and grants broad powers to consumer protection agencies (led nationally by SENACON) to investigate practices and impose fines. E-commerce, subscription services and algorithmic pricing have drawn increased regulatory attention, and companies selling to Brazilian consumers should expect the Code to apply to their activities, whether they are locally established or not.

Cybersecurity

Cybersecurity obligations are distributed across sector rules rather than consolidated in a single statute:

- the Central Bank imposes detailed cybersecurity and incident-reporting requirements on financial institutions;
- the LGPD requires proportionate security measures; and
- critical infrastructure operators face additional expectations under policy co-ordinated by the Institutional Security Cabinet.

Incident response planning increasingly needs to address both LGPD breach notification duties and sector-specific reporting timelines, which can run on different clocks.

ESG, Sustainability and Foreign Trade Compliance

Publicly held and, increasingly, private companies seeking financing face growing ESG disclosure expectations, driven by CVM rules for listed issuers, lender and investor due diligence standards, and emerging carbon market obligations. Companies engaged in cross-border trade must also observe customs valuation, classification and country-of-origin rules administered through Siscomex, together with product-specific technical or sanitary requirements imposed by regulators such as ANVISA or the Ministry of Agriculture.

Contributed by:
Gustavo Fiuza Quedevez, Lorena Guimarães, Pablo Arana, Flávio Yoshida, Felipe Barreto Veiga and Leonardo Carvalho,
BVA – Barreto Veiga Advogados

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Labour Laws

Brazilian employment relationships are governed primarily by the Federal Constitution and the CLT. The Constitution establishes fundamental employee protections, while the CLT regulates matters such as employment contracts, working hours, remuneration and individual and collective employment rights.

Federal Law No 13,467/2017, known as the Labour Reform, introduced significant changes to the CLT, including the recognition of "highly qualified employees" – ie, individuals who hold a university degree and earn a monthly salary equal to or greater than twice the ceiling of the General Social Security Regime. These employees have greater autonomy to negotiate certain contractual terms directly with employers, provided that constitutional guarantees and the non-waivable rights listed in Article 611-B of the CLT are respected.

Article 507-A of the CLT also permits arbitration agreements with highly qualified employees, subject to their express consent and compliance with the applicable legal requirements. Arbitration proceedings are additionally governed by the Brazilian Arbitration Act (Federal Law No 9,307/1996).

Employers engaging individuals as independent service providers must also consider the risk that the arrangement may be reclassified as employment. Courts generally examine whether the relationship involves subordination, personal service, continuity and remuneration. The Federal Supreme Court is considering the legality, jurisdictional rules and burden of proof applicable to such arrangements under Theme 1,389.

Termination Requirements, Employee Protections and Employer Liability Under Brazilian Law

Employment contracts in Brazil may be terminated as follows:

- by the employer with or without cause;
- by the employee, by mutual agreement; or
- in the case of a serious breach by the employer, through constructive dismissal.

As a general rule, an employer may terminate an indefinite-term employment contract without cause, without having to demonstrate a business justification. The employee will ordinarily be entitled to:

- accrued salary;
- a proportional 13th-month salary;
- accrued and proportional holiday pay plus the constitutional one-third supplement;
- access to the balance of the Severance Indemnity Fund (FGTS);
- a 40% penalty on the employer's FGTS deposits; and
- subject to eligibility requirements, unemployment insurance.

Notice may be worked or paid in lieu by the employer. The statutory period is 30 days, increased by three days for each year of service with the same employer, up to a maximum of 90 days. The employer must also record the termination, notify the relevant authorities, deliver the required documents and pay the termination amounts within ten days of the end of employment.

Dismissal for cause is permitted only in the circumstances established by Article 482 of the CLT, which include:

- dishonesty;
- serious misconduct;
- habitual neglect of duties;
- insubordination; and
- breach of confidentiality.

As this is the most severe disciplinary measure available, employers are generally expected to establish the misconduct through reliable evidence and observe principles such as proportionality, consistency and prompt application of the sanction. If the alleged cause is not upheld, the dismissal may be converted into termination without cause, with the corresponding payments becoming due.

Brazil does not apply a general concept of "wrongful dismissal" in precisely the same manner as some common law jurisdictions. Nevertheless, a dismissal may be challenged if it is:

- discriminatory;
- retaliatory;
- abusive;
- contrary to a contractual or collective bargaining restriction; or
- carried out during a period of statutory job protection.

Protected categories may include pregnant employees, employees on certain occupational accident leave, and trade union or internal accident prevention representatives. Depending on the circumstances, an invalid or discriminatory dismissal may result in reinstatement, back pay, damages or payment of the remuneration relating to the protected period. Brazilian law expressly allows an employee affected by discriminatory termination to seek reinstatement with back pay or twice the remuneration for the period away from work, in addition to moral damages.

Constructive dismissal, known in Brazil as *rescisão indireta*, is governed by Article 483 of the CLT. It may be claimed when the employer commits a sufficiently serious breach that makes the continuation of employment unreasonable. Examples include:

- requiring unlawful or excessively burdensome services;
- subjecting the employee to abusive treatment;
- exposing the employee to serious danger;
- materially breaching contractual obligations;
- reducing work in a manner that significantly affects remuneration; or
- committing acts against the employee's honour or physical integrity.

Repeated failure to pay salary, make FGTS deposits or comply with material contractual duties may also support such a claim.

Constructive dismissal is usually sought before the labour courts, and the employee generally bears the burden of proving the employer's serious breach. If the claim succeeds, the employee normally receives substantially the same termination entitlements as in a dismissal without cause, including the FGTS penalty. If it fails, the departure may instead be treated as a resignation, depending on the facts and how the employee proceeded. Employers should therefore investigate complaints promptly, document remedial measures and correct material breaches before they render the employment relationship untenable.

Additional considerations apply to fixed-term contracts, negotiated termination agreements and collective redundancies. In particular, mass dismissals require prior trade union intervention, although union authorisation or the conclusion of a collective agreement is not required. Employers should also review applicable collective bargaining agreements, which may establish additional procedures, payments or protections.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

Executive compensation arrangements may provide for fixed and variable remuneration, performance-related bonuses, short- and long-term incentives, equity awards and deferred compensation. When the executive meets the statutory requirements to qualify as a highly qualified employee (see **10.1 Employment Standards and Workplace Regulation**), the parties have greater freedom to negotiate these provisions directly.

Nevertheless, contractual autonomy is not unlimited. Compensation arrangements must comply with the minimum protections established by the Federal Constitution and the CLT. Particular attention should be paid to the proper legal characterisation of each payment for employment law, tax and social security purposes.

Equity incentive arrangements should clearly regulate eligibility, vesting conditions, performance targets, termination consequences and the treatment of awards in corporate transactions.

Enforceability of Restrictive Covenants in Brazilian Employment Relationships

Non-competition, non-solicitation and confidentiality obligations may be included in employment contracts, particularly those involving highly qualified employees. The enhanced contractual autonomy granted to these professionals supports the enforceability of appropriately drafted restrictive covenants.

However, that autonomy remains subject to constitutional protections and mandatory employment rights. Employers should therefore draft restrictive covenants clearly and proportionately, ensuring that their scope reflects a legitimate business interest and does not impose an excessive restriction on the employee.

Confidentiality provisions should identify the protected information and the employee's obligations during and after employment. Non-competition and non-solicitation clauses should clearly specify their duration, territorial reach, restricted activities and the consequences of a breach. Specifically, a non-compete obligation must be accompanied by equivalent compensation.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership

Brazilian property law recognises full ownership (*propriedade plena*) as the principal form, alongside lesser real rights that can be registered against a property, including usufruct, surface rights (*direito de superfície*), easements, and various leases and concessions. Ownership and real rights over immovable property must be registered with the competent notary (*Cartório de Registro de Imóveis*) in order to be effective against third parties; an unregistered transfer, however valid between the parties, does not transfer ownership under Brazilian law.

Restrictions on Foreign Ownership of Rural Land

The acquisition of rural land by foreign individuals, entities and Brazilian companies with foreign shareholdings above certain thresholds is restricted under Law 5.709/1971 and its implementing decree, which the Supreme Federal Court (*Supremo Tribunal Federal*, or STF) reaffirmed as constitutional in a 2023 decision resolving years of legal uncertainty. The regime caps the rural land such purchasers may hold, in terms of area and as a proportion of the municipality, and requires prior authorisation from the National Institute of Colonisation and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária*, or INCRA) or, in some cases, Congress above certain thresholds, including for land near international borders.

In 2026, the STF further confirmed that these restrictions extend to Brazilian companies controlled by foreign capital, closing off structures previously used to acquire rural land through domestic vehicles without INCRA authorisation. Investors should map the acquiring entity's ultimate beneficial ownership early, since the restrictions turn on the nationality of control rather than the entity's place of incorporation.

Foreign Ownership of Urban Property

Urban real estate is not subject to the general restrictions on rural land, and foreign individuals and entities may generally acquire, hold and dispose of urban property on the same terms as Brazilian nationals, subject to standard registration and tax identification (CPF or CNPJ). Specific categories of land carry their own rules regardless of nationality, including border zone land (*faixa de fronteira*), coastal lands (*terrenos de marinha*) subject to a tenure form known as *aforamento*, and indigenous or protected environmental areas, which are generally inalienable.

Additional Considerations for Non-Resident Purchasers

Non-resident purchasers must typically register with the Central Bank's foreign capital system (RDE) when remitting funds from abroad to acquire Brazilian real estate, to allow future repatriation of proceeds and ensure correct tax treatment. Non-resident owners are also subject to Brazilian property taxes (IPTU for urban, ITR for rural) and capital gains tax on disposal, and commonly appoint a local tax representative and, for individuals, obtain a CPF registration to complete the acquisition.

11.2 Commercial Real Estate Transactions

Legal Framework and Land Registration System

Commercial real estate transactions are governed principally by the Civil Code, the Public Registries Law (Law 6.015/1973) and, for leasing, the Tenancy Law (Law 8.245/1991). Brazil operates a registration-based (rather than title-based or Torrens) system: each property has its own registration record (*matrícula*) at the local real estate registry, and a chronological, continuous chain of registered transfers and encumbrances establishes and protects ownership and security interests against third parties.

Because the *matrícula* is the authoritative source of title, due diligence centres on an updated certified copy of the registration record together with certificates confirming the absence of liens, judicial claims, tax debts and litigation involving the seller, rather than on title insurance, which remains uncommon in Brazil compared with jurisdictions such as the United States.

Structuring Acquisitions and Dispositions

Commercial property can be acquired directly (asset deal, via a registered deed) or indirectly, through the acquisition of shares or quotas in the entity holding the asset (share deal), with the choice being driven mainly by tax efficiency and the buyer's willingness to assume contingent liabilities. Direct acquisitions generally limit exposure to the seller's pre-existing liabilities but trigger municipal transfer tax (ITBI), whereas share deals can defer that exposure but bring the target's full liability history.

- Due diligence typically covers registered title and chain of ownership, zoning compliance, environmental licensing history, outstanding property and municipal tax debts, and any leases, easements or third-party rights affecting the asset.
- Real estate funds (*Fundos de Investimento Imobiliário*) and other vehicles are frequently used to hold commercial assets, offering tax advantages for certain investors and facilitating exit through the sale of fund units rather than the underlying property.
- Escrow and holdback mechanisms are common to address contingencies identified in due diligence, particularly tax and environmental risks that survive as liabilities regardless of transaction structure.

Commercial Mortgage Financing and Security

Real property financing is most commonly secured by a mortgage (*hipoteca*) or, increasingly, a fiduciary transfer of ownership for security purposes (*alienação fiduciária*), which is favoured by lenders because it allows faster extrajudicial enforcement upon default. Both forms must be registered against the property's *matrícula* to be effective and establish priority, which generally follows the chronological order of registration rather than the date the agreement was signed.

Landlord and Tenant Considerations in Commercial Leases

The Tenancy Law gives commercial tenants a statutory right to renew a lease (*ação renovatória*) where cumulative requirements are met, including a written lease, a minimum aggregate term (typically five years) and at least three years running the same business at the premises – a significant factor for lease negotiations and portfolio planning. Assignment and subletting generally require landlord consent unless the lease provides otherwise, and the law sets specific remedies and notice requirements for default, non-renewal and early termination, including summary judicial eviction in defined circumstances.

Commercial leases are typically structured on a build-to-suit or triple-net basis for larger occupiers, with rent indexed to inflation (commonly IGP-M or IPCA) and subject to judicial review after three years if either party believes rent has become materially misaligned with market levels.

Recent Developments

The consumption tax reform under Constitutional Amendment 132/2023 introduces new IBS and CBS taxes that will progressively apply to the leasing of real property by recurring lessors, overlapping with the current regime over a multi-year transition from 2026. Landlords and tenants are increasingly building tax gross-up and reopener mechanisms into new leases, and the STF's 2026 decisions on foreign-controlled rural land (see **11.1 Requirements for Land Ownership**) are also prompting renewed attention to beneficial ownership structuring for real estate vehicles.

CANADA



Law and Practice

Contributed by:
Marshall Pawar, Jesse Ahuja, Rosalyn Hogg, Jennifer MacGregor-Greer, Adrienne Adams and Maggie Lee
Michael, Evrensel & Pawar LLP

Contents

1. Business Entities P.63
1.1 Business Organisations p.63
1.2 Incorporation and Ongoing Compliance p.63
1.3 Share Issuances p.63
1.4 Distributions and Return of Capital p.64
1.5 Control Person Reporting p.64

2. Corporate Governance P.64
2.1 Legal Framework p.64
2.2 Directors' Duties and Liabilities p.64
2.3 Board Composition and Independence p.65
2.4 ESG and Disclosure Obligations p.65
2.5 Conflicts of Interest and Related-Party Transactions p.66

3. Shareholder Rights and Agreements P.66
3.1 Shareholder Rights p.66
3.2 Shareholder Agreements p.67

4. Mergers and Acquisitions P.68
4.1 Legal Framework p.68

5. Capital Markets P.69
5.1 Securities Regulation and Public Offerings p.69
5.2 Continuous Disclosure p.70
5.3 Insider Trading p.70
5.4 Shareholder Disclosure p.70
5.5 Internal Controls and Whistle-Blower Regimes p.71

6. Secured Transactions P.71
6.1 Transaction Financing and Security Interests p.71

7. Commercial Contracts P.73
7.1 Contract Formation and Enforceability p.73
7.2 Termination and Remedies p.73
7.3 Intellectual Property in Commercial Transactions p.73
7.4 Consumer Protection p.74

8. Foreign Investment P.74
8.1 Competition and Merger Control p.74
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.75

9. Regulatory Compliance P.76
9.1 Privacy and Data Protection p.76
9.2 Anti-Money Laundering, Sanctions and Corruption p.77
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.77
9.4 Artificial Intelligence p.78
9.5 Other Regulatory Compliance Requirements p.78

10. Employment and Labour P.79
10.1 Employment Standards and Workplace Regulation p.79
10.2 Executive Compensation and Restrictive Covenants p.80

11. Real Property and Commercial Leasing P.80
11.1 Requirements for Land Ownership p.80
11.2 Commercial Real Estate Transactions p.81

Contributed by: Marshall Pawar, Jesse Ahuja, Rosalyn Hogg, Jennifer MacGregor-Greer, Adrienne Adams and Maggie Lee,
Michael, Evrensel & Pawar LLP

Michael, Evrensel & Pawar LLP (MEP Business Counsel) is a leading business and entertainment boutique law firm based in Vancouver, Canada. MEP's corporate, securities and finance lawyers provide a full range of services to a wide variety of public and private sector clients, both domestic and international, and manage the breadth of legal issues that arise during the course of an M&A transaction. The team is comprised of 12 accomplished M&A and entertainment lawyers with exceptional training from some of the largest law firms in the world. As well as providing full transactional services, the firm acts as experienced local Canadian counsel for international matters having a Canadian component.

Authors



Marshall Pawar is a founding partner of MEP Business Counsel. He advises clients on their corporate and commercial matters, as well as extraordinary corporate transactions. His clients range from start-ups and growth-stage companies to mature multinational enterprises, including private and public corporations, not-for-profit organisations, private equity funds, investment banks and entrepreneurs. Marshall has accumulated a wealth of international business law experience spanning a wide range of commercial issues across many industries and jurisdictions. His scope of commercial law experience spans multiple industries and disciplines, including technology, hospitality and gaming, transportation, automotive, health sciences, resources, and infrastructure.



Jesse Ahuja is a partner at MEP Business Counsel. He advises private enterprises and their investors (private equity/venture capital) with respect to mergers, acquisitions and dispositions, joint ventures, formation, restructuring, financing and strategic transactions. Jesse also advises on domestic and international commercial relationships and acts for secured lenders. Jesse's clients span a broad range of industries, including technology, manufacturing, distribution, logistics, professional services, hospitality, food and beverage, e-commerce, retail, and financial services.



Rosalyn Hogg is a partner at MEP Business Counsel. Her practice focuses on business law across a broad spectrum of industries, with a particular interest in the technology sector and emerging markets. She is experienced in the structuring and formation of private corporations, sophisticated M&A, private equity investments, corporate finance transactions, and corporate and commercial matters. Rosalyn is a trusted adviser to a varied range of clients, including professional corporations, venture capitalists, angel and strategic investors, private equity, early-stage entrepreneurs, start-ups and growth companies, not-for-profit organisations, and multinational enterprises. Rosalyn has extensive cross-border experience with international clients.



Jennifer MacGregor-Greer is senior counsel at MEP Business Counsel, advising clients on acquisitions and divestitures, joint ventures, and a broad range of corporate, partnership, commercial, and securities matters. Jennifer's clients span small start-up enterprises to sophisticated public companies in a variety of industries, not-for-profit entities, and investors. Jennifer advises on the structuring and governance of domestic and international joint ventures and represents both vendors and purchasers in the sale of businesses. Her experience includes complex corporate reorganisations, ongoing corporate governance advice, shareholder and limited partnership agreements. Her securities practice includes non-institutional financing and ongoing securities compliance, primarily for private issuers.

Contributed by: Marshall Pawar, Jesse Ahuja, Rosalyn Hogg, Jennifer MacGregor-Greer, Adrienne Adams and Maggie Lee, **Michael, Evrensel & Pawar LLP**



Adrienne Adams is an associate in the Business Law Group at MEP Business Counsel and assists clients with both the sale and acquisition of privately owned companies in a range of industries. As part of her practice, Adrienne advises clients on everyday corporate and commercial matters, including corporate restructuring, governance, commercial agreements and various shareholder matters. Adrienne assists business owners with achieving the next steps of their corporate journey, whether that is to execute a succession plan or continue their company's growth through capital raising activities or acquisitions.



Maggie Lee is an associate in the Business Law Group at MEP Business Counsel. Her practice includes advising on matters across the full business life cycle to clients in various industries, including the formation and structuring of corporate entities, capital-raising transactions, corporate governance, day-to-day commercial matters, extraordinary transactions, and acquisitions.

Michael, Evrensel & Pawar LLP

Suite 1750
1055 West Georgia St. Vancouver
B.C. V6E 3P3
PO Box 11125

Tel: 604-669-1119
Fax: 604-669-0010
Email: admin@meplaw.ca
Web: www.meplaw.ca

Contributed by: Marshall Pawar, Jesse Ahuja, Rosalyn Hogg, Jennifer MacGregor-Greer, Adrienne Adams and Maggie Lee, **Michael, Evrensel & Pawar LLP**

1. Business Entities

1.1 Business Organisations

Types of Business Organisations

Businesses may operate in Canada as limited liability corporations (referred to as "companies" or "corporations"), unlimited liability corporations (though these are not available in all Canadian jurisdictions), co-operative corporations, general partnerships, limited partnerships, limited liability partnerships, sole proprietorships, and trusts (used as holding entities for investment purposes).

Corporations may incorporate federally under the Canada Business Corporations Act (CBCA) or provincially under statutes such as the British Columbia Business Corporations Act (BCBCA) or Ontario Business Corporations Act (OBCA). Federal corporations benefit from stronger name protection than their provincial counterparts; however, once incorporated, all corporations must register extra-provincially in each province and territory in which they do business.

Choice of Business Structure

Governance rights, financial participation rights, liability management and tax considerations are the primary factors that drive the choice of structure for most businesses. For example, sole proprietors may benefit from flow-through taxation, which allows business losses to offset personal income for income tax purposes. However, sole proprietors are personally responsible for all debts and obligations of their business. By contrast, where a corporation is used, a corporate shareholder's liability is limited to their invested capital, and the corporation is taxed as a separate entity. Potential liability concerns associated with employment and ownership of assets will also influence the structure; where a corporation is used, the corporation acts as the employer and registered property owner, limiting personal liability of the business operator for associated claims.

1.2 Incorporation and Ongoing Compliance

Incorporation Requirements

While incorporation requirements vary by province, typically the first step is to reserve a name with the applicable corporate registry. If no name is desired, a corporate number, assigned by the corporate registry, may be used as the company name.

Once a name has been reserved, typically the incorporator must electronically file an incorporation application, which includes information concerning the name, registered office, directors and authorised capital structure of the company. The prescribed government filing fee varies by jurisdiction. Once filed, incorporation is quick; in British Columbia it takes effect as soon as the incorporation application is submitted, whereas federal and Ontario incorporations are typically approved within one business day.

Every corporation must have a registered and records office in its jurisdiction of incorporation. Registered and records office services are typically provided by law firms or accounting firms.

Ongoing Corporate Compliance

Corporate registries require annual reports to be filed but the information included varies between jurisdictions; required information includes the corporation's current directors, officers, registered and records office, and, in some jurisdictions, the date of the last annual general meeting of the company (which must be held each calendar year). For BC, Ontario and federal corporations, any change in directors must be filed with the corporate registry within 15 days. Shareholder information is not filed with corporate registries in most Canadian jurisdictions, but there is a requirement to maintain a register of significant individuals, as described further in **1.5 Control Person Reporting**.

1.3 Share Issuances

Creation, Issuance and Alteration of Share Capital

Equity interests in Canadian corporations are represented by the issuance of shares. At incorporation, the corporation is required to set out its intended authorised share structure, specifying the name of each class of shares, the maximum number of shares of each class issuable by the corporation, whether the shares have a par value, and whether any special rights and restrictions are attached to each class. In some Canadian jurisdictions, a corporation may have an unlimited number of shares, which, if properly structured, eliminates the need to create additional shares each time shares are required to be issued.

In most Canadian jurisdictions, shares are without par value; ie, there is no minimum price at which shares must be issued and redeemed. British Columbia, Nova Scotia, Prince Edward Island, Quebec, and Yukon allow corporations to issue shares with or without par value. Where a class of shares has a par value, shares of that class must be issued at a price equal to or greater than the par value.

Shares cannot be issued unless the corporation has received full consideration for them; this usually means that shares cannot be paid for by way of promissory note or a promise of future services.

Key Considerations in Structuring Share Classes

By statute, all shares are deemed to carry the same rights unless stated otherwise in the constating documents of the corporation. Therefore, when structuring multiple classes of shares, it is important to differentiate between them by considering the voting rights, dividend rights, liquidation preferences, and redemption and retraction rights for each class. The special rights and restrictions must be set out in the constating documents and can usually only be amended by shareholder approval.

1.4 Distributions and Return of Capital

The ability of a corporation to declare and pay a dividend, redeem shares, or repurchase shares is regulated by the laws of the jurisdiction of incorporation, the corporation's constating documents, and any applicable shareholder agreement. In most jurisdictions, the power to declare dividends, redeem and repurchase shares is held by the board of directors, but this power can be varied by way of shareholder agreement.

Typically, the ability to pay a dividend is subject to the directors of the corporation having determined that payment of the dividend will not render the corporation unable to pay its debts as they become due.

1.5 Control Person Reporting

In order to increase transparency over beneficial ownership and expose and deter criminal activity, money laundering, and tax evasion, private corporations in all Canadian jurisdictions except Alberta, Northwest Territories and Nunavut are required to maintain a register of individuals with significant control (ISC). An ISC is an individual who directly or indirectly owns or controls at least 25% of the shares of the corporation, although the specific definition varies by jurisdiction.

The requirement to maintain an ISC register is relatively new in Canada, following similar developments in various European jurisdictions. At present, most Canadian provinces and territories allow such registers to be maintained privately, such that they are only accessible to directors of the corporation and applicable government agencies. However, the federal corporate registry now maintains a publicly searchable registry in respect of federally incorporated corporations. A similar initiative is underway in British Columbia, although the implementation date is not yet known.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Canada is governed by a combination of federal and provincial corporate statutes and, for public corporations, provincial and territorial securities legislation and applicable stock exchange requirements. The applicable corporate statute generally depends on the corporation's jurisdiction of incorporation. Although securities regulation is administered provincially and territorially, most governance requirements for public corporations are substantially harmonised across Canada.

This fundamental governance framework contemplates matters such as board powers, directors' duties, conflicts of interest and shareholder remedies for corporate misdeeds. Public corporations are subject to additional securities disclosure and governance requirements, with National Policy 58-201 – Corporate Governance Guidelines and National Instrument 58-101 – Disclosure of Corporate Governance Practices providing a framework for recommended practices. Private corporations, however, have greater flexibility and are governed by their applicable corporate statute, constating documents and shareholder agreements.

2.2 Directors' Duties and Liabilities

Under Canadian corporate law, the principal fiduciary duty of directors is to act honestly and in good faith

with a view to the best interests of the corporation. This fiduciary duty includes obligations to appropriately address conflicts of interest and to avoid improperly using corporate opportunities, property or confidential information for personal benefit.

The Supreme Court of Canada set out the core legal principles applicable to directors' duties in two landmark cases, *Peoples Department Stores Inc*. (*Trustee of*) *v Wise* (*2004*) and *BCE Inc*. *v 1976 Debentureholders* (*2008*), which have been codified in the CBCA. In this regard, it is important to note that Canadian law treats director responsibilities differently than US law. Directors of a Canadian corporation owe their fiduciary duties to the corporation itself rather than to any single group such as shareholders, creditors or employees. In determining the corporation's best interests, directors may, however, consider the interests of shareholders and other stakeholders, including employees, retirees and pensioners, creditors, consumers and governments, as well as the environment and the long-term interests of the corporation. Canadian courts will generally defer to directors' business decisions where the directors have acted prudently, on a reasonably informed basis and within a range of reasonable alternatives.

Directors' standard of care is an objective standard pursuant to which directors must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Directors are generally not personally liable if a corporation incurs a loss or fails to fulfil a contract. However, directors may be held personally liable for breach of fiduciary duty/duty of care, statutory liabilities, tortious conduct, or fraud.

2.3 Board Composition and Independence

For private corporations, board composition is primarily governed by the applicable corporate statute, constating documents and any shareholder agreement. All companies require at least one director, while public companies must have at least three. Although most Canadian jurisdictions do not have director residency requirements, at least 25% of the directors of a federally incorporated corporation must be resident Canadians, or, if the corporation has fewer than four directors, then at least one must be a resident Canadian.

There is no statutory requirement for independent directors for private companies. However, federally incorporated distributing corporations are subject to diversity disclosure requirements relating to their boards and senior management, on a comply-or-explain basis.

Canadian securities laws impose additional governance guidelines for public companies, including recommendations that a majority of directors (including the chair) be independent, and that audit committees be composed of at least three members, each of whom must be independent and financially literate.

2.4 ESG and Disclosure Obligations

Canada does not currently have a mandatory ESG, sustainability or climate-related reporting regime applicable to all corporations. ESG-related obligations arise from a combination of securities laws, sector-specific regulation and laws of general application.

The Canadian Sustainability Standards Board has issued Canadian Sustainability Disclosure Standards, which are aligned with the International Sustainability Standards Board framework. These standards are voluntary and do not themselves create mandatory disclosure obligations.

Certain federally regulated financial institutions are subject to climate-related governance, risk management and disclosure requirements under the Office of the Superintendent of Financial Institutions' Guideline B-15 – Climate Risk Management. In addition, the Competition Act regulates false or misleading environmental representations and imposes requirements relevant to certain environmental benefit claims, creating potential liability in relation to "greenwashing".

Under securities law, reporting issuers must disclose material environmental, climate-related and other ESG risks in the same manner as other material information, including through their annual information forms, MD&A, financial statements and other continuous disclosure documents.

As a matter of good governance and risk management, boards should ensure that material ESG and sustainability matters are properly identified, assessed

and integrated into the corporation's overall strategy and risk-management framework.

2.5 Conflicts of Interest and Related-Party Transactions

Canadian corporate law generally requires an interested director or officer to disclose their material interests in material contracts or transactions involving the corporation. Interested directors are generally restricted from voting on the relevant matter, subject to specific statutory exceptions. Failure to comply with these requirements may affect the transaction and expose the interested director or officer to potential liability.

Public companies may also be subject to securities law requirements governing related-party transactions, including a requirement for enhanced disclosure, an independent formal valuation and/or approval by disinterested minority shareholders. Private companies generally have fewer disclosure requirements, although the applicable corporate statute, constating documents and any shareholder agreement may impose approval or procedural requirements.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder rights in Canada are set out under the corporate statute of a corporation's jurisdiction of incorporation. Although the principal corporate statutes are broadly similar across Canada, there are important differences from jurisdiction to jurisdiction. The discussion below generally describes the position under the CBCA and comparable provincial corporate statutes.

Voting Rights

Holders of voting shares generally have the right to vote on key corporate matters. Each voting share typically carries one vote at shareholder meetings. In certain circumstances, holders of otherwise non-voting shares may also have statutory voting rights. Shareholders may vote in person or by proxy. Typical matters voted on by shareholders include:

- election of directors;
- appointment of auditors or, where permitted, dispensing with appointment of auditor;
- approval of certain shareholder proposals; and
- approval of fundamental changes to the corporation.

A corporation may restrict a shareholder's right to vote on certain matters by creating classes of shares with different voting rights and restrictions.

Access to Information

Shareholders have the right to receive certain corporate information including:

- annual financial statements;
- specified corporate records including the articles, by-laws, minutes of shareholders' meetings and certain corporate registers; and
- financial disclosures for public companies.

The scope of a shareholder's access to information can also vary depending on the class of shares they hold.

Approval of Fundamental Changes

Shareholders generally have the right to approve major corporate changes and transactions. For certain fundamental changes (such as amalgamations, continuations, liquidation, dissolution and the disposition of all or substantially all the assets of the corporation), the CBCA requires approval by a special resolution of the shareholders which is typically at least two-thirds of the votes cast by voting shareholders.

In certain situations, shareholders that would normally not have voting rights due to their class of shares will have a right to vote if the fundamental change would disproportionately affect their share class.

Other Rights

Other rights may include the right to receive dividends when declared by the directors, and the right to participate in distributions of the corporation's remaining property on dissolution, again subject to the rights and priorities attaching to the corporation's share classes.

Statutory Remedies

Statutory remedies available to shareholders include the following:

- Dissent Rights: Shareholders who dissent from certain specified fundamental changes may, if they comply with the applicable statutory procedures, require the corporation to purchase their shares for their fair value.
- Oppression Remedy: This is a particularly important Canadian remedy. A "complainant" may seek relief where corporate conduct is oppressive, unfairly prejudicial to, or unfairly disregards the interests of, a security holder, creditor, director or officer. Canadian courts have broad remedial discretion, and the analysis commonly focuses on the complainant's reasonable expectations.
- Derivative Actions: Shareholders may, with leave of the court, bring or defend an action in the name and on behalf of the corporation where the corporation itself has failed to do so. Typical grounds for a derivative action include breach of fiduciary duty, conflicts of interest or fraud by its directors or officers.
- Winding-Up/Dissolution Applications: In certain situations, such as a lengthy shareholder deadlock, shareholders can apply to the court to have the corporation dissolved. Courts generally view this remedy as drastic and will typically only grant it where less severe remedies do not adequately address the issue.

3.2 Shareholder Agreements

In Canada, shareholder agreements are commonly used to supplement corporate statutory requirements and to safeguard the investments of shareholders. Shareholder agreements are especially prevalent in closely held private corporations where shareholders desire greater certainty regarding governance, ownership and exit rights.

Common shareholder agreement provisions include:

- special shareholder approvals required for fundamental changes;
- rules regarding director appointments and board composition;
- pre-emptive and anti-dilution rights with respect to the issuance of new shares;
- buy/sell mechanisms;
- dispute resolution procedures;
- processes for dealing with retirement, death and disability of shareholders;
- non-competition, non-solicitation and confidentiality provisions; and
- valuation methods.

Shareholders in private companies can also use shareholder agreements to control and restrict who can become a shareholder. Common transfer restrictions include tools such as rights of first refusal, pre-emptive purchase rights, shotgun buy-sell provisions, and tag-along and drag-along rights.

Shareholder agreements are generally recognised and enforced by courts as legally binding contracts.

Unanimous Shareholder Agreements and Provincial Considerations

Under the CBCA and certain other provincial statutes, all shareholders may enter into a unanimous shareholder agreement (USA) that restricts, in whole or part, the powers of the directors to manage or supervise the management of the corporation. To the extent that a USA transfers such powers from the directors to shareholders, the shareholders assume the corresponding rights, powers, duties and liabilities of the directors. A USA must be executed by all shareholders for it to be effective.

In contrast to the CBCA and other provincial legislation, the Business Corporations Act (British Columbia) does not recognise the statutory concept of a USA. Instead, the articles of a British Columbia company may transfer, in whole or in part, the powers of the directors to one or more other persons.

Dispute Resolution

The legal mechanisms and remedies for resolving shareholder disputes in Canada are generally described in **3.1 Shareholder Rights**. In addition, a corporation may include dispute resolution provisions in its shareholder agreement stipulating that any disputes be resolved through mediation or arbitration.

The mechanisms for solving partnership disputes depend on the partnership agreement, nature of the dispute and the applicable provincial partnership legislation. Such disputes are commonly addressed through a combination of contractual remedies, alternative dispute resolution methods and court proceedings where necessary.

4. Mergers and Acquisitions

4.1 Legal Framework

In Canada, M&A and takeover bids (the Canadian equivalent of tender offers) are governed by the following legal regimes:

- federal and provincial corporate statutes;
- provincial securities laws;
- stock exchange rules;
- the federal Competition Act which provides the Competition Bureau the power to challenge transactions that are likely to substantially lessen or prevent competition;
- the federal Investment Canada Act which governs investments in Canadian businesses by non-Canadians;
- industry-specific regulations in which the target operates, for example, sectors such as banking, insurance and transportation; and
- contract law.

Structural Considerations

The key structuring considerations for public and private M&A transactions in Canada are driven by several factors including:

- whether the target is public or private;
- whether the transaction is friendly or hostile;
- the proposed ownership percentage;
- tax implications;
- regulatory approvals;
- financing;
- minority shareholder protections;
- timing; and
- deal certainty.

The choice of structure is particularly significant in public M&A. Friendly acquisitions are commonly completed by a statutory plan of arrangement, while a takeover bid involves an offer directly to shareholders and may be used in either a negotiated or unsolicited transaction. Amalgamations and other statutory transaction structures may also be used.

- Plans of Arrangement: A plan of arrangement is the most commonly used structure for negotiated public M&A transactions because of its flexibility and ability to facilitate the acquisition of 100% of a target in a single transaction. The arrangement is governed by the corporate statute of the target's jurisdiction of incorporation and is subject to court supervision. The target first obtains an interim court order establishing procedural matters. Following the required shareholder approval, the target applies for a final court order approving the arrangement.
- Statutory Amalgamations: An amalgamation occurs when two corporations amalgamate into a single entity pursuant to the relevant corporate legislation. Amalgamations allow for the immediate combination of operations and require shareholder approval.

Private company acquisitions are typically structured as the acquisition of the shares in the target, or the acquisition of assets from the operating entity.

- Share Purchases: In a share purchase, the purchaser acquires the shares of the target from its shareholders. The target corporation continues to own its assets and remains responsible for its liabilities, with the purchaser indirectly acquiring the economic benefit and risk associated with those assets and liabilities through its ownership of the target.
- Asset Purchases: In an asset purchase, the purchaser acquires specified assets directly from the target and generally assumes only those liabilities expressly agreed to be assumed, subject to liabilities that may transfer by operation of law.

Takeover Bids

In Canada, a takeover bid is the equivalent of a tender offer and occurs when a purchaser makes an offer directly to the target's shareholders to acquire their shares. Subject to specified exemptions, the takeo-

ver bid regime generally applies where an offer would result in the bidder and its joint actors beneficially owning 20% or more of the outstanding securities of a class of voting or equity securities. Takeover bids require adequate disclosures to be made to the target's shareholders and generally include (i) a takeover bid circular setting out the conditions of the bid; and (ii) a directors' circular from the target board within 15 days after the date of the bid. Bids must be made equally to all holders of the class. A takeover bid must generally remain open for at least 105 days, though this may be shortened in certain circumstances.

More than 50% of the shares owned by persons other than the bidder and its joint actors must be tendered to the bid before the bidder can acquire any securities tendered.

Recent Developments

Recent changes to the Competition Act and the Investment Canada Act have had significant impacts on M&A practices. For more information, please see **8.1 Competition and Merger Control** and **8.2 Foreign Investment Restrictions and Sector-Specific Rules**.

Canadian courts continue to play an important role in developing M&A law, particularly in relation to directors' duties, shareholder remedies, contested transactions and the approval of plans of arrangement. Although corporate statutes differ among federal and provincial jurisdictions, Canadian courts frequently consider jurisprudence from other Canadian jurisdictions where the statutory provisions and underlying principles are similar.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework

Rather than a single national securities regulator, securities regulation in Canada is governed at the provincial/territorial level, with each jurisdiction maintaining its own securities legislation. However, the Canadian Securities Administrators (CSA) acts as an umbrella agency, co-ordinating and harmonising securities regulation across jurisdictions, while the Canadian Investment Regulatory Organization (CIRO) oversees trading activity on Canadian equity and debt marketplaces.

While securities regulation is largely harmonised, jurisdiction-specific differences remain and must be considered when offering securities in Canada.

There are several stock exchanges in Canada, with the Toronto Stock Exchange (TSX) being the most senior exchange. Stock exchange listing requirements and securities regulation operate as two overlapping layers of regulation, and a public company, as a reporting issuer, must generally comply with both. Exchange rules supplement, rather than replace, securities law.

Fundamental Securities Principles

The Canadian securities regime is based on two pillars: registration of market participants, and prospectus disclosure.

Registration requires persons who are in the business of trading in securities to register under provincial securities statutes. Registration includes educational, as well as "know your client" and ongoing compliance components. While the test for determining whether a person is "in the business of trading" is multifaceted, generally if a person is compensated for trading activity, they are deemed to be in the business of trading.

The second pillar of the securities regime is the disclosure of information to prospective investors via a prospectus. Prospectus reviews are conducted by the principal regulator of the applicable reporting issuer. There are additional, ongoing disclosure requirements which are addressed further below.

Securities offerings may be made without a prospectus where an issuer relies on a prospectus exemption. Common exemptions include:

- the accredited investor exemption, which covers certain institutional and high net worth individual investors;
- the private issuer exemption, which applies to closely held issuers that offer to a specified group of permitted purchasers;

- the family, friends and business associates exemption, which facilitates early-stage private company investments from specified individuals; and
- the offering memorandum exemption, which allows for broader capital raising subject to prescribed disclosure requirements.

For non-reporting issuers that issue securities under an available prospectus exemption, the securities may be subject to an indefinite hold period unless another prospectus exemption is available for the resale. For reporting issuers, such securities may be subject to hold period rules. Non-compliance carries significant regulatory and even criminal consequences.

5.2 Continuous Disclosure

The continuous disclosure regime applicable to reporting issuers is largely set out in National Instrument 51-102, which requires reporting issuers to provide timely and periodic disclosure, including annual and interim financial statements, management's discussion and analysis, annual information forms, business acquisition reports, information circulars, executive compensation disclosure and material contracts.

A key obligation for issuers is the timely disclosure of material changes to its business, operations or capital. When a material change occurs, the issuer must promptly disseminate a news release and file a material change report within the prescribed timeframe. Listed issuers must also comply with applicable stock exchange timely disclosure requirements. These obligations are, for the most part, harmonised under the NI 51-102 framework and exchange rules, although specific enforcement mechanisms are administered provincially.

Disclosure documents are generally filed electronically through the online SEDAR+ platform.

5.3 Insider Trading

Canadian securities law prohibits trading in securities while a person is in possession of a material fact or material change that has not been generally disclosed, and prohibits tipping such information to others. These core prohibitions are substantively harmonised across all Canadian jurisdictions.

"Reporting insiders" of reporting issuers (further discussed in **5.4 Shareholder Disclosure**) are required to file online insider reports, disclosing any changes in ownership, control, or direction over securities and related financial instruments.

Securities regulators have broad investigative and enforcement powers to address market abuse, insider trading and other securities law violations and regularly collaborate with law enforcement agencies for enforcement purposes. They may compel the production of documents and information, examine records and transactions, and conduct examinations and hearings. Regulators may issue or seek temporary orders, trading halt orders and cease-trade orders to prevent ongoing misconduct or protect investors and market integrity.

Following enforcement proceedings, regulators may impose administrative penalties, disgorgement of profits or losses avoided through misconduct, cease-trade orders, and prohibitions or restrictions on an individual's or company's participation in the capital markets. For more serious misconduct, the securities regulators may refer matters for quasi-criminal or criminal prosecution, with courts able to impose fines, imprisonment, disgorgement and restitution.

5.4 Shareholder Disclosure

In Canada, the disclosure of substantial shareholdings and changes in shareholder interests is primarily governed by the "early warning system", together with separate insider reporting requirements.

The early warning regime applies generally to persons or entities that acquire beneficial ownership of, or control or direction over, 10% or more of a class of voting or equity securities of a reporting issuer. After the initial 10% threshold has been reached, additional disclosure is required whenever the holder acquires or disposes of securities representing 2% or more of the outstanding securities of the relevant class or experiences a change in a material fact contained in its most recently filed early warning report. A report is also required when the shareholder's ownership falls below 10%, at which point the early warning reporting requirements cease unless the 10% threshold is again reached.

Failure to make a required early warning report or insider report is a contravention of applicable securities laws, for which securities regulators can bring administrative enforcement proceedings, and more serious contraventions can constitute offences under securities statutes.

5.5 Internal Controls and Whistle-Blower Regimes

Under corporate law, directors and officers have statutory duties that provide a foundation for corporate compliance. Please refer to **2.2 Directors' Duties and Liabilities**. For reporting issuers, this is supplemented by securities law, under which reporting issuers must establish and maintain disclosure procedures and internal controls over financial reporting.

Canada does not have a single, nationally applicable whistle-blower regime for securities law violations, and there is no general Canadian requirement applicable to all private companies to establish a formal whistle-blowing hotline or internal whistle-blowing programme. Several provincial securities regulators have established whistle-blower programmes through which individuals may report suspected securities law violations directly to the regulator. The programmes generally seek to encourage the reporting of misconduct by providing confidentiality and/or anonymity and protection against retaliation.

While Canada does not prescribe a single corporate governance framework that all companies must adopt for managing compliance risk, companies should assess their ownership structure, size of the business, regulatory status and applicable corporate and securities legislation to determine the appropriate framework. For reporting issuers, National Policy 58-201 – Corporate Governance Guidelines sets out guidance for corporate governance best practices, and National Instrument 58-101 – Disclosure of Corporate Governance Practices sets out disclosure requirements.

The recommendations for reporting issuers under NP 58-201 include matters such as composition of the board, position descriptions and written board mandates, ongoing education for board members, the adoption of a code of conduct, use of a nominating committee, executive compensation process, director assessments and diversity disclosure requirements. NI 58-101 adopts a "comply-or-explain" disclosure model with respect to these matters.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

In Canada, the principal laws and regulations governing secured transactions are found in provincial and territorial personal property security legislation, provincial real property law, and the federal Bank Act, Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act.

Personal Property

In all provinces and territories, except Quebec, security over personal property is primarily organised around the concept of a single, functional security interest under provincial Personal Property Security Acts (PPSAs). The Quebec equivalent is the hypothec governed by the Civil Code of Quebec.

The PPSAs apply to security interests in personal property such as equipment, inventory, receivables, bank accounts and other movable assets and generally apply to any transactions that in substance secure payment or performance of an obligation, without regard to its form and without regard to the person who has title to the collateral.

Real Property

Security over land is governed by provincial and territorial real property statutes and land title systems. Real property security is generally registered in the relevant provincial land registry or land title office, and the primary forms of real property security are:

- mortgages;
- charges; and
- assignments of rents or leases.

Bank Act Security

The Bank Act is a federal regime governing security interests in very specific types of property, and its use is limited to the banks listed in the statute's schedules.

Examples of sectors for which the Bank Act is used include:

- agriculture;
- fisheries; and
- inventory financing.

Insolvency Legislation

The federal Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act do not create security interests, but instead govern priority, enforcement and realisation rights when a debtor becomes insolvent.

Types of Security

Common types of security interests include:

- general security agreements;
- specific/fixed security interests;
- pledges;
- floating charges;
- assignments by way of security;
- mortgages;
- hypothecs (Quebec); and
- purchase-money security interests (PMSIs).

Attachment and Perfection

In Canada, a security interest must first attach to collateral before it can be perfected. Attachment occurs when (i) value is given by a secured party; (ii) the debtor has rights in the collateral; and (iii) the parties have entered into an enforceable security agreement.

Once attached, a security interest is perfected when all steps under the relevant PPSA have been completed for the specific type of perfection. Perfection may occur by way of possession of the relevant collateral, registration in the applicable provincial Personal Property Registry, or control of the collateral.

Priority

Secured interests in Canada are generally governed by the rule that the first creditor to perfect a security interest in collateral has first priority, with a few exceptions. The PPSAs expressly subordinate unperfected security interests to perfected security interests.

Enforcement

A creditor's enforcement rights are derived from the relevant PPSA and security agreement and become effective upon an event of default as defined in the specific security agreement. Upon an event of default, creditors generally have the right to seize or take possession of collateral, sell collateral, collect receivables, enforce control arrangements and/or appoint a receiver.

Acquisition Financing

Corporate acquisition financing is typically structured as a combination of senior secured debt, mezzanine debt, vendor take-back financing and/or equity contributions from the purchaser or related party. The financing and security packages are designed to ensure lenders have effective recourse to the corporation's assets while allocating priority among various creditors and generally include:

- general security agreements;
- guarantees;
- share pledges;
- real property security;
- intercreditor agreements; and
- assignments of collateral.

In acquisition financing, registration of security is critical to establish priority against third-party creditors. Prior to financing, lenders will conduct searches of security registers to identify existing encumbrances that must be discharged, subordinated or subject to intercreditor arrangements to ensure priority.

In circumstances where a corporation engages multiple creditors for an acquisition, an intercreditor agreement is put in place to address the priority ranking of security interests, enforcement standstills, payment restrictions, notice rights with respect to events of default, sharing of proceeds and rights during restructurings or insolvency proceedings.

Canada's push for greater ownership transparency with respect to the ownership of corporations and land has impacted financing practices across the provinces and territories. Please refer to **1.5 Control Person Reporting**. For more information regarding

anti-money laundering legislation, see **9.2 Anti-Money Laundering, Sanctions and Corruption**.

The transparency requirements affect financing practices as lenders now have enhanced due diligence requirements with respect to client identification and verification, ownership structures and anti-money laundering compliance. Lenders must also keep detailed records regarding their due diligence efforts and must submit reports to FINTRAC in certain specified circumstances. These new obligations increase compliance costs and administrative responsibilities for lenders in Canada.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

As a general rule, a corporation has the capacity to enter into contracts with any other person. The essential requirements to form a legally binding contract are offer and acceptance, consideration having been given, certainty of the essential terms of the contract, and an intention to create legal relations.

While a contract generally need not be in writing, certain specific types of contracts, such as those dealing with real property, must be documented in writing in order to be binding under Canadian law.

Contractual interpretation starts with reading the plain language of the contract. The text is then read with reference to the factual matrix and commercial reasonableness. The factual matrix refers to the surrounding context that sheds light on the parties' intentions, although it cannot override the contract's clear wording. The principle of commercial reasonableness avoids interpretations that are inconsistent with business common sense.

A contract may be found invalid where the essential requirements of formation are missing, where a contract was entered into under mistake, or where a significant imbalance in bargaining power gives rise to the doctrine of unconscionability.

7.2 Termination and Remedies

The primary remedy for breach of contract in Canada is damages. Expectation damages place the injured party in the position it would have been in had the contract been performed. Where the injured party has changed its position in reliance on the contract, reliance damages place the injured party in the position it would have been in had it never entered into the contract.

Where damages would be an inadequate remedy for a breach of contract, a court may order equitable remedies such as specific performance and an injunction.

A contract may be terminated:

- by mutual agreement of the parties;
- in accordance with its termination clause, which may allow one party to terminate by giving notice to the other; or
- by way of repudiation, in which case the innocent party may choose to accept the repudiation, in which case the contract is terminated, or to not accept it, in which case the contract continues.

A contract may also be terminated where it becomes impossible to perform. This can occur either due to the occurrence of force majeure, or due to frustration, a common law doctrine that arises where an unforeseen and radical change in circumstances renders performance impossible.

7.3 Intellectual Property in Commercial Transactions

Patents, trade marks, and copyright are governed by federal legislation. Trade secrets, confidential information, and know-how have no legislative regime and are instead protected contractually. As best practice, all intellectual property assignments and licences should be in writing and, where applicable, registered with the Canadian Intellectual Property Office.

Under the Copyright Act, copyright created in the course of employment is owned by the employer, and joint authors own the work equally. However, ownership of patents, trade marks and trade secrets created in commercial relationships is governed by common law rather than statute. The best practice

for any commercial relationship is to include express intellectual property assignment provisions in the governing agreement.

In *Re Thaler*, 2025 CACP 8, the Patent Appeal Board held that an AI system could not be recognised as an "inventor" under Canadian patent law and that only humans could be inventors. Ownership of AI-generated content remains an area of law that continues to be under development and is being closely monitored.

Remedies for infringement of patents, trade marks, and copyright are provided for in the applicable legislative framework and could include injunctions, damages, an accounting of profits, and, in the case of trade mark infringement, destruction of offending goods, packaging, labels and advertising material.

7.4 Consumer Protection

Federal statutes governing consumer protection include:

- the Canada Consumer Product Safety Act, regulating consumer product safety;
- the Competition Act, regulating anti-competitive practices;
- the Consumer Packaging and Labelling Act, regulating packaged consumer products;
- the Motor Vehicle Safety Act, regulating the manufacturing and importation of motor vehicles and equipment; and
- the Food and Drugs Act, establishing standards for food quality.

All provinces and territories have enacted consumer protection legislation governing consumer contracts. Because requirements vary by jurisdiction, the discussion below focuses on Ontario, British Columbia, and Alberta.

Cooling-Off Periods

Ontario, BC, and Alberta consumer protection legislation provide identical ten-day cooling-off periods for direct sales, letting consumers cancel without reason within ten days of receiving a written copy of the contract. Each jurisdiction extends this to one year if the contract fails to meet statutory requirements or omits required information.

For distance sales, BC provides a 30-day cancellation period if certain statutory requirements are not met. Alberta provides a ten-day cooling-off period, letting consumers cancel without reason, and a one-year extended cancellation right in certain circumstances.

Unfair Practices

Unfair practices are defined somewhat differently across Canadian jurisdictions, but generally include deceptive and unconscionable representations, exerting undue pressure, taking advantage of a consumer's inability to understand the transaction, and using exaggeration or ambiguity about material facts.

Disclosure Requirements

Across all jurisdictions, consumer protection legislation generally requires suppliers to disclose information in a clear, comprehensible and prominent manner.

Enforcement of Consumer Protection

The Competition Act provides both criminal and civil remedies for misleading advertising, which could include administrative penalties of up to CAD15,000,000 and imprisonment for up to 14 years.

Provincial regulators, such as Consumer Protection Ontario, Consumer Protection BC, and Service Alberta supervise consumer protection legislation and receive consumer complaints.

8. Foreign Investment

8.1 Competition and Merger Control

The federal Competition Act governs merger review and pre-merger notifications, and is administered and enforced by the Competition Bureau.

Pre-Merger Notification

A transaction will generally require a pre-merger notification where both of the following financial thresholds are met:

- Transaction-Size Threshold: The value of the target's assets in Canada, or revenues from sales in, from, or into Canada generated from those assets exceed CAD93 million.

- Party-Size Threshold: The combined assets in Canada or revenues from sales in, from, or into Canada generated from those assets of the parties to the transaction and their affiliates exceed CAD400 million.

A share acquisition will generally require a pre-merger notification where the acquiror, together with their affiliates, would acquire:

- in the case of a public corporation, more than 20% of the voting shares, or, where more than 20% is already owned, acquisition of more than 50% of the voting shares; or
- in the case of a private corporation, more than 35% of the voting shares, or, where more than 35% is already owned, acquisition of 50% or more of the voting shares.

Once a complete pre-merger notification is filed, an initial 30-day waiting period is triggered. If the Competition Bureau requests a Supplementary Information Request (SIR), a second 30-day waiting period is triggered once the SIR is complied with.

The Competition Bureau assesses whether the transaction is likely to substantially prevent or lessen competition in a relevant Canadian market. Relevant factors include the level of economic concentration in the relevant industry, the parties' respective market shares, the conditions and barriers affecting entry into the market, and the transaction's anticipated anti-competitive effects.

Failing to supply information required by the pre-merger notification provisions, without "good and sufficient cause", constitutes an offence and may result in a fine. Additionally, if the parties close a notifiable transaction before the waiting period expires, civil consequences include dissolution of the merger, disposition of assets or shares, or administrative monetary penalties.

Anti-Competitive Conduct

Under the Competition Act, certain forms of anti-competitive conduct constitute criminal offences punishable by up to 14 years' imprisonment or a fine in the discretion of the court, or both.

The Competition Act also authorises the Competition Tribunal to order administrative monetary penalties for anti-competitive conduct. Penalties for an initial order can be up to the greater of CAD25,000,000 (CAD35,000,000 for subsequent orders) and three times the value of the anti-competitive practice derived, or where that amount cannot reasonably be determined, 3% of the person's annual worldwide gross revenues.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign Investment Review

Both the acquisition of control of a Canadian business and establishment of a new Canadian business by a non-Canadian are subject to the Investment Canada Act (ICA) and require, at a minimum, notification under the ICA. A non-Canadian is defined as a person who is not a Canadian citizen or a permanent resident, and includes any entity that is not Canadian controlled.

Net Benefit Review

An acquisition of control of an existing Canadian business by a non-Canadian may require an Application for Review where the target's enterprise value exceeds the applicable threshold. In 2026, the thresholds are:

- CAD2.179 billion for private-sector trade-agreement investments; and
- CAD1.452 billion for private-sector WTO investments.

Different thresholds apply if the Canadian business is a cultural business. In such a case, the threshold is generally CAD5,000,000 in book value for direct investments and CAD50,000,000 in book value for indirect investments. A cultural business is an enterprise involved in activities such as:

- publishing, distributing, or selling books, magazines, periodicals, or newspapers;
- producing, distributing, selling, or exhibiting film, video, or audio music recordings; or
- radio communications, broadcasting, and satellite programming services.

There is no associated filing fee for the application.

An Application for Review must be submitted before the transaction completes. Once submitted, a waiting period of 45 days is triggered while the Minister of Innovation, Science and Economic Development assesses whether the proposed investment will provide a "net benefit" to Canada.

If the Minister ultimately determines that an investment is not likely to be of net benefit to Canada, the investor will be notified that the investment cannot proceed, or, if already implemented, the investor must divest itself of control.

National Security Review

The national security review regime operates separately from the net benefit review process. The regime applies to any direct or indirect investment by a non-Canadian that raises national security concerns, irrespective of the investment's monetary value or an acquisition of control. If an investment is found to be harmful to national security, the federal government may prohibit the transaction, authorise it subject to conditions, or order divestiture.

Foreign Ownership Restrictions in Certain Industries

Canada restricts ownership in specific industries, such as:

- Telecommunications: Carriers are generally required to be incorporated in Canada. At least 80% of the directors must be Canadians, and 80% of the voting interest must be Canadian-owned.
- Broadcasting: The Canadian broadcasting system must be effectively owned and controlled by Canadians.
- Air Transportation: To qualify for an air service licence, a corporation must satisfy Canadian ownership and control requirements, and no single non-Canadian can own or control, directly or indirectly, more than 25% of the voting interest of the business. Similar Canadian control requirements apply to Canadian air carriers.
- Residential Real Estate: Non-Canadians are generally prohibited from purchasing certain residential property until 1 January 2027.

Productivity Mega Deduction

On 15 September 2026, Prime Minister Mark Carney announced the Productivity Mega Deduction, which will allow businesses to immediately claim a capital cost allowance deduction for 100% of the cost of eligible new investments. The prime minister announced that "Canada's marginal effective tax rate on new business investment will fall from roughly 13% to 6.4% – the lowest of any major economy in the world and less than half the rate in the United States" and that qualifying assets include "fibre-optic cable, mining property, oil and gas pipelines, software, research and development, computer equipment, aircraft and vehicles, patents, rail track, bridges, and roads".

9. Regulatory Compliance

9.1 Privacy and Data Protection

Canada's privacy and data protection framework includes several federal and provincial statutes that may apply based on the type of entity handling the information, where the organisation operates, whether it is federally regulated, what type of information is involved, and whether the information crosses provincial or national borders.

The federal Privacy Act governs how federal government institutions collect, use, disclose, retain and provide access to personal information and provides individuals with a right to access that information.

The Personal Information Protection and Electronic Documents Act (Canada) (PIPEDA) is the primary federal privacy law applicable to the private sector. It regulates how organisations collect, use and disclose personal information in the course of commercial activities. However, where a province has enacted privacy legislation that is substantially similar to PIPEDA, and the personal information remains within that province without crossing provincial or national borders, the provincial law governs. Currently, Alberta, British Columbia and Quebec have enacted provincial privacy legislation that is recognised as substantially similar to PIPEDA.

In Canada, health information is a heavily regulated sector, and Ontario, New Brunswick, Nova Scotia and

Newfoundland and Labrador have all enacted health privacy statutes that apply to hospitals, physicians and other health information custodians. Financial institutions and telecommunication providers also face additional sector-specific privacy regulations.

PIPEDA contains key obligations with respect to the handling of personal information, including that the organisation must obtain meaningful consent to information collection and handling, collect only the necessary personal information for the intended purpose, retain the information only as long as needed, and protect the information through appropriate safeguards.

PIPEDA requires organisations to notify affected individuals and the Office of the Privacy Commissioner of Canada when a data breach creates a real risk of significant harm.

9.2 Anti-Money Laundering, Sanctions and Corruption

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) governs Canada's anti-money laundering and anti-terrorist financing (AML/ATF) framework. The PCMLTFA applies to a broad range of reporting entities in Canada, including financial institutions, money services businesses, securities dealers, mortgage sector participants, real estate professionals, casinos, dealers in precious metals and precious stones, certain accountants and notaries, title insurers, and other prescribed businesses and professionals.

Canada's primary sanctions legislation includes the Special Economic Measures Act, the United Nations Act and the Justice for Victims of Corrupt Foreign Officials Act, which authorise the government to impose economic sanctions on foreign states, individuals and entities.

The Export and Import Permits Act governs the export and import of goods in Canada.

These statutes apply to all businesses with a nexus to Canada, and depending on the applicable regulations, businesses may be prohibited from:

- business dealings with designated persons;
- facilitating prohibited transactions;
- providing certain financial services; and
- engaging in specific imports, exports and investments involving sanctioned jurisdictions.

Businesses are expected to maintain risk-based controls and conduct appropriate due diligence to ensure compliance with the above-noted legislation, including by screening customers, classifying goods prior to shipping, obtaining permits where required and providing voluntary disclosure when a violation is discovered. Penalties for non-compliance may result in criminal prosecution, including fines and/or imprisonment.

The Corruption of Foreign Public Officials Act and the Criminal Code of Canada govern Canada's anti-corruption and anti-bribery framework. Businesses with a nexus to Canada are expected to implement compliance programmes to prevent, detect and respond to bribery and corruption risks. Effective programmes generally include the following:

- written policies and procedures;
- accountability for compliance performance;
- country-based risk assessments;
- due diligence on third parties;
- financial controls;
- internal training; and
- reporting and investigations.

Regulators focus on the detection, prevention and enforcement of anti-money laundering, sanctions and corruption legislation through regulatory supervision, the exchange of information with international partners, providing training and outreach to organisations, reviewing transactions to identify risks, and strengthening civil and criminal penalties.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulation

The environmental regulatory regime in Canada is divided between federal, provincial and territorial governments, with municipalities also playing a role in land use and local permitting. Major projects may require federal or provincial environmental or impact

assessments, as well as approval by local First Nations governments.

Provincial environmental legislation generally imposes broad liability for contaminated sites. Current and former owners, operators and other parties may potentially be responsible for investigation and remediation costs, often regardless of fault.

Companies may face multiple climate-related and environmental compliance risks, including regulatory enforcement for breaches of environmental legislation, civil claims relating to contamination or pollution or regulatory scrutiny relating to environmental and sustainability disclosure.

Health and Safety

The Canada Labour Code is the primary federal legislation governing employment and workplace standards for federally regulated employers and industries such as telecommunications, airlines and railways. Most employers in Canada, however, are subject to the applicable provincial or territorial employment and occupational health and safety regime. There are a number of health and safety obligations that can apply to employers, including obligations to provide appropriate training, supervision, and protective equipment to employees and establishing workplace safety policies and procedures.

Licensing and Permitting Requirements

Licensing and permitting requirements will vary depending on the business, industry and location. Some common requirements include municipal business licences and zoning approvals, import/export licences, or environmental permits and operating approvals. Certain industries are subject to extensive regulatory oversight, such as the energy sector, which may require federal, provincial and local approvals, the financial sector, which is provincially regulated, or pharmaceutical businesses, which may require federal licences and approvals relating to drugs, medical devices, manufacturing and distribution.

9.4 Artificial Intelligence

Following the prorogation of the federal Digital Charter Implementation Act in January 2025, including the Artificial Intelligence and Data Act, Canada does not currently have legislation specifically regulating artificial intelligence.

For private-sector organisations, AI regulation is governed by existing legal frameworks, including those relating to privacy and human rights. In 2023, the federal government developed the Voluntary Code of Conduct on Advanced Generative AI Systems (the "Code") to help organisations manage AI-related risks. The Code is built on six principles: safety, accountability, transparency, fairness and equity, human oversight and monitoring, and validity and robustness.

In 2025, the Implementation Guide for Managers of Artificial Intelligence Systems (the "Guide") was published to support implementation of the Code. Under the Guide, managers of AI systems are encouraged to, among other guidelines:

- promote transparency by clearly labelling as AI any system that could be mistaken for a human;
- promote safety by conducting comprehensive risk assessments and involving diverse stakeholders, and evaluating risks such as bias and data protection; and
- promote accountability by implementing policies and training procedures to ensure personnel understand their responsibilities and risk-management obligations.

To be clear, the Code and Guide represent a voluntary best practices framework and, at present, do not carry the force of law.

9.5 Other Regulatory Compliance Requirements

Multiple regulatory compliance regimes apply to businesses across Canada, and are dependent upon the nature and size of the business, its activities, and factors such as its environmental impact and whether or not it is a public company. Please refer to:

- **5 Capital Markets**;
- **7.4 Consumer Protection**;
- **8 Foreign Investment**; and
- **10 Employment and Labour**.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

In Canada, employment and labour law varies among federal and provincial/territorial jurisdictions. The Canada Labour Code governs all federally regulated employers such as banks, broadcasting, postal services and federal Crown corporations. Provincially/territorially regulated employers are governed by the employment standards legislation of the province or territory in which they operate and in which their employees are located.

Key Elements

The key elements of Canadian employment and labour laws are as follows:

- employment standards, which cover the minimum wage, hours of work, overtime pay, vacation time, leaves of absence, termination and severance notice requirements, statutory holidays and record-keeping obligations;
- human rights legislation, which prohibits discrimination in employment based on protected grounds such as race, sex, age, disability and religion;
- occupational health and safety statutes, which detail employer health and safety duties;
- workers' compensation schemes, which provide no-fault benefits for workplace injuries and illnesses;
- labour relations and collective bargaining legislation, which govern matters specific to unions;
- the common law of employment in all provinces, except Quebec, pursuant to which courts imply a duty of "reasonable notice" of termination, unless validly limited by a written contract; in Quebec, the Civil Code of Quebec concept of good faith and reasonable notice applies;
- privacy legislation with respect to the collection, use, disclosure and safeguarding of employee personal information;
- pay equity and employment equity legislation requiring equal pay for work of equal value; and
- immigration and temporary foreign worker legislation that governs the hiring of foreign workers.

Termination of Employment

The key legal considerations for employers with respect to termination of employment are as follows:

- Statutory Notice and Severance Requirements: Generally, employers must provide advance written notice of termination or pay in lieu of notice or a combination of both. The length of the notice period generally depends on the employee's length of service. An employment agreement that provides less than the applicable minimum statutory standard for notice may be found unenforceable.
- Termination for Cause: An employer may terminate employment without notice only where it can establish just cause. Termination for cause requires egregious misconduct. Such termination can often lead to litigation and therefore employers are strongly encouraged to obtain legal advice prior to the termination for cause.
- Wrongful Dismissal: Wrongful dismissal claims in Canada primarily arise when an employer terminates an employee without providing the employee's full legal entitlement to notice or compensation or when an employer terminates for cause but cannot substantiate the claim. Issues may also arise where the facts show the true reason for termination is one that is unlawful, despite a different lawful reason being provided at termination.
- Constructive Dismissal: Constructive dismissal occurs when an employer unilaterally makes a fundamental change to a term of employment, causing an employee to resign. Constructive dismissal can also arise from workplace conduct permitted or created by employers such as harassment, bullying and discrimination.
- Duty of Good Faith in Termination: In Canada, employers owe a duty of good faith and fair dealing to employees with respect to termination. When terminating employees, employers must be truthful, candid, preserve employee dignity, be respectful and avoid misleading statements.
- Mass Terminations: Several jurisdictions in Canada impose additional obligations on employers when terminating multiple employees within a specified time period which may include enhanced notice requirements and employee representative notification requirements.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

In Canada, executive compensation arrangements are generally structured to attract and retain talent, align with shareholder interests, provide tax efficiencies and meet corporate governance requirements. Key considerations include the following:

- Compensation Structure: An executive compensation arrangement typically includes a combination of:
  (a) base salary;
  (b) short-term incentives;
  (c) long-term incentives;
  (d) retirement and pension plans;
  (e) benefits; and
  (f) termination and severance entitlement.
- Equity Incentive Plans: Common forms of equity awards include stock options, restricted share units (RSUs), performance share units (PSUs) and deferred share units (DSUs). For equity incentives, employers must consider several factors including vesting schedules, performance metrics, limits on dilution and clawback provisions.
- Change of Control Provisions: Executive compensation arrangements generally include change of control provisions to retain key personnel during acquisitions, provide certainty for executives following a transaction, reduce potential conflicts and clearly set out severance rights.
- Tax Implications: Tax considerations are a primary driver of the structure of executive compensation, for both the employee and the employer, including:
  (a) the taxable employment benefit upon the exercise of stock options;
  (b) the triggering of forfeiture of restricted stock in certain circumstances;
  (c) the design of RSUs, PSUs and DSUs to avoid salary deferral arrangement rules; and
  (d) cross-border tax issues for multinational corporations.

Enforceability of Restrictive Covenants

In Canada, non-competition and non-solicitation covenants are treated as restraints of trade and therefore carefully scrutinised by courts. The enforceability of these restrictive covenants is dependent on whether they arise in employment agreements, which are subject to greater judicial scrutiny, or in commercial contracts, such as the sale of a business, which are more likely to be upheld. Courts will only enforce what is legitimately necessary to protect the business.

In Ontario, employers are prohibited from entering into employment agreements that include non-competition clauses. However, this prohibition does not apply to executive employment agreements. Further, in May 2026, a federal bill was introduced to amend the Canadian Labour Code, which, if passed, would also prohibit non-competition clauses for certain federal employees.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

In Canada, land ownership is primarily governed by provincial and territorial law, with the result that specific rules vary by jurisdiction. Canada generally uses an electronic land title (Torrens-style) registration system, under which a government-maintained land registry records the ownership of and registered interests in real property. However, some jurisdictions historically used a registry or “deed registration” system based on recording instruments and tracing the chain of title rather than registering an indefeasible title, and these registry lands may still exist.

First Nations lands are subject to separate federal land-registration regimes, dependent upon the location of the real property and the particular First Nation’s self-governing status. These registries are maintained federally.

Interests in Real Property

Fee simple title is the most common form of real property ownership. The registered owner of land generally has the right to possess, use, lease, sell and transfer the property, subject to applicable laws, registered interests, easements and other restrictions.

A person may also have a leasehold interest in land. This enables the holder to possess and use land for

a specified period under a lease, while the underlying title remains with the landlord or lessor.

A significant proportion of Canadian land is owned by the federal or provincial/territorial Crown rather than private parties. Crown land can be subject to leases, licences, permits and other rights granted to private parties without transferring fee-simple ownership.

Indigenous peoples in Canada may hold title to lands based on historic occupation and use, as recognised under Section 35 of the Constitution Act, 1982. The Canadian legal system recognises Aboriginal title as a unique collective right to the use of and jurisdiction over a group's ancestral territories. The Crown has a duty to consult and, where appropriate, accommodate First Nations groups when proposed government action may adversely affect asserted or established Aboriginal or treaty rights.

Foreign Ownership of Real Property

There is no general Canadian prohibition on foreign ownership of commercial, industrial or most other non-residential real estate. A foreign corporation may generally hold Canadian real property directly or through a Canadian subsidiary, subject to applicable provincial registration, tax and regulatory requirements. However, the Prohibition on the Purchase of Residential Property by Non-Canadians Act, in effect until 1 January 2027, prohibits "non-Canadians" from purchasing residential property, subject to certain exceptions.

Provincial and territorial legislation, including in Ontario and British Columbia, can impose additional restrictions, taxes and registration requirements on foreign purchasers. Alberta restricts foreign ownership of certain rural land under its Foreign Ownership of Land Regulations.

11.2 Commercial Real Estate Transactions

Please refer to **11.1 Requirements for Land Ownership** for a summary of the legal framework relating to real property in Canada.

Principal Considerations

The principal considerations in structuring an acquisition or disposition of commercial real property include the form of transaction, land title and survey matters, physical and environmental condition of the property, financing, tax, zoning and development restrictions, and allocation of liabilities between the parties.

Typical real estate due diligence includes real property surveys, review of existing leases, an environmental site assessment, confirmation of property taxes, and review of existing property insurance. Title insurance is widely used in Canadian commercial real estate transactions to manage risks associated with title defects.

Depending on the location and past use of real property, an environmental review is particularly important as the purchaser of a contaminated site can be liable for third-party claims arising from such contamination, as well as remediation of the land, even if the purchaser did not own the property at the time the contamination occurred.

Commercial Mortgage Financing

In addition to general due diligence matters, which in a financing will mirror the due diligence performed by the purchaser itself, key issues in commercial mortgage financing include:

- the creation and perfection of the lender's security,
- priority over competing interests, and
- the lender's enforcement rights following a default.

A lender will generally take a registered mortgage or charge over the borrower's interest in the real property, registered in the applicable provincial or territorial land registry.

Priority is generally determined by the applicable land registration and secured transactions legislation, and will depend on the order of registration (with first priority generally given to the first to file), statutory priority rules and the terms of intercreditor or subordination agreements.

In the event of borrower default, the lender's remedies depend on applicable provincial law and the contractual mortgage terms, but may include the lender's power of sale, judicial sale, foreclosure, appointment

of a receiver and enforcement of related personal property security.

Commercial Leases

Commercial leases are typically structured as triple net leases, in which the tenant bears the economic burden of the property's principal operating expenses in addition to base rent. Such operating expenses typically include property taxes, insurance and maintenance/operating costs, as well as, in many cases, management fees.

Key features of commercial leases include:

- term of the lease as well as any rights of the tenant to renewal or extension;
- tenant's possession date of the property;
- any obligations of the landlord and tenant with respect to renovations of the property;
- amount and payment terms of base rent, including whether any free rent periods apply;
- a detailed description of additional rent;
- the tenant's rights and obligations with respect to any common areas of the property;
- the tenant's permitted use of the premises;
- the maintenance and repair obligations of each party;
- the impact of damage or destruction of the real property in whole or in part;
- provisions governing assignment or subletting of the property; and
- events that will give rise to a default, and the landlord's rights of termination arising from such a default.

Tenants may also negotiate options to renew, expansion rights, rights of first refusal or rights of first offer in respect of additional premises or a future sale of the property.

Commercial leases commonly prohibit assignment or subletting without the landlord's prior written consent. The lease should address when consent is required, the circumstances in which it may be withheld, conditions imposed on an assignment, continuing liability of the original tenant and whether a change of control of the tenant is deemed to constitute an assignment.

Common landlord remedies on tenant default include re-entry and termination of the lease, recovery of unpaid rent and damages, enforcement of security or guarantees, and, where available, distress. Where a landlord wishes to make use of the distress remedy, care should be taken to strictly comply with statutory requirements since courts have found failures to comply with procedural requirements to invalidate the intended remedy.

First Nations Rights

Recognition of First Nations land rights and the substantive involvement of First Nations in land-use and development decisions have become increasingly important considerations in commercial real estate transactions. Depending on the location and circumstances, proposed real property development and other activities on land may be affected by Aboriginal or treaty rights, asserted or established First Nations title, and the Crown's duty to consult and, where appropriate, accommodate First Nations groups.

Trends and Developments

Contributed by:
Marshall Pawar, Jesse Ahuja, Rosalyn Hogg and Jennifer MacGregor-Greer
Michael, Evrensel & Pawar LLP

Michael, Evrensel & Pawar LLP (MEP Business Counsel) is a leading business and entertainment boutique law firm based in Vancouver, Canada. MEP's corporate, securities and finance lawyers provide a full range of services to a wide variety of public and private sector clients, both domestic and international, and manage the breadth of legal issues that arise during the course of an M&A transaction. The team is comprised of 12 accomplished M&A and entertainment lawyers with exceptional training from some of the largest law firms in the world. As well as providing full transactional services, the firm acts as experienced local Canadian counsel for international matters having a Canadian component.

Authors



Marshall Pawar is a founding partner of MEP Business Counsel. He advises clients on their corporate and commercial matters, as well as extraordinary corporate transactions. His clients range from start-ups and growth-stage companies to mature multinational enterprises, including private and public corporations, not-for-profit organisations, private equity funds, investment banks and entrepreneurs. Marshall has accumulated a wealth of international business law experience spanning a wide range of commercial issues across many industries and jurisdictions. His scope of commercial law experience spans multiple industries and disciplines, including technology, hospitality and gaming, transportation, automotive, health sciences, resources, and infrastructure.



Jesse Ahuja is a partner at MEP Business Counsel. He advises private enterprises and their investors (private equity/venture capital) with respect to mergers, acquisitions and dispositions, joint ventures, formation, restructuring, financing and strategic transactions. Jesse also advises on domestic and international commercial relationships and acts for secured lenders. Jesse's clients span a broad range of industries, including technology, manufacturing, distribution, logistics, professional services, hospitality, food and beverage, e-commerce, retail, and financial services.



Rosalyn Hogg is a partner at MEP Business Counsel. Her practice focuses on business law across a broad spectrum of industries, with a particular interest in the technology sector and emerging markets. She is experienced in the structuring and formation of private corporations, sophisticated M&A, private equity investments, corporate finance transactions, and corporate and commercial matters. Rosalyn is a trusted adviser to a varied range of clients, including professional corporations, venture capitalists, angel and strategic investors, private equity, early-stage entrepreneurs, start-ups and growth companies, not-for-profit organisations, and multinational enterprises. Rosalyn has extensive cross-border experience with international clients.



Jennifer MacGregor-Greer is senior counsel at MEP Business Counsel, advising clients on acquisitions and divestitures, joint ventures, and a broad range of corporate, partnership, commercial, and securities matters. Jennifer's clients span small start-up enterprises to sophisticated public companies in a variety of industries, not-for-profit entities, and investors. Jennifer advises on the structuring and governance of domestic and international joint ventures and represents both vendors and purchasers in the sale of businesses. Her experience includes complex corporate reorganisations, ongoing corporate governance advice, shareholder and limited partnership agreements. Her securities practice includes non-institutional financing and ongoing securities compliance, primarily for private issuers.

Michael, Evrensel & Pawar LLP

Suite 1750
1055 West Georgia St. Vancouver
B.C. V6E 3P3
PO Box 11125

Tel: 604-669-1119
Fax: 604-669-0010
Email: admin@meplaw.ca
Web: www.meplaw.ca

As a sophisticated global economy, Canada is not immune to the developments and pressures that exist in the broader global marketplace. As corporate, commercial and mergers and acquisitions counsel, we see the effects of these influences in every transaction.

Implementation and Effect of Artificial Intelligence Tools

As in many other jurisdictions worldwide, arguably the most significant recent development in Canadian corporate and commercial law relates to the ongoing development and increasing prevalence of artificial intelligence tools. While opinion differs on whether such tools are beneficial or detrimental as a whole, it cannot be denied that they are ubiquitous and will be a transformative technology on a scale that we can only imagine.

In the commercial contracting realm, AI is already affecting both the form and substance of agreements. We are seeing heightened sensitivity to contractual elements addressing issues around intellectual property ownership and use of data. It has become critical to know, early in the corporate transaction process, exactly how a contracting business uses AI in its operations, and to draft operative agreements accordingly. This could mean including covenants to ensure that proprietary information or personal data is not uploaded to generative AI, and that AI agents are not trained on confidential information.

Concerns as to the use of AI by a business extend to how due diligence is conducted in commercial transactions – although it has become standard to involve AI agents in due diligence exercises, contracting parties often require assurance that their due diligence materials containing proprietary information are not uploaded to AI agents, or, if they are, that such AI agents do not have the ability to "remember" such information (and are not trained on it) following completion of the exercise. Commercial due diligence itself now includes reviews of intellectual property ownership (specifically as it relates to whether the relevant IP has either been derived from or uploaded to AI tools), cybersecurity protocols, the existence and accuracy of AI-generated content, and compliance with applicable privacy laws, in part to address such concerns.

In the commercial context, we are also seeing AI-drafted documents produced by clients and other contracting parties, often in an effort to reduce legal costs. We find these are virtually always insufficient to protect our clients' interests, and, in some cases, actually violate applicable laws such that they would be unenforceable. While we understand the desire to increase efficiency by using AI agents, we find that the current models are unreliable and, at best, only lead to frustration on the part of both lawyer and client, and, ultimately, higher costs to the client. For the time being, therefore, we do not recommend the use of AI-generated legal documents except for the most mundane matters.

Likewise, we are increasingly seeing AI-generated comments provided by clients on lawyer-produced documents. While sometimes these comments are surprisingly insightful, more often they are unnecessary or even incorrect, again leading to inefficiencies

(with some irony given the original intent behind the use of AI to generate comments) and higher costs for the client.

On a more practical level, Canada's rich renewable resources and temperate climate have led many tech businesses to view Canada as a suitable location for AI data centres. However, given the uncertainties around the environmental impacts of such businesses and the fact that the proposed locations for such businesses are often communities where ongoing employment opportunities are needed, we recommend that potential investors carefully investigate before proceeding to ensure that local support is in place, including substantive support by local First Nations governments.

Finally, similarly to many other legal professionals, we continue to consider how the ongoing use of AI tools is likely to impact fee structures for legal services. Law firms are, or will soon be, investing significant amounts in AI tools to aid in efficiency, driven by client demand. At the same time, use of AI tools by legal professionals may result in fewer billable hours, which are historically the fundamental unit upon which legal services fees are based. Consequently, legal service providers may need to consider either revising their hourly rates or moving to project-based billing models, which could result in the final demise of the long-standing billable hour model.

Cybersecurity and Data Sovereignty

The use of AI by many Canadian businesses highlights the increased sensitivity we have observed around cybersecurity and data sovereignty, which again has influenced transaction analysis and negotiation.

Use of AI by a business can impact its data sovereignty due to the risk that its data will be stored on non-Canadian servers. Currently, AI use in the private sector is unregulated within Canada, and there is no prohibition against the movement of personal data across borders. However, given the ability of US authorities to require the disclosure of data controlled by a US business, regardless of where the data physically resides, many Canadian businesses are now choosing to require that their data is stored on servers owned and controlled by Canadian entities, which has an impact on the service providers they choose to engage with. Bill C-36, introduced in June 2026, is designed to strengthen privacy requirements with respect to the transfer of personal information outside of Canada. If implemented, it would be a significant step in addressing this risk specifically with respect to personal data.

The new prevalence of AI has also highlighted other cybersecurity risks, ranging from use of proprietary information in training large language models, to ransomware risks and data breaches. As a result, cybersecurity is a concern across all industries, and businesses are now expected to have robust incident response plans, be engaged in active monitoring of third-party risks, and, in the M&A context, ensure that appropriate cybersecurity due diligence is conducted. Board-level oversight of such matters is now a general expectation. This means not only that businesses should implement corporate policies relating to cybersecurity, but also that such policies must be robust, appropriately implemented and consistently enforced.

With respect specifically to the security of personal information, the collection and use of such information by private sector organisations is governed by federal and provincial statutes. Businesses need to be able to explain what data they hold, how it is stored and secured, and how it is used. In particular, Canadian statutes require meaningful user consent to the use of data, which means that user agreement must be obtained before data is collected, and the data collected must be used only for the stated purposes. It is also critical that organisations that collect personal data have privacy policies that are easy to find and understand. The ability of AI to access personal information adds a new element to this risk because if personal information is used to train AI, the business loses control over how such information is used and who has access to it, causing the business to be in breach of its obligations under privacy laws.

Effect of Geopolitical Events and Regulatory Reforms

As with recent developments in the field of artificial intelligence, recent geopolitical events have played and continue to play an important role in decision-making in the commercial context.

As of the date of this publication, the strained trade negotiations between Canada and the USA permeate Canadian society and have had a trickle-down effect from government procurement policies, to provincial "buy Canadian" initiatives, to individual consumer decision-making. This includes uncertainties associated with US and Canadian tariffs, which have had a notable impact on businesses with cross-border supply chains or customer bases, and all of which have contributed to significant economic uncertainty in some sectors.

In part to address shifting trade relationships, the Canadian government is engaged in a high-profile effort to diversify Canadian trade linkages, particularly with Asia and Europe. These new relationships represent notable opportunities for businesses to seek out new suppliers and expand their global reach.

Given Canada's fossil fuel and renewable energy resources, there are also opportunities for Canadian businesses to benefit from the current global volatility in the energy sector.

These developments also come at a time of increased scrutiny of Canadian supply chains. The Fighting Against Forced Labour and Child Labour in Supply Chains Act, implemented in 2024, requires Canadian entities that source materials from outside Canada to file annual reports with the federal government, reporting on forced labour and child labour risks within their supply chains, and their responses to such risks. This new requirement is representative of recent increased regulatory oversight and engagement, which has occurred in several regulatory areas.

Regulatory Developments

Recent reforms to the Competition Act (Canada) have been implemented which demonstrate the Competition Bureau's increased appetite for scrutinising transactions more closely. In particular, recent amendments:

- create a rebuttable presumption that a merger is anti-competitive if it significantly increases concentration or market share beyond specified thresholds;
- strengthen remedies for anti-competitive mergers;
- expand the pre-merger notification rules and transaction size calculation; and
- extend the period for which the Competition Bureau may challenge non-notifiable mergers from one year to three years after closing.

This enhanced scrutiny extends to environmental claims made by participants in the Canadian market, as the reforms include review of environmental representations and sustainability claims. Regulators have demonstrated that they take such claims seriously and, in their reviews, look for substantive evidence such claims are true, rather than simply being "greenwashing". This approach is in marked contrast to recent US federal government policies, where ESG matters have demonstrably fallen out of favour. As a result, businesses making environmental and sustainability claims in Canada must be prepared to demonstrate that such claims are robust and capable of regulatory scrutiny.

Foreign investment reviews in sensitive sectors are also closely reviewed, including with respect to critical minerals, energy, AI, telecommunications, defence-related industries and state-owned enterprises. Certain amendments to the Investment Canada Act, which came into force on 3 September 2025, grant regulators:

- expanded ministerial powers with respect to national security reviews;
- enhanced information-sharing with foreign counterparts; and
- ability to resolve national security concerns through undertakings.

Additional amendments which have not yet come into effect will create mandatory pre-closing filings for proposed investments in sensitive sectors, create stronger penalties for non-compliance, and grant regulators new authority to subject state-owned enterprise investments to a net benefit review.

As a result of the foregoing developments, transaction parties should expect closer regulatory reviews than in the past, and allow for this in their transaction timelines.

By contrast, however, we have also seen Canadian regulators revise their previously robust positions on certain matters due to competitiveness or other economic concerns. In particular, the Canadian Securities Administrators paused the implementation of its mandatory climate disclosure requirements in 2025, following the SEC's withdrawal from its own climate disclosure rules. Similarly, provisions of Bill C-11, Canada's proposed "Online Streaming Act", which received royal assent in 2023 and under which foreign digital platforms would be required to pay a percentage of annual Canadian revenues as a levy to support Canadian productions, were dialled back in May 2026 in the context of trade and tariff negotiations with the US government. So it remains to be seen how Canadian regulators will ultimately balance the need for their desired policies, with broader competitive pressures.

Changes to Canadian Corporate Law

Certain recent changes in Canadian corporate law have already had an impact on business across Canada, and as the industries affected by such changes adapt to them, will continue to influence corporate practice.

Corporate transparency registers

Unlike in the USA, where the attempt to impose such requirements has been rolled back, most Canadian jurisdictions now require companies incorporated in those jurisdictions to maintain internal transparency registers. Only Alberta, Nunavut, NWT and Yukon do not have transparency register requirements at this time.

While the specific requirements and ownership threshold for disclosure vary across provinces, generally all shareholders who directly or indirectly control 25% or more of a company are required to be identified as individuals with significant control. A person could also be required to be listed under other circumstances; for example, if they have "direct or indirect influence" that would result in control of the company, or where the person controls a holding company or other entity that would ultimately give them 25% control, or where the shares are held jointly. There are generally very few exceptions to the requirement to disclose – one common exception is public companies.

Although generally, such transparency registers are confidential and disclosable only to qualified regulatory authorities, some jurisdictions (such as Quebec and the federal corporate registry) have also established a public beneficial ownership registry. At the time of writing, British Columbia is in the process of doing so but has not yet implemented a public registry. In jurisdictions where such a registry exists, it is publicly searchable. We find it reasonably likely that other provinces and territories in Canada will follow suit over the coming years.

Separately, a publicly searchable beneficial ownership registry is also maintained in British Columbia in respect of land ownership (LOTR). Notably, the LOTR threshold for beneficial ownership disclosure is 10%, a much lower threshold than the common corporate disclosure threshold of 25%. BC is currently the only Canadian jurisdiction where such a beneficial land ownership registry exists.

Business law framework review

In April 2026, the Canadian federal government launched a review of proposed legislative amendments to Canada's insolvency and federal corporate governance frameworks, with a view to streamlining processes, better enabling the use of digital and communications technologies, shortening approval timelines and reducing costs overall for businesses and the government. The proposed amendments would apply to six federal statutes, including the Canada Business Corporations Act and the Bankruptcy and Insolvency Act.

If adopted, the proposed amendments will include the following:

- First, amendments will be made to the CBCA to permit full and partial electronic meetings by default, subject to any restrictions stipulated in the constating documents of the company. Given that the CBCA was drafted at a time when electronic conferencing was not a viable option, at present the statutory default is physical meetings. This change is intended to acknowledge the prevalence of virtual and hybrid meetings, the availability of electronic communications technologies, and current market practice.

- Second, amendments will be made to the Bankruptcy and Insolvency Act to provide for a condensed, summary administration model for debtors with unsecured liabilities below a prescribed threshold and a prescribed maximum number of employees at the time of filing. It is intended that the summary proceedings would have streamlined features, thereby lowering costs and reducing complexity for smaller businesses. The Bankruptcy and Insolvency Act would also be amended to allow for use of modern videoconferencing technology in the administration process.

As part of the Business Law Framework public consultation process, there have also been calls to modernise the CBCA more generally. One example of this is repealing the current requirement that 25% of the directors of CBCA corporations be Canadian residents. While this is not a requirement in all Canadian jurisdictions, it remains a requirement for federally incorporated entities, and some commentators have noted that it is an outdated requirement, arguing that it would be more efficient and effective to instead preserve sector-specific control requirements where justified. Another example is the current requirement that, where non-public companies obtain written shareholder approvals for ordinary resolutions, such resolutions must be passed by unanimous consent. It has been argued that this, again, is an outdated requirement that adds unnecessary complexity to what should be standard corporate procedures, and that it should be sufficient to obtain the approval of shareholders using the normal voting threshold that would apply at a meeting, with notice given to any non-signing shareholders. While there have been longstanding calls for modernisation of the CBCA regime, it remains to be seen how the government will respond to the latest calls for reform.

In the current economic and political environment, regulators, investors and other stakeholders expect strong corporate governance practices from public issuers, particularly with respect to active board oversight of risk management (including with respect to cybersecurity and climate risks). Many of these requirements are mandated by securities regulators, but pressure from investors and other stakeholders is becoming increasingly influential.

Online contracts and subscriptions

Canada has also seen recent major updates to consumer protection laws affecting online contracts and subscriptions. These are governed by provincial rather than federal statute so vary by province and territory. Recent changes in British Columbia and Quebec focus on tightening regulation around auto-renewal of contracts and online subscriptions (referred to as "future performance contracts" under the Business Practices and Consumer Protection Act (BC)), requiring notice to the consumer before renewals, allowing for easy cancellation of the service, and requiring greater transparency by the business. Similar amendments have been made federally by the Canadian Radio-television and Telecommunications Commission specifically with respect to retail mobile phone plans and internet services. Changes to Manitoba's Business Practices Act focus on price transparency, specifically deeming the use of personalised algorithmic pricing to increase what businesses charge as an unfair business practice. In all cases, consumer rights have been enhanced.

CANADA – BRITISH COLOMBIA

Trends and Developments

Contributed by:
Gary S. Gill, Rod Talaifar, Karim Winski and Sierra Orschel
Sangra Moller

Sangra Moller is a leading corporate and securities law firm with a team of two partners and ten associates. The firm operates from its office in Vancouver, British Columbia, acting for local, national and international clients. The firm's expertise in corporate and securities law spans corporate finance, mergers and acquisitions, strategic investments, takeovers and takeover defence, corporate and commercial matters, and natural resources. This breadth allows the team to handle larger, more complex national and international transactions, and it is regularly retained as special counsel to boards of directors on complex corporate governance matters. Sangra Moller counsels clients in a broad range of businesses, including financial services, natural resources, technology and manufacturing, and routinely represents issuers, underwriters and financial investors.

Authors



Gary S. Gill is a partner at Sangra Moller focusing on securities, corporate finance and commercial law. He advises on IPOs, RTOs, M&A, joint ventures, and equity and debt financings, including significant domestic, cross-border and international transactions for clients listed on the TSX, TSXV, CBOE Canada, CSE and NASDAQ. He assists clients on contested matters, including proxy contests and takeover bids, and advises boards on governance, regulatory compliance and fiduciary responsibilities. Gary has lectured and served as an adjunct professor at the University of British Columbia, Faculty of Law, and was called to the British Columbia Bar in 2005.



Rod Talaifar is a partner at Sangra Moller focusing on corporate and securities law, capital markets, and public company governance. He acts as lead advisor to boards and public companies on take-over bids, mergers and acquisitions, initial public offerings, project finance, and cross-border debt and equity offerings, as well as governance matters, internal board investigations and proxy contests. He is recognised by Chambers and Partners, which ranks him as a leading corporate and commercial lawyer in British Columbia. Rod has been an adjunct professor at the University of British Columbia, Faculty of Law since 2010.



Karim Winski is an associate at Sangra Moller. He joined the firm as an articling student in 2025 and assists clients with corporate and commercial matters, including corporate finance transactions and securities compliance. Karim brings a strong background in legislative and regulatory work, having previously worked with the Senate of Canada and the Competition Bureau Canada on legal and policy analysis of complex economic and regulatory issues. He holds a Juris Doctor, a Licentiate in Law and a Bachelor of Commerce, all from the University of Ottawa.



Sierra Orschel is an associate at Sangra Moller. She joined the firm as an articling student and was called to the British Columbia bar in 2025. Sierra assists clients with corporate and commercial matters, corporate finance transactions and securities compliance. She has a particular interest in environmental law, including how evolving regulatory frameworks and sustainability standards impact corporate governance, risk management and disclosure obligations. Sierra completed her summer articles in Ontario and received her Juris Doctor in 2024 from the University of Ottawa.

Contributed by: Gary S. Gill, Rod Talaifar, Karim Winski and Sierra Orschel, **Sangra Moller**

Sangra Moller LLP

2200-1021 West Hastings Street
Vancouver BC
V6E 0C3

Tel: (+1) 604-662-8808
Fax: (+1) 604-669-8803
Email: info@sangra.com
Web: www.sangra.com



British Columbian businesses have operated against a backdrop of heightened economic and regulatory uncertainty in 2026. Trade friction with the United States has increased tariff exposure and raised practical questions about supply chains, contractual risk allocation and public-company disclosure. In response to this uncertainty, the Federal and provincial governments have pursued measures to reduce interprovincial trade barriers, diversify market access and accelerate major projects.

The year has also brought several legal and regulatory developments relevant to commercial activity in the Province. These include British Columbia's new commercial liens regime, amendments affecting consumer contracts and forthcoming prompt payment legislation, as well as Federal developments in foreign investment review and securities regulation.

Tariffs and Commercial Drafting

Tariff exposure arises at various points in the cross-border supply chain and is affecting the operation of existing commercial agreements.

In August 2026, the US imposed additional 50% tariffs on a broad range of Canadian goods. The new tariffs operate as a surcharge on top of any ordinary customs duties and other applicable charges. Canada responded the following month with counter-tariffs of 15%, 25% and 50% on approximately CAD27.6 billion of imports from the US, including on steel, agricultural equipment, pulp and paper and electronics. These measures followed the first joint review of the Canada-US-Mexico Agreement ("CUSMA") on 1 July 2026. The US declined to extend CUSMA in its current form for a further 16-year period. CUSMA nevertheless remains in force, but will now be subject to annual joint review unless the parties agree to an extension.

British Columbia's forestry sector has been directly affected. For much of 2026, the combination of anti-dumping and countervailing duties and a separate 10% tariff that the US imposed under Section 232 of the Trade Expansion Act of 1962 left most Canadian softwood lumber producers facing an effective US duty burden of roughly 35%.

The broader tariff landscape has also changed repeatedly over a relatively short period. In the US, tariffs have been imposed under several different statutes, including the Tariff Act of 1930 and the Trade Act of 1974, and the available exemptions differ depending on the measure. Canada has responded to some of those tariffs with counter-tariffs of its own.

This uncertainty has implications for contracts that extend beyond the tariff payable on any particular shipment. A long-term supply or fixed-price agreement may have been negotiated on an assumption about landed cost that no longer holds when performance becomes due. For such agreements, the relevant contractual issues include the allocation of the additional cost and whether the agreement permits an adjustment to the commercial terms.

In new agreements, tariff risk may be addressed expressly through provisions dealing with duties, pricing and changes in law. Depending on the transaction, parties may allocate responsibility for new duties, permit price adjustments when tariff costs change materially or create a right to renegotiate where the economics of the arrangement shift. CUSMA treatment

is not uniform across the current US tariff regimes, and the contractual position may depend on how the goods are classified, sourced and documented.

Existing agreements present a different problem. Businesses affected by new tariffs must work within the allocation of risk already embedded in the contract, particularly its pricing, force majeure, change-in-law and termination provisions. Where those provisions do not clearly allocate the risk, the parties may need to determine whether the existing pricing or change-in-law language permits an adjustment, or whether an amendment or renegotiation is required. That issue may be especially relevant in longer-term or fixed-price arrangements, where tariffs imposed after execution can alter the landed cost of performance.

Internal Trade Liberalisation

The deterioration in Canada-US trade relations has resulted in a renewed effort to reduce barriers within Canada. At the Federal level, the One Canadian Economy Act created a framework under which goods and services that satisfy provincial or territorial requirements may be treated as satisfying comparable Federal requirements, while also improving recognition of occupational credentials across jurisdictions. British Columbia has expressly linked its internal trade initiatives to diversifying market access and reducing reliance on the US market.

In British Columbia, the move towards mutual recognition has been formalised through both intergovernmental agreement and provincial legislation. In November 2025, the government of British Columbia helped bring together all provincial and territorial governments and the Federal government to approve the Canadian Mutual Recognition Agreement on the Sale of Goods. British Columbia followed in February 2026 with the Trade Recognition Act, which made its recognition framework permanent, while parallel work has continued on services and labour mobility, including a 30-day service standard for labour mobility applications.

The mutual recognition measures are intended to reduce duplicative testing, certification and approval requirements when goods move between participating jurisdictions. A product that can already be lawfully sold in one province may no longer require a separate round of testing, certification or approval before being sold elsewhere in Canada.

These reforms do not eliminate provincial differences, but they can make interprovincial expansion less burdensome for British Columbia companies. At a time when trade with the US has become more uncertain, access to other Canadian markets has assumed greater commercial significance.

Tariff Risk Disclosure

Tariff developments may give rise to disclosure obligations for public companies where they are material to the issuer. Tariffs may affect an issuer directly, where it imports or exports goods subject to additional duties, or indirectly through higher input costs, constrained access to materials, changes in customer demand and disruption to suppliers or distribution channels.

While Canadian securities legislation does not prescribe a tariff-specific disclosure regime, the existing continuous disclosure framework nevertheless requires reporting issuers to consider whether tariff developments require disclosure under existing materiality standards. Management's discussion and analysis must address known trends, demands, commitments, events and uncertainties that are reasonably likely to affect the issuer's business. It should also discuss important risks that have affected the financial statements, or are reasonably likely to affect them in the future, and explain material effects on financial condition, performance and cash flows. Depending on their significance, tariffs may also require disclosure in an annual information form, prospectus or other offering document.

National Policy 51-201 also recognises that an external political or economic development may warrant issuer-specific disclosure where its effect on the issuer is material and uncharacteristic of the effect generally experienced by others in the same industry. Tariff exposure should therefore be assessed by reference to the particular issuer's operations, supply chain and contractual arrangements, rather than solely by reference to the effect of tariffs on its industry generally.

Mitigation measures also require careful treatment. Where an issuer relies on mitigation measures, its disclosure may address matters such as pricing measures, supply-chain changes, inventory management and contractual pass-through rights. Disclosure should address material limitations on those measures. Assertions about the expected effectiveness of mitigation strategies may constitute forward-looking information and should be accompanied by the material assumptions and risk factors on which they are based.

For issuers with meaningful exposure, tariff risk may warrant distinct treatment rather than being subsumed within a generic geopolitical risk factor.

British Columbia's New Commercial Liens Regime

The Commercial Liens Act came into force on 30 June 2025, replacing five separate lien statutes and specified common law possessory liens with a unified statutory framework for commercial liens arising from services provided in respect of goods. The Builders Lien Act and the Forestry Service Providers Protection Act continue to operate separately.

The Commercial Liens Act also materially changes the role of possession in the commercial lien regime. A lien arises when the services are first provided and may be perfected either by possession or by registration in the Personal Property Registry, including in respect of non-serial-numbered goods. This departs from the former regime, under which many lien rights depended on continued possession and registration was more limited. Enforcement is now integrated with the Personal Property Security Act, including its notice and sale procedures.

Because a commercial lien may be perfected by registration, a service provider need not retain possession of the goods in order to perfect the lien. Registered commercial liens may also be relevant to lien searches and priority analysis undertaken by lenders and other secured parties where financed assets are subject to services.

Consumer Contract Reform in British Columbia

British Columbia has materially revised its consumer protection framework through amendments to the Business Practices and Consumer Protection Act. The first tranche of Bill 4 – Business Practices and Consumer Protection Amendment Act, 2025 – amendments came into force on 31 March 2025, prohibiting contractual terms that require mandatory arbitration, waive participation in class proceedings or restrict consumer reviews. A further tranche took effect on 1 August 2026, adding more prescriptive requirements governing contract disclosure, subscription renewals and unilateral amendments to consumer agreements.

The subscription amendments are directed principally at recurring consumer arrangements. Suppliers are now required to provide prescribed notice in advance of certain renewals and contractual changes, with corresponding cancellation rights where those requirements are not satisfied. The legislation also limits the circumstances in which a supplier may unilaterally amend an agreement to increase the consumer's obligations or reduce its own.

The British Columbia Court of Appeal has already addressed the temporal application of the new arbitration prohibition. In *Vandenbosch v Rogers Communications Canada Inc*., 2026 BCCA 102, the Court held that the amendments operate retrospectively, but not retroactively. The prohibition may therefore apply to an arbitration clause in a contract entered into before 31 March 2025 where the dispute arose after that date, but does not disturb rights arising from disputes that had already crystallised when the amendments came into force.

British Columbia's Incoming Prompt Payment Regime

British Columbia has enacted a new prompt payment regime for the construction sector, although it is not yet in force. The Construction Prompt Payment Act will take effect by regulation once the supporting framework is in place.

Once in force, the Construction Prompt Payment Act will impose statutory payment timelines on construction projects. Owners will generally have 28 days after receiving a proper invoice to pay, with payment then moving down the contractual chain on shorter timelines. Payment disputes may be referred to adjudication, with the adjudicator's determination binding

unless later displaced by a final decision of a court, arbitrator or agreement of the parties. The regime is mandatory and parties will not be able to contract out of it.

The legislation will also amend the Builders Lien Act. Among other changes, the holdback period will be reduced from 55 to 46 days and the separate lien against holdback funds established by the courts will be abolished. For owners, contractors and subcontractors, the new regime will shift payment administration away from purely contractual timelines towards statutory deadlines and expedited dispute resolution, making it a significant change for construction and infrastructure projects in British Columbia.

Foreign Investment Review and Economic Security

Foreign investment review has become a more significant execution issue for acquisitions of Canadian businesses, including those in British Columbia. On 5 March 2025, the Federal government updated its national security review guidelines under the Investment Canada Act to add economic security expressly to the assessment. The Federal government may now consider, among other factors, the size of the Canadian business, its place in the innovation ecosystem and the effect of the investment on Canadian supply chains.

The Federal government's annual report on the Investment Canada Act, published on 16 February 2026, shows the increased scrutiny in practice. During the 2024–25 fiscal year, 30 investments were subject to extended national security review, up from 26 in the previous year, and the average extended review lasted 155 days. Nine investments were withdrawn and six were permitted to proceed subject to undertakings.

Extended national security reviews during the 2024–25 fiscal year involved investments in sectors including mining, pharmaceuticals, financial services, aviation and data processing. Bill C-34, which received Royal Assent on 22 March 2024, has already expanded ministerial powers during national security reviews, but not all of its amendments are yet operative. As of October 2026, the proposed mandatory pre-closing filing requirement for investments in prescribed sensitive sectors remained to be brought into force through further regulatory action.

Proposed Changes to Take-Over Bid, Issuer Bid and Early Warning Rules

On 14 May 2026, the Canadian Securities Administrators published proposed amendments to Canada's issuer bid, take-over bid and early warning reporting regimes. The proposal, if adopted, would amend National Instrument 62-104*Take-Over Bids and Issuer Bids*, National Instrument 62-103*The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and National Instrument 51-102*Continuous Disclosure Obligations*, together with related policy guidance. The proposals respond to recurring issues in market practice, including selective issuer repurchases, the use of equity-equivalent derivatives and uncertainty around certain early warning triggers.

Under the current issuer bid regime, an issuer that wishes to repurchase securities privately from selected securityholders generally has no equivalent to the private agreement exemption available for take-over bids and must therefore seek discretionary relief. Proposed Section 4.6.1 of National Instrument 62-104 would change that by permitting selective repurchases of up to 5% of a class over a 12-month period, subject to prescribed conditions. The proposal would therefore move a category of transaction that currently depends on case-by-case relief into the rules themselves.

Separate amendments would address disclosure of economic exposure and the operation of the early warning regime. In formal take-over bids and certain proxy solicitations, prescribed disclosure would extend to equity-equivalent derivatives and other arrangements that alter a party's economic exposure to an issuer. The proposals would also deem persons who begin acting jointly or in concert to have acquired one another's securities for early warning purposes, potentially triggering a filing where their aggregate holdings exceed 10%. If adopted, this approach would differ from the British Columbia Securities Commission's decision in *Re NorthWest Copper Corp.*, 2023 BCSECCOM 602, where the Commission held that the formation of a joint actor relationship, without a subsequent acquisition of securities, did not itself trigger an early warning report

CAYMAN ISLANDS



Law and Practice

Contributed by:
Christopher Brett Young, Jason Allison, Hugh Anderson, Andrew Barker, James Murrie, Michael Beck, Sam Francis and Manon Cote
Walkers

Contents

1. Business Entities P.97
1.1 Business Organisations p.97
1.2 Incorporation and Ongoing Compliance p.98
1.3 Share Issuances p.99
1.4 Distributions and Return of Capital p.99
1.5 Control Person Reporting p.100

2. Corporate Governance P.100
2.1 Legal Framework p.100
2.2 Directors' Duties and Liabilities p.101
2.3 Board Composition and Independence p.101
2.4 ESG and Disclosure Obligations p.102
2.5 Conflicts of Interest and Related-Party Transactions p.102

3. Shareholder Rights and Agreements P.102
3.1 Shareholder Rights p.102
3.2 Shareholder Agreements p.103

4. Mergers and Acquisitions P.104
4.1 Legal Framework p.104

5. Capital Markets P.105
5.1 Securities Regulation and Public Offerings p.105
5.2 Continuous Disclosure p.106
5.3 Insider Trading p.106
5.4 Shareholder Disclosure p.106
5.5 Internal Controls and Whistle-Blower Regimes p.106

6. Secured Transactions P.106
6.1 Transaction Financing and Security Interests p.106

7. Commercial Contracts P.109
7.1 Contract Formation and Enforceability p.109
7.2 Termination and Remedies p.109
7.3 Intellectual Property in Commercial Transactions p.109
7.4 Consumer Protection p.110

8. Foreign Investment P.110
8.1 Competition and Merger Control p.110
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.110

9. Regulatory Compliance P.111
9.1 Privacy and Data Protection p.111
9.2 Anti-Money Laundering, Sanctions and Corruption p.111
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.112
9.4 Artificial Intelligence p.113
9.5 Other Regulatory Compliance Requirements p.113

10. Employment and Labour P.113
10.1 Employment Standards and Workplace Regulation p.113
10.2 Executive Compensation and Restrictive Covenants p.114

11. Real Property and Commercial Leasing P.114
11.1 Requirements for Land Ownership p.114
11.2 Commercial Real Estate Transactions p.114

Contributed by: Christopher Brett Young, Jason Allison, Hugh Anderson, Andrew Barker, James Murrie, Michael Beck, Sam Francis and Manon Cote, **Walkers**

Walkers is a leading international law firm that provides legal, corporate, compliance and fiduciary services to global corporations, financial institutions, capital markets participants and investment fund managers. With ten offices globally, Walkers is well positioned to provide time zone-friendly service to its clients, which include the most innovative firms and institutions across the financial markets, and which rely on Walkers for its ability to provide solutions to their most important legal and business issues. The firm develops globally minded, entrepreneurial lawyers who are experts in their respective fields and committed to client service. Walkers is ranked by Chambers and Partners as a Leading Firm in Chambers Global 2026.

Authors



Christopher Brett Young focuses on private equity, M&A and other complex corporate transactions, advising clients across a variety of industries including fintech. He advises on private equity, M&A, joint ventures and equity capital markets transactions. Christopher regularly acts for private equity sponsors, portfolio companies, investment banks and other financial institutions on strategic investments, acquisitions, divestitures and corporate reorganisations. He also advises public and private companies on acquisitions, disposals and restructurings, including complex cross-border transactions and corporate reorganisations involving Cayman Islands companies, partnerships and other investment structures.



Jason Allison advises on all aspects of corporate law and investment funds law across a wide variety of industries. He has particular experience and expertise advising on high-value cross-border corporate transactions, the structuring and establishment of private equity funds and hedge funds as well as on their upstream and downstream transactions. His clients include major investment banks, institutional fund managers and blue-chip corporates. Jason has worked on some of the most sophisticated financial transactions utilising the Cayman Islands jurisdiction. In addition to his wide-ranging legal practice, he regularly contributes to the development of Cayman Islands legislation.



Hugh Anderson advises clients on complex finance and corporate transactions. He has extensive experience in subscription finance, hedge-fund finance, M&A, and initial public offerings. Hugh acts for lenders, borrowers, sponsors and corporations on a range of finance and corporate transactions including take privates, corporate restructurings, public listings, acquisition financings, venture capital financing, capital call facilities, NAV, hybrid and ABL facilities, asset-based facilities, and complex cross-border and syndicated credit facilities. His clients include asset managers, corporates, international banks and other financial institutions.



Andrew Barker advises on all aspects of corporate and investment funds law, regularly acting for public and private companies, investment managers and private equity sponsors. He advises on structuring and forming funds, as well as downstream transactions including joint ventures, acquisitions and disposals. Andrew also works on initial public offerings (including special purpose acquisition companies (SPACs)), take privates and ongoing matters for Cayman Islands public companies.

Contributed by: Christopher Brett Young, Jason Allison, Hugh Anderson, Andrew Barker, James Murrie, Michael Beck, Sam Francis and Manon Cote, **Walkers**



James Murrie advises clients on complex cross-border corporate transactions and investment fund matters. He acts for leading investment managers and private equity sponsors on structuring and formation of investment funds, downstream acquisitions and divestments, exits and end-of-life issues. James also advises large public and private corporates on a range of matters, including initial public offerings, M&A, joint ventures, corporate reorganisations, preferred equity financings and special purpose acquisition companies.



Michael Beck specialises in advising clients on corporate transactions with a focus on public and private M&A, corporate structuring, capital markets transactions and general corporate advisory matters. He regularly advises public companies and sponsors on M&A, SPAC IPOs and business combinations, US listings of Cayman holding companies, joint ventures, and strategic equity financings.



Sam Francis specialises in complex corporate transactions, with a focus on cross-border public and private M&A, take-privates, SPAC and de-SPAC transactions, IPOs, redomiciliations and international corporate reorganisations. He also has particular experience advising institutional asset managers on private capital transactions, investment fund structures, downstream private equity investments and capital raisings, as well as advising clients in the fintech sector.



Manon Cote specialises in advising on corporate matters, including general corporate advisory work. Manon advises clients on a broad range of corporate matters, including M&A, corporate restructurings, corporate governance and general corporate advisory matters.

Walkers

190 Elgin Avenue
George Town
Grand Cayman
KY1-9001
Cayman Islands

Tel: +1 345 949 0100
Email: info@walkersglobal.com
Web: www.walkersglobal.com

1. Business Entities

1.1 Business Organisations

In this chapter of the guide, references to Cayman Islands statutes are to those statutes as amended, unless stated otherwise.

Forms of Business Entity

The Cayman Islands offers a wide range of vehicles to facilitate corporate transactions. The most commonly used vehicles are exempted companies, limited liability companies (LLCs) and exempted limited partnerships (ELPs). Other vehicles include segregated portfolio companies (SPCs), ordinary resident companies, foundation companies and trusts, including STAR trusts established under the Trusts Act.

Exempted companies

The exempted company is the most widely used Cayman Islands company and is incorporated under the Companies Act. Exempted companies may obtain a 30-year undertaking from the Cayman Islands government that no tax will be imposed on the company or its shareholders. The identity of shareholders is not generally a matter of public record. Most exempted companies issue shares with a par value, although it is possible for exempted companies to issue shares without a par value. Exempted companies may create classes of shares with different economic and voting rights and may hold shares in treasury. Unless the articles of association require otherwise (eg, where the company's shares are listed), exempted companies do not need to hold annual general meetings and unregulated exempted companies are not required to prepare and file audited financial statements with any Cayman Islands regulator. Exempted companies are often used as general partners of ELPs. Most hedge funds are structured as exempted companies.

Limited liability companies

LLCs are formed under the Limited Liability Companies Act, which is broadly similar to the Delaware LLC equivalent. They are widely used for joint ventures, carried interest arrangements, private investment structures and fund-related vehicles, including as general partners of ELPs. An LLC is a body corporate with separate legal personality and at least one member. Its LLC agreement provides substantial contractual flexibility and may vest management in the members or designated managers. By default, managers owe a duty of good faith, although the LLC agreement may expand or restrict that duty. LLCs may obtain a 50-year tax undertaking.

Exempted limited partnerships

ELPs are established under the Exempted Limited Partnership Act and are the preferred vehicle for closed-ended investment fund structures. An ELP has no separate legal personality, and its property is held on statutory trust by its general partner. An ELP must have at least one general partner, which may be an individual resident in the Cayman Islands, a Cayman Islands company, LLC, another ELP, or a foreign company or partnership registered in the Cayman Islands. An ELP must also have at least one limited partner. ELPs may obtain a 50-year tax undertaking.

A limited partner's liability is generally limited to its agreed contribution, although a limited partner that takes part in the conduct of the ELP's business may be liable to third parties who reasonably believed it to be a general partner. The Exempted Limited Partnership Act lists a number of safe harbours for conduct that will not expose a limited partner to liability. In addition, a limited partner may be required to return distributions received while the ELP was insolvent where it had knowledge of the insolvency.

Other vehicles

- *Segregated portfolio companies* (SPCs) – These are Cayman Islands exempted companies with statutory ring-fencing of assets between separate portfolios, most commonly used in insurance and fund structures.
- *Foundation companies* – These are companies registered under the Foundation Companies Act, which are increasingly used for Web3, decentralised autonomous organisations and charitable structures.
- *Limited liability partnerships* – These are partnerships registered under the Limited Liability Partnership Act, and these vehicles have separate legal personality.
- *Unit trusts* – These are used for certain funds, particularly Japan-facing funds.

- *Special economic zone companies* (SEZCs) – These are Cayman Islands exempted companies with a physical presence in the Cayman Islands that operate within Cayman Enterprise City (CEC) and are restricted to conducting offshore activities.
- *Limited duration companies* (LDCs) – These are exempted companies with a maximum duration of 30 years and a minimum of two members. They are not commonly used, particularly following the introduction of the US "check-the-box" tax election regime on 1 January 1997.
- *Ordinary non-resident companies* – These are incorporated in the Cayman Islands but carry on business mainly outside the jurisdiction. They must file an annual return disclosing the names of members, directors and officers.
- *Ordinary resident companies* – These are companies that carry on business within the Cayman Islands. They are subject to local licensing requirements and the Local Companies (Control) Act, which generally requires at least 60% of the company's shares to be beneficially owned by Caymanians and at least 60% of its board to be Caymanian, unless a licence is granted. They must also hold an annual general meeting and file an annual return with the Registrar of Companies, among other obligations.

Factors Driving Choice of Entity

The choice of vehicle depends on several factors, including the following:

- desired level of liability protection;
- tax neutrality;
- flexibility of constitutional documents;
- regulatory treatment; and
- the nature of the proposed business.

A key distinction is that companies and LLCs have separate legal personality, whereas ELPs do not. LLCs offer a degree of contractual freedom, making them attractive for sophisticated commercial arrangements. The Cayman Islands does not impose income tax, capital gains tax, withholding tax or estate or inheritance tax on any of these vehicles or on their investors (who must comply with the tax laws of their home jurisdictions).

1.2 Incorporation and Ongoing Compliance

To incorporate an exempted company, the subscriber files the company's memorandum and articles of association, together with the prescribed fees and an affidavit, with the Cayman Islands Registrar of Companies. The Registrar will ordinarily issue a certificate of incorporation within three business days of filing, with same-day expedited processing available on payment of an additional fee. The date of registration will be the date of filing.

Registration fees range from approximately USD854 to USD3,132, depending on the amount of authorised share capital. The most commonly adopted authorised share capital for Cayman Islands companies is USD50,000 as this is the maximum amount of authorised share capital available for the lowest incorporation and annual fee.

To register an LLC, the applicant files a registration statement with the Registrar of Limited Liability Companies. A certificate of registration is typically issued within three business days of filing, with same-day expedited processing available on payment of an additional fee. The date of registration will be the date of filing. Registration fees are approximately USD1,100.

All exempted companies and LLCs must maintain a registered office in the Cayman Islands, which is commonly provided by a licensed corporate services provider.

Ongoing Compliance Obligations

Exempted companies, LLCs and ELPs must file an annual return and pay an annual fee by 31 January each year. Annual government fees range from approximately USD1,250 to USD3,528 for exempted companies (depending on authorised share capital), approximately USD1,200 for LLCs and approximately USD1,710 to USD2,683 for ELPs. Exempted companies, LLCs and ELPs must each maintain statutory registers (for exempted companies, a register of members, a register of directors and officers and a register of mortgages and charges). Books of account must be maintained and kept for a minimum of five years.

Additional compliance requirements include maintaining and providing prescribed beneficial ownership information in accordance with the Cayman Islands Beneficial Ownership Transparency Act, filing an annual economic substance notification (made with the annual return) and, where applicable, registering and reporting under the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA). Subject to any contractual, constitutional or sector-specific requirements, unregulated entities are generally not required to prepare and file audited financial statements with a Cayman Islands government authority.

1.3 Share Issuances

Share Capital Structure

Exempted companies are typically limited by shares and most typically issue shares with a par value. No par value shares are permitted under the Companies Act for exempted companies but are uncommon in practice, primarily because the entire consideration received for such shares is treated as share capital, reducing flexibility in relation to distributions and capital management. There is no minimum paid-in capital requirement (other than in respect of certain regulated companies, such as insurance companies). Fractional shares may be issued if authorised by the articles of association.

Classes of Shares and Rights

Companies may create multiple classes of shares, each carrying different rights as to voting, dividends and return of capital on a winding up. Preferential rights, conversion rights and anti-dilution protections are typically attached to particular share classes in the articles of association and/or in an ancillary document such as a shareholders' agreement or offering memorandum. If authorised by the company's articles of association, a company may increase its share capital by new shares of such amount as it thinks expedient, consolidate and divide all or any of its share capital into shares of larger amount than its existing shares, subdivide its shares or any of them, and cancel any unissued shares.

Treasury Shares

Cayman Islands companies may hold shares that have been repurchased, redeemed or surrendered as treasury shares, rather than cancelling them, provided its memorandum and articles of association do not prohibit this and it is authorised to do so (by its articles or a resolution of the directors) before such purchase, redemption or surrender. While held in treasury, the shares carry no voting rights, no dividend or other distribution may be paid on them (including on a winding up), and they are disregarded in calculating the number of shares in issue. Treasury shares may subsequently be cancelled or transferred on such terms as the directors determine, subject to the memorandum and articles.

1.4 Distributions and Return of Capital

Dividends

Dividends may be paid out of profits (including retained earnings) or, subject to the provisions of the memorandum and articles, from the share premium account, provided that no distribution or dividend may be paid to members out of the share premium account unless, immediately following the date on which the distribution or dividend is proposed to be paid, the company shall be able to pay its debts as they fall due in the ordinary course of business. There is no statutory prohibition on a company providing financial assistance for the purchase of its own shares although directors must be satisfied that doing so is in the company's best interests and for a proper purpose.

Redemption and Repurchase of Shares

Shares may be redeemed or repurchased if authorised by the company's articles of association. The payment may be made out of the company's profits, from the share premium account or from the proceeds of a fresh issue of shares. If specifically authorised by the articles, payment may be made out of capital, subject to the company satisfying the solvency test. Subject to the articles of association and the Companies Act, shares may be surrendered to the company for no consideration.

Reduction of Capital

A company may reduce its share capital through a court-approved process under the Companies Act, which requires a special resolution of shareholders and confirmation by the Grand Court. The timing of a court-approved reduction depends on the court timetable and the circumstances of the transaction.

Following a recent legislative amendment, a company may now also reduce its issued share capital by special resolution of shareholders supported by a solvency statement from the directors, without court involvement. For LLCs, membership interests may be acquired or redeemed, provided the LLC satisfies the statutory solvency test.

1.5 Control Person Reporting

Beneficial Ownership Regime

The Cayman Islands has implemented a beneficial ownership transparency regime under which in-scope legal persons (which include Cayman Islands companies, LLCs and partnerships but exclude trusts) must identify their registrable beneficial owners and, through their corporate services provider, establish and maintain a register containing adequate, accurate and current beneficial ownership information. This information is filed by the corporate services provider on a centralised, secure electronic platform and is not generally accessible to the public. The competent authority (being the Minister for Financial Services, who has delegated the function to the Registrar of Companies) may access it and may grant access, or provide beneficial ownership information, to certain persons, primarily Cayman Islands and overseas law enforcement, tax and regulatory authorities. Access to certain beneficial ownership information may also be granted, on application, to certain members of the public who can demonstrate a legitimate interest in the information sought.

Alternative Compliance

Certain entities may use an alternative route to compliance instead of the full beneficial ownership reporting requirements. These include entities listed on an approved stock exchange (and their subsidiaries), entities licensed by the Cayman Islands Monetary Authority (CIMA) and investment funds registered with CIMA under the mutual funds or private funds legislation.

No General Control Person Reporting

Beyond the beneficial ownership regime, there is no general "control person" reporting obligation in the Cayman Islands. The emphasis of the regime is on identifying ultimate beneficial owners, being those with specified levels of ownership or control, rather than focusing on control only.

2. Corporate Governance

2.1 Legal Framework

Principal Legislation

The primary legislation governing corporate governance for Cayman Islands companies is the Companies Act. For LLCs, the equivalent statute is the Limited Liability Companies Act. These statutes establish the legal framework governing the formation, operation, governance and winding up of each type of entity.

There is no general corporate governance code applicable to Cayman Islands companies. However, CIMA has issued rules and statements of guidance on corporate governance for the entities it regulates, and Cayman companies that are listed on a stock exchange will be subject to the governance requirements of that exchange.

Common Law and Regulatory Overlay

Much of Cayman Islands corporate governance law comes from common law rather than statute, including the duties that directors owe to the company (see **2.2 Directors' Duties and Liabilities**). The company's memorandum and articles of association, and any shareholders' agreement, may also set governance rules.

Entities operating in the financial services sector are also subject to sector-specific regulatory legislation, including the following:

- Mutual Funds Act;
- Private Funds Act;
- Securities Investment Business Act; and
- Directors Registration and Licensing Act.

These statutes impose additional governance and compliance obligations on regulated entities and their directors.

2.2 Directors' Duties and Liabilities

Fiduciary Duties

Directors of Cayman Islands companies owe fiduciary duties to the company (not, generally, to individual shareholders). These duties are derived from common law and include the following:

- to act honestly and in good faith in the best interests of the company;
- to exercise powers for a proper purpose;
- not to fetter their discretion;
- to avoid conflicts between personal interests and the interests of the company;
- not to make secret profits; and
- when exercising powers affecting shareholder rights, to act fairly as between shareholders.

English and other leading Commonwealth authorities are highly persuasive in the Cayman Islands, but are not binding. Directors' fiduciary duties arise principally under common law rather than being codified in the Companies Act. Companies listed on the Cayman Islands Stock Exchange (CSX), and entities operating in regulated sectors, are subject to additional governance, disclosure and compliance requirements.

Standard of Care

The standard of care expected of a director has both an objective and a subjective element. A director must show the care, diligence and skill of a reasonably diligent person with both the general knowledge, skill and experience reasonably expected of someone in that director's role and the actual knowledge, skill and experience of that particular director. This means that a director with specialist expertise (eg, in finance or accounting) may be held to a higher standard than a non-specialist director.

The Creditor Duty

When a company is insolvent or bordering on insolvency, directors must have regard to the interests of the company's creditors as a whole. The duty is owed to the company and is typically enforced by a liquidator.

The weight to be given to creditors' interests increases as the company's financial position deteriorates. While the duty does not ordinarily require directors to subordinate all other considerations to creditors' interests, where an insolvent liquidation is inevitable, those interests become paramount.

Liability and Indemnification

Directors may be personally liable for breach of fiduciary duty, negligence or fraud. It is standard practice for articles of association to include exculpation and indemnity provisions in favour of directors, to the maximum extent permitted by law (which does not permit exculpation or indemnification arising from a director's own actual fraud or wilful default). Many companies also maintain directors' and officers' liability insurance.

LLC Managers

The position for managers of a Cayman Islands LLC differs from that of company directors. The Limited Liability Companies Act permits the LLC agreement to expand or restrict fiduciary and other duties that might otherwise apply. Accordingly, the scope of a manager's duties will depend heavily on the terms of the LLC agreement.

2.3 Board Composition and Independence

Statutory Requirements

The Companies Act does not prescribe a minimum or maximum number of directors for exempted companies, though the articles of association will typically specify a minimum. There is no statutory requirement for directors or shareholders to be resident in the Cayman Islands, and corporate directors are permitted. There are no mandatory requirements regarding board independence, gender diversity or the composition of board committees for private companies.

Regulated Entities

Entities regulated by CIMA, including registered mutual funds and private funds, are required to have a minimum of two directors who are natural persons (or, where the fund is not a company, an operator such as a general partner with at least two directors or equivalent officers). Directors of "covered entities", principally regulated mutual funds and entities registered under the Securities Investment Business Act, must also be registered or, in the case of professional and corporate directors, licensed with CIMA under the Directors

Registration and Licensing Act. Licensed directors are subject to CIMA's fit and proper requirements.

Companies listed on the CSX are subject to the CSX Listing Rules, which impose additional governance and board-related requirements.

Meetings

There is no statutory requirement to hold board meetings in the Cayman Islands, though the economic substance regime may influence the location of board meetings for entities carrying on "relevant activities" in the jurisdiction. Exempted companies are not required to hold annual general meetings of shareholders unless the articles of association so provide. A company secretary is not required under the Companies Act.

2.4 ESG and Disclosure Obligations

Current Position

There is no comprehensive environmental, social and governance legislation in the Cayman Islands and no mandatory climate-related financial disclosure requirements. Directors' duties do not expressly require the consideration of environmental, social or broader stakeholder interests.

2.5 Conflicts of Interest and Related-Party Transactions

Directors are subject to a fiduciary duty to avoid conflicts between their personal interests and the interests of the company and must not make secret profits from their position. There is no specific statutory regime governing related-party transactions in the Cayman Islands. Instead, common law duties of directors, together with any provisions in the articles of association, provide the principal framework for managing conflicts.

Disclosure and Authorisation

The articles of association of a Cayman Islands exempted company commonly contain provisions permitting directors to disclose an interest in a proposed transaction or arrangement and, subject to the terms of those articles, to be counted in the quorum and vote on the relevant board resolutions notwithstanding that interest. Such provisions do not relieve directors of their overriding duty to act in good faith in the best interests of the company. The scope and mechanics of these provisions vary between companies and should be considered carefully in each case.

Subject to any restrictions imposed by law and the nature of the breach, shareholders may in certain circumstances ratify conduct that would otherwise constitute a breach of duty.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Voting Rights

The voting rights of shareholders in a Cayman Islands exempted company are determined by the company's memorandum and articles of association and any ancillary documents, subject to the mandatory requirements of the Companies Act, including the statutory thresholds for special resolutions. An ordinary resolution is generally passed by a simple majority of votes cast by shareholders entitled to vote who are present and voting (in person or by proxy). A special resolution requires a majority of not less than two thirds of the votes cast by shareholders entitled to vote (or such higher threshold as may be specified in the articles of association).

Subject to the company's articles of association, shareholders may approve resolutions by written resolution. A written special resolution must be signed by all shareholders entitled to vote on the matter; the articles may permit written ordinary resolutions or other consents on a non-unanimous basis. Written resolutions avoid the need to convene a physical meeting.

Certain matters require shareholder approval under the Companies Act. These include:

- amendments to the memorandum and articles of association (by special resolution);
- change of name (by special resolution);
- reduction of share capital (by special resolution and, where the solvency statement route is not used, confirmation by the Grand Court; see **1.4 Distributions and Return of Capital**);
- transfer by way of continuation (by special resolution);

- approval of a merger or consolidation (by special resolution and any further approval required by the articles, save for certain parent–subsidiary mergers); and
- voluntary winding up (by special resolution).

The articles may also require shareholder approval for certain matters.

Information Rights and Proxies

Shareholders are entitled under the Companies Act to receive a copy of the company's memorandum and articles of association on request. The articles typically also entitle shareholders to appoint a proxy to attend and vote at general meetings on their behalf. Cayman Islands law does not confer broad statutory inspection rights on shareholders of exempted companies, and access to corporate records is generally governed by the company's articles of association, any shareholders' agreement and, in certain circumstances, the supervisory jurisdiction of the Grand Court.

Remedies

Shareholders in the Cayman Islands have access to statutory and equitable remedies. These include bringing a derivative action on behalf of the company (subject to the requirements set by the courts), a personal right to sue where the directors have exercised their powers for an improper purpose and petitioning for the company to be wound up on just and equitable grounds. On such a petition, the Grand Court may instead make alternative orders under the Companies Act, such as ordering the purchase of a shareholder's shares or regulating the company's future affairs. In a merger, dissenting shareholders may exercise statutory dissent rights to receive the fair value of their shares, as determined by the Grand Court if not agreed.

3.2 Shareholder Agreements

Typical Provisions

Shareholders' agreements are widely used in the Cayman Islands to supplement the articles of association and regulate the relationship between shareholders. Common provisions include:

- restrictions on share transfers (including rights of first refusal and permitted transfer provisions);
- drag-along and tag-along rights;
- board appointment rights;
- information and reporting rights; and
- lists of reserved matters requiring the consent of specified shareholders or a qualified majority.

Accession and Enforceability

New shareholders are typically required to accede to the shareholders' agreement by executing a deed of accession (or another form of accession specified in the agreement), which binds them to the terms of the agreement as if they were an original party. Shareholders' agreements are contractual in nature and are enforceable through the usual contractual remedies, including damages and, in appropriate cases, specific performance. They are not typically filed with the Registrar and remain confidential as between the parties.

Conforming the Articles

It is considered best practice to ensure that the articles of association are conformed to the shareholders' agreement so that the two documents work together consistently. Where there is a conflict, the articles will generally prevail as a matter of company law, although the shareholders' agreement may give rise to contractual remedies as between the parties for any breach. Careful drafting at the outset can help minimise the risk of inconsistency.

A shareholders' agreement cannot fetter the exercise of directors' fiduciary duties under Cayman Islands law. Accordingly, while shareholders may agree governance and consent arrangements, directors must continue to act in accordance with their statutory and fiduciary duties.

Dispute Resolution

Disputes arising in the shareholder context may be resolved through a range of mechanisms, including:

- derivative actions;
- just and equitable winding-up petitions; and
- contractual claims under the shareholders' agreement.

The availability of each remedy will depend on the nature of the complaint and the terms of the relevant documents. Many shareholders' agreements include

dispute resolution clauses providing for arbitration or mediation as an alternative to court proceedings.

4. Mergers and Acquisitions

4.1 Legal Framework

Statutory Mergers and Consolidations

Cayman Islands companies limited by shares and LLCs may merge or consolidate with one another, and cross-border mergers and consolidations with overseas companies and foreign entities are permitted, subject to compliance with the relevant Cayman Islands legislation (being the Companies Act and the Limited Liability Companies Act) and any applicable foreign law requirements. Cayman Islands SPCs cannot participate as constituent entities in a statutory merger or consolidation. There is no statutory merger mechanism that applies to ELPs.

Merger Procedure

The directors of each constituent company must approve a written plan of merger setting out the terms and conditions of the transaction. This includes:

- the manner of converting shares or membership interests in the constituent entities into shares, interests or other consideration in the surviving entity;
- any rights or benefits given to the directors or managers; and
- the effective date.

The plan must then be authorised by the shareholders of each company by special resolution and such other authorisation, if any, as may be specified in the articles (or, in the case of LLCs, by special resolution of the members, being a two-thirds majority unless the LLC agreement provides otherwise). A shareholder resolution is not required for a merger between the parent company and its subsidiary where the parent holds shares carrying at least 90% of the votes at a general meeting of the subsidiary.

A director of each constituent company must give a declaration covering:

- the solvency of each constituent company and the surviving or consolidated company;
- that no petition or other similar proceeding for winding up has been filed and no receiver or similar officer has been appointed;
- that all required fees have been paid; and
- a statement of the assets and liabilities of the constituent company as at the latest practicable date before the declaration.

In a merger involving an overseas entity, a further declaration is required that the merger is bona fide and not intended to defraud unsecured creditors.

The plan of merger and supporting documents are then filed with the Registrar of Companies, and a certificate of merger is issued upon registration. The merger takes effect on registration or on a later date specified in the plan, which may be no more than 90 days after registration. A copy of the certificate and plan must be given to members and creditors, and notice of the merger must be published in the Cayman Islands Gazette. The consent of each holder of a fixed or floating security interest over a constituent company is a statutory requirement, whatever the terms of the security documents. The Grand Court may waive this requirement on application.

Dissenting Shareholders

The Companies Act gives shareholders a statutory right to dissent from the merger or consolidation of a Cayman Islands company, and to be paid an agreed or judicially determined fair value for their shares instead of the merger consideration being offered by the merging company. These rights and the associated consideration provide an alternative remedy to address claims made by dissenting shareholders, although this process does not prevent the successful completion of a merger transaction.

Dissenters' rights are not available for any class of shares for which an open market is maintained on a recognised stock exchange or recognised interdealer quotation system at the end of the period for giving notice of an election to dissent. This exception applies only where the consideration is shares or depositary receipts of a surviving or consolidated company, or of

another listed company (although cash may be paid in lieu of fractional shares).

The dissent procedure is subject to strict procedural requirements. A dissenting shareholder must give the company written objection to the merger before the vote, including a statement that the shareholder proposes to demand payment for their shares if the merger is authorised. Within 20 days after the company gives notice that the merger has been authorised, the shareholder must give written notice of election to dissent, stating their name and address, the number and classes of shares concerned and a demand for payment of fair value. The company must then make a written offer to purchase the shares at the price it considers to be fair value. If no agreement is reached within 30 days, the company must (and the dissenting shareholder may) petition the Grand Court within the following 20 days to determine fair value. Failure to comply with these requirements may result in the loss of the right to dissent.

Dissenters' rights do not apply in respect of a scheme of arrangement.

Schemes of Arrangement

As an alternative to a statutory merger, a company may effect a reorganisation by way of a scheme of arrangement under the Companies Act. A scheme is a court-supervised process. A shareholders' scheme requires the approval of at least 75% in value of the shareholders (or each relevant class) present and voting, in person or by proxy, at a meeting convened by order of the Grand Court. A creditor scheme requires the approval of a majority in number representing 75% in value of the creditors (or each relevant class of creditors) present and voting. The scheme must then be sanctioned by the Grand Court. Schemes are flexible and can be used to achieve a wide range of outcomes, including compromises with creditors, restructurings and amalgamations. Creditor schemes may also be promoted in conjunction with the restructuring officer regime.

Compulsory Acquisition of Minority Shares

The Companies Act also provides a compulsory acquisition (squeeze-out) mechanism. Where a takeover offer has been approved by the holders of at least 90% in value of the shares to which it relates within four months of the offer, the offeror may, within the following two months, give notice to the remaining shareholders that it wishes to compulsorily acquire their shares on the same terms. A dissenting shareholder may apply to the Grand Court within one month of the notice.

Regulated Entities

Where a constituent entity is regulated by CIMA, prior notification to, or consent from, CIMA may be required for a merger transaction depending on the nature of the regulated business and the applicable regulatory legislation.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework

CIMA is the primary regulator of financial services in the Cayman Islands. Key statutes governing investment funds and securities activities include the following:

- Mutual Funds Act;
- Private Funds Act; and
- Securities Investment Business Act.

CIMA is responsible for licensing, registering and supervising entities carrying on regulated activities in or from the Cayman Islands.

The Cayman Islands Stock Exchange

The CSX is the jurisdiction's primary stock exchange and provides a listing facility for equity securities, debt instruments and investment funds. Entities seeking a listing on the CSX must comply with the CSX Listing Rules, which impose requirements regarding prospectus content, ongoing disclosure and corporate governance. The CSX is recognised by international regulatory bodies and its listings are accepted for the purposes of various tax and regulatory regimes.

There is no general prospectus registration regime applicable to private placements of securities in the Cayman Islands. Securities may generally be offered to sophisticated, institutional or other investors with-

out the filing or approval of a prospectus, provided the offering does not constitute a public offering in the Cayman Islands.

5.2 Continuous Disclosure

Listed entities on the CSX are subject to continuous disclosure obligations under the CSX Listing Rules, including:

- timely disclosure of price-sensitive information;
- publication of annual and interim financial statements; and
- notification of material transactions and related-party transactions.

Unregulated entities are not subject to any general continuous disclosure regime, although regulated funds are required to make periodic filings and reports to CIMA.

5.3 Insider Trading

The Securities Investment Business Act creates criminal offences of insider dealing and doing anything to create a false or misleading appearance of active trading in listed securities or in respect of the market for, or the price of, any such securities (market manipulation). The relevant provisions are generally limited to dealings in securities listed on the CSX. A person convicted of these offences may be subject to fines and/or imprisonment.

Entities listed on the CSX are subject to the CSX Listing Rules, which, in line with the above, include provisions relating to dealings by directors and insiders.

Cayman Islands entities that are listed or traded on overseas exchanges may also be subject to the insider trading and market abuse regimes of those jurisdictions.

5.4 Shareholder Disclosure

There is no general shareholder disclosure regime in the Cayman Islands. The Cayman Islands operates a beneficial ownership transparency regime (see **1.5 Control Person Reporting**), but the information held is not generally accessible to the public.

Companies listed on the CSX may be subject to disclosure requirements under the CSX Listing Rules in relation to significant shareholders. Cayman Islands entities that are listed or traded on overseas exchanges will typically be subject to the shareholder disclosure requirements of those jurisdictions.

5.5 Internal Controls and Whistle-Blower Regimes

Under the Whistleblower Protection Act, employees in the Cayman Islands may make disclosures of improper conduct to the Cayman Islands Ombudsman.

There is no general statutory requirement for Cayman Islands companies to implement compliance programmes or internal control systems. However, entities regulated by CIMA must comply with various regulatory measures that impose requirements in relation to matters such as corporate governance frameworks and the maintenance of adequate systems and controls, including internal compliance and risk management functions, as part of their ongoing regulatory obligations.

Anti-money laundering legislation (discussed further in **9.2 Anti-Money Laundering, Sanctions, and Corruption**) requires entities conducting relevant financial business to identify, assess and understand their money laundering, terrorist financing and proliferation financing risks and to implement and maintain risk-based procedures covering specified matters. Entities subject to overseas regulatory requirements must comply with the internal control and whistle-blower requirements of those regimes.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Principal Laws and Forms of Security

Secured transactions in the Cayman Islands are governed by a combination of common law, equitable principles and relevant Cayman Islands legislation. Where a particular issue has not been considered by the Cayman Islands courts, decisions of the English courts on common law and equitable principles are

highly persuasive in, although not binding on, the Cayman Islands courts.

Cayman Islands law recognises a broad range of security interests, including legal and equitable mortgages and charges, fixed and floating charges, assignments by way of security and, less commonly, pledges and liens. The appropriate form of security interest depends principally on the nature and location of the secured asset and the governing law of the underlying obligations being secured.

Perfection and Registration

Aside from certain specific asset classes, such as Cayman Islands registered intellectual property, land situated in the Cayman Islands and Cayman Islands registered ships and aircraft, there is no central public registry for security interests granted by Cayman Islands entities. Specific rules for perfecting security over LLC and ELP interests are also discussed below.

Under the Companies Act, a Cayman Islands company is required to maintain a register of mortgages and charges at its registered office in the Cayman Islands, recording security interests over its property. Failure to make the required entries may result in financial penalties for the company and its directors but does not invalidate the security interest. The register is not a public register, although it is open to inspection by creditors and members of the company at all reasonable times.

A similar requirement applies to LLCs under the Limited Liability Companies Act. Where the general partner is a Cayman Islands company, any security interests granted by the ELP over its assets would typically be recorded in the register of mortgages and charges of the general partner (which holds the assets of the partnership on statutory trust).

Security Over Partnership and LLC Interests

Specific statutory rules apply to security over interests in an ELP or LLC. Notice of the security should be served on the ELP (through its general partner) or the LLC at its registered office, and the security is then recorded in the entity's register of security interests. Priority between competing security interests over the same partnership or LLC interest is generally determined by the order in which notice is received, so serving notice promptly is an important practical step.

Priority

As a general matter and save for the specific asset classes mentioned above and below, priority is determined by Cayman Islands common law and equitable principles rather than by registration in a central security registry. A security interest, whether legal or equitable, will generally rank behind an earlier legal interest or an earlier perfected equitable interest in the same asset, although priority for some security interests depends on the order in which notice is given (see below). An equitable security interest may also rank behind a later legal interest acquired by a bona fide purchaser for value without notice. These principles apply only where the competing equities are otherwise equal, and a party may lose priority through, for example, fraud or negligence.

For security over debts and other contractual rights, the applicable priority and perfection rules will generally depend on the governing law of the relevant debt or contractual right. Where Cayman Islands law applies, priority between competing assignees or chargees will generally be determined by the order in which notice is given to the relevant debtor or obligor, applying the rule in *Dearle v Hall*, subject to applicable exceptions. Prompt notice can therefore be an important perfection and priority step in Cayman Islands financing transactions.

Enforcement

Enforcement depends on the type of asset, the terms of the security document and its governing law. Cayman Islands security documents typically include certain "self-help" remedies allowing a secured party to enforce its security without a court order and may also include a power of sale and the right to appoint a receiver.

The Cayman Islands courts would not necessarily recognise or enforce foreclosure (being the secured party's assumption of beneficial ownership of the secured asset and the extinction of the security provider's equity of redemption) without a court order obtained in foreclosure proceedings. This applies only to foreclosure under mortgages and does not affect

the exercise of a power of sale under a mortgage or charge.

Subject to the foregoing, a secured creditor may generally enforce its security without the leave of the Cayman Islands court and without reference to the liquidator. The restructuring officer regime imposes a stay on proceedings but makes specific provision for enforcement of creditors' security.

Preferential debts rank ahead of floating charge holders to the extent the assets available to general creditors are insufficient. It is also possible under certain circumstances for a transaction (including the grant of a security interest) to be challenged by a liquidator as, for example, a voidable preference, fraudulent trading or a fraudulent disposition.

The Cayman Islands courts will generally (i) recognise validly granted and perfected foreign law governed security interests duly granted by a Cayman Islands entity and (ii) uphold a choice of foreign law in a security document on the basis that it has been made in good faith and will be regarded as valid and binding in the courts of the relevant jurisdiction. A final and conclusive foreign money judgment can generally be enforced at common law by bringing a claim on the judgment debt in the Grand Court of the Cayman Islands, without the merits being reconsidered, subject to limited exceptions (for example, on public policy grounds).

Stamp Duty

Stamp duty is generally payable only if a security document is executed in, or subsequently brought into, the Cayman Islands, or produced before a Cayman Islands court. The amount payable depends on the nature of the document and the secured asset and is generally nominal where the secured asset is not located in, or governed by the laws of, the Cayman Islands.

Acquisition Financing and Security Packages

In acquisition financings, Cayman Islands entities usually appear as borrowers, guarantors and/or security providers, typically in the form of exempted companies, LLCs or ELPs.

A typical security package can include security over shares or other equity interests in the Cayman Islands entity, bank accounts, intercompany receivables and contractual rights. The main finance documents are typically governed by New York or English law, with Cayman Islands law governed security, foreign-law governed security or a combination of both taken over any Cayman Islands law governed or domiciled assets.

Guarantees and Corporate Benefit

As noted in **1.4 Distributions and Return of Capital**, there is no statutory prohibition on a Cayman Islands company giving financial assistance for the acquisition of its own shares, so upstream and cross-stream guarantees and security interests are commonly given by Cayman Islands targets and holding vehicles. The principal considerations are the entity's capacity and the authority of its directors under its constitutional documents, and the directors' fiduciary duty to act in the best interests of the company. In practice, secured parties will expect board resolutions recording the corporate benefit to the company and, where appropriate (particularly for upstream guarantees), shareholder resolutions approving the transaction.

Intercreditor and Subordination Arrangements

Intercreditor and subordination agreements in acquisition financings are typically governed by the law governing the finance documents (usually New York or English law). Cayman Islands law gives statutory recognition to contractual subordination: under the Companies Act, the distribution of a company's property in a liquidation takes account of the rights of secured and preferred creditors, any subordination agreement, and contractual set-off and netting arrangements.

Recent Legislative Changes

The Companies (Amendment) Act 2024, which came into force on 1 January 2026, introduced an "out of court" capital reduction procedure (see **1.4 Distributions and Return of Capital**) and new continuation and entity conversion mechanisms. These amendments primarily concern Cayman Islands corporate procedures and do not alter the framework applicable to the creation, perfection, priority or enforcement of security interests.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Governing Principles

Cayman Islands contract law is based on English common law principles. A valid and enforceable contract requires:

- offer;
- acceptance;
- consideration (or, in the case of a deed, execution as a deed);
- certainty of terms; and
- an intention to create legal relations.

The courts generally give effect to the terms agreed by the parties, subject to standard common law doctrines such as:

- misrepresentation;
- duress;
- undue influence; and
- illegality.

Electronic Signatures

Electronic signatures are generally valid and enforceable under the Electronic Transactions Act. In practice, this means most commercial contracts can be validly signed electronically, subject to certain limited exceptions.

Execution of Deeds

A deed may be executed by a Cayman Islands company under its common seal (if any) or otherwise in accordance with Cayman Islands law. Deeds are generally enforceable without consideration and are subject to a 12-year limitation period. They are commonly used for powers of attorney, releases, guarantees and indemnities, and other instruments intended to be binding without consideration.

Third-Party Rights

The Contracts (Rights of Third Parties) Act allows a person who is not a party to a contract to enforce a term of that contract, but only where the contract expressly provides that the third party may do so. If the parties wish third parties to have enforceable rights, the contract should say so clearly.

7.2 Termination and Remedies

Termination

A contract may be terminated in accordance with its terms (eg, when a fixed term expires, when a specified event occurs or when a party exercises a contractual termination right). At common law, the innocent party may also terminate for a repudiatory breach, that is to say, a breach that goes to the root of the contract, or a breach of a condition. A contract may also be discharged in some circumstances by frustration, where an unforeseen event makes performance impossible or radically different from what the parties intended.

Remedies

The primary remedy for breach of contract is damages, calculated to put the innocent party in the position it would have been in had the contract been performed. In appropriate cases, the court may also grant equitable remedies such as specific performance or an injunction. In some circumstances interim relief may be available pending a final determination of the claim.

Liquidated damages clauses are generally enforceable unless they impose a detriment out of all proportion to the innocent party's legitimate interest in performance. The limitation period for a breach of contract claim is six years from the date of breach (or 12 years for a deed).

7.3 Intellectual Property in Commercial Transactions

The Cayman Islands has its own registration system for trade marks under the Trade Marks Act, and registered designs and patents granted in the UK (and certain other jurisdictions) can be extended to the Cayman Islands under the Patents and Trade Marks Act and the Design Rights Registration Act.

Copyright protection is available by virtue of a slightly modified version of Part 1 of the Copyright, Designs and Patents Act 1988 having been extended from the UK to the Cayman Islands by Order in Council. In commercial transactions, intellectual property rights are typically dealt with by way of contractual licence, assignment or transfer provisions.

Although intellectual property rights do not frequently come before the courts in the Cayman Islands, the

law is clear that such rights will be respected, and the full range of financial and equitable remedies is available in consequence of any infringement. By the same token, there is no reason to consider that contractual provisions defining the ownership of intellectual property generated in the course of a commercial relationship would not be upheld in ordinary circumstances.

The Cayman Islands economic substance regime (see **9.5 Other Regulatory Compliance Requirements**) is designed to ensure that entities earning income from certain geographically mobile activities in the Cayman Islands have real economic substance in the Cayman Islands. Intellectual property business is one of these "relevant activities" and so the regime may be relevant to Cayman Islands entities that hold or exploit intellectual property assets.

A relevant entity carrying on intellectual property business must satisfy the economic substance test in the Cayman Islands (including conducting core income-generating activities in, and being directed and managed in, the Cayman Islands) and make required filings with the Cayman Islands Tax Information Authority. Additional requirements apply to "high risk" intellectual property business, where the entity is presumed to fail the economic substance test unless it can rebut that presumption.

7.4 Consumer Protection

The Cayman Islands does not have a comprehensive consumer protection statute. Consumer transactions are governed mainly by common law, including the law of contract and tort (for example, claims for misrepresentation). Certain sector-specific protections exist, such as in insurance and financial services.

The absence of a general consumer protection regime reflects the predominantly business-to-business nature of commercial activity in the Cayman Islands, though this position is likely to continue to evolve in line with the growth of the domestic economy. A draft Consumer Protection and Guarantees Bill was gazetted in 2023 but as yet has not found its way into law.

8. Foreign Investment

8.1 Competition and Merger Control

The Cayman Islands does not have a general competition law or merger control regime. There is no requirement to notify or obtain approval from a competition authority for mergers, acquisitions or other business combinations, although the Utility Regulation and Competition Office (OfReg) has competition powers in regulated sectors such as telecommunications, energy and water.

Outside those regulated sectors, there is no general prohibition on anti-competitive agreements, abuse of dominance or cartel activity under Cayman Islands law, although common law restraint of trade principles may make unreasonable restrictive covenants unenforceable.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

General Position

Other than in respect of businesses carried on within the Cayman Islands (as opposed to businesses conducted from the Cayman Islands with persons outside the jurisdiction), there are no general foreign investment restrictions in the Cayman Islands. Subject to the above, foreign nationals and foreign-owned entities may freely own Cayman Islands entities without government approval.

Licensing Requirements

There is no general foreign investment or national security screening regime. However, a business carried on within the Cayman Islands (rather than offshore) generally requires a trade and business licence and, where foreign-owned, may require a licence under the Local Companies (Control) Act. Regulated activities such as banking, insurance, funds and securities business also require registration with or a licence from CIMA.

Special Economic Zones

The CEC and the Cayman Tech City operate special economic zones in the Cayman Islands, offering dedicated infrastructure, streamlined immigration processes and other concessions for companies in the technology, media, maritime services, commodities

and academic research sectors. Companies operating within the CEC are classified as SEZCs and are restricted to conducting activities directed at clients and counterparties outside the Cayman Islands.

Government Concessions

The Cayman Islands government offers various incentives to attract foreign investment, including:

- the absence of direct taxation;
- a stable regulatory environment; and
- a well-developed legal and financial services infrastructure.

There is no exchange control legislation, and funds may be freely remitted into and out of the jurisdiction in any currency.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Data Protection Act

The Data Protection Act is the principal data protection legislation in the Cayman Islands. The Act applies to data controllers established in the Cayman Islands, and to data controllers established elsewhere that process personal data in the Cayman Islands (otherwise than for the purposes of transit), and imposes obligations regarding the collection, use and disclosure of personal data. Data controllers must comply with eight data protection principles which, amongst other things, require a data controller to ensure that personal data is processed fairly and on a lawful basis (consent being one of several available bases), is accurate, is not kept for longer than is necessary and is only transferred internationally in compliance with the requirements of the Data Protection Act. A data controller must ensure that the principles are met by anyone processing data on its behalf.

Personal data may not be transferred outside the Cayman Islands unless the destination country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data, or an exemption applies (eg, the data subject has given consent or the transfer is subject to approved contractual clauses). There are no general data localisation requirements, although regulated entities should also consider relevant CIMA regulatory measures, including CIMA's rules and guidance on outsourcing and cybersecurity.

Breach Notification

In the event of a personal data breach, data controllers are generally required to notify the Ombudsman and affected data subjects within five calendar days of becoming aware of the breach. The notification must include:

- details of the nature and consequences of the breach;
- measures taken or proposed to address the breach; and
- measures recommended to mitigate the possible adverse effects of the breach.

Enforcement

The Ombudsman is the supervisory authority responsible for the enforcement of the Data Protection Act and has the power to investigate complaints, issue enforcement notices and impose monetary penalties. Certain breaches of the Data Protection Act are also criminal offences. Data subjects have the following rights:

- to be informed about the purposes for which their personal data is processed;
- to access their personal data;
- to request correction of inaccurate data;
- to restrict or request the cessation of processing of their data;
- to stop direct marketing; and
- to complain to the Ombudsman about a data controller's handling of their data.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering

Entities carrying on "relevant financial business" in the Cayman Islands are subject to comprehensive anti-money laundering obligations under the following legislation and related guidance:

- Anti-Money Laundering Regulations;
- Proceeds of Crime Act;

• Terrorism Act; and
• Proliferation Financing (Prohibition) Act.

These entities must appoint:

• an Anti-Money Laundering Compliance Officer;
• a Money Laundering Reporting Officer (MLRO); and
• a Deputy Money Laundering Reporting Officer.

These entities must also adopt risk-based policies and procedures covering specified matters, conduct customer due diligence, maintain records and ensure that knowledge or suspicion of criminal conduct is reported to the entity's MLRO and, where the MLRO determines it appropriate, to the Financial Reporting Authority (FRA). Compliance is supervised by CIMA or, for non-financial businesses, the relevant designated supervisory authority. Administrative fines may be imposed for breaches, and serious breaches are also criminal offences. The anti-money laundering regime is broadly aligned with the recommendations of the Financial Action Task Force. Certain regulated entities are subject to additional CIMA regulatory measures regarding anti-money laundering and sanctions compliance.

More generally, all persons in the Cayman Islands are required to report knowledge or suspicion of criminal conduct (either to the MLRO, where applicable, or to the FRA) where the information comes to their attention in the course of their trade, profession, business or employment.

Sanctions

United Kingdom sanctions legislation is extended to the Cayman Islands, with modifications, by Orders in Council. Sanctions compliance is mandatory for all persons and entities in the Cayman Islands, and it is a criminal offence to deal with the funds or economic resources of designated persons or to make funds or economic resources available to or for the benefit of designated persons.

The FRA is the competent authority for financial sanctions, and persons must report to it any knowledge or suspicion that a person is designated or that a breach has occurred, as well as any frozen assets. Breaches may result in fines and/or imprisonment. Financial services businesses are expected to maintain screening procedures to ensure ongoing compliance with applicable sanctions regimes.

Anti-Corruption

Bribery and corruption are criminal offences under the Anti-Corruption Act, which covers the bribery of public officials (including foreign public officials) and related offences, and is enforced by the Anti-Corruption Commission. The Cayman Islands also participates in relevant international anti-corruption conventions. Businesses with links to other jurisdictions with extra-territorial anti-corruption laws should ensure that their compliance programmes also address those requirements.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental regulation in the Cayman Islands is governed by the National Conservation Act and related legislation, which provides for the protection of the natural environment and the regulation of development activities.

Health and safety in the workplace is addressed through the Labour Act and related regulations, which impose duties on employers regarding working conditions, workplace safety and accident reporting.

Industry-specific regulation applies to certain sectors such as banking (Banks and Trust Companies Act), insurance (Insurance Act) and investment funds (Mutual Funds Act and Private Funds Act), with CIMA acting as the primary regulatory body for the financial services sector.

Outside financial services, businesses are regulated by the Trade and Business Licensing Act and the Local Companies (Control) Act, which create a licensing and review system designed to ensure that local interests are appropriately protected. Foreign-owned businesses are required to satisfy a number of broad public interest based tests if they wish to trade with customers located within the Cayman Islands. Businesses located within the Cayman Islands but whose customer base is located elsewhere fall outside this regime. In general, where a business is locally

licensed, regulatory approvals will be required before any transfer of shares or ownership can be effected.

9.4 Artificial Intelligence

There is currently no specific legislation regulating the development or use of artificial intelligence (AI) in the Cayman Islands. Existing laws, including the Data Protection Act, the common law of contract and tort, and regulatory requirements administered by CIMA, apply to AI-related activities where relevant. Accordingly, organisations deploying AI remain subject to existing obligations relating to data protection, confidentiality, governance and sector-specific regulation.

As AI adoption increases, developments in large international markets and emerging international frameworks, including those developed by the Organisation for Economic Co-operation and Development (OECD) and the European Union, will likely influence future policy and legislative updates in the Cayman Islands.

9.5 Other Regulatory Compliance Requirements

Economic Substance

The International Tax Co-operation (Economic Substance) Act requires entities carrying on "relevant activities" in the Cayman Islands to maintain adequate economic substance in the jurisdiction. Relevant activities include:

- holding company business;
- intellectual property business;
- financing and leasing;
- fund management;
- banking;
- insurance;
- shipping;
- distribution and service centre business; and
- headquarters business.

Relevant entities must file an annual economic substance notification and, if applicable, an economic substance return demonstrating compliance with the substance requirements.

FATCA, CRS and CARF

The Cayman Islands has implemented both FATCA and the OECD CRS through local legislation. Financial institutions in the Cayman Islands are required to identify and report information on financial accounts held by US persons (under FATCA) and by tax residents of participating CRS jurisdictions (under CRS) to the Cayman Islands Tax Information Authority, which exchanges the information with the relevant foreign tax authorities. Registration and reporting obligations apply on an annual basis. The Cayman Islands has also implemented the Crypto-Asset Reporting Framework (CARF) under which Reporting Crypto-Asset Service Providers are required to register with, and identify and report user and transaction information to, the Cayman Islands Tax Information Authority for exchange with relevant tax authorities.

Beneficial Ownership Transparency

The Cayman Islands has implemented a beneficial ownership transparency regime under which in-scope legal persons (which include Cayman Islands companies, LLCs and partnerships but exclude trusts) must identify their registrable beneficial owners and, through their corporate services provider, establish and maintain a register containing adequate, accurate and current beneficial ownership information. Please see **1.5 Control Person Reporting** for more information.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Legislation

Employment relationships in the Cayman Islands are primarily governed by the Labour Act, which sets out minimum standards for terms and conditions of employment, including provisions relating to:

- working hours;
- rest periods;
- public holidays;
- annual leave;
- sick leave; and
- maternity leave.

The Labour Act applies to most employees working in the Cayman Islands private sector, subject to certain very limited exceptions.

Work Permits and Immigration

Non-Caymanian nationals generally require a work permit to be lawfully employed in the Cayman Islands. Work permits are issued under the Caymanian Protection Act and are subject to various requirements, including that the employer demonstrate that no suitably qualified Caymanian is available to fill the position. The work permit system is administered by the Workforce Opportunities and Residency Cayman department. Employers must comply with the Caymanian Protection Act in relation to the recruitment, employment and termination of non-Caymanian employees.

Pensions and Health Insurance

Employers are required to provide pension contributions for their employees under the National Pensions Act. The minimum employer contribution is 5% of the employee's earnings up to KYD87,000 (approximately USD106,000) (with a matching 5% contribution from the employee). Employers are also required to provide health insurance for their employees under the Health Insurance Act, although a portion of that cost can be recouped from the employee. These obligations apply to all employers in the Cayman Islands and form a significant part of the employment cost base.

Termination of Employment

The Labour Act requires that notice be given prior to the termination of employment in most cases, other than in circumstances of misconduct or inadequate performance; "at will" employment is not permitted in the Cayman Islands. Employers may be required to pay severance in certain circumstances, including redundancy. Unfair dismissal claims may be brought before the Labour Tribunal, which has jurisdiction to award compensation, although not to order reinstatement. Whilst the courts do have jurisdiction over certain employment disputes, this category is limited, as the vast majority of claims fall within the scope of the Tribunal's authority.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

There are no statutory restrictions on executive compensation in the Cayman Islands. Remuneration packages are contractual and a matter of negotiation between the parties. They are typically set out in a service agreement or employment contract.

Equity-based compensation (including share options, restricted share awards and carried interest arrangements) is common. Cayman Islands companies that are listed on overseas exchanges may be subject to the compensation disclosure rules of those jurisdictions.

There is no direct taxation in the Cayman Islands, so any taxation aspects of executive compensation arrangements will be driven by any taxation rules of jurisdictions where the executives or the group are based.

Restrictive Covenants

Restrictive covenants are generally enforceable in the Cayman Islands to the extent that they are reasonable in scope, duration and geographical extent, among other factors. There is no specific restrictive covenant legislation; the enforceability of such provisions is determined by reference to English common law principles, which are highly persuasive in the Cayman Islands courts. A restrictive covenant that goes further than is reasonably necessary to protect the employer's legitimate business interests is likely to be held void. Careful drafting is therefore essential to maximise enforceability and to ensure the effectiveness of a restraint.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

No additional commentary is included for the purposes of this chapter.

11.2 Commercial Real Estate Transactions

No additional commentary is included for the purposes of this chapter.

CHINA

Law and Practice

Contributed by:
Yuejian Wang, Ting Gu and Leilei Fu
Hylands Law Firm

Contents

1. Business Entities P.117
1.1 Business Organisations p.117
1.2 Incorporation and Ongoing Compliance p.117
1.3 Share Issuances p.118
1.4 Distributions and Return of Capital p.118
1.5 Control Person Reporting p.118

2. Corporate Governance P.118
2.1 Legal Framework p.118
2.2 Directors' Duties and Liabilities p.119
2.3 Board Composition and Independence p.119
2.4 ESG and Disclosure Obligations p.120
2.5 Conflicts of Interest and Related-Party Transactions p.120

3. Shareholder Rights and Agreements P.120
3.1 Shareholder Rights p.120
3.2 Shareholder Agreements p.121

4. Mergers and Acquisitions P.121
4.1 Legal Framework p.121

5. Capital Markets P.122
5.1 Securities Regulation and Public Offerings p.122
5.2 Continuous Disclosure p.123
5.3 Insider Trading p.123
5.4 Shareholder Disclosure p.124
5.5 Internal Controls and Whistle-Blower Regimes p.124

6. Secured Transactions P.125
6.1 Transaction Financing and Security Interests p.125

7. Commercial Contracts P.126
7.1 Contract Formation and Enforceability p.126
7.2 Termination and Remedies p.126
7.3 Intellectual Property in Commercial Transactions p.127
7.4 Consumer Protection p.128

8. Foreign Investment P.129
8.1 Competition and Merger Control p.129
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.129

9. Regulatory Compliance P.130
9.1 Privacy and Data Protection p.130
9.2 Anti-Money Laundering, Sanctions and Corruption p.131
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.132
9.4 Artificial Intelligence p.132
9.5 Other Regulatory Compliance Requirements p.133

10. Employment and Labour P.133
10.1 Employment Standards and Workplace Regulation p.133
10.2 Executive Compensation and Restrictive Covenants p.133

11. Real Property and Commercial Leasing P.134
11.1 Requirements for Land Ownership p.134
11.2 Commercial Real Estate Transactions p.134

Hylands Law Firm (Hylands) was established in 1997 and headquartered in Beijing. It now operates from 40 offices across major Chinese mainland cities, in Hong Kong, and beyond. With over 2,000 legal professionals – including more than 600 partners and counsels – Hylands maintains collaborative relationships with 150-plus international law firms, delivering one-stop, cross-border multidisciplinary services. Hylands lawyers are legal experts in their respective areas. Yuejian Wang has gained industry recognition as the author of the acclaimed monograph "Corporate Control, Shareholder Rights and Articles of Association Design", which diagnoses common governance pitfalls and offers systematic, actionable solutions. Hylands excels in full-chain corporate and commercial practice, driven by close-knit, efficient teamwork that crafts tailor-made, pragmatic solutions which exceed client expectations. The firm's consistent top-tier rankings across prestigious legal directories further attest to its market-leading capabilities and client-centric excellence.

Authors



Yuejian Wang is a senior partner at Hylands. He graduated from Koguan School of Law, Shanghai Jiao Tong University, and has transitioned from in-house counsel at a Fortune 500 enterprise to senior partner at a premier law firm. He has built a comprehensive professional system explained in his monograph "Corporate Control, Shareholder Rights and Articles of Association Design" that is centred on corporate control and governance compliance, shareholder rights protection, family business control, practical matters concerning the duties of directors, supervisors, and senior executives, and complex corporate dispute resolution. His broad engagements with bar associations, universities, government task forces, and industry organisations further attest to his substantial industry influence.



Ting Gu is a senior partner at Hylands who specialises in major and complex commercial litigation and arbitration, investment and financing dispute resolution, debt recovery, corporate counsel and governance matters. She advises listed companies, pre-IPO companies, fund managers, insurers, trust companies, large SOEs, renowned real estate developers and investment institutions. Representative matters include VAM disputes for listed companies, shareholder control contests in the jewellery and outdoor sports sectors, misrepresentation claims, equity repurchase and shortfall-supplementation disputes involving large funds and asset management plans, equity transfer disputes for listed power and real estate companies, and numerous complex enforcement objection cases.



Leilei Fu is a partner at Hylands whose primary practice areas include investment and financing, M&A, corporate governance, labour disputes, civil and commercial dispute resolution, and non-performing asset disposal. She has participated in numerous cross-border/domestic M&A projects, red-chip listings of domestic enterprises, and foreign direct investment projects. In her domestic practice, she provides comprehensive legal services as outside counsel to enterprises in the life sciences, computer software development and applications, and AI sectors. She has successfully handled numerous dispute resolution cases, safeguarding clients' legal rights through judicial proceedings. She graduated from the School of Law, Tsinghua University, and the School of Foreign Languages & Literature, Shandong University.

Hylands Law Firm

F11/12, S1, Bund Financial Centre
No 600 Zhongshan No 2 Road(E)
Huangpu District
Shanghai, 200010
PRC

Tel: (86) 139 1890 5986
Fax: (86) 021 6887 1787
Email: wangyuejian@hylandslaw.com
Web: www.hylandslaw.com

1. Business Entities

1.1 Business Organisations

Principal Business Structures

The principal vehicles for commercial operations in mainland China are limited liability companies (LLCs), joint stock companies, partnerships and sole proprietorships. Other registered market entities include individual businesses, non-company enterprise legal persons, farmers' professional co-operatives and branches of domestic or foreign enterprises. Trust companies are licensed financial institutions organised as companies; a trust is not a separate category of registered business entity.

Liability and Governance

Companies have separate legal personality and are liable for their debts with their own assets. Shareholders generally have limited liability. In a general partnership, partners bear unlimited joint and several liability; in a limited partnership, general partners bear unlimited joint and several liability, while limited partners' liability is limited to their subscribed contributions. Sole proprietors bear unlimited liability.

The choice of structure depends on the proposed activities, allocation of control, liability exposure, tax treatment and compliance costs. Companies provide an established governance framework but require more formal administration. Partnerships allow contractual flexibility and are commonly used for private equity funds and employee shareholding platforms.

Tax and Regulatory Treatment

Companies are subject to enterprise income tax, and distributions may also be taxable in shareholders' hands. Partnerships generally allocate taxable income to partners, whose treatment depends on whether they are individuals or entities. Sole proprietors and individual businesses are subject to the applicable individual income tax rules. Sector-specific licensing and foreign investment restrictions may further constrain the choice of vehicle.

1.2 Incorporation and Ongoing Compliance

Incorporation Requirements

An LLC may have one to 50 shareholders. For newly established LLCs, shareholders generally must pay their subscribed capital within five years of incorporation, subject to specific statutory requirements. A joint stock company may have one to 200 promoters, who must pay for their subscribed shares before establishment. Both forms require articles of association, a lawful name and a registered domicile.

Registration Procedure

Applicants declare the proposed name and submit the registration application, articles of association, shareholder identification, evidence of the right to use the registered premises, and other required documents. The registration authority reviews the application and issues a business licence. The licence issue date is the incorporation date.

Complete applications may be processed immediately. Where this is not possible, the usual statutory period is three working days, extendable by a further three working days in complex cases. Incomplete

applications require correction, and sector-specific approvals may add time. Company registration and business licence issuance do not attract administrative fees, although professional and ancillary costs may arise.

1.3 Share Issuances

Authorised and Issued Capital

The Company Law, revised in 2023 and effective from 1 July 2024, permits a joint stock company's articles of association or shareholders' meeting to authorise its board to issue shares within three years, up to 50% of the shares already issued. Issues for non-cash consideration require shareholder approval. Consequential amendments to registered capital or issued share numbers do not require a separate shareholder vote where the board acts within its authority. LLCs remain subject to the subscribed capital regime.

Par Value and No-Par Value Shares

Joint stock companies may use either par value or no-par value shares and may convert all shares from one type to the other in accordance with their articles. Par value shares have equal nominal amounts and cannot be issued below par. For no-par value shares, at least half the issue proceeds must be credited to registered capital.

Capital Accounts

Paid-in capital or share capital records capital contributions, while capital reserves include share premiums and the portion of no-par value issue proceeds not credited to registered capital. Statutory and discretionary reserves and retained earnings principally reflect accumulated profits. These accounting categories should be distinguished from the company's registered capital.

1.4 Distributions and Return of Capital

Dividends and Reserves

Before distributing profits, a company must cover accumulated losses and generally allocate 10% of after-tax profits to its statutory reserve until that reserve reaches 50% of registered capital. Shareholders may also approve a discretionary reserve. Remaining profits are distributed according to paid-in contributions in an LLC, unless all shareholders agree otherwise, or shareholdings in a joint stock company, unless its articles provide otherwise.

Approved distributions must be completed within six months. Unlawful distributions must be returned, and responsible shareholders, directors, supervisors or senior executives may be liable for resulting losses. Following a capital reduction to absorb losses, distributions remain restricted until the statutory and discretionary reserves together reach 50% of registered capital. That reduction cannot involve payments to shareholders or release them from contribution obligations.

1.5 Control Person Reporting

Private companies face several reporting obligations relevant to ownership and control. These arise under corporate registration, beneficial ownership, anti-money laundering and foreign investment rules.

Enterprise information disclosures cover prescribed shareholder and capital information. Companies must also maintain an internal shareholder register and file beneficial ownership information where required, subject to applicable exemptions. Beneficial ownership filings should be distinguished from publicly accessible corporate information.

Financial institutions undertake customer and beneficial owner due diligence under anti-money laundering rules, requiring companies to provide supporting ownership and control information. Foreign-invested enterprises must report prescribed investor and ultimate controller information through the relevant reporting system. Companies should keep these records consistent and update them when ownership or control changes.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in mainland China is governed principally by the Company Law and, for securities issuers, the Securities Law. These are supplemented by corporate registration and information disclosure regulations, regulatory rules and stock exchange requirements.

Listed companies must consider the Code of Corporate Governance for Listed Companies, the rules on independent directors, disclosure measures, listing rules and standardised operation guidelines. The Basic Standard for Enterprise Internal Control and related guidance address internal controls. Securities companies, banks and insurers are subject to additional sector-specific governance and compliance requirements.

State-owned enterprises must also comply with applicable state asset supervision rules, including requirements issued by the State-owned Assets Supervision and Administration Commission (SASAC). The relevant framework therefore depends on ownership, listing status and sector.

Articles of association translate statutory requirements into the company's governance arrangements. They should clearly allocate decision-making powers, specify approval thresholds and regulate shareholder and board procedures. Contractual flexibility remains subject to mandatory law and the protection of creditors and minority shareholders.

2.2 Directors' Duties and Liabilities

Loyalty and Diligence

Directors owe duties of loyalty and diligence under the Company Law. Loyalty requires them to avoid conflicts and refrain from using their position for improper gain. Diligence requires the reasonable care ordinarily expected of a manager acting in the company's best interests.

Courts consider both the substance of a decision and the process followed, including disclosure of interests and compliance with approval procedures. In (*2020*) *Zui Gao Fa Min Shen No 640*, the Supreme People's Court (SPC) emphasised that directors must protect the company's interests when personal interests conflict with them.

The duty of diligence also requires active oversight. In (*2018*) *Zui Gao Fa Min Zai No 366*, concerning Simate, the SPC addressed directors' failure to pursue overdue shareholder capital contributions. Relevant factors include awareness of operational risks, compliance with internal procedures and the steps taken to protect the company.

Business Decisions

The Company Law does not expressly codify a business judgment rule. Some courts nevertheless assess whether decisions were made in good faith, with reasonable care and a proper basis for considering them beneficial to the company, rather than judging them solely by their outcome. Examples include (*2023*) *Zhe 06 Min Zhong No 964* and (*2021*) *Yue 01 Min Zhong No 1056*.

2.3 Board Composition and Independence

Board Size and Eligibility

A board generally requires at least three directors. Eligible small companies or companies with few shareholders may appoint a single director instead. Companies must also consider statutory employee representation requirements; for example, companies with at least 300 employees generally require an employee director unless an eligible supervisory board includes employee representatives.

The Company Law imposes no general nationality or residence requirement for directors. Sector-specific and foreign investment rules may impose additional conditions on particular positions. Directors must have sufficient time and capacity to fulfil their duties.

Listed and State-Owned Companies

Independent directors must comprise at least one third of a listed company's board, including at least one accounting professional. Its audit committee must have an independent-director majority and comply with applicable composition requirements. External directors must form the majority of the board of a wholly state-owned company.

Board diversity is encouraged under listed-company governance standards and national policy. Companies should assess the skills, experience and independence needed for effective oversight, alongside any mandatory requirements arising from listing status or sector.

2.4 ESG and Disclosure Obligations

Legal Framework

Corporate environmental, social and governance (ESG) obligations arise from several legal regimes. The Ecological Environment Code, effective from 15 August 2026, consolidates the principal environmental framework. Carbon trading regulations and enterprise environmental disclosure measures impose additional obligations on covered businesses.

Social obligations arise under employment, social insurance, work safety, occupational health, consumer protection and personal information legislation. Governance requirements derive principally from the Company Law, listed-company governance and disclosure rules, and sector-specific standards. Mandatory obligations should be distinguished from voluntary sustainability reporting standards.

Sustainability and Cimate Disclosure

The national sustainability disclosure framework comprises basic standards, specific standards and application guidance. The Basic Standard for Enterprise Sustainability Disclosure and the climate-specific trial standard currently operate on a voluntary basis within their stated implementation scope. The climate standard addresses governance, strategy, risk management and emissions information, including Scope 1, Scope 2 and Scope 3 emissions.

Stock exchange sustainability reporting rules impose mandatory reporting on designated listed companies, including constituents of the SSE 180, STAR 50, SZSE 100 and ChiNext indices and companies listed both domestically and overseas. Their first reports covering financial year 2025 were due by 30 April 2026. Other issuers should assess applicable voluntary guidance and any separate disclosure duties.

The exchanges have supplemented the reporting framework with preparation guidance, including 2026 guidance on pollutant emissions, energy use and water resources. Local requirements may also apply; Shenzhen, for example, has environmental disclosure rules for financial institutions.

2.5 Conflicts of Interest and Related-Party Transactions

Applicable Rules

Related-party transactions are governed by the Company Law, securities disclosure rules, stock exchange requirements and accounting standards. Banking and insurance institutions face additional sector-specific controls. The Company Law's definition of affiliated relationships extends beyond formal ownership to relationships capable of transferring benefits away from the company.

Approval and Conflicts

Directors, supervisors and senior executives must report transactions involving themselves and specified connected persons to the board or shareholders' meeting. Approval must follow the company's articles and statutory requirements. Reporting alone does not replace the required resolution.

Interested directors must abstain, and their votes are excluded from the voting total. If fewer than three disinterested directors remain, the matter must be submitted to shareholders. Listed companies face further requirements concerning written reporting, independent director review and approval thresholds.

Disclosure

Private companies principally face internal reporting requirements. Listed companies must also disclose material related-party transactions under securities and exchange rules, with accurate, complete and timely information. Financial statements must comply with Accounting Standard for Business Enterprises No 36 on related-party disclosures.

In practice, companies should maintain a current related-party register, identify interests before negotiations, document commercial terms and ensure that approvals and disclosures are completed at the required stage.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholders have economic rights, governance rights and statutory remedies. Economic rights include dis-

tributions, transfers, applicable pre-emption rights, qualifying repurchase rights and a share of residual assets. Governance rights include voting, access to information, proposals, meeting requisitions and questions to management, subject to the conditions applicable to each company form.

Fundamental changes, including amendments to the articles, capital changes, mergers, divisions, dissolution and changes of corporate form, require special resolutions. For LLCs, the threshold is at least two thirds of all voting rights; for joint stock companies, it is at least two thirds of the voting rights represented at the meeting.

Direct Remedies

Shareholders may challenge defective resolutions, enforce information rights and seek compensation for direct harm caused by directors or senior executives. Other remedies include claims concerning profit distributions and qualifying repurchase claims, including the LLC remedy under Article 89 (3) for serious controlling-shareholder abuse. This repurchase remedy is distinct from, and ordinarily antecedent to, the judicial dissolution remedy below.

Where serious management difficulties threaten substantial shareholder losses and other solutions are unavailable, shareholders holding at least 10% of voting rights may seek judicial dissolution under Article 231 of the Company Law. Judicial dissolution is a last-resort remedy, available only where other exit paths, including the Article 89 (3) repurchase remedy, are exhausted or unavailable.

Separately, where the company itself suffers harm, eligible shareholders may bring a derivative action under Article 189, subject to the statutory precondition of a prior written request to the supervisory board (or the board, for claims against a supervisor) and refusal, inaction for 30 days, or emergency. Unlike the direct remedies above, it vindicates the company's loss, and recovery belongs to the company.

3.2 Shareholder Agreements

Purpose and Typical Terms

Shareholders' agreements supplement the Company Law by regulating governance, voting arrangements, reserved matters, economic rights and transfers. Common terms include voting commitments, veto rights, pre-emption procedures, transfer restrictions and agreed subscription rights. Departures from statutory default rules are effective only where the law permits them.

Enforceability

The agreement binds its parties, whereas the articles bind the company and its corporate participants in their statutory capacities. Provisions intended to govern corporate decision-making should therefore be reflected in the articles where appropriate. A shareholders' agreement cannot displace mandatory corporate powers or prejudice creditors.

The parties should align the agreement with the articles, obtain the necessary signatures and specify remedies for breach. Whether a provision is enforceable depends on its substance and the relevant mandatory rules; a contractual undertaking does not itself guarantee that a corporate resolution or transaction will be effective.

4. Mergers and Acquisitions

4.1 Legal Framework

M&A are governed principally by the Company Law and Civil Code. Public transactions also engage the Securities Law, the rules on acquisitions and major asset restructuring of listed companies, and stock exchange requirements. Non-listed public companies have a separate supervisory regime. Merger control, foreign investment, national security and sector-specific rules may apply alongside corporate approvals.

Structuring Considerations

The target's legal form and listing status determine the regulatory route. Private LLC acquisitions require review of the articles, transfer restrictions and other shareholders' pre-emption rights. Public acquisitions require particular attention to disclosure thresholds, mandatory offer rules and major asset restructuring requirements. Foreign investment restrictions and sector approvals should be assessed before agreeing a closing timetable.

For listed companies, a 5% interest generally triggers reporting obligations. Further acquisitions after reaching 30% generally require a tender offer unless an exemption applies. Holdings and voting arrangements of persons acting in concert must be aggregated. An indirect acquisition may therefore engage the same obligations as a direct purchase.

Transaction documents should allocate signing-to-closing risk through operating covenants, conditions precedent and termination rights. Listed-company transitional restrictions may limit board changes, guarantees and asset disposals. Private transactions commonly address material adverse changes, key employee retention and continuation of important customer contracts.

Common Structures

Negotiated share purchases transfer ownership of the target while leaving its assets and liabilities in place. They are commonly used for control acquisitions. Tender offers may be general or partial and can be voluntary or mandatory; their effects on listing status depend on the resulting shareholding and listing requirements.

Listed companies may issue shares to acquire assets or undertake share-swap mergers. These structures require analysis of registration, shareholder approvals, valuation and lock-up rules. Indirect acquisitions through a holding company may also transfer control, but do not necessarily avoid public acquisition requirements.

Asset purchases allow the buyer to select a business or assets, although liabilities do not invariably remain with the seller. They require assessment of title, contract transfers, permits, employees and transaction taxes. Statutory mergers follow Company Law procedures. Court involvement is particularly relevant where an acquisition forms part of a judicial restructuring, rather than an ordinary negotiated transaction.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework and Authorities

Mainland China's capital markets are governed by the Securities Law, Company Law, Securities Investment Fund Law and related regulations. The China Securities Regulatory Commission (CSRC) supervises the securities market. The Shanghai, Shenzhen and Beijing stock exchanges review issuance and listing applications and supervise listed issuers under their business rules.

The National Equities Exchange and Quotations (NEEQ) regulates public share transfers and specified issuances by non-listed public companies. China Securities Depository and Clearing Corporation provides registration, custody and clearing. The Securities Association of China and Asset Management Association of China (AMAC) exercise relevant self-regulatory functions.

Initial Public Offerings

Public offerings require registration with the CSRC or another authorised authority. Under the registration-based system, the exchange reviews eligibility, listing conditions and disclosure, followed by CSRC registration. Registration is not an endorsement of investment value.

IPO applicants must have sound governance, sustainable operations and compliant financial reporting. The Securities Law requires unqualified audit opinions for the preceding three years and addresses specified criminal records of the issuer, controlling shareholder and actual controller. Detailed requirements differ by board, including operating history, business stability, independence, internal controls and financial or market capitalisation tests.

The prospectus must contain the information investors need to assess the issuer and the securities, including material risks. Disclosure must be accurate, complete and understandable. Application documents are disclosed in advance as required, but pre-disclosed documents cannot be used to offer shares. Sponsors and other responsible parties assume statutory responsibilities for their work and disclosures.

The prospectus generally remains valid for six months from its final pre-offering signing date. Financial statements are subject to separate currency requirements, normally six months, with a permitted extension in specified circumstances. Issuers must update material information during the process.

5.2 Continuous Disclosure

General Requirements

Listed issuers and other statutory disclosure obligors must provide accurate, complete, timely and fair information under the Securities Law, CSRC measures and exchange rules. Disclosures must be clear and must not contain misleading statements or material omissions. Material information cannot be selectively released. Dual-listed companies must co-ordinate simultaneous domestic and overseas disclosure.

Periodic Reporting

Annual reports are due within four months of the financial year-end, and interim reports within two months of the half-year-end. Annual financial statements require an audit by an eligible accounting firm. Reports cover financial performance, ownership, governance, business developments and material risks and events.

The board must approve periodic reports, with financial information first reviewed by the audit committee as required. Directors and senior executives provide written confirmations; anyone unable to confirm the report or disagreeing with it must explain their position. Financial results announcements, non-standard audit opinions and delays may trigger additional disclosure or regulatory action.

Disclosure Channels

Required announcements must be published through the exchange website and prescribed media. Press briefings, interviews and periodic reports do not replace a required ad hoc announcement. Chinese-language disclosure requirements apply, with the Chinese text prevailing where applicable. Information released during non-trading hours may require an announcement before the next session.

Voluntary disclosures must meet the same standards of accuracy and fairness and be consistent over time. Public commitments must be disclosed and performed. Companies should not use voluntary announcements to disclose selectively or to manipulate the market.

Material Events

A listed company must promptly disclose an undisclosed event likely to have a material effect on the price of its securities or derivatives. The announcement should explain the event, its current status and potential impact. Relevant events include significant investments or disposals, major contracts or guarantees, defaults, losses, litigation, restructuring, changes of control and investigations affecting the company or key persons.

CSRC rules extend the statutory categories to matters such as significant impairments, freezing of major assets or accounts, interruptions to operations, changes of auditor and specified restrictions affecting substantial shareholdings. Events at subsidiaries or investees may also require disclosure where material to the listed company.

5.3 Insider Trading

Legal Framework

Market abuse is addressed through the Securities Law, Criminal Law, judicial interpretations and CSRC rules. Administrative enforcement, criminal prosecution and civil compensation may apply to the same conduct where their respective conditions are met.

What Is Insider Trading?

Inside information is non-public information concerning an issuer's business, finances or other matters capable of materially affecting securities prices. Insiders include relevant officers, significant shareholders and controllers, transaction participants, advisers and others with access through their position or work. Persons who obtain inside information unlawfully are also subject to the prohibition.

Before disclosure, such persons must not trade the relevant securities, disclose the information or recommend trading. Separate rules prohibit financial and regulatory personnel from trading, or directing others to trade, using other non-public information obtained through their work.

Administrative consequences include disposal of unlawfully held securities, confiscation of gains and fines. Insider trading fines may reach ten times unlawful gains, with statutory monetary ranges where gains are absent or below the prescribed threshold. Criminal liability depends on seriousness and the applicable judicial tests, including trading amounts, gains or losses avoided, and other circumstances; the most serious cases may attract imprisonment for up to ten years. Investors may seek compensation for qualifying losses.

Market Manipulation and Other Abuse

Prohibited manipulation includes co-ordinated trading to affect prices, matched trades, transactions between commonly controlled accounts, orders placed without an intention to execute, misleading information used to induce trading, conflicted public recommendations and cross-market manipulation. Manipulation can attract confiscation, substantial fines, market bans, civil liability and criminal penalties.

Other prohibited conduct includes fabricating or disseminating market information, inducing investors through false information, and securities intermediaries acting against clients' instructions or interests. Companies and individuals may face separate liability.

5.4 Shareholder Disclosure

Scope and Legal Basis

Substantial shareholding disclosures are governed principally by the Securities Law and the acquisition and shareholding reduction rules for listed companies. They apply to domestic and foreign investors, including individuals, companies and other organisations. Directors and senior executives have additional reporting duties concerning their own holdings.

The calculation includes registered shares and voting rights the investor actually controls. Interests of persons acting in concert are aggregated. Control relationships, common management, financing and other arrangements may create presumptions of concerted action, subject to rebuttal under the applicable rules.

Initial and Subsequent Thresholds

An investor reaching 5% of a listed company's issued voting shares through exchange trading must generally report to the CSRC and exchange, notify the company and announce the position within three days. Trading is restricted during that period, subject to statutory exceptions.

After reaching 5%, a further increase or decrease of five percentage points triggers reporting and announcement, with trading restricted from the event until three days after the announcement. Each change of one percentage point requires notification to the company and announcement on the following day. Investors should monitor aggregate interests before placing orders or implementing control arrangements.

Negotiated transfers and acquisitions through court enforcement, inheritance, gifts or administrative allocation may also trigger reporting. The timing and standstill rules depend on the acquisition method. Passive changes caused by corporate actions can create separate issuer disclosure obligations.

Form of Report

A holder of at least 5% but less than 20%, that is neither the largest shareholder nor the actual controller, generally provides a simplified interests report. This covers identity, purpose, holdings, funding and relevant trading history. A largest shareholder or actual controller in that range must provide additional detailed information.

Holdings from 20% to 30% generally require a detailed report addressing control structure, funding, future plans, competing businesses, related-party transactions and relevant dealings. Further acquisitions after 30% usually require a general or partial tender offer unless exempt. Offer documentation must state the acquisition terms and comply with equal-treatment requirements.

5.5 Internal Controls and Whistle-Blower Regimes

Compliance and Internal Controls

The Company Law establishes duties of loyalty and diligence and imposes express internal supervision, risk control and compliance requirements on state-invested companies. Listed companies and regulated financial institutions face additional obligations. The applicable framework must be assessed by company type; requirements specific to listed or central state-

owned enterprises do not automatically apply to every private company.

The Basic Standard for Enterprise Internal Control addresses the control environment, risk assessment, control activities, information and communication, and internal supervision. It seeks to protect assets, support reliable reporting and lawful operations, and improve operational effectiveness. Covered enterprises must establish anti-fraud procedures, assess deficiencies and evaluate control effectiveness.

Listed Companies

Listed companies must maintain internal control, risk management and internal audit arrangements. Their board audit committees exercise statutory supervisory functions under the reformed governance framework. Committee composition requirements include at least three directors, an independent-director majority and an accounting professional as convener, with restrictions on executive membership.

Financial information requires audit committee review before board approval. Internal control assessments and audit opinions must be disclosed where required. IPO applicants must demonstrate effective internal controls supported by the prescribed assurance report. Disclosure management procedures should cover information escalation, review, confidentiality and accountability.

Central State-Owned Enterprises and Financial Institutions

The SASAC Measures for Compliance Management of Central Enterprises require a structured programme, including a compliance committee, chief compliance officer and defined responsibilities across business, compliance and oversight functions. Major decisions and contracts require the relevant compliance review. Risk reporting, remediation and accountability procedures are also required.

Financial institutions must meet their sector's compliance, risk management and governance rules. These may include independent control functions and remuneration deferral or recovery mechanisms. Boards should identify which obligations apply to the institution rather than relying solely on general company law.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Legal Framework and Security Types

The Civil Code recognises mortgages, pledges and liens over property, together with personal guarantees. The SPC interpretation of the security regime also addresses arrangements serving a security function, including retention of title, finance leases, factoring and transfers by way of security. Corporate approval, financial assistance and bankruptcy rules may affect the package.

Mortgages may cover land use rights, buildings, construction in progress and eligible movable assets. Floating mortgages can cover specified categories of present and future business assets. Pledges may cover movable property, equity, fund interests, transferable intellectual property rights and receivables. A lien may arise where a creditor lawfully retains the debtor's movable property in the circumstances prescribed by law.

Guarantees may be general or joint and several. Where the form is not agreed or is unclear, the statutory default is a general guarantee. A dedicated cash margin account under the creditor's actual control may support priority over the account funds.

Creation and Registration

Real property mortgages are created by registration. Movable asset mortgages generally arise when the mortgage contract takes effect, but registration is necessary to protect against bona fide third parties. Possessory pledges require delivery. Equity, intellectual property and receivables pledges require registration with the relevant registry.

The unified movable property and rights security system covers specified transactions, including receivables pledges, factoring, finance leases and retention of title. Other assets remain subject to specialised registries. Lenders should verify title, existing encumbrances, registration details and any necessary corporate approvals before advancing funds.

Priority

Registered mortgages generally rank by registration time and ahead of unregistered mortgages. Competing mortgages and pledges are ranked by the relevant registration or delivery sequence. A qualifying purchase-money mortgage registered within ten days of delivery may take priority over other security, subject to liens. Statutory liens and other special priority rules require separate assessment.

Competing assignments and factoring arrangements over receivables have specific priority rules. Contractual intercreditor arrangements can allocate enforcement proceeds and decision-making between lenders but do not themselves replace statutory registration or alter third-party priorities.

In bankruptcy, secured creditors generally have priority in the proceeds of their collateral. Enforcement may be stayed during reorganisation, subject to statutory protection where collateral is at risk. Security for new operational financing must also be assessed under bankruptcy rules.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation and Validity

Commercial contracts are governed principally by the Civil Code. Formation generally requires agreement on identifiable parties and sufficiently certain essential terms. Contracts may be concluded in writing, orally or by other legally recognised means, subject to any mandatory form requirement. Consideration is not a separate validity requirement under Chinese law.

Parties must have the necessary capacity and express genuine consent. The agreement must comply with applicable mandatory rules and public policy. Where approval or registration is required, its effect should be distinguished – a missing formality may affect the effectiveness or the transfer of a property right rather than prevent the contract from being formed.

Invalidity and Avoidance

Invalidity may arise from lack of capacity, sham arrangements, prohibited collusion, breach of mandatory rules that invalidate the transaction, or conflict with public order and good morals. Fraud, duress, material mistake and manifest unfairness may instead make a contract voidable on application. These categories should not be treated as interchangeable.

Interpretation

Courts consider wording in context, the contract's purpose, negotiations, performance, trade usage and good faith. Clear drafting remains important, but interpretation is not confined to an isolated clause. Parties should define commercial assumptions, responsibilities and remedies consistently across the agreement.

Standard Terms and Liability

A party supplying standard terms must reasonably highlight provisions materially affecting the other party and explain them when requested. Failure may prevent a term from becoming part of the contract. Unfair terms that improperly exclude liability or restrict principal rights may be invalid.

Clauses excluding liability for personal injury, or property loss caused intentionally or through gross negligence, are invalid. Agreed damages may be adjusted by a court or tribunal if insufficient or excessive. An amount more than 30% above the relevant loss is generally an indicator of excess, but adjustment depends on the circumstances and the applicable judicial criteria.

7.2 Termination and Remedies

Remedies

Remedies for breach of contract include continued performance, repair or other corrective measures, damages, agreed damages, applicable deposit remedies and termination. Availability depends on the breach, the contract and statutory limits. Damages and agreed remedies should be assessed together to avoid impermissible double recovery.

Termination

Parties may agree termination events or terminate by mutual agreement. Statutory grounds include anticipatory refusal to perform a principal obligation, failure to perform after notice and a reasonable cure period, and breach or force majeure that defeats the contract's purpose.

A party seeking termination of a contract must establish a valid contractual or statutory ground and comply with applicable notice and timing requirements. An unsupported termination notice does not automatically end the contract. Refusal to continue performance of the contract may itself constitute a breach and expose the purported terminating party to damages.

Force Majeure

Force majeure consists of objective circumstances that are unforeseeable, unavoidable and insurmountable. Relief depends on the event's actual effect on performance of the contract; an event such as an epidemic or natural disaster is not automatically sufficient. Liability may be reduced or excluded to the extent prescribed by law.

The affected party must notify the counterparty promptly and provide evidence within a reasonable period. Force majeure arising after that party is already in delay does not excuse the existing breach. Termination is available where the event defeats the contract's purpose; a temporary impediment may justify more limited relief.

Failure of Contractual Purpose

Chinese law addresses failure of contractual purpose through statutory termination rules rather than a wholesale adoption of common-law frustration. Where force majeure or fundamental breach prevents the transaction's essential purpose from being achieved, termination may be available. Mere additional difficulty or expense will not necessarily satisfy that test.

Change of Circumstances

Article 533 of the Civil Code addresses a material, unforeseeable change in the contract's fundamental conditions outside ordinary commercial risk, where continued performance would be manifestly unfair. The affected party may seek renegotiation and, if unsuccessful within a reasonable period, request judicial or arbitral modification or termination.

The SPC's interpretation distinguishes exceptional policy or market changes from risks inherent in volatile commodities and investment products. A court considers the change, renegotiation and resulting losses when deciding relief and its effective date. An advance agreement excluding Article 533 is invalid under that interpretation. Parties should therefore document their original assumptions and efforts to renegotiate.

7.3 Intellectual Property in Commercial Transactions

Transfers and Licences

Intellectual property transactions are governed by the Patent Law, Trademark Law, Copyright Law and Anti-Unfair Competition Law. Due diligence should establish ownership, scope, duration, existing licences, encumbrances and any restrictions affecting the proposed use or transfer.

Patent assignments require a written contract and registration and take effect on registration. Patent licences should define the permitted acts, territory, duration and exclusivity. The distinction between exclusive, sole and non-exclusive licences affects both use and enforcement rights.

Registered trademark assignments require the prescribed approval and announcement. Related identical or similar marks for the same or similar goods may need to be transferred together. Trade mark licences must be recorded as required; an unrecorded licence cannot be asserted against a bona fide third party.

Copyright generally arises without registration. Assignment and licence terms should identify the economic rights, works, territory, duration and permitted uses. Trade secret arrangements depend on the information remaining secret and commercially valuable, with reasonable protective measures. Contracts should address authorised access, use, onward disclosure and return or destruction of materials.

Employee and Commissioned Intellectual Property

Ownership of employee-created works depends on the statutory category and any permitted agreement. Ordinary service works generally belong to the author, subject to the employer's priority use rights; specified service works may belong to the employer, with authorship retained by the individual. Service inventions generally give the employer the patent application right, subject to inventor attribution, reward and remuneration rights.

Commissioned copyright ownership should be agreed expressly; in the absence of an agreement, the item generally belongs to the commissioned creator. Commissioned technology development generally gives the developer the patent application right unless law or contract provides otherwise. Joint development requires particular attention to ownership, exploitation, licensing and transfer rules, which differ by intellectual property type.

AI-Generated Content

Chinese courts examine whether human choices and creative input satisfy copyright originality requirements. Prompt design, selection, adjustment and iteration may be relevant, but protection is fact-specific and judicial standards are not fully settled. Businesses should preserve development records and address ownership and permitted use contractually rather than assume that all generated output is protected.

Remedies

Civil remedies may include injunctions and damages, with punitive damages available for intentional infringement in serious cases under the applicable statute. Administrative authorities can investigate and sanction conduct within their powers, and serious infringements may be referred for criminal proceedings. The appropriate route depends on the right, available evidence, urgency and desired remedy.

7.4 Consumer Protection

Legal Framework

Consumer transactions are governed by the Law on the Protection of Consumer Rights and Interests, its implementing regulations, the Civil Code and legislation on e-commerce, product quality and advertising. Mandatory consumer protections can override commercial terms.

Returns, Prepayments and Standard Terms

For specified distance sales, consumers generally have seven days from receipt to return goods without giving a reason. Statutory exclusions include customised and perishable goods, specified digital products and delivered newspapers or periodicals. Other goods unsuitable for return require the legally prescribed consumer confirmation. Opening packaging for reasonable inspection does not by itself justify refusal where the goods remain intact under the applicable standard.

Prepaid services must be supplied as agreed. Failure to perform may entitle the consumer to performance or a refund, together with applicable interest and reasonable expenses. Providers should clearly state what is supplied, charges, refund arrangements and how service interruptions will be handled.

Standard terms cannot unfairly restrict consumer rights, relieve the trader of liability or increase the consumer's obligations. Terms of material importance must be properly disclosed. Online sellers must provide required identity, contact, product, price and service information; financial service disclosures must also explain relevant fees, returns and risks.

Unfair Practices and Advertising

Businesses must not mislead consumers through false advertising, fabricated transactions or manipulated reviews. Algorithmic pricing must comply with consumer protection requirements, including restrictions on unjustified differential treatment without consumers' knowledge. Coercive sales practices and unlawful intrusions on consumers' dignity or privacy are prohibited.

Advertising concerning life or health can attract enhanced responsibility for advertising intermediaries and endorsers. Liability depends on the product, conduct and statutory conditions. Traders should substantiate claims and supervise marketing across agencies and online channels.

Enforcement and E-Commerce

Market regulation authorities investigate and impose administrative sanctions. Consumers may complain through channels such as 12315, seek consumer association mediation or bring civil proceedings. Qualified consumer associations may pursue public interest litigation for harm affecting numerous consumers.

E-commerce platforms have duties concerning trader verification, information and safety. A platform that knows or should know of harmful or unlawful activity and fails to take necessary measures may be jointly liable under the applicable rules. Livestreaming busi-

nesses must provide accurate product information and workable complaint procedures. Commercial agreements should allocate operational responsibilities without purporting to exclude mandatory consumer remedies.

8. Foreign Investment

8.1 Competition and Merger Control

Legal Framework and Scope

China's merger control regime is principally governed by the Anti-Monopoly Law of the People's Republic of China and administered by the State Administration for Market Regulation (SAMR). A concentration may arise from a merger, or an acquisition of equity or assets resulting in control, or contractual or other arrangements that confer control or decisive influence. Qualifying intra-group restructurings may fall within statutory exemptions.

For transaction parties, the key question is therefore not the legal form of the deal but whether control changes. Minority investments, joint ventures and transactions that confer veto or significant governance rights should be assessed before signing to determine whether they constitute a concentration.

Notification Thresholds

A concentration generally requires pre-closing notification if either of the following thresholds is met: (i) the parties' combined worldwide turnover in the preceding financial year exceeds CNY12 billion and at least two of the parties each have a turnover in China exceeding CNY800 million; or (ii) the parties' combined turnover in China exceeds CNY4 billion and at least two of the parties each have a turnover in China exceeding CNY800 million. Special turnover calculation rules apply to sectors such as banking, insurance, securities and futures.

The SAMR may also require notification of a below-threshold transaction where there is evidence that it has or may have the effect of eliminating or restricting competition. Transactions in concentrated markets, involving key technologies or leading market players should therefore not be treated as risk-free merely because the statutory thresholds are not met.

Review Process and Substantive Test

The initial review period is generally 30 days. If the SAMR opens a further review, the additional period is generally 90 days and may be extended by up to 60 days in statutory circumstances. The SAMR considers matters including market shares, market concentration, barriers to entry, technological progress, effects on consumers and other businesses, and the wider impact on the national economy.

Transaction timetables should allow sufficient time for merger review, with clearance normally addressed as a condition precedent to closing. Where competition concerns may arise, the parties should also assess at an early stage whether behavioural or structural remedies could be required.

Consequences of Failure to Notify and Anti-Competitive Conduct

Failure to notify a concentration that does not eliminate or restrict competition may attract a fine of up to CNY5 million. If a transaction has or may have anti-competitive effects, the SAMR may also order the parties to cease implementation, dispose of shares or assets, transfer a business or take other measures to restore competition, and may impose a fine of up to 10% of the preceding year's sales. Voluntary reporting, co-operation and remedial action may be taken into account in mitigation.

Beyond merger control, monopoly agreements and abuse of market dominance may result in significant administrative penalties and civil claims. Pricing, distribution, dealer arrangements, data sharing and industry co-operation should therefore form part of a company's ongoing antitrust compliance programme in China.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Market Access Regime

China applies a pre-establishment national treatment plus negative-list regime under the Foreign Investment Law of the People's Republic of China and the Implementing Regulations of the Foreign Investment Law of the People's Republic of China. Sectors outside the negative list are generally subject to the same market access rules as domestic investment; restricted sec-

tors must comply with equity, management or other conditions; while prohibited sectors are closed to foreign investment.

Foreign investors should review not only the national negative list but also any free trade zone list and sector-specific licensing rules at the outset of a project. Even where foreign equity caps have been removed, regulated sectors such as finance, telecommunications, aviation, energy and pharmaceuticals may remain subject to licensing, qualifying shareholder, controller or national security requirements.

Restricted and Prohibited Sectors

The 2024 national negative list further reduced restrictions on foreign investment, and manufacturing restrictions have broadly been removed. Restrictions nevertheless remain in areas such as seed production, nuclear power, domestic water transport, public air transport, civil airports, basic telecommunications and certain value-added telecommunications services. Certain internet information, publishing, legal services, specified biotechnology and strategic mineral activities remain prohibited or tightly restricted.

In cross-border M&A, sector access should be analysed before signing rather than deferred to closing. Equity ratios, joint venture structures, board rights and ultimate beneficial ownership may all affect the regulatory outcome.

National Security Review

China maintains a national security review regime for foreign investment. Investments in defence-related sectors and areas surrounding military facilities, and investments involving important agricultural products, energy and resources, major equipment, critical infrastructure, transport, cultural products, information technology, financial services, key technologies and other sensitive fields may require filing where the foreign investor obtains actual control. Control may arise below 50% ownership where voting rights or other arrangements give material influence over board, shareholder, operational, personnel, financial or technology matters.

The preliminary stage generally determines within 15 working days whether a review should proceed; a general review normally takes 30 working days and a special review normally takes 60 working days, subject to statutory extension. Transactions involving sensitive sectors or key technology should therefore be screened at the structuring stage, with approval risk appropriately allocated in the transaction documents.

Investment Incentives and Recent Direction

The 2025 Catalogue of Encouraged Industries for Foreign Investment, effective from 1 February 2026, continues to promote advanced manufacturing, modern services and investment in central, western and north-eastern China. Qualifying projects may benefit from customs duty, land, corporate income tax or reinvestment incentives, and free trade zones generally apply a shorter foreign investment negative list.

The overall policy direction remains one of further opening, but greater access does not mean uniform deregulation. Foreign investors should treat market access, sector licensing, merger control, national security review, data compliance and foreign exchange as an integrated transaction-entry checklist.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Core Legal Framework

China's data and privacy regime is principally built around the Cybersecurity Law of the People's Republic of China, the Data Security Law of the People's Republic of China and the Personal Information Protection Law of the People's Republic of China, supplemented by the Network Data Security Management Regulations and sector rules for areas such as finance, healthcare, automotive, and industry and information technology. Businesses commonly need to address cybersecurity, data classification and personal information obligations in parallel.

For multinational businesses, compliance should start with a data map identifying the data collected, where it is stored, why it is processed, who can access it and whether it is transferred outside China. A privacy notice alone, without controls over actual data flows, will rarely provide an adequate compliance framework.

Personal Information Obligations

Processing personal information requires a lawful basis and must comply with principles of legality, legitimacy, necessity and good faith. Sensitive personal information, including biometric, religious, specific identity, health, financial account, location tracking and information relating to children under 14, is subject to enhanced necessity, notice and protection requirements. Individuals have statutory rights including rights to know, decide, access, copy, correct, supplement and delete their personal information.

In a data incident, processors must take remedial action promptly and, where required, notify regulators and affected individuals. Businesses should maintain an incident response plan, internal escalation procedures and evidence preservation arrangements rather than relying on ad hoc responses after a breach occurs.

Cross-Border Transfers and Localisation

China's outbound data regime includes security assessment, the standard contract for outbound personal information, personal information protection certification and statutory exemptions. Important data, critical information infrastructure operators and businesses exceeding specified personal information processing or outbound-transfer thresholds may be subject to security assessment, while other qualifying businesses may use the standard contract or certification routes.

Personal information and important data collected and generated in China by critical information infrastructure operators are generally subject to localisation requirements. Multinational groups implementing global human resources (HR), customer relationship management (CRM), enterprise resource planning (ERP), cloud, or research and development (R&D) systems should determine the applicable transfer mechanism before system launch to avoid costly restructuring later.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering Obligations

The revised Anti-Money Laundering Law strengthens China's risk-based regulatory approach. Obliged entities include banking, securities, funds, insurance, trust and payment institutions, as well as designated non-financial institutions specified by law. Core duties include internal controls, customer due diligence, record retention, large and suspicious transaction reporting, and enhanced measures for higher-risk relationships.

Although not every commercial company is directly subject to statutory AML reporting obligations, multinationals should still conduct counterparty and transactional due diligence in acquisitions, distributor relationships, third-party payments, trade finance and dealings involving higher-risk jurisdictions to manage legal, commercial and reputational exposure.

Sanctions and Export Controls

China has developed an export control and countermeasure framework centred on the Export Control Law of the People's Republic of China, the Regulations of the People's Republic of China on Export Control of Dual-Use Items, the Anti-Foreign Sanctions Law of the People's Republic of China and the Unreliable Entity List regime. Regulatory tools include control lists, watch lists, the Unreliable Entity List and countermeasure lists, which may result in licensing restrictions, transaction prohibitions, asset freezes or investment restrictions.

Companies should screen controlled items, end users, end uses and counterparties in export, re-export, technology transfer and cross-border supply chain activities. Multinationals exposed simultaneously to Chinese and foreign sanctions or export controls should maintain a conflicts-of-law and escalation process rather than leaving such decisions to individual business teams.

Anti-Bribery Measures

Commercial bribery is regulated through the Anti-Unfair Competition Law of the People's Republic of China, criminal law and the supervision regime, with an increasing focus on both the paying and receiving sides of improper benefits. Authorities may impose administrative sanctions on companies and responsible individuals, and serious cases may result in criminal liability.

Sales, distribution, tenders, marketing and government-facing activities should include controls over commissions, consultancy fees, gifts and hospitality, sponsorships, promotional activities and third-party payments. An effective compliance programme should combine risk assessment, approval controls, third-party due diligence, training, whistle-blowing and investigation procedures.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental and Carbon Regulation

The PRC Environmental Code, effective from 15 August 2026, consolidates major environmental regimes within a unified framework and strengthens rules on emissions permits, environmental impact assessment and greenhouse gas emissions. The national carbon emissions trading market now covers power generation, steel, cement and aluminium smelting, creating more direct compliance and penalty exposure for key emitting entities.

Environmental due diligence in acquisitions and asset transactions should look beyond whether permits are current. Historical contamination, carbon obligations, remediation exposure and approvals required for expansion can be material, and environmental liabilities may in some circumstances continue with land use or project operations. Transaction documents commonly address these risks through representations, indemnities and closing conditions.

Occupational Health and Safety

The Work Safety Law and the Law on Prevention and Control of Occupational Diseases require businesses to establish responsibility systems for workplace safety and to implement prevention, facility and medical examination obligations for occupational hazards. Violations may result in daily fines, suspension, industry bans and liability for responsible managers.

Manufacturing, energy, construction and chemical businesses should embed environmental, health and safety oversight into board and management systems, including regular risk assessments, training, contractor management and emergency exercises. Acquisition due diligence should also cover historical incidents, administrative penalties and outstanding rectification orders.

Sector Licensing

China operates a market access negative-list system under which activities outside the list are generally open, while sectors such as finance, pharmaceuticals and energy remain heavily licensed. Acquisitions, equity changes and changes of control in some regulated industries may require prior regulatory approval.

Sector licensing should therefore be treated as a transaction-structuring issue rather than merely a post-closing registration matter. Parties should confirm whether licences survive a change of control and whether re-application or regulator consent will be required.

9.4 Artificial Intelligence

Current Regulatory Framework

China does not yet have a single comprehensive AI statute. Instead, AI is regulated through cybersecurity, personal information, algorithm recommendation, deep synthesis, generative AI services and AI-generated content labelling rules. Key regulatory themes include training data legality, algorithm filing and security assessment, personal information protection, content labelling, protection of minors and provider accountability.

A company's obligations will depend on factors such as whether it provides generative AI services to the public, whether the service has public opinion or social mobilisation attributes, whether sensitive personal information is processed and whether synthetic content is generated. Use of a third-party foundation model through an application programming interface (API) does not in itself eliminate responsibility for data inputs, outputs or user rights.

Transparency, Bias and Accountability

The current regime requires, where applicable, algorithm filing and disclosure, labelling of AI-generated content and personal information notices and consents, while also addressing unreasonable differential treatment and protection of minors. Businesses should be able to evidence key model and algorithm governance processes and retain records relating to data provenance, testing, security assessment and internal approval.

Policy in 2026 continues to move towards more comprehensive AI legislation. Companies should adopt a scalable AI governance framework covering AI inventories, risk classification, data governance, vendor management, human oversight, incident response, and board or senior management supervision to reduce the cost of future regulatory change.

9.5 Other Regulatory Compliance Requirements

General corporate compliance in China may also involve employment and social insurance, tax, foreign exchange, product quality, advertising, intellectual property, unfair competition, and enterprise credit reporting, as well as listed-company disclosure. Internet platform businesses may face more specific obligations in relation to tax information reporting, treatment of data, advertising and competition.

Multinationals should avoid treating these areas as unrelated functional silos. A more effective approach is to maintain a consolidated compliance calendar and responsibility matrix across business, legal, finance, HR, and information security and internal auditing, with escalation procedures for significant regulatory developments.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment Contracts and Termination

Employment relationships in China are principally governed by the Labour Law of the People's Republic of China, the Labour Contract Law of the People's Republic of China and the Labour Dispute Mediation and Arbitration Law of the People's Republic of China and related judicial interpretations. Employment contracts may be fixed-term, open-ended or project-based, and employers are generally required to enter into written employment contracts and make statutory social insurance contributions.

Termination is heavily regulated. Employees generally resign on 30 days' written notice (three days during probation). A non-fault termination by an employer generally requires a statutory ground and 30 days' notice or one month's salary in lieu, while serious misconduct and other statutory fault grounds may permit immediate termination. Collective economic redundancies are also subject to procedural requirements, including consultation or notification involving the trade union or workforce.

Unlawful Termination and Severance

Unlawful termination commonly arises where there is no statutory ground, required procedure has not been followed, or protected employees have been dismissed in breach of special rules. An employee may seek reinstatement or, where reinstatement is not pursued, statutory compensation for unlawful termination. Employees may also terminate and claim economic compensation where the employer fails to provide lawful working conditions, pay remuneration or make the required social insurance contributions.

Economic compensation is generally calculated by reference to years of service, with one month's salary for each full year, while compensation for unlawful termination is generally twice the statutory economic compensation. Employers should therefore complete evidence, procedure and protected-status checks before implementing a termination decision.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation and Equity Incentives

Equity incentives for listed companies are subject to securities regulation and corporate governance requirements, including restrictions on eligible participants, award size, approvals and disclosure. Qualifying equity incentives of non-listed companies may benefit from tax deferral arrangements, subject to applicable conditions and filing requirements.

When a multinational extends a global equity plan to employees in China, foreign exchange, tax, employment and cross-border personal information issues should also be addressed. Simply applying the overseas parent company's plan documents is often insufficient for compliance in China.

Non-Competes, Confidentiality and Non-Solicitation Agreements

Non-compete restrictions are generally limited to senior management, senior technical personnel and other employees with confidentiality obligations. The duration is generally capped at two years and the scope should be proportionate to the trade secrets actually known by the employee. Employers are generally required to pay economic compensation during the restricted period, and overly broad restrictions or restrictions imposed on employees without access to trade secrets may face enforceability challenges.

Chinese law does not provide a comprehensive standalone statutory regime for non-solicitation, which is commonly addressed contractually and assessed for reasonableness and clarity. Confidentiality obligations are distinct from non-competes, generally do not depend on compensation and may continue for as long as the relevant trade secret remains protected.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Land Regime and Foreign Investment

Land in China is subject to public ownership: state ownership and collective ownership. Land ownership itself is not privately bought and sold; commercial development and investment generally take place through the lawful grant and transfer of land-use rights. Urban land is generally state-owned, while rural and suburban land is generally collectively owned unless otherwise provided by law.

The current foreign investment negative list does not generally prohibit or restrict real estate as an industry, but foreign investors remain subject to real estate, foreign exchange, corporate establishment and project approval rules. An offshore investor acquiring non-self-use commercial property should confirm before signing whether a domestic commercial presence and particular capital or foreign exchange arrangements are required.

11.2 Commercial Real Estate Transactions

Title, Due Diligence and Registration

China operates a unified real estate registration system, and registration is generally the constitutive requirement for the creation or transfer of real property rights. Commercial real estate due diligence should cover title, mortgages and seizures, planning and permitted use, construction compliance, leases, tax and environmental exposure.

The market generally does not rely on title insurance as a substitute for title investigation. Buyers should therefore verify registry information, historical title documents and government approvals, as well as land use, remaining land-use term and any risk relating to idle land or planning breaches.

Mortgage Financing

A real estate mortgage is generally created upon registration and priority is commonly determined by registration order. Statutory priorities, including certain construction payment claims, may rank ahead of a registered mortgage in specified circumstances, so lenders should not rely on mortgage registration alone when assessing recovery priority.

Commercial real estate financings may also use share pledges, account control, receivables arrangements and other credit support as part of an overall security package. Existing mortgages, construction claims, rent arrangements and other rights that may affect cash flow or priority should be reviewed before funding.

Commercial Leasing and Recent Policy

Commercial leases are principally governed by the contract provisions of the Civil Code of the People's Republic of China. Lease terms generally may not exceed 20 years, and filing of a lease does not normally determine the contract's validity. A tenant may sublet with the landlord's consent, and a qualifying existing lease generally survives a transfer of ownership of the leased property.

Since 2025, real estate policy has continued to focus on market stabilisation, inventory reduction and improved financing. Macro policy support does not replace transaction-level title, planning, tax, financing and lease due diligence, particularly in acquisitions of project companies or existing commercial property.

Trends and Developments

Contributed by:
Yuejian Wang, Ting Gu and Leilei Fu
Hylands Law Firm

Hylands Law Firm (Hylands) was established in 1997 and headquartered in Beijing. It now operates from 40 offices across major Chinese mainland cities, in Hong Kong, and beyond. With over 2,000 legal professionals – including more than 600 partners and counsels – Hylands maintains collaborative relationships with 150-plus international law firms, delivering one-stop, cross-border multidisciplinary services. Hylands lawyers are legal experts in their respective areas. Yuejian Wang has gained industry recognition as the author of the acclaimed monograph "Corporate Control, Shareholder Rights and Articles of Association Design", which diagnoses common governance pitfalls and offers systematic, actionable solutions. Hylands excels in full-chain corporate and commercial practice, driven by close-knit, efficient teamwork that crafts tailor-made, pragmatic solutions which exceed client expectations. The firm's consistent top-tier rankings across prestigious legal directories further attest to its market-leading capabilities and client-centric excellence.

Authors



Yuejian Wang is a senior partner at Hylands. He graduated from Koguan School of Law, Shanghai Jiao Tong University, and has transitioned from in-house counsel at a Fortune 500 enterprise to senior partner at a premier law firm. He has built a comprehensive professional system explained in his monograph "Corporate Control, Shareholder Rights and Articles of Association Design" that is centred on corporate control and governance compliance, shareholder rights protection, family business control, practical matters concerning the duties of directors, supervisors, and senior executives, and complex corporate dispute resolution. His broad engagements with bar associations, universities, government task forces, and industry organisations further attest to his substantial industry influence.



Ting Gu is a senior partner at Hylands who specialises in major and complex commercial litigation and arbitration, investment and financing dispute resolution, debt recovery, corporate counsel and governance matters. She advises listed companies, pre-IPO companies, fund managers, insurers, trust companies, large SOEs, renowned real estate developers and investment institutions. Representative matters include VAM disputes for listed companies, shareholder control contests in the jewellery and outdoor sports sectors, misrepresentation claims, equity repurchase and shortfall-supplementation disputes involving large funds and asset management plans, equity transfer disputes for listed power and real estate companies, and numerous complex enforcement objection cases.



Leilei Fu is a partner at Hylands whose primary practice areas include investment and financing, M&A, corporate governance, labour disputes, civil and commercial dispute resolution, and non-performing asset disposal. She has participated in numerous cross-border/domestic M&A projects, red-chip listings of domestic enterprises, and foreign direct investment projects. In her domestic practice, she provides comprehensive legal services as outside counsel to enterprises in the life sciences, computer software development and applications, and AI sectors. She has successfully handled numerous dispute resolution cases, safeguarding clients' legal rights through judicial proceedings. She graduated from the School of Law, Tsinghua University, and the School of Foreign Languages & Literature, Shandong University.

Contributed by: Yuejian Wang, Ting Gu and Leilei Fu, **Hylands Law Firm**

Hylands Law Firm

F11/12, S1, Bund Financial Centre
No 600 Zhongshan No 2 Road(E)
Huangpu District
Shanghai, 200010
PRC

Tel: (86) 139 1890 5986
Fax: (86) 021 6887 1787
Email: wangyuejian@hylandslaw.com
Web: www.hylandslaw.com

Introduction

Over the past two years, China's corporate and commercial legal environment has undergone its most profound systemic transformation in nearly three decades. On 1 July 2024, the revised Company Law of the People's Republic of China came into force, reshaping the country's capital contribution regime and corporate governance framework. On 20 May 2025, China enacted the Private Economy Promotion Law, its first foundational statute dedicated to the private economy, elevating equal protection and fair competition from policy commitments into binding legal rules. At the same time, the negative list governing foreign investment has been progressively shortened, while the rules against unfair competition and controlling cross-border data flows have been updated at a remarkable pace.

For companies planning to invest, acquire or form joint ventures in China, understanding the commercial implications of these changes has never been more important. This article reviews the five most significant trends in plain, non-technical language and offers practical recommendations for businesses navigating the new landscape. It deliberately avoids technical jargon, explains the concepts that matter most to commercial decision-makers, and focuses throughout on what companies should actually do in response to each development.

The New Company Law: The Era of Paid-In Capital Has Arrived

The most striking feature of the new Company Law is the requirement that shareholders of a limited liability company (LLC) pay in their subscribed capital contributions within five years of the company's establishment. This rule brings an end to the long-standing practice of "subscribing capital without ever paying it in", and is designed to curb "sky-high registered capital" and the hollowing-out of corporate capital.

For existing companies, the State Council's implementing provisions set out a transitional arrangement. LLCs established before 1 July 2024 whose capital contribution periods exceed the limits allowed under the new law must adjust those periods by 30 June 2027, and the total remaining periods after adjustment may not exceed five years – meaning that the capital must be fully paid in by 30 June 2032 at the latest. Existing joint stock companies, meanwhile, must pay up their share capital in full by 30 June 2027.

For companies that need to reduce capital, the new law distinguishes between ordinary capital reduction and simplified capital reduction, and imposes strict rules on notifying creditors and making public announcements. Where a capital reduction is carried out in violation of the law, shareholders must return the funds they received and restore the company's capital; if losses are caused, the shareholders and the responsible directors, supervisors and senior managers are also liable for compensation. Capital reduction is therefore a key tool for relieving paid-in capital pressure, but procedural compliance cannot be taken lightly, and professional advisers should be engaged throughout the process.

The commercial logic behind the reform is straightforward. Registered capital functions as a statement of financial commitment to creditors, business part-

ners and the market. Under the old regime, a founder could register a company with capital of RMB50 million while paying in almost nothing, leaving creditors and counterparties with misleading signals about the company's real financial strength. The five-year rule restores the credibility of that signal and the strength behind it, and with it the accountability of shareholders for the promises embedded in a company's registration.

Companies should map out their response against a clear timetable. The key dates to diarise are 30 June 2027 – the deadline for adjusting non-compliant capital contribution periods and for paying up the capital of existing joint stock companies – and 30 June 2032, the final deadline for paying in the remaining capital of pre-2024 LLCs. Boards and shareholders should treat these dates with the same seriousness as tax filing deadlines: missing them can expose individual shareholders to personal liability for company debts, a risk that was previously rare in practice.

Beyond this, the new law introduces a number of important governance rules. The transfer of equity interests to outsiders no longer requires the consent of the majority of the other shareholders (although the statutory right of first refusal is preserved). Joint stock companies are permitted to adopt an authorised capital system. Directors dismissed without justification are entitled to compensation. The law also strengthens the duties of loyalty and diligence owed by controlling shareholders and actual controllers, and establishes liability rules for de facto directors and shadow directors. Taken together, these changes point to one clear change: the focus of corporate governance is shifting from "formal compliance" to "substantive responsibility".

Other governance changes deserve mention. Small LLCs may now appoint a single director instead of a full board, and joint stock companies may establish an audit committee under the board to exercise the powers traditionally held by the board of supervisors – in effect allowing the supervisory layer to be streamlined. The new law also introduces additional remedies for shareholders, including the right to require the company to repurchase equity in specified circumstances, and tightens the rules on related-party transactions by directors and senior managers. Together, these provisions give minority shareholders stronger tools than they have ever had before under Chinese law.

The Private Economy Promotion Law: Equal Protection Enshrined in Law

The Private Economy Promotion Law, adopted on 30 April 2025 and effective from 20 May 2025, is a milestone in the development of China's private economy. Comprising nine chapters and 78 articles, it is the first statute to write into law that "promoting the sustained, healthy and high-quality development of the private economy is a major national policy to be upheld over the long term", and it establishes a comprehensive framework covering fair competition, investment and financing promotion, scientific and technological innovation, regulated operations, services and safeguards, and rights protection.

From a business perspective, the highlights of the law include the following:

- all economic entities may enter sectors outside the negative list on an equal basis;
- private economy organisations may not be restricted or excluded from public resource transactions such as tendering, bidding and government procurement;
- profit-driven cross-region law enforcement by local authorities is expressly prohibited;
- administrative or criminal means may not be used to interfere unlawfully in economic disputes; and
- state organs, public institutions and state-owned enterprises may not delay payments owed to private economy organisations.

The law also addresses financing and payment practices that have long burdened private businesses. It requires equal treatment of private economy organisations in access to production factors such as land, labour, capital, technology and data, and it directs financial institutions to provide fair and convenient credit support. Combined with the prohibition on delayed payments by state organs and state-owned enterprises, these provisions respond to two of the most persistent complaints of private businesses in China: difficulty obtaining bank credit on equal terms,

and the long payment cycles on government-related receivables.

Particular attention should be paid to Article 68, which provides that where a large enterprise procures goods, works or services from small and medium-sized private economy organisations, it may not agree to make payment conditional on receipt of payment from a third party. This provision targets the much-criticised "back-to-back" payment clauses and gives SME suppliers a direct legal weapon. Its scope is expressly limited: it applies only where a large enterprise procures from a small or medium-sized private economy organisation, and does not invalidate all back-to-back arrangements as such. Within that scope, it will also materially affect how large enterprises manage their supply-chain contracts with SME private suppliers.

Another significance of the law lies in stabilising expectations. It expressly provides that normative documents closely related to business operations do not apply retroactively, and that local governments and their departments may not breach or repudiate contracts on the grounds of administrative division adjustments, government changes of term, institutional or functional restructuring, or changes of relevant personnel. For businesses that depend on government contracts, concessions or preferential policies, these provisions offer a welcome degree of certainty.

On the other hand, the law also imposes higher standards of regulated conduct on enterprises themselves:

- improving governance structures and management systems, regulating the conduct of operators, and strengthening internal oversight;
- establishing sound internal audit systems;
- separating corporate revenue and expenditure from the personal revenue and expenditure of operators to keep corporate and personal property apart; and
- preventing financial fraud.

In other words, institutional dividends and compliance obligations are two sides of the same coin. The law also clarifies that private economy organisations involving foreign investment remain subject to the foreign investment laws and regulations.

For businesses with Chinese operations, the message is twofold. Defensively, the law supplies new grounds for challenging discriminatory treatment, unlawful enforcement and unfair payment terms. Proactively, its compliance expectations – internal audit, financial discipline, separation of corporate and personal assets – are no longer aspirational; companies that can demonstrate these controls will find it easier to obtain finance, win government contracts and pass counterparties' due diligence.

Foreign Investment: A Further Shortened Negative List and Accelerated Institutional Opening

China's current foreign investment framework dates from 1 January 2020, when the Foreign Investment Law replaced the three separate statutes that governed Sino-foreign equity joint ventures, co-operative joint ventures and wholly foreign-owned enterprises. The new model is built on two pillars: national treatment for foreign investors outside the negative list, and pre-establishment access governed by the list itself. Six years on, the steady shortening of the list has turned that framework from promise into practice.

Since the Foreign Investment Law took effect in 2020, China's negative list for foreign investment access has been shortened on multiple occasions. The latest version took effect on 1 November 2024, reducing the number of items to 29 and eliminating all foreign investment restrictions in the manufacturing sector. Opening up in services such as telecommunications, healthcare and education is also advancing steadily. Outside the negative list, domestic and foreign investors are in principle subject to the same market access conditions.

The commercial implications of this trend are clear. For manufacturing and most service industries, the "glass doors" blocking foreign access are being removed, and the predictability of market entry has increased significantly. The decision-making logic of foreign investors establishing, acquiring or increasing capital in Chinese companies is shifting from "whether we are allowed in" to "how to operate compliantly and collaborate effectively with local partners".

In deal practice, the shortened negative list has directly energised the foreign-investment M&A market. In

recent years, transactions in which foreign investors acquire equity or inject capital to gain footholds in advanced manufacturing, healthcare and consumer services in China have increased noticeably. For Chinese shareholders contemplating a sale, foreign buyers generally impose demanding due diligence requirements on governance transparency, financial discipline and data compliance; an early "compliance health check" helps shorten deal timelines and supports valuations.

That said, openness does not mean an absence of regulation. The foreign investment security review regime, merger control filings and sector-specific licences all continue to play important roles. For investments in sensitive sectors or those involving critical infrastructure or important data, conducting early-stage access assessments and security review planning remains a critical part of transaction timetable management.

Structuring choices have also been simplified. Foreign investors may now establish wholly foreign-owned enterprises across most sectors, and the corporate governance of foreign-invested enterprises has been unified under the Company Law following a five-year transition period that ended in December 2024. This means legacy joint ventures with structures mandated by the old regime – including mandatory trade union and party organisation clauses and rigid board compositions – should by now have been brought in line with the general company law framework. Investors with legacy structures that remain unadjusted should treat this as an outstanding compliance item.

Dispute Resolution and the Business Environment: Judicial Safeguards Strengthened

The life of the law lies in its implementation. In August 2025, the Supreme People's Court issued its Guiding Opinions on Implementing the Private Economy Promotion Law, calling for refined adjudication rules, the correction of wrongful cases involving private economy organisations, and stronger judicial review of administrative conduct.

The Guiding Opinions also call for the correction of wrongful cases, the restraint of criminal measures in civil-commercial disputes, and the protection of entrepreneurs' personal and property rights. In parallel, enforcement practice is being standardised: courts are required to supervise the disposal of seized assets and to prevent the use of enforcement measures as a pressure tactic in negotiations. For creditors, these reforms cut both ways – enforcement is becoming more disciplined, but also more predictable, which ultimately improves the enforceability of judgments and arbitral awards.

Several signals are worth noting for businesses. First, the courts are drawing a clear line between economic disputes and economic crimes, preventing contractual disputes from being broadened into criminal cases. Second, property preservation and enforcement are being regulated, with excessive, over-reaching or time-barred seizure, detention and freezing of assets strictly prohibited. Third, government performance of contracts and honouring of commitments is being emphasised, with policy promises and administrative agreements protected against repudiation due to leadership changes or institutional restructuring. Together, these measures point to a more predictable business environment.

In cross-border dispute resolution, the China International Commercial Court, foreign-related arbitration and commercial mediation mechanisms continue to improve, offering Chinese and foreign parties a wider and more efficient range of options for resolving disputes.

For cross-border parties, China's dispute resolution infrastructure now offers credible alternatives to litigation in home courts. The China International Commercial Court, established in 2018, hears major international commercial disputes with judges of diverse jurisdictions; leading arbitral institutions such as the China International Economic and Trade Arbitration Commission (CIETAC), the Shenzhen Court of International Arbitration (SCIA) and the Beijing International Arbitration Centre report growing caseloads; and interim measures arrangements between mainland courts and both Hong Kong and Macau allow evidence and asset preservation to support foreign-seated arbitrations. China is also a party to the New York Convention, making Chinese-seated awards enforceable in more than 170 jurisdictions.

Conclusion

Stepping back, the developments described in this article are best understood not as isolated reforms but as parts of a single design: to rebuild confidence in the rules of the game for doing business in China.

Overall, the wave of legislation since 2024 sends a dual signal. On the one hand, through capital regime reform, the enshrinement of equal protection in law and the progressive shortening of the negative list, China is working to build a more transparent and predictable market environment. On the other hand, the trend towards substantive governance responsibility and increasingly granular compliance requirements is equally unmistakable. For market participants, the better course is to adapt proactively rather than wait and see; putting governance and compliance in place early is the best way to capture the dividends of this round of institutional reform.

COLOMBIA



Law and Practice

Contributed by:
Daniela Pérez, Álvaro Parra Gómez, César Barajas, Federico García, Ángela Serrano, Juan Manuel Gónzalez and Juan Felipe Benedeti
Parra Rodríguez Abogados

Contents

1. Business Entities P.144
1.1 Business Organisations p.144
1.2 Incorporation and Ongoing Compliance p.144
1.3 Share Issuances p.145
1.4 Distributions and Return of Capital p.145
1.5 Control Person Reporting p.146

2. Corporate Governance P.146
2.1 Legal Framework p.146
2.2 Directors' Duties and Liabilities p.147
2.3 Board Composition and Independence p.147
2.4 ESG and Disclosure Obligations p.147
2.5 Conflicts of Interest and Related-Party Transactions p.148

3. Shareholder Rights and Agreements P.148
3.1 Shareholder Rights p.148
3.2 Shareholder Agreements p.149

4. Mergers and Acquisitions P.150
4.1 Legal Framework p.150

5. Capital Markets P.151
5.1 Securities Regulation and Public Offerings p.151
5.2 Continuous Disclosure p.152
5.3 Insider Trading p.153
5.4 Shareholder Disclosure p.153
5.5 Internal Controls and Whistle-Blower Regimes p.154

6. Secured Transactions P.155
6.1 Transaction Financing and Security Interests p.155

7. Commercial Contracts P.156
7.1 Contract Formation and Enforceability p.156
7.2 Termination and Remedies p.156
7.3 Intellectual Property in Commercial Transactions p.156
7.4 Consumer Protection p.157

8. Foreign Investment P.159
8.1 Competition and Merger Control p.159
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.159

9. Regulatory Compliance P.159
9.1 Privacy and Data Protection p.159
9.2 Anti-Money Laundering, Sanctions and Corruption p.160
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.160
9.4 Artificial Intelligence p.160
9.5 Other Regulatory Compliance Requirements p.160

10. Employment and Labour P.161
10.1 Employment Standards and Workplace Regulation p.161
10.2 Executive Compensation and Restrictive Covenants p.161

11. Real Property and Commercial Leasing P.162
11.1 Requirements for Land Ownership p.162
11.2 Commercial Real Estate Transactions p.163

Parra Rodríguez Abogados (PRA) advises Colombian and international clients with a clear philosophy: understand the business, bring clarity to complexity and provide advice with purpose. This philosophy shapes the corporate/M&A practice. The firm advises on acquisitions, cross-border transactions, corporate structuring, reorganisations and market entry, particularly where legal analysis must be considered alongside commercial, regulatory and reputational realities. PRA combines experience with a modern approach to the practice of law, bringing together rigorous legal thinking, sound judgement and a distinctly human approach.

Authors



Daniela Pérez is a director of the corporate/M&A practice at Parra Rodríguez Abogados. She holds a Law degree from Universidad del Rosario and a Master I in International Law from Université Paris I Panthéon-Sorbonne. Daniela advises Colombian and international clients on corporate matters, with a particular focus on cross-border M&A transactions and business structuring. She is experienced in personal data protection, company incorporations, licensing processes, and regulatory compliance across various industries in Colombia. Clients value her technical precision and strategic approach to improving efficiency, mitigating legal risks, and effectively executing complex corporate projects and transactions.



Álvaro Parra Gómez is a partner at Parra Rodríguez Abogados and heads the firm's litigation, tax, and corporate practice groups. He graduated from Universidad de los Andes in 1987 and has been a partner since 1995. He advises Colombian and international clients on corporate transactions, cross-border matters, tax planning, and regulatory issues. Recognised for his experience in corporate and tax law and his strong litigation track record, Álvaro regularly advises airlines and aviation sector companies on tax, foreign exchange, and corporate matters. Clients value his strategic and commercially focused approach, particularly to risk management, conflict prevention, and dispute resolution in complex business matters.



César Barajas is a partner at Parra Rodríguez Abogados, where he leads the banking and finance practice. He holds a Law degree from Universidad del Rosario and an LLM in International Business Law from Tilburg University, graduating cum laude. César advises national and international clients on structured finance, cross-border transactions, and asset-based financing matters. He has extensive experience representing foreign financial institutions and advising export credit agencies on leasing, acquisitions, insurance, and corporate finance transactions. His practice includes complex cross-border financing transactions across various industries. He previously served as an international law clerk at Holland & Knight in New York and is also a law lecturer.



Federico García is an associate at Parra Rodríguez Abogados with more than five years of experience advising on corporate, M&A, and cross-border transactions. His practice covers corporate structuring, transactional matters, and domestic and international commercial agreements involving Colombian companies and foreign investors. He also advises on structured finance matters and has experience in complex insolvency proceedings before the Colombian Superintendency of Companies. Federico was a research scholar at UNIDROIT in Rome, where he conducted research on the Luxembourg Rail Protocol to the Cape Town Convention. He also works as a teaching assistant for the Economics and Law course at Universidad del Rosario.

Contributed by: Daniela Pérez, Álvaro Parra Gómez, César Barajas, Federico García, Ángela Serrano, Juan Manuel Gónzalez and Juan Felipe Benedeti, **Parra Rodríguez Abogados**



Ángela Serrano is a director of the litigation practice at Parra Rodríguez Abogados and has more than seven years of experience advising and representing domestic and international clients in civil, commercial, and administrative disputes. Her practice covers alternative dispute resolution, commercial law, contracts, and consumer protection. She is recognised for providing clear, strategic, and technically sound legal advice, with a focus on conflict prevention and efficient dispute resolution. She holds a Master's degree in Commercial Law at Universidad Externado de Colombia. She also holds a specialisation in Civil Procedural Law and a law degree from Universidad del Rosario.



Juan Manuel Gónzalez is the director of the tax and foreign exchange law practice at Parra Rodríguez Abogados. He holds a Law degree from Universidad del Rosario (2013) and a specialisation in tax law from the same institution (2015). Juan Manuel advises national and international clients on tax and foreign exchange matters, fiscal and wealth management, M&A transactions, and tax litigation before local and national authorities and administrative courts.



Juan Felipe Benedeti is a senior associate and leads the labour and employment practice at Parra Rodríguez Abogados. He co-ordinates the firm's advisory and litigation work across individual and collective labour matters, representing employers in judicial and administrative proceedings. His practice focuses on labour counselling, compliance programmes, restructurings, disciplinary processes, business closures, and immigration matters. In addition to private practice, he teaches Labour Litigation II at Universidad de los Andes and lectures on Pontificia Universidad Javeriana's compliance diploma programme. He holds a Law degree from Universidad de los Andes and holds a Master's degree in Labour and Social Security Law.

Parra Rodríguez Abogados S.A.S.

Carrera 9 # 74 – 08, oficina 504
Bogotá D.C.
110221
Colombia

Tel: +57 6013764200
Email: pralaws@pralaws.com
Web: www.pralaws.com

Contributed by: Daniela Pérez, Álvaro Parra Gómez, César Barajas, Federico García, Ángela Serrano, Juan Manuel Gónzalez and Juan Felipe Benedeti, **Parra Rodríguez Abogados**

1. Business Entities

1.1 Business Organisations

The principal business vehicles used in Colombia are corporations, limited liability partnerships, simplified stock companies, and branches of foreign companies.

Corporations (S.A.)

An S.A. is a commercial company formed by shareholder capital contributions. It requires at least five shareholders. Shareholders' liability is limited to their capital contributions.

Simplified Stock Companies (S.A.S.)

- An S.A.S. may be incorporated by one or more shareholders, whose liability is limited to their capital contributions.
- The S.A.S. is currently the most widely used corporate form in Colombia. It offers a relatively simple incorporation process and flexible governance.
- It may have a sole shareholder and does not require a board of directors. A statutory auditor is mandatory only if applicable asset or income thresholds are exceeded.

Limited Liability Partnerships (Ltda.)

- An Ltda. must have between two and 25 partners. Their liability is generally limited to their capital contributions.
- The bylaws may provide for greater liability for some or all partners.
- Partners are also jointly and severally liable with the company, proportionally to their capital contributions, for unpaid tax and labour obligations.

Branches of Foreign Companies

- A branch is a commercial establishment organised in Colombia by a foreign company. It is an extension of its head office and is not a separate legal entity.
- Branches may be useful where the parent company's experience or qualifications are relevant.
- This may arise, for example, in airline operations or public procurement processes using the parent company's experience and financial statements.

Tax Treatment

S.A., S.A.S., Ltd.'s and branches of foreign companies are subject to the same tax regime.

Choice of Structure

The choice of structure generally depends on the number and type of investors, governance requirements, liability considerations and the intended business activities.

The S.A.S. is generally preferred because of its flexible governance and incorporation requirements. A branch may be more suitable where the foreign parent's experience, qualifications or financial standing are relevant to the Colombian operations. Tax treatment is generally equivalent across the principal corporate forms and branches.

1.2 Incorporation and Ongoing Compliance

Incorporation Process

Except for simplified stock companies (S.A.S.), companies must be incorporated by public deed. An S.A.S. may be incorporated by private document.

The incorporation process may be completed directly by the investors or through an attorney-in-fact acting under a valid power of attorney.

Incorporation Documents

The documentation required is generally the same for all corporate forms, except where a public deed is required.

Key documents include:

- evidence of the existence and representation of any corporate shareholder, duly legalised or apostilled and officially translated into Spanish when required;
- powers of attorney granted by the shareholders;
- the company's bylaws or, in the case of a branch, the corporate resolution authorising its establishment in Colombia; and
- acceptance letters from legal representatives, directors and statutory auditors, where applicable, together with identification documents.

The company must also file the required commercial registration and tax registration forms before the competent Chamber of Commerce.

Timing

The incorporation process usually takes approximately one to two weeks, depending on the type of company.

Incorporation Costs

Incorporation costs principally include registration tax and commercial registration fees.

Registration tax is a departmental tax levied on documents filed with the Chamber of Commerce. Rates vary by jurisdiction and generally range between 0.3% and 1% of the relevant taxable amount. In Bogotá, the rate is 0.7% of the subscribed capital.

Commercial registration fees vary according to the schedules issued by the relevant Chamber of Commerce and the company's assets.

Post-Incorporation Registrations

Depending on the nature of its activities, the company may be required to obtain authorisation from Colombian Tax and Customs Authority (DIAN) to issue invoices.

Foreign investments must be registered with the Central Bank of Colombia. Companies may also need to register with local tax authorities and complete beneficial ownership registration requirements.

Ongoing Compliance

Companies must comply with recurring corporate and tax obligations, including renewal of the commercial registration, approval of financial statements at the annual shareholders' meeting and filing of annual income tax returns.

Additional periodic tax and regulatory obligations may apply depending on the company's activities and circumstances.

1.3 Share Issuances

Incompanies by shares, mainly S.A. and S.A.S., the issuance of shares is authorised by the relevant corporate body through the rules for the issuance of shares, which must include the payment terms. Under Colombian law, shares must be issued at par value. Shares may be issued with a premium but never below par value. The company may also have different types of shares with different par values.

In Colombia, it is possible to structure different types of shares with different rights. Preferred dividend shares without voting rights and privileged shares in companies under the surveillance of the Superintendence of Companies may require authorisation from that authority. S.A.S. companies may create different classes of shares in their bylaws, making it possible to establish the rights attached to them and regulate their political rights, including voting rights.

1.4 Distributions and Return of Capital

Dividends

Dividends may only be distributed from profits reflected in approved financial statements. The company cannot make distributions while losses affecting its capital remain unresolved.

The amount available for distribution may be limited by applicable legal, statutory or occasional reserves. In S.A.S. companies, a legal reserve is not mandatory unless required by the bylaws.

Mandatory profit-distribution rules vary depending on the corporate form. Distribution thresholds applicable to corporations do not generally apply to S.A.S. companies unless incorporated into their bylaws.

Dividends are generally distributed in proportion to each shareholder's paid-in participation, unless otherwise agreed.

For foreign shareholders, the investment must be registered under Colombia's foreign-exchange regime to allow the remittance of dividends abroad.

Return of Capital

Capital may be returned through a capital reduction with reimbursement of contributions or through distributions upon liquidation.

A capital reduction involving reimbursement of contributions is subject to creditor protection requirements and may require authorisation from the Superintend-

ency of Companies. Relevant conditions include the company's liabilities, its post-reduction asset-to-liability position or creditor consent.

Colombian corporate law does not apply a solvency test equivalent to those found in some common law jurisdictions. Instead, capital maintenance is protected through specific statutory requirements.

Share Repurchases and Cancellation

Companies may repurchase their own shares subject to statutory requirements. In S.A.S. companies, the repurchase must be approved by shareholders, funded from liquid profits and involve fully paid shares.

While held by the company, repurchased shares do not confer voting, economic or other shareholder rights. The company may subsequently dispose of, distribute or cancel such shares in accordance with law.

Share cancellations may either increase proportionally the par value of the remaining shares or reduce the company's capital. Capital reductions resulting from cancellation must comply with legal requirements.

Financial Assistance

Colombian corporate law does not contain a general prohibition on financial assistance for the acquisition of shares applicable to commercial companies. Such arrangements remain subject to corporate, conflict of interest, group company and regulatory restrictions.

1.5 Control Person Reporting

In Colombia, since 2023 it has been mandatory to report ultimate beneficial owners (UBOs). This report is filed before the tax authority and is not publicly accessible.

UBOs are the individuals who directly or indirectly control the Colombian entity, whether through ownership or decision-making power.

The report must include only those individuals who hold 5% or more ownership in the Colombian entity or, if no individual meets this threshold, the person with the highest authority or decision-making power over the entity.

The report should not include companies or legal entities, nor is it required to reflect 100% of the ownership or control structure. It should only include the individual or individuals who qualify as UBOs according to the applicable criteria.

2. Corporate Governance

2.1 Legal Framework

General Corporate Governance Framework

Corporate governance in Colombia is primarily governed by the Colombian Commercial Code and Law 222 of 1995. These rules regulate corporate bodies, decision-making processes, administrators and their duties and liabilities. The applicable governance structure depends on the type of company. Law 1258 of 2008 provides the specific framework for S.A.S. companies and allows significant flexibility in designing their governance arrangements through the bylaws.

The principal corporate bodies may include the partners' meeting or general shareholders' meeting, the board of directors and the legal representative. The requirement to have a board of directors depends on the type of company and its bylaws.

Members of boards of directors and legal representatives qualify as administrators under Colombian law and are subject to the statutory liability framework described below.

Decree 46 of 2024 further develops the rules applicable to administrators regarding conflicts of interest, competition with the company and deference to business judgement.

Listed Companies and Best Practices

Listed companies and other securities issuers are subject to additional corporate governance requirements, principally under Law 964 of 2005 and regulations issued by the Colombian Financial Superintendency (SFC).

The SFC has also adopted the Colombian Corporate Governance Code (*Código País*), which contains corporate governance best practices and an implementation reporting framework for securities issuers.

2.2 Directors' Duties and Liabilities

The directors are responsible for the permanent management of corporate affairs. Although corporate law recognises a discretionary margin for the exercise of their office, various regulations establish specific duties of conduct that must be taken into account.

Administrators must act in good faith, with loyalty and with the diligence of a good businessperson. In performing their functions, directors must consider duties relating to the adequate development of the corporate purpose, compliance with legal or statutory provisions, ensuring that the functions entrusted to the statutory auditor are adequately carried out, keeping the commercial and industrial reserve of the company, refraining from misuse of inside information, treating all partners equally and respecting the right of inspection of all partners.

Directors must also refrain from participating, directly or through an interposed person, in activities involving competition with the company or a conflict of interest, unless authorised by the highest corporate body.

Directors are jointly and severally liable for damages caused by fraud or fault to the company, partners or third parties, unless they were not aware of the relevant action or omission, or voted against it and did not execute it. Fault is presumed when directors fail to comply with their functions, exceed their authority or violate the law or the bylaws. Clauses seeking to absolve directors from liability or limit liability to guarantees provided for their positions are deemed unwritten. Insurance covering directors' conduct is common and admissible, without limiting their liability.

2.3 Board Composition and Independence

Private Companies

The requirement to have a board of directors depends on the type of company. S.A) must have a board comprising at least three members, while S.A.S. companies are not required to have a board unless their bylaws provide otherwise. If an S.A.S. establishes a board, its bylaws have substantial flexibility to determine its composition, number of members, appointment method and operating rules.

Colombian law does not generally require directors of private companies to be Colombian nationals or residents. Foreign individuals may therefore serve as board members, subject to any specific statutory or regulatory restrictions applicable to the company's activities.

Private companies are generally not subject to statutory independence or gender diversity requirements for board composition.

Securities Issuers and Listed Companies

Securities issuers, including listed companies, are subject to additional requirements. Their boards must comprise between five and ten principal members, at least 25% of whom must qualify as independent under Colombian securities law.

Issuers may not appoint numerical alternates. Where an independent principal director has an alternate, that alternate must also satisfy the applicable independence requirements.

The Colombian Corporate Governance Code also recommends that boards have an odd number of members, appropriate professional qualifications and a composition that prevents company employees from controlling board decisions. These recommendations operate primarily on a comply-or-explain basis.

There is no general statutory gender quota applicable to all private issuers. However, securities issuers that are mixed-economy companies with majority state ownership must have at least 30% female board representation.

2.4 ESG and Disclosure Obligations

ESG and Sustainability Framework

Colombia does not impose a single ESG framework on all companies. Relevant obligations derive from corporate, environmental, labour, securities and sector specific regulations.

For companies supervised by the Superintendency of Companies, the Basic Legal Circular includes voluntary recommendations on sustainability reporting. The Superintendency has confirmed that sustainability reports are not mandatory and are not triggered by

asset or income thresholds. Companies are encouraged to report in accordance with international standards covering governance, environmental, social, economic and financial matters.

Securities Issuers and Climate Related Disclosures

Securities issuers are subject to additional mandatory disclosure requirements under External Circular 031 of 2021 issued by the SFC.

These requirements cover social and environmental matters, including climate-related information, within the issuer's periodic disclosure framework.

Benefit and Collective Interest Companies

Law 1901 of 2018 allows commercial companies to voluntarily adopt Benefit and Collective Interest (BIC) status. BIC companies must pursue collective benefit purposes and prepare an annual report on their social and environmental impact using an independent standard and making the report publicly available.

Directors of BIC companies must balance the company's interests, shareholders' interests and the collective benefit objectives established in the bylaws.

Directors' Duties and Board Oversight

Outside the BIC regime, Colombian corporate law does not impose a general duty on directors to prioritise ESG or broader stakeholder interests. Directors must act in good faith, with loyalty and due care, in the company's best interests while considering shareholders' interests.

As a matter of good governance, boards should integrate material ESG risks into strategy, risk management and disclosure processes, and oversee management's response to environmental, social and climate-related risks.

2.5 Conflicts of Interest and Related-Party Transactions

Decree 46 of 2024 establishes a legal framework for directors' conduct in commercial companies, conflicts of interest and the application of the business judgement rule.

A conflict of interest exists when a director has direct or indirect interests that may compromise their independence in decision-making for the benefit of the company. The Decree also addresses activities that constitute competition with the company and situations where a conflict arises through interposed persons, such as relatives or companies controlled by the director or related parties.

If there is a potential conflict, the directors must call a general shareholders' meeting or inform the legal representative to do so. The conflict must be included in the agenda, and the director must provide clear and relevant information. Authorisation may be granted only if the company's interests are not harmed, and if the director is also a shareholder, their vote is excluded.

Shareholders or partners who authorise an act that harms the company may be liable for damages, unless they lacked sufficient information to decide. The statutory auditor must inform the highest corporate body and the legal representative in writing if they become aware of a conflict of interest. Authorised transactions must be reported in accordance with applicable law.

Except in cases of bad faith or breach of law, deference is given to the business judgement of directors acting in good faith and in the best interests of the company. Related party transactions must also be considered from a tax perspective and should comply with the arm's-length principle, which may trigger transfer pricing obligations.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights

Shareholders generally hold economic and governance rights, including voting rights, profit participation, access to corporate information and participation in remaining assets upon liquidation after payment of liabilities.

The rights attached to shares depend on the company type, share class and bylaws. Colombian law permits

different classes of shares with varying economic and voting rights, subject to statutory limits.

Shareholders participate in key corporate decisions through the shareholders' meeting, including bylaw amendments, mergers, demergers, transformations, dissolution and other matters reserved by law or the bylaws. Approval thresholds vary according to the company type, the matter involved and the bylaws.

Shareholders also have inspection rights over certain corporate books and records, subject to the applicable legal requirements.

Statutory Remedies

Shareholders may challenge resolutions adopted in breach of the law or the bylaws, subject to applicable procedural requirements.

They may also bring claims against directors for breaches of duty causing damages. Colombian law further provides a corporate liability action against administrators, exercised in the company's interest pursuant to the relevant statutory procedure.

Certain fundamental transactions may trigger withdrawal rights for absent or dissenting shareholders if the transaction increases their liability or adversely affects their economic rights.

In S.A.S. companies, abusive voting by majority, minority or parity shareholders is expressly prohibited. Available remedies include damages and, where appropriate, the invalidation of the relevant corporate decision.

3.2 Shareholder Agreements

Shareholder Agreements

Shareholder agreements are commonly used to supplement the bylaws and regulate relationships among some or all shareholders.

They commonly address voting arrangements, transfer restrictions, rights of first refusal, tag-along and drag-along rights, governance matters, deadlock mechanisms and dispute resolution.

The applicable enforceability requirements depend on the type of company. Under the general regime, certain voting agreements must be in writing and deposited with the company to produce effects against it. S.A.S. companies are subject to a broader regime. Shareholder agreements may regulate share transfers, pre-emptive rights, voting arrangements, representation at shareholders' meetings and generally any other lawful matter.

For these agreements to be enforceable against an S.A.S., they must comply with the statutory requirements and be deposited with the company. Properly deposited agreements may also be specifically enforced before the Superintendency of Companies.

Shareholder agreements concerning listed companies are subject to additional disclosure requirements before the securities market.

Shareholder Disputes and Remedies

Corporate disputes may be resolved before the ordinary courts or, in matters falling within their jurisdiction, before the Superintendency of Companies. Arbitration is also frequently agreed in bylaws and shareholder agreements.

The Superintendency has jurisdiction over disputes between shareholders, the company and administrators, challenges to corporate resolutions and the enforcement of shareholder agreements.

Colombian law does not use the concept of an oppression or unfair prejudice remedy as such. However, shareholders may challenge decisions adopted through an abuse of voting rights.

This protection applies to abuse by majority, minority and parity shareholders. Available remedies include invalidation of the relevant decision and damages.

Shareholders may also pursue liability claims against administrators. The statutory corporate liability action is brought in the company's interest following approval by the shareholders.

If the company does not commence the action within three months after approval, individual shareholders

and certain other persons may bring it on the company's behalf.

Finally, shareholders may seek a determination regarding the occurrence of a statutory or contractual dissolution event. Colombian law does not generally provide a standalone right to seek winding-up merely because a shareholder considers the relationship unfair or oppressive.

4. Mergers and Acquisitions

4.1 Legal Framework

Legal Framework and Private M&A

Private M&A transactions are primarily governed by the Colombian Commercial Code, Law 222 of 1995 and, for S.A.S. companies, Law 1258 of 2008.

The most common structures are share acquisitions, asset acquisitions and statutory mergers. Share acquisitions are generally contractual transactions and do not require governmental approval solely because of the transfer of shares.

However, competition clearance, sector-specific approvals, foreign investment filings and contractual or corporate consents may apply depending on the transaction.

Statutory mergers constitute corporate reorganisations and require approval from the relevant corporate bodies. They are also subject to creditor protection requirements, registration formalities and, where applicable, supervision by the Superintendency of Companies.

The Superintendency applies either a general regime or a prior authorisation regime for mergers and demergers, depending on the companies involved and their supervisory status.

Merger Control

Colombian merger control is principally governed by Law 1340 of 2009.

Transactions may require prior notification or authorisation where the parties conduct the same economic activity or participate in the same value chain and exceed annually determined financial thresholds.

Where those requirements are met but the parties jointly hold less than 20% of the relevant market, notification is sufficient. Otherwise, prior clearance from the Superintendency of Industry and Commerce may be required.

The analysis applies regardless of the legal form of the transaction and may therefore capture share acquisitions, asset acquisitions and other transactions resulting in an integration or acquisition of control.

Public M&A and Tender Offers

Acquisitions of listed companies are additionally governed by Law 964 of 2005 and Decree 2555 of 2010, as amended.

A mandatory public tender offer (*oferta pública de adquisición* or OPA) is required to acquire a beneficial ownership interest of 25% or more of the voting capital of a listed company.

A shareholder already holding at least 25% must also use an OPA to increase its participation by more than five percentage points.

OPAs are subject to the supervision of the SFC and are conducted through the Colombian stock exchange.

Recent Regulatory Developments

Decree 451 of 2026 significantly modernised the Colombian tender/offer regime.

Among other changes, it consolidated the rules applicable to mandatory and voluntary OPAs, strengthened the framework for competing and improved offers and introduced a nine-month restriction on successive offers.

The new regime also expressly addresses pre-agreements with selling shareholders and strengthens disclosure and minority shareholder protections.

In 2026, the Superintendency of Companies also issued a new Basic Legal Circular, which updated and clarified the supervisory framework for mergers and

demergers, including applicable authorisation and disclosure requirements.

Judicial and Dispute Resolution Considerations

M&A transactions in Colombia are not generally subject to court approval or to a process equivalent to a scheme of arrangement.

Judicial intervention typically arises from disputes relating to corporate approvals, shareholder rights or the performance of transaction documents.

Contractual M&A disputes may also be submitted to arbitration where the parties have agreed to an arbitration clause.

Recent developments in Colombian M&A law have been driven predominantly by legislation and regulatory authorities rather than by a significant line of court decisions altering the substantive M&A framework.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework and Authorities

Colombia's capital markets are governed primarily by Law 964 of 2005, Decree 2555 of 2010 and SFC regulations.

Law 964 establishes the general framework for securities market regulation, while Decree 2555 contains the principal rules applicable to issuers, offerings, intermediaries, collective investment schemes and market infrastructure.

Regulatory policy is developed by the Ministry of Finance and Public Credit and the Financial Regulation Unit (URF). The SFC is the main supervisory authority and administers the National Registry of Securities and Issuers (RNVE) through the Integrated Securities Market Information System (SIMEV).

The Colombian Securities Market Self-Regulatory Organization (AMV) complements the Superintendencies' functions through self-regulatory, supervisory, disciplinary and certification activities applicable to market participants.

Public Offerings and Registration Requirements

Public offerings are regulated by Law 964, Decree 2555 and Superintendencies' regulations.

An offering is generally considered public when addressed to unidentified persons or to 100 or more identified persons. Public offering rules may also apply where investors are reached through public pre-marketing activities.

Public offerings generally require prior authorisation and registration of the relevant securities with the RNVE. IPOs require issuer and securities registration, whereas follow-on offerings remain subject to securities registration and regulatory approval requirements.

Issuers must prepare a prospectus containing information necessary for informed investment decisions, including details regarding the issuer, financial condition, risks, use of proceeds and offering terms. Issuers with securities registered in the RNVE are subject to ongoing disclosure obligations.

Certain transactions benefit from exemptions or simplified regimes under Decree 2555. The timing of an offering depends on the specific transaction and the SFCs review process.

Stock Exchange Listing

RNVE registration and stock exchange listing are separate requirements.

While RNVE registration is administered by the SFC, listing is governed by the rules of the relevant exchange. Securities intended for public trading must generally satisfy exchange admission requirements before launch.

Certain instruments, including publicly offered bonds, must be admitted to a trading venue before placement. Compliance with RNVE and SFC requirements does not automatically satisfy exchange-listing obligations.

Offerings Outside the Public-Offering Regime

Colombian law does not generally recognise traditional prospectus exemptions. Instead, certain transac-

tions fall outside the definition of a public offering or are subject to simplified regulatory frameworks.

As a general rule, offerings made to fewer than 100 identified persons are not considered public, provided they are not otherwise directed to the broader market. Certain transactions, including specific shareholder, capitalisation and employee share plans, are also excluded from the public offering regime.

Colombia further provides a simplified framework through the Second Market, which is generally available only to authorised or professional investors and remains subject to reduced registration and disclosure requirements.

Private offerings outside the public offering regime generally do not require RNVE registration or compliance with ordinary prospectus requirements.

Resale Restrictions and Consequences of Non-Compliance

Colombian law generally does not impose statutory holding periods on securities acquired through private placements. However, each subsequent transfer must be assessed independently, and resale requirements may apply if the transaction constitutes a public offering.

For Second Market securities, transfers are generally limited to authorised investors unless a regulatory exception applies. These restrictions are based on investor eligibility rather than the passage of time.

Resales conducted in breach of applicable public-offering, registration or investor eligibility requirements may be ineffective and may result in administrative sanctions.

5.2 Continuous Disclosure

Periodic Disclosure

Issuers with securities registered in the RNVE must keep their registration updated by filing periodic and relevant information with the SFC. Where securities are traded through a securities trading system, the same information must also be disclosed through that system within the applicable deadlines. Additional disclosure requirements may apply to exchange-listed issuers.

Periodic disclosure includes annual and quarterly reports. Annual reports contain financial statements and material information concerning the issuer's operations, risks and significant litigation. Quarterly reports include interim financial statements, material developments affecting the issuer's financial position, management discussion and analysis, and significant changes in risks and ESG matters, where applicable. All disclosures must be accurate, complete and understandable to investors and the market.

Material Events

Material events are disclosed through the Colombian relevant information disclosure regime. Information is considered material where a prudent and diligent investor would take it into account or exercise related rights.

Issuers must disclose, among other matters, material agreements outside the ordinary course of business, significant acquisitions or disposals, changes of control, material financial obligations, significant litigation or administrative proceedings, changes in credit ratings, and major corporate or management developments.

Relevant information must be disclosed through the SFC's official mechanism immediately after the event occurs or, if the information originates from a third party, once the issuer becomes aware of it. Disclosure through other media is only permitted after, or simultaneously with, disclosure through the prescribed regulatory channel. If potentially relevant information is reported by the media, the issuer must address its accuracy through the same mechanism.

In exceptional circumstances, the issuer may request SFC authorisation to temporarily withhold relevant information where disclosure could harm the issuer or affect market stability, subject to applicable regulatory requirements. Disclosure obligations relating to significant changes in shareholdings are discussed in **5.4 Shareholder Disclosure**.

5.3 Insider Trading

Market Abuse and Inside Information

Colombian securities law prohibits insider trading, the improper use or disclosure of inside information, and market manipulation. The principal framework is set out in Law 45 of 1990, Law 964 of 2005, Decree 2555 of 2010 and the Colombian Criminal Code.

Decree 2555 defines inside information as confidential information, information not publicly disclosed despite a disclosure obligation, or non-public information that a prudent investor would consider when trading securities.

Market participants must refrain from trading on inside information, providing it to unauthorised third parties, or recommending transactions based on such information. Breaches may give rise to administrative sanctions under securities regulations.

Market Manipulation

Market manipulation is expressly prohibited. Prohibited conduct includes transactions or practices intended to interfere with the free formation of prices, manipulate liquidity, create artificial supply or demand, artificially affect prices, or restrict free competition in securities offerings.

Criminal Liability

Certain conduct may also result in criminal liability. Article 258 of the Colombian Criminal Code penalises the improper use of non-public information by employees, advisers, directors and managers for their own benefit or that of third parties, including trading in securities registered in the RNVE.

Article 317 separately criminalises certain fraudulent manipulation of RNVE-registered securities.

Administrative and Self-Regulatory Enforcement

The SFC is the primary authority responsible for supervising and enforcing compliance with securities-market regulations. It may investigate violations, request information, conduct inspections and administrative proceedings, and impose sanctions.

Available sanctions include warnings, fines, suspension or disqualification from management functions for up to five years, removal from office, and suspension or cancellation of SIMEV registrations, without prejudice to any civil, disciplinary or criminal liability.

AMV also exercises supervisory and disciplinary authority over securities intermediaries and other regulated persons, including matters involving inside information, market manipulation, conflicts of interest and market conduct obligations. Its powers complement, rather than replace, those of the SFC.

Conduct constituting a criminal offence may additionally be investigated and prosecuted by the competent criminal authorities independently of any administrative or self-regulatory proceedings.

5.4 Shareholder Disclosure

Disclosure of Substantial Shareholdings

Under the relevant information regime, issuers must disclose significant changes in their capital structure. This obligation operates primarily through issuer disclosure rather than through a separate substantial shareholder filing system.

A change is deemed significant when a person or group constituting the same beneficial owner acquires or disposes of an interest resulting in a variation equal to or greater than 5% of the issuer's capital. The disclosure must include the transaction details and the percentage of participatory securities held, directly or indirectly, by the beneficial owner following the transaction.

Issuers must also disclose changes in control. For these purposes, beneficial ownership extends beyond registered shareholders and includes persons exercising direct or indirect decision-making power over the securities.

Acquisitions of significant voting interests in listed companies may also trigger the mandatory OPA regime, which governs the acquisition of substantial voting stakes and operates separately from the disclosure requirements described above

Relevant Thresholds

The disclosure threshold is a variation equal to or greater than 5% of the issuer's capital held by the

relevant beneficial owner, considering both direct and indirect holdings. The issuer is responsible for disclosing the change once it becomes aware of it under the applicable rules.

This threshold differs from those applicable under the mandatory OPA regime. Generally, a person or group constituting the same beneficial owner may acquire 25% or more of the voting capital of a listed company only through a mandatory OPA. Likewise, a beneficial owner already holding at least 25% may generally increase its participation by more than an additional 5% only through a mandatory OPA, subject to applicable exceptions.

Consequences of Non-Compliance

Failure to comply with substantial shareholding disclosure obligations may constitute a breach of securities market regulations and result in administrative enforcement by the SFC.

Where voting shares are acquired in breach of the mandatory OPA regime, the political and economic rights attached to the improperly acquired securities are suspended. The issuer must also demonstrate to the SFC that the effects of the relevant transactions have been fully reversed. Securities subject to suspension are not counted for quorum or voting purposes.

5.5 Internal Controls and Whistle-Blower Regimes

Corporate Compliance and Internal Control

Colombian law does not impose a uniform compliance programme on all companies. Requirements vary according to the entity's activities, size, risk profile and supervisory authority.

Companies subject to the Superintendency of Companies may be required to implement systems to manage money laundering, terrorist financing, proliferation financing, corruption and transnational bribery risks. Depending on the applicable regime, these obligations may be triggered when statutory thresholds are met, including, for certain compliance systems, assets or income exceeding 4.929.017 basic value unit (UVB). These systems generally include risk assessment, due diligence, internal controls, training, reporting mechanisms and the appointment of Compliance Officers.

Entities supervised by the SFC are subject to separate risk-management and internal-control requirements, including SARLAFT, which covers customer and beneficial owner due diligence, transaction monitoring and regulatory reporting.

Securities issuers are generally also required to establish an audit committee composed of at least three board members, including all independent directors, and chaired by an independent director, subject to applicable exceptions. The committee oversees internal audit functions and compliance with financial reporting and disclosure obligations.

Whistle-Blowing and Reporting Mechanisms

Colombia does not have a single whistle-blowing regime applicable to all private companies. Reporting obligations depend on the regulatory framework applicable to each entity.

Under the Superintendency of Companies regime, obligated entities must maintain confidential and anonymous reporting channels for compliance related misconduct and establish procedures for investigating reports and protecting confidentiality.

They must also identify and report suspicious transactions to the Colombian Financial Information and Analysis Unit (UIAF) without requiring proof of a criminal offence or the illicit origin of funds. Suspicious transaction reports (ROS) must be submitted immediately through the SIREL platform. In addition, statutory auditors and Compliance Officers, where applicable, are required to report to the Superintendency of Companies conduct that may constitute transnational bribery in accordance with the applicable compliance framework.

Entities subject to the SFC's SARLAFT framework must comply with the corresponding reporting obligations.

Governance of Compliance Risk

Companies should adopt a risk-based compliance framework proportionate to their activities and risk exposure, with responsibilities allocated among the board, senior management, compliance, risk-management and internal-audit functions.

The board should oversee the compliance system, appoint compliance officers and ensure adequate resources. Compliance officers should operate independently and report directly to the board or highest governing body.

The framework should include risk assessment, due diligence, conflict-of-interest controls, internal policies, reporting mechanisms, training, investigations, monitoring and periodic review. Obligated entities are also generally required to conduct annual internal or external reviews to assess the effectiveness, efficiency and compliance of the relevant risk management system. The Three Lines Model is also recognised as a relevant governance framework.

For securities issuers and other entities supervised by the SFC, compliance should be integrated into the broader internal control and risk management structure, taking into account audit committee requirements and the corporate governance principles reflected in the Code of Best Corporate Practices.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Legal Framework and Available Security Interests

Secured transactions over movable assets are primarily governed by Law 1676 of 2013 and Decree 1074 of 2015, as amended. The regime adopts a functional approach, applying to any transaction that secures obligations with movable assets regardless of its form.

Collateral may include present and future assets, inventory, receivables, contractual rights, non-book-entry shares, bank accounts and intellectual property. Security assignments, retention-of-title arrangements and security trusts are also recognised. Although Colombian law does not provide for a floating charge, security may cover categories or substantially all present and future movable assets.

Mortgages over real estate are governed by the Civil Code and Law 1579 of 2012 and require execution by public deed and registration. Certain assets, including intermediated securities and negotiable instruments, remain subject to special regimes.

Perfection, Priority and Enforcement

Movable security agreements must be in writing and comply with the requirements of Law 1676. Effectiveness against third parties is generally achieved through registration in the Movable Collateral Registry, possession or control, depending on the asset type.

Security over bank accounts is perfected through control arrangements, while security over nominative shares requires registration in the Movable Collateral Registry and annotation in the shareholder ledger. Assets subject to special registries may require additional filings.

Priority is generally determined by the date of registration or, where applicable, the time possession or control is obtained. Special rules apply to acquisition security interests, statutory preferences and insolvency proceedings.

Security interests may be enforced through direct payment, judicial proceedings or the special enforcement procedures provided under Law 1676. Insolvency proceedings under Law 1116 of 2006 may affect enforcement rights and contain specific protections for secured creditors.

Acquisition Financing and Security Packages

Acquisition financings are commonly structured as secured debt incurred by the purchaser or acquisition vehicle. Security packages frequently include pledges over shares, receivables, contractual rights, bank accounts, movable assets and, where relevant, mortgages over real estate. Security trusts are also widely used.

Target-level guarantees and security require analysis of corporate capacity, corporate benefit, directors' duties, conflicts of interest and applicable approvals. Companies subject to the control of the Superintendency of Companies require prior authorisation before granting security over their assets.

Where multiple creditors share collateral, intercreditor agreements commonly govern enforcement, voting,

proceeds distribution and subordination arrangements. These agreements do not replace the perfection and registration requirements applicable to the underlying security interests. Foreign exchange reporting requirements may also apply to acquisition financing structured as external indebtedness.

Recent Developments

Law 2437 of 2024 made permanent several insolvency measures introduced during the COVID-19 period, including priority treatment for certain financing granted during reorganisation proceedings. In specific cases, court-authorised financing may benefit from second-ranking or even first-ranking security, subject to statutory safeguards.

Law 2540 of 2025, effective from 27 February 2026, introduced institutional arbitration for enforcement proceedings where executive arbitration has been agreed, potentially extending to secured and mortgage enforcement actions.

In addition, Decree 510 of 2026 updated the regulatory framework applicable to fiduciary businesses and expressly recognised security trusts as a distinct category of fiduciary business for supervisory purposes.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Contract Formation and Enforceability

Under Colombian law, commercial contracts are generally consensual and may be concluded without specific formalities. Certain contracts, however, are subject to statutory formalities, such as transactions involving real estate.

The principal requirements for validity are legal capacity, consent free from defects, a lawful object and a lawful cause. Colombian law does not require consideration in the common-law sense.

Contracts may be subject to absolute or relative nullity. Absolute nullity generally arises from an unlawful object or cause, absolute incapacity, or failure to comply with formalities required for the validity of the transaction. Relative nullity generally concerns defects affecting consent or relative incapacity and may be cured in accordance with applicable law.

Commercial contracts must be performed and interpreted in good faith. Interpretation primarily seeks to determine the parties' common intention and preserve the effectiveness of the contract. Other statutory principles include systematic interpretation, consideration of the parties' conduct and, in cases of ambiguity, interpretation against the drafter where applicable.

Parties may generally allocate and limit contractual liability, subject to mandatory law and public policy. Agreements purporting to waive liability for future wilful misconduct are unenforceable.

7.2 Termination and Remedies

A breach of contract may give rise to the right to initiate court proceedings. Depending on the nature of the obligation, different proceedings may be initiated.

It is generally possible to include grounds for termination in the contract. If a contract is wrongfully terminated, the other party may claim damages, including consequential damages and loss of profits.

Force majeure is recognised under Colombian law and the event must be unpredictable and irresistible in order to operate as an exception to compliance with an obligation. The effects of force majeure, including suspension for a certain period and other consequences, may be regulated in the contract.

Hardship is also recognised under Colombian law and refers to unpredictable events. Colombian law provides that the contract may be reviewed by a judge, who may readjust the contract or order its termination. The parties may also regulate hardship events contractually.

7.3 Intellectual Property in Commercial Transactions

Intellectual Property in Commercial Transactions

Colombia's intellectual property regime combines Andean Community and domestic rules. Patents, trade marks and trade secrets are mainly governed by Andean Decision 486, while copyright is regulated

by Andean Decision 351, Law 23 of 1982 and related amendments.

Patents and trade marks may be assigned or licensed. Transfers and licences concerning registered industrial property rights should be recorded with the Superintendency of Industry and Commerce to be effective against third parties.

Copyright distinguishes between moral and economic rights. Economic rights may be assigned or licensed, while moral rights remain with the author. Transfers must be in writing and, where ownership or exclusivity is involved, registered with the National Copyright Directorate to produce effects against third parties. Trade secrets are protected if the information is confidential, commercially valuable and subject to reasonable protection measures.

Ownership of Intellectual Property

Industrial property created under written employment or services agreements is generally presumed to belong to the employer or contracting party, unless otherwise agreed. In joint development projects, ownership and exploitation rights should be expressly allocated.

For copyright, creators remain the original holders of moral and economic rights, although economic rights are generally presumed transferred to the employer or commissioning party when works are created under written employment or services agreements.

AI-assisted content requires particular attention, as Colombian copyright protection remains based on human authorship. Accordingly, transactions should clearly identify the human contribution and regulate ownership and permitted uses contractually.

Remedies for Infringement

Industrial property owners may seek injunctions, removal of infringing products and damages. Interim measures are also available to prevent infringement, preserve evidence and secure enforcement.

Copyright holders may pursue civil remedies, including damages and precautionary measures. Courts may order the destruction or withdrawal of infringing goods, and certain infringements may also result in criminal liability.

7.4 Consumer Protection

Principal Consumer Protection Laws and Regulations, and their Interaction with Commercial Agreements

Consumer protection has constitutional status in Colombia under Article 78 of the Constitution and is primarily governed by Law 1480 of 2011 (Consumer Statute), as amended by Law 2439 of 2024. Consumer rights are mandatory and cannot be waived contractually. Sector-specific regimes, including financial services, public utilities, telecommunications, air transport and healthcare, prevail where applicable, with the Consumer Statute applying supplementarily.

The regime directly impacts commercial agreements. Producers and suppliers are jointly and severally liable under the legal warranty regime for the quality, fitness and safety of goods and services. Contractual warranties may supplement, but not limit, statutory rights. Liability for defective products is also strict and joint and several, and contractual risk-allocation provisions are unenforceable against consumers.

Suppliers must provide clear, truthful and verifiable information, including pricing and relevant risks. Public offers and advertising are binding and form part of the contract, while misleading advertising is prohibited.

The Consumer Statute regulates adhesion contracts and unfair terms. Standard terms must be disclosed before contract formation and are interpreted against the drafter. Clauses creating an unjustified imbalance to the consumer's detriment are ineffective by operation of law.

Consumers enjoy cooling-off rights in certain transactions, including distance sales, non-traditional sales methods, timeshare agreements and supplier-financed sales. The withdrawal period is five business days, subject to statutory exceptions. Following Law 2439 of 2024, e-commerce refunds must generally be processed within 15 calendar days. Additional protections include payment-reversal rights in cases such as fraud, non-delivery or delivery of non-conforming

goods. Consumers cannot be charged for unsolicited goods or services.

The Obligations That Bear on Commercial Agreements

The key obligations bearing on commercial agreements include compliance with legal warranty requirements, product liability rules, information duties and restrictions on unfair contractual terms.

Producers and suppliers are jointly and severally liable for legal warranties and defective products. Consumers may bring claims against either party, while contractual indemnities and limitations of liability remain effective only between commercial parties.

Suppliers must provide clear, truthful and verifiable information regarding goods and services, including pricing and relevant risks. Public offers and advertising are binding, and objective advertising claims must be substantiated.

Standard terms must be disclosed before contract formation and are interpreted against the drafter. Clauses creating an unjustified imbalance to the consumer's detriment are ineffective by operation of law.

Consumers benefit from cooling-off rights in qualifying transactions, as well as payment-reversal rights in distance and electronic sales involving fraud, non-delivery or delivery of non-conforming goods. They also cannot be charged for products or services that were not expressly accepted.

Key Enforcement Mechanisms Available to Regulators and Consumers

The Superintendence of Industry and Commerce (SIC) is Colombia's principal consumer protection authority and exercises both administrative and judicial functions.

Administratively, the SIC may investigate infringements ex officio or upon complaint, order interim measures and impose sanctions, including fines, business closures, product bans and destruction orders. Sector regulators exercise equivalent powers within their respective industries.

Consumers may seek redress through consumer protection actions, defective-product claims and collective proceedings. Consumer disputes may be brought before the SIC acting in its judicial capacity or the ordinary civil courts, while defective-product damage claims are heard by civil courts. Class and popular actions are also available to protect collective interests.

Additional remedies may arise under unfair competition, data protection and sector-specific regimes. Financial consumers may also submit complaints to the Financial Consumer Ombudsman.

Unfair and Unconscionable Practices, Misleading Advertising and E-commerce

Unfair commercial practices are primarily regulated by the Consumer Statute and unfair competition rules.

Unfair terms are assessed according to whether they create an unjustified imbalance to the consumer's detriment and are ineffective by operation of law. The SIC may require suppliers to amend standard contractual terms. Common examples include clauses limiting statutory warranties, reversing the burden of proof, allowing unilateral modifications or imposing automatic renewals without effective cancellation mechanisms.

Misleading advertising is prohibited, and objective claims must be substantiated. Guidance also requires disclosure of commercial relationships in influencer marketing.

Specific e-commerce rules require suppliers and platforms to identify sellers, publish terms and conditions, allow consumers to review and correct orders before submission, and retain transaction records.

Law 2439 of 2024 strengthened digital consumer protection by requiring effective communication channels, immediate notice of product unavailability and refunds within 15 calendar days where applicable. Where consumers accept delayed delivery, the delivery period may not exceed thirty calendar days; otherwise, they are entitled to a full refund. The SIC may adopt additional measures to protect consumers in digital commerce.

8. Foreign Investment

8.1 Competition and Merger Control

Competition and Merger Control

Colombia's competition regime is primarily governed by Law 155 of 1959, Decree 2153 of 1992 and Law 1340 of 2009. The SIC is the national competition authority.

A transaction must be notified when the parties engage in the same economic activity or participate in the same value chain and meet the applicable asset or revenue thresholds. Transactions where the parties hold less than 20% of each relevant market are subject to a simplified notification process and are deemed authorised. Where the parties hold 20% or more of any relevant market, prior approval from the SIC is required.

The SIC reviews transactions through a two-phase procedure. It may authorise, condition or object to a transaction where it considers that it may result in an undue restriction of competition.

Failure to comply with merger control rules may lead to significant fines for both companies and individuals, and the SIC may order the reversal of transactions that unduly restrict competition.

Anti-competitive agreements, unilateral anti-competitive conduct and abuse of dominance are prohibited and may result in administrative sanctions and corrective measures. Bid-rigging in public procurement may also give rise to criminal liability.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Incentives Available to Foreign Investors in Colombia

Colombia does not provide a general tax holiday or grant programme specifically for foreign investors. Foreign and domestic investors generally have access to the same tax incentives and special regimes, subject to compliance with the applicable requirements.

A key incentive is the Free Trade Zone (FTZ) regime, under which industrial users may benefit from a preferential 20% corporate income tax rate on qualifying export-related income, as well as customs and VAT benefits, subject to statutory conditions.

Colombia also grants sector-specific incentives. Certain hotel, ecotourism and agrotourism projects may qualify for a 15% corporate income tax rate for ten years. Investments in non-conventional renewable energy and energy-efficiency projects may benefit from tax deductions, VAT exclusions and accelerated depreciation, subject to certification and regulatory requirements.

Additional incentives include tax credits for qualifying investments in research, technological development, innovation and environmental projects.

While no grants or subsidies are available solely on the basis of foreign ownership, financial support may be available through specific government programmes or strategic sector initiatives. Accordingly, the incentives available to foreign investors depend largely on the sector, location and characteristics of the investment, including eligibility for special regimes such as FTZs.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Personal Data Processing Under Colombian Law

Colombian data protection rules apply to Colombian and foreign individuals or entities that process personal data in Colombia, including foreign companies collecting personal data within the country.

Data subjects have the right to access, update, rectify and request deletion of their personal data, obtain information regarding its processing, request proof of consent, file complaints before the competent authority and, where applicable, revoke authorisation when processing violates legal or constitutional requirements.

As a general rule, personal data may only be processed with prior, informed and verifiable authorisation of the data subject. Controllers must inform individuals of the purpose of processing, their rights and the identity of the controller.

Organisations must implement data processing policies, privacy notices and procedures for handling requests and complaints. Processing of sensitive data generally requires express authorisation, subject to limited exceptions.

Cross-border transfers and transmissions of personal data are subject to regulatory requirements. Transfers generally require an adequate level of protection or a legal exception, while transmissions to processors are permitted under compliant data-processing agreements.

Certain organisations must register databases in the National Database Registry and report security incidents within the prescribed period. Non-compliance may result in administrative sanctions.

9.2 Anti-Money Laundering, Sanctions and Corruption

In Colombia, separate regulatory frameworks govern anti-money laundering, terrorist financing and financing for the proliferation of weapons of mass destruction (LA/FT/FPADM), and anti-corruption and anti-bribery risks (C/ST). The LA/FT/FPADM regime follows Financial Action Task Force (FATF) standards, while C/ST requirements are based on OECD guidelines.

Sector-specific authorities require companies to implement compliance systems. Financial entities must comply with regulations issued by the SFC, while transportation companies are subject to the Superintendency of Transportation.

Companies required to implement an LA/FT/FPADM and/or C/ST risk system must identify risks, adopt mitigation measures, and establish due diligence, restricted-list screening and reporting procedures.

Non-compliance may result in investigations and fines imposed by the relevant authorities.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

In Colombia, many areas have become protected in recent years, and there are also regulations concerning land use.

In addition, there is an environmental regulatory framework. The sectors most impacted by environmental rules are infrastructure, oil and gas, and mining.

Since Colombia is a republic, national law applies in terms of health and safety, regulated under labour laws. Companies must implement health and safety risk programmes for their employees.

Only certain sectors require specific licences to operate, including mining activities, cannabis, financial services, surveillance, and transportation.

9.4 Artificial Intelligence

In 2024, the data protection authority established mandatory guidelines for the use of personal data in AI systems in Colombia.

Under those guidelines, all processing of personal data in AI systems must meet the following criteria: suitability, meaning the processing must be appropriate for the declared purpose; necessity, meaning only strictly necessary data should be processed; reasonableness, meaning the processing must be proportionate to the objective; strict proportionality, meaning the benefits of processing must outweigh the risks to data subjects; and demonstrated accountability, meaning the company must be able to demonstrate compliance with the applicable regulations.

In 2025, the government established the National AI Policy to promote AI. Colombia is currently developing a specific AI law.

9.5 Other Regulatory Compliance Requirements

Other Regulatory Compliance Requirements

In addition to the regimes described in **9. Regulatory Compliance**, Colombian businesses are subject to accounting, financial reporting and tax compliance requirements.

Law 1314 of 2009 and Decree 2420 of 2015 establish the general framework for accounting, financial reporting and assurance standards. The applicable standards depend on the classification and characteristics of the relevant entity.

Businesses required to issue invoices must generally comply with Colombia's electronic invoicing regime.

Additional registration, reporting or compliance requirements may apply depending on the company's activities, size, sector and supervisory authority.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment and Labour Laws

Employment relationships in Colombia are primarily governed by three regulatory areas, as set out below.

Labour obligations

The Substantive Labour Code (CST), as amended by Law 2466 of 2025, regulates employment contracts, employer obligations and prohibitions, working time, overtime and surcharges, statutory benefits, leave entitlements, termination grounds, disciplinary procedures, apprenticeship contracts and collective labour relations.

Occupational health and safety

Decree 1072 of 2015 regulates the Occupational Health and Safety Management System (SG-SST), requiring employers to identify, assess and mitigate workplace risks through prevention policies, training, surveillance measures and other health and safety controls.

Social security obligations

Employers must affiliate employees to the health, pension and occupational risk systems and make the corresponding contributions. The framework is primarily governed by Law 100 of 1993, as amended by Law 2381 of 2024, the CST, Decree 780 of 2016, Decree 1833 of 2016 and Decree 1072 of 2015.

Key Legal Considerations for Employers With Respect to Termination of Employment

Notice and contract duration

Fixed-term contracts renew automatically unless the employer provides clear written notice of non-renewal at least 30 days before expiration. Failure to do so results in automatic renewal and may expose the employer to wrongful dismissal claims. Under Law 2466 of 2025, fixed-term contracts may not exceed four years, after which they become indefinite. Work-for-task contracts must be in writing and clearly define the assigned task.

Dismissal for cause and due process

Termination for cause must be based on statutory grounds, and those grounds must be communicated at the time of dismissal. Law 2466 of 2025 establishes a formal disciplinary procedure that employers should follow to mitigate due process risks. Performance-related dismissals remain subject to specific statutory requirements, including prior warnings and an opportunity for the employee to respond.

Wrongful (no cause) dismissal. Subject to reinforced job stability protections, employers may terminate employment without cause upon payment of the statutory indemnity. For fixed-term contracts, compensation generally corresponds to salaries due until contract expiration; for indefinite-term contracts, it varies according to salary level and length of service.

Constructive dismissal

Constructive dismissal arises when a serious employer breach makes continued employment unreasonable. The employee must identify the alleged breaches in the resignation notice and bears the burden of proof. If established, the employee is entitled to the statutory indemnity applicable to a dismissal without cause

10.2 Executive Compensation and Restrictive Covenants

Key Considerations in Structuring Compensation Arrangements

Executive compensation is governed by the Colombian Substantive Labour Code. Employees earning at least ten monthly minimum wages may receive an integral salary, which consolidates ordinary remuneration and most statutory benefits into a single payment.

Employers frequently grant extra-legal non-salary benefits under Article 128 through express salary-exclusion agreements. However, courts assess the substance rather than the label of a payment, and amounts directly remunerating services, particularly

commissions, bonuses and performance-based incentives, generally retain their salary nature.

To qualify as non-salary, a benefit must be expressly identified, pursue a purpose unrelated to remuneration and satisfy a specific employee need. Given the presumption that regular payments constitute salary, employers must evidence both the purpose and use of the benefit. Non-salary payments should not exceed 40% of total remuneration under Law 1393 of 2010.

Equity incentive plans are common, particularly those granted by foreign parent companies. As Colombian law does not specifically regulate these arrangements, their treatment depends on whether they constitute remuneration. Ownership-based and discretionary awards are generally more defensible as non-salary. Investments in foreign shares must comply with foreign-exchange regulations and be registered with the Colombian Central Bank.

Change-of-control provisions, including accelerated vesting and enhanced severance benefits, are generally enforceable provided they do not diminish statutory labour rights. Employment relationships continue following employer substitution, and both outgoing and incoming employers remain jointly liable for pre-substitution obligations.

From a tax perspective, executive compensation is generally treated as employment income subject to withholding tax. The salary or non-salary characterisation of each component affects both labour costs and applicable contribution and withholding bases.

Enforceability of Non-competition, Non-solicitation, and Confidentiality Covenants

Colombian law distinguishes between restrictions applicable during employment and those intended to survive termination.

Non-competition during employment

Non-competition and exclusivity covenants are generally enforceable during employment, provided they are reasonable and proportionate. Breach may constitute just cause for dismissal.

Non-competition after termination

Post-termination non-compete covenants are generally unenforceable due to the constitutional freedom to work. The only statutory exception applies to certain technical, industrial and agricultural workers for up to one year, subject to compensation of at least 50% of salary during the restricted period.

Non-solicitation

Colombian law does not specifically regulate non-solicitation covenants. Their enforceability is assessed under unfair competition principles. Soliciting employees or clients is not unlawful per se, although liability may arise where conduct involves deception, coercion or anticompetitive intent. In commercial transactions, reasonable non-solicitation obligations may be enforceable when ancillary to a legitimate business arrangement.

Confidentiality

Confidentiality obligations receive the strongest protection and derive from duties of loyalty and good faith. Unauthorised disclosure of confidential business information may constitute just cause for dismissal and may survive termination while the information remains genuinely confidential and commercially valuable.

Limits on confidentiality restrictions

Confidentiality clauses cannot extend to public information. To be enforceable, the information must be genuinely confidential, commercially valuable and subject to reasonable protection measures. Broad clauses that fail to identify protected information with sufficient precision are unlikely to be enforced.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Requirements for Land Ownership

Colombian law recognises private ownership of real property, which may be held individually or jointly. Real estate may also be subject to the horizontal property regime, combining exclusive ownership of private units with co-ownership of common areas.

Transfers of real property generally require a public deed. Title is transferred upon registration of the deed with the competent Real Estate Registry Office.

Foreign individuals and corporations generally have the same capacity as Colombian nationals to acquire, hold and dispose of privately owned real estate. There is no general residency requirement, foreign ownership cap or special governmental approval solely because the purchaser is foreign.

The acquisition of Colombian real estate by a non-resident constitutes foreign direct investment. The investment must therefore comply with the applicable foreign exchange registration and channelling requirements.

Foreign purchasers are not generally subject to an additional acquisition tax solely because of their foreign status.

11.2 Commercial Real Estate Transactions

Legal Framework and Due Diligence

Real estate transactions in Colombia are principally governed by the Civil Code, Law 1579 of 2012 and applicable land-use and urban-planning regulations.

Transfers of real property must be executed by public deed and become effective upon registration with the relevant Real Estate Registry Office. Each property is identified through an individual real estate registration folio recording ownership, encumbrances and registered restrictions.

Due diligence typically covers title, liens and encumbrances, cadastral and tax matters, land-use restrictions, licences, leases and environmental issues. Title insurance is not generally used, and transactions primarily rely on legal due diligence.

Property development and use are subject to municipal planning regulations and, where applicable, urban development licences. Environmental reviews may be required depending on the property's location, prior use and activities conducted on it. Environmental sanctions are principally regulated by Law 1333 of 2009, as amended by Law 2387 of 2024.

Mortgage Financing

Mortgages must be granted by public deed and registered with the competent Real Estate Registry Office to become effective.

Priority is generally determined by the order of registration. Mortgage creditors may enforce their security interests through the judicial procedures established in the General Code of Procedure, including proceedings against the mortgaged asset.

Commercial Leasing

Commercial leases are principally governed by the Commercial Code and the contractual arrangements agreed by the parties.

Tenants that have operated the same business establishment for at least two consecutive years generally benefit from a statutory renewal right, subject to specific exceptions. Certain statutory protections are mandatory and cannot be waived.

Total subletting generally requires landlord consent, while partial subletting is permitted within statutory limits. Lease assignments also generally require landlord approval, except in certain transfers of the relevant business establishment.

In the event of default, landlords may terminate the lease, recover possession of the premises and seek payment of outstanding rent or damages, subject to the contract and applicable law.

Recent Developments

Law 2625 of 2026 amended the commercial lease regime. Following termination and restitution of the premises, former tenants may display a relocation notice at the property for one month.

COSTA RICA



Law and Practice

Contributed by:
Ana Sáenz, Hernán Pacheco, Alejandro Chow, Ana Julia Vargas and Laura Navarrete
Deloitte Legal

Contents

1. Business Entities P.167
1.1 Business Organisations p.167
1.2 Incorporation and Ongoing Compliance p.167
1.3 Share Issuances p.167
1.4 Distributions and Return of Capital p.168
1.5 Control Person Reporting p.168

2. Corporate Governance P.168
2.1 Legal Framework p.168
2.2 Directors' Duties and Liabilities p.169
2.3 Board Composition and Independence p.169
2.4 ESG and Disclosure Obligations p.169
2.5 Conflicts of Interest and Related-Party Transactions p.170

3. Shareholder Rights and Agreements P.170
3.1 Shareholder Rights p.170
3.2 Shareholder Agreements p.171

4. Mergers and Acquisitions P.171
4.1 Legal Framework p.171

5. Capital Markets P.172
5.1 Securities Regulation and Public Offerings p.172
5.2 Continuous Disclosure p.172
5.3 Insider Trading p.173
5.4 Shareholder Disclosure p.173
5.5 Internal Controls and Whistle-Blower Regimes p.174

6. Secured Transactions P.174
6.1 Transaction Financing and Security Interests p.174

7. Commercial Contracts P.175
7.1 Contract Formation and Enforceability p.175
7.2 Termination and Remedies p.175
7.3 Intellectual Property in Commercial Transactions p.176
7.4 Consumer Protection p.176

8. Foreign Investment P.177
8.1 Competition and Merger Control p.177
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.177

9. Regulatory Compliance P.178
9.1 Privacy and Data Protection p.178
9.2 Anti-Money Laundering, Sanctions and Corruption p.178
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.179
9.4 Artificial Intelligence p.180
9.5 Other Regulatory Compliance Requirements p.180

10. Employment and Labour P.181
10.1 Employment Standards and Workplace Regulation p.181
10.2 Executive Compensation and Restrictive Covenants p.181

11. Real Property and Commercial Leasing P.182
11.1 Requirements for Land Ownership p.182
11.2 Commercial Real Estate Transactions p.182

Deloitte Legal provides innovative, high-quality advice on commercial, corporate, M&A and regulatory matters across Central America, Panama and the Dominican Republic. With more than 60 professionals in the region and a presence across all seven Central American markets, the firm combines local insight with Deloitte Legal's broader network throughout Spanish-speaking Latin America and globally. Commercial, corporate and M&A are core pillars of the practice. It advises multinational, regional and local clients on corporate structuring, acquisitions, disposals, joint ventures, commercial agreements, governance, financing and regulatory compliance. The multidisciplinary teams draw on tax, employment, competition, technology and data-protection capabilities to deliver practical, solutions-driven advice. Deloitte Legal's experience spans infrastructure, transportation, tourism, financial services, retail and consumer products, technology and energy. Recent work includes advising ASUR on due diligence relating to Costa Rica's international airport, and supporting clients on strategic investments, restructurings and cross-border regulatory matters across the region.

Authors



Ana Sáenz is a partner in Deloitte Legal's corporate, commercial and M&A practice. She leads complex M&A transactions across Costa Rica and Central America, advising on structuring, negotiation and execution. Her experience includes joint ventures, investment projects, hospitality, education and consumer products matters. Ana also delivers M&A and contract-drafting workshops and leads firm AI initiatives to improve M&A efficiency. She holds an LLM from Duke University, a summa cum laude Law degree from Universidad Latina, and a BA in Economics from Bard College. She is a member of the Costa Rican Bar Association and the International Bar Association.



Hernán Pacheco is the managing partner of Deloitte Legal's Central America marketplace and has more than 35 years' experience advising local and international clients on complex M&A, financing, commercial transactions and regulatory matters. Hernán is a Costa Rican notary public and holds a Law degree, cum laude probatus, from the Universidad Autónoma de Centro América, an LLM from the University of Hull, and has completed Harvard University's PIL programme. He is a member of the Costa Rican Bar Association, the International Bar Association, and the New York State Bar Association. Hernán has been recognised as a Tier 1 M&A attorney by Chambers & Partners for over 15 years.



Alejandro Chow is an attorney with more than five years of experience in corporate, real estate and transactional law. He holds a Law degree from the Universidad Escuela Libre de Derecho and advises clients on real estate transactions, commercial and hospitality development projects, and complex transaction structuring, negotiation and execution. His experience also includes regional M&A transactions involving Costa Rica, Central America and the Dominican Republic. Alejandro focuses on corporate matters, legal risk management, and supporting investment and business-expansion initiatives. He is currently pursuing an MBA in Finance at the Universidad Latinoamericana de Ciencia y Tecnología (ULACIT).



Ana Julia Vargas is a Costa Rican attorney advising local and foreign investors on real estate, hospitality, corporate, and project development matters. She has experience in real estate transactions, legal due diligence, corporate structuring, project development, asset-holding structures, and wealth planning. Throughout her career, she has advised individuals and business groups on asset-holding structures and wealth planning considerations, providing practical legal support tailored to their business and investment objectives. Ana Julia holds a Certificate in the Advanced Legal Program in Real Estate Law from IE University and is currently pursuing a specialisation in notarial law.



Laura Navarrete leads Deloitte's labour and employment law practice and has more than 13 years of experience advising employers on individual and collective labour law. She holds a Law degree with honours from the University of Costa Rica and a Master's degree in Labour Law and Labour Relations from the University of Salamanca. She serves on the Board of Directors of Women in the Profession (Costa Rican Chapter), a Cyrus R. Vance Center-initiative. She has taught labour and employment law at Fidélitas University and served as Ombudsperson at Peace University, a UN-mandated institution.

Deloitte Legal

Condominio Escazú Village I, cuarto piso
San Rafael
Escazú
San José
Costa Rica

Tel: +506 2246 5000
Fax: +506 2246 5100
Email: ansaenz@deloitte.com
Web: www.deloitte.com/latam/es/

1. Business Entities

1.1 Business Organisations

Principal Types of Business Entities

The principal business entities available in Costa Rica are the stock corporation (*sociedad anónima* or S.A.) and the limited liability company (*sociedad de responsabilidad limitada* or S.R.L.). Both limit the liability of their shareholders or quota holders, as applicable, to their respective capital contributions. An S.A. has share capital divided into shares, is administered by a board of directors and is generally preferred where a more flexible ownership and transfer structure is required. An S.R.L. has capital divided into participation quotas, does not have a board but is rather administered by managers, and is commonly used for closely held businesses, as quota transfers are subject to statutory and/or contractual restrictions. Costa Rican law also recognises general partnerships (*sociedades en nombre colectivo*) and limited partnerships (*sociedades en comandita simple*); however, these are less commonly used for ordinary commercial operations.

Factors Driving the Choice of Structure

The choice of structure is generally driven by the intended ownership and governance model, transfer restrictions, anticipated financing or investor needs, and any regulatory requirements applicable to the business activity. An S.A. is typically preferred where greater flexibility for ownership transfers or future investment is expected, while an S.R.L. is often more suitable for closely held businesses seeking tighter control over ownership changes. Tax treatment is generally not materially different between these two forms; however, the business activity, assets, revenues, and cross-border arrangements may affect the overall tax analysis.

1.2 Incorporation and Ongoing Compliance

Incorporation Requirements

Companies are incorporated by executing a public deed before a Costa Rican notary public, publishing an extract of the incorporation deed in *La Gaceta*, and registering the deed with the Mercantile Section of the National Registry. Both an S.A. and an S.R.L. require at least two founders at incorporation, however 100% of the capital can belong to a single person, national or foreign, individual or corporate immediately after incorporation; in the case of an S.A., each shareholder must subscribe to at least one share. The incorporation deed must include, among other matters, the corporate name, domicile, corporate purpose, term, capital, ownership structure, governance arrangements, legal representation and registered email address. Applicable notarial fees, registration charges, stamp duties and publication costs must be paid. Once the deed is registered, the company is assigned an identification number. Straightforward incorporations are commonly completed within several business days, subject to the National Registry's review and workload.

Ongoing Compliance Obligations

Companies must maintain statutory corporate books, including shareholders' or quota-holders' registers; keep accounting and supporting records; maintain a legal representative; and keep their registered information, including their registered email address, current before the National Registry. Annual and periodic obligations generally include holding an annual ordinary meeting, payment of the Legal Entities Tax, beneficial-ownership reporting through the Central Bank, and applicable income-tax, VAT and other tax filings and reporting. Additional obligations may apply depending on the business activity, including municipal licences, employer and social-security compliance, and sector-specific permits or reports. Failure to comply may result in fines, restrictions on the registration of corporate documents, and difficulties obtaining corporate certifications from the National Registry.

1.3 Share Issuances

Share Capital and Classes of Shares

In an S.A., capital is divided into shares. The incorporation deed must state the number, par value, nature and class of shares; no-par-value shares are prohibited. Share capital may be denominated in Costa Rican colones or foreign currency. All shares must be subscribed at incorporation, and at least 25% of cash contributions must be paid at that time. An S.A.'s deed may authorise the board to increase capital up to a stated limit. Other capital increases or reductions generally require an amendment to the statutes, publication and registration. Amounts contributed above par value may be recorded as additional paid-in capital/share premium, separate from registered share capi-

tal. An S.R.L. does not issue shares: its capital is divided into quotas, which are not shares. The full quota capital must be subscribed at incorporation, with at least 25% paid at that time and the balance payable within one year. Shares are transferred by endorsement, whereas quotas shall be transferred via a formal assignment agreement.

Multiple Classes of Shares and Shareholder Rights

An S.A. may issue common and registered shares. It may also issue preferred shares, with rights and restrictions set out in the company statutes. These may address dividends, liquidation proceeds, voting rights, transfer restrictions and other economic or governance rights or restrictions. Common shares carry one vote per share and plural-voting shares are prohibited. Any amendment that eliminates or modifies the privileges of a class requires approval by the affected class. An S.R.L. has common and registered quotas rather than share classes. Each quota carries one vote, and transfers to third parties are subject to statutory consent requirements and the company's incorporation deed.

1.4 Distributions and Return of Capital

Distributions and Returns of Capital

Dividends and other distributions may be made only from realised and liquid profits shown in financial statements approved by the shareholders. If share capital has been impaired by losses, it must first be restored or legally reduced before profits may be distributed; directors are personally liable for unlawful distributions. In an S.A., 5% of annual net profits must be allocated to the legal reserve until it reaches 20% of share capital. For an S.R.L., the 5% annual allocation applies until the reserve reaches 10% of quota capital. Returns of capital require a formal capital reduction, with the applicable publication, registration, and creditor-protection procedures. Dividend distributions are subject to 15% withholding taxes.

Share Repurchases, Redemptions and Cancellations

An S.A. may repurchase its own fully paid shares only with shareholder approval and using net profits shown in duly approved financial statements. It may not hold more than 50% of its share capital; treasury shares carry no voting or economic rights. If not transferred within one year, the company must reduce its capital proportionately. An S.R.L. may acquire its own quotas only from effective profits; the acquired quotas have no voting rights while held by the company. Costa Rican law does not impose a standalone statutory cash-flow or balance-sheet solvency test comparable to common-law solvency tests. Creditor protection is instead addressed through the profit-based distribution restriction, capital-maintenance rules, legal reserves, and publication and creditor-opposition procedures for capital reductions. A company also may not make loans or advances to its shareholders secured by its own shares or quotas.

1.5 Control Person Reporting

Costa Rican private companies must report their ownership and control structure through the Registry of Transparency and Final Beneficiaries (RTBF). The filing identifies all equity holders and the natural persons who ultimately own or control the company, including through voting rights, appointment rights, or other means of substantive influence. The ordinary RTBF return is filed annually in April. An extraordinary filing is generally required within 15 business days after certain changes, including a person reaching or exceeding 15% of the company's capital, a capital increase, or a change in ultimate beneficial ownership or control. Supporting records must be maintained for at least five years. Non-compliance may result in tax penalties. Companies operating in regulated sectors may also have separate ownership, control-person, and fit-and-proper disclosure obligations before the relevant regulator.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Costa Rica is principally governed by the Commercial Code (Law No 3284), which regulates corporate bodies, shareholder meetings, directors and officers, statutory auditors, corporate records, distributions, reorganisations and dissolution. A company's incorporation deed and bylaws supplement these rules, subject to mandatory law. Companies must adopt corporate-governance policies approved by their board or equivalent body. These must address related-party transactions,

board approval of transactions involving 10% or more of total assets, and disclosure of such transactions in the annual management report. Listed companies and regulated financial entities are subject to additional governance requirements under the Securities Market Regulatory Law, National Council for Supervision of the Financial System (CONASSIF), General Superintendency of Securities (SUGEVAL) and the relevant sector regulator, including rules on board oversight, conflicts, risk management and internal controls.

2.2 Directors' Duties and Liabilities

Principal Duties

Under Article 189 of the Commercial Code, directors must act with due care and loyalty, comply with applicable law and the company's articles of incorporation and bylaws, and act in the best interests of the company and its shareholders. They must supervise management and take reasonable steps to prevent, stop, or mitigate known harmful conduct. Directors who become aware of irregularities committed by their predecessors must report them in writing to the statutory comptroller (fiscal). Costa Rican courts assess the director's actual conduct; liability requires proof of a breach, resulting loss, and causation. The company's claim against a director generally requires shareholder approval.

Standard of Care and Personal Liability

Directors must perform their functions diligently and within the authority granted to them. They may be jointly and severally liable to the company for losses caused by a breach of their legal duties or the company's articles or bylaws, including inadequate oversight, participation in harmful conduct, failure to address known harmful acts, or failure to report predecessor irregularities to the statutory comptroller. Liability may be individual where the matter falls within a particular director's assigned authority. A director may avoid liability by promptly recording their written dissent and notifying the statutory comptroller, or by being absent from the relevant deliberation. Directors acting pursuant to a shareholder resolution are generally protected unless the resolution is manifestly unlawful or contrary to the company's articles or bylaws. Separate liability to shareholders, creditors, or third parties may arise where they suffer direct loss.

2.3 Board Composition and Independence

Private Companies

An S.A. must have a board of at least three directors, who may – but need not – be shareholders. The Commercial Code does not impose a citizenship, residence, independence or gender-diversity requirements for directors. An S.R.L. is managed by one or more managers, who need not be quota holders. Companies must maintain a registered address in Costa Rica and a registered e-mail address for official notifications; there is no longer a general resident-agent requirement. A statutory comptroller (fiscal), if appointed or required, is separate from the board and may not hold another office in the company. As a matter of best practice, companies should select directors with appropriate experience, identify and manage conflicts of interest, and maintain an appropriate mix of skills and perspectives.

Listed and Regulated Companies

Listed issuers and regulated financial-sector entities are subject to additional requirements under securities and sector-specific regulation, including director suitability and independence, board and committee composition, risk management, conflicts controls, disclosure, and board evaluation. The applicable requirements depend on the entity's activities and the relevant supervisory authority.

2.4 ESG and Disclosure Obligations

ESG and Sustainability

Costa Rica does not have a single ESG statute applicable to all companies. Instead, ESG-related obligations arise mainly from activity-specific environmental, labour, health and safety, consumer-protection, anti-corruption, data-protection and sectoral rules. Businesses may require environmental permits and must comply with applicable requirements on emissions, wastewater, waste, natural resources and environmental remediation; producers and importers of certain products may also be subject to extended producer-responsibility obligations. Non-compliance may result in fines, remediation duties, suspension or cancellation of permits, and civil liability.

ESG-related Disclosure

There is no general mandatory ESG or climate-related financial-disclosure regime for ordinary private com-

panies. Listed issuers and regulated entities may be subject to additional disclosure requirements or performance indicators under securities and sector-specific rules. Voluntary sustainability reporting is increasingly used, but is not generally mandatory for private companies.

Directors' Duties and ESG

Costa Rican law does not impose a standalone ESG duty or a general duty to balance all stakeholder interests. However, directors must consider ESG matters where these are material to compliance with applicable law, permits, or the company's interests. Environmental non-compliance may expose the company and, where applicable, the individuals responsible for the conduct to administrative sanctions, remediation duties, civil liability and, in serious cases, criminal liability. Directors and legal representatives may face personal exposure where they participate in, authorise, or culpably fail to prevent the underlying breach. A director may incur ordinary corporate liability where a failure to supervise or address known unlawful or harmful conduct breaches the director's statutory duties and causes loss; voluntary ESG standards alone do not create that liability.

Board Best Practices

Boards should identify material ESG risks, assign oversight responsibility, integrate them into risk management and internal controls, and ensure that public sustainability claims are accurate and supported by reliable information.

2.5 Conflicts of Interest and Related-Party Transactions

Conflicts of interest and related-party transactions are governed principally by the Commercial Code, the company's articles and bylaws and, for listed or regulated entities, applicable sector-specific rules. Companies must adopt board-approved corporate-governance policies requiring directors and the general manager to report to the board transactions involving the acquisition, sale, mortgage or pledge of company assets in which they or their related parties have an interest; the interested person must abstain from participating in the decision-making process. Prior board approval is required for those transactions where the relevant assets represent 10% or more of the company's total assets, measured against the prior month's financial statements. Those transactions must be disclosed in the annual management report. For non-listed companies, the applicable disclosure rules are issued by the Ministry of Economy, Industry and Commerce; listed issuers are subject to the applicable rules of CONASSIF and SUGEVAL. The company should document the interest disclosed, the interested person's abstention, the board's approval and the basis for the transaction in its minutes. Related-party transactions may also be subject to Costa Rican transfer-pricing rules, including the arm's-length principle and applicable supporting-documentation requirements.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights

Shareholder rights are governed by the Commercial Code, the company's articles and bylaws, and the rights attached to each share class. Key rights include voting (one vote per common share; plural-voting shares are prohibited), participation in shareholder meetings, approval of annual financial results, dividends and appointments, and separate class approval where class rights are amended. Shareholders may request information on matters submitted to a meeting; a request by holders of at least 20% of capital generally cannot be refused on confidentiality grounds. Holders of 25% of the share capital may require the directors to call a meeting, and an individual shareholder may do so if no meeting has been held for two consecutive years. Amendments to the articles and other fundamental changes require extraordinary shareholder approval. It is normally recommended to supplement the company statutes with a shareholders' agreement to address specific governance matters.

Statutory Remedies

Shareholders may challenge unlawful or defective shareholder resolutions, subject to the applicable standing requirements and limitation periods; seek a court-ordered meeting if directors fail to convene one; enforce declared dividends; and exercise statutory withdrawal rights in specified reorganisations

or changes that increase shareholder liability. Costa Rican law does not provide a single, general remedy for unfair treatment of minority shareholders. Instead, minority shareholders must rely on specific rights under the Commercial Code, the company's articles of incorporation and bylaws, any shareholders' agreement, and claims for losses they have suffered directly.

3.2 Shareholder Agreements

Shareholder Agreements

Shareholders' agreements are commonly used to supplement the articles and bylaws on governance, reserved matters, board nominations, funding, information rights, transfer restrictions, pre-emption rights, tag-along and drag-along rights, deadlock and dispute resolution. They generally bind only their signatories. Transfer restrictions and other provisions intended to bind the company or future shareholders should, where appropriate, also be reflected in the company's articles of incorporation and require a buyer to agree to become a party to the shareholders' agreement.

Disputes

Shareholder and partnership disputes may be resolved through contractual claims, challenges to corporate resolutions, damages claims, interim court relief, enforcement of transfer or buy-sell provisions, or arbitration where agreed. Costa Rican law does not provide a standalone statutory remedy equivalent to a common-law derivative action or unfair-prejudice claim. Claims for loss suffered by the company generally must be pursued by the company through shareholder authorisation; a shareholder may pursue a claim for loss suffered directly. Dissolution or liquidation is available only on statutory or agreed grounds, such as expiry of the company's term, completion or impossibility of its purpose, loss of 50% of capital (unless restored or reduced), or shareholder agreement – not merely because of minority-shareholder dissatisfaction.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Laws and Regulations

Private M&A is governed principally by the Commercial Code, which regulates share and quota transfers, statutory mergers and corporate approvals. Public M&A and tender offers are governed by the Securities Market Regulatory Law and SUGEVAL regulations. Transactions may also require merger-control clearance from the Anti-trust Authority (COPROCOM) and sector-specific approvals, particularly in regulated industries.

Key Structuring Considerations

The principal considerations are the choice between a share, quota or asset acquisition; allocation of historic liabilities; tax treatment; transferability of permits and material contracts; employee matters; merger control; and any sector-specific approval. Statutory mergers are approved by the participating companies and registered with the Mercantile Registry; court involvement is generally limited to creditor opposition.

Most Commonly Used Deal Structures

Private share or quota acquisitions and asset acquisitions are the most common structures. Statutory mergers (particularly mergers by absorption) are commonly used for post-closing integration and internal group reorganisations. Capital increases, equity subscriptions and joint ventures are also frequently used for strategic investments; public tender offers are less common given the limited size of Costa Rica's public equity market.

Recent Legislative or Regulatory Developments

A significant development in Costa Rican M&A practice has been the competition-law reform introduced by Law No 9736 in 2019, which strengthened the merger-control framework and made early assessment of a potential COPROCOM filing a standard part of transaction planning.

Role of the Courts in the Development of M&A Law

M&A-specific case law remains limited; legislation and regulatory practice are the main drivers of M&A law. Courts primarily shape the area through decisions on corporate approvals, contractual enforcement, creditor protection and judicial review of regulator decisions. A 2025 Supreme Court decision concerning COPROCOM's review of a retail acquisition confirmed that the authority must observe due-process protections in merger-control proceedings, including allowing the parties an opportunity to address identified

competition concerns through proposed remedies under the framework then in force.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Summary of Legal Regulatory Framework

Costa Rica's capital markets are governed principally by the Securities Market Regulatory Law (Law No 7732) and regulations issued under it. SUGEVAL regulates, supervises and authorises public offerings and market participants; CONASSIF issues the governing regulatory framework; and the Costa Rican Stock Exchange operates the trading market and establishes its operating rules.

Principal Laws and Regulations

IPOs and follow-on offerings generally require prior SUGEVAL authorisation and registration of the issuer and securities in the National Registry of Securities and Intermediaries (RNVI). The application must include the corporate approval for the issuance, the terms of securities, audited financial information, and a prospectus containing material information on the issuer, offering and risks. The issuer must generally satisfy SUGEVAL's final authorisation requirements within one month following notice of authorisation, subject to an extension for an equal period. Securities must generally be placed within two years from the proposed issue date; SUGEVAL may grant an extension of up to one additional year upon a reasoned request submitted before expiry. Registered issuers are also subject to ongoing disclosure obligations, including disclosure of material facts, events and decisions in accordance with applicable securities regulations.

Exchange Listing

SUGEVAL authorisation and RNVI registration are the regulatory basis for a public offering. Listing or admission to trading on the Costa Rican Stock Exchange is a separate, complementary step governed by the exchange's rules; it does not replace securities-law compliance. Offerings may be made on- or off-exchange, but an on-exchange placement must also comply with the applicable exchange rules and trading mechanisms.

Prospectus Exemptions

Costa Rica does not have a broad "prospectus exemption" or "accredited investor" regime comparable to those of the United States or Canada. Instead, the key distinction is between a public offering, which requires SUGEVAL authorisation, a prospectus and RNVI registration, and a private offering, which is the closest equivalent to a prospectus-exempt offering. An offer may be treated as public if it uses mass-marketing channels or is placed with more than 50 investors. Private offerings exceeding USD1 million by an issuer or its economic group must generally be accredited with SUGEVAL, although accreditation is not equivalent to authorisation or registration. The issuer must provide specified information and obtain investor acknowledgments that the securities are unregistered and not tradable in the regulated secondary market. A restricted public offering to institutional or sophisticated investors remains a regulated public offering, not a prospectus exemption.

Resale Restrictions

Costa Rican law does not impose a fixed statutory holding period for securities issued in a private offering. However, because those securities are not registered with the RNVI, investors must be warned that they may not be traded in the regulated secondary market. Each resale must be assessed under the public-offering criteria. A resale that is marketed publicly, uses mass communication channels, is placed with more than 50 investors, or otherwise meets the applicable qualitative or quantitative criteria may require SUGEVAL authorisation, a prospectus and RNVI registration. Non-compliance may result in SUGEVAL enforcement action, public disclosure of the breach and administrative sanctions; for accredited private offerings, SUGEVAL may publicly identify issuers that fail to meet their accreditation obligations.

5.2 Continuous Disclosure

Continuous Disclosure

Listed entities in Costa Rica are subject to continuous disclosure obligations under Articles 105 and 150 of the Securities Market Regulatory Law. Article 105 requires securities issuers to inform the public, within the shortest possible period established by regulation, of any factors, facts or decisions that may have a material effect on the price of their securities. Article

150 further empowers SUGEVAL to require issuers and other entities related to the securities markets to immediately disclose to the public any facts or information that SUGEVAL considers relevant to investors and whose disclosure is necessary to ensure market transparency.

Disclosure of Material Events

Material events are reported to SUGEVAL through a Material Event Notice (*Comunicado de Hecho Relevante*) under the applicable SUGEVAL rules. Disclosure must be made immediately after the issuer becomes aware of the event and, in any case, within one business day. SUGEVAL rules contain a non-exhaustive list of events that may qualify as material, and SUGEVAL may determine whether a filed notice constitutes a material event for registry and market disclosure purposes.

5.3 Insider Trading

Market Abuse and Insider Trading

Costa Rican law criminalises market manipulation and insider trading in relation to securities traded on a stock exchange. Market manipulation includes conduct intended to artificially raise, lower or maintain the price of securities through false, distorted or concealed information. Insider trading consists of buying or selling exchange-traded securities, directly or through a third party, while possessing privileged information in order to obtain an undue benefit. Both offences carry imprisonment of three to eight years.

Enforcement Powers

SUGEVAL may monitor supervised entities, require information and public disclosure, conduct inspections, order corrective measures, and impose or initiate administrative sanctions and precautionary measures. It may also order the cessation or correction of non-compliant advertising and cooperate with domestic and foreign supervisory authorities. Suspected criminal conduct, including insider trading and market manipulation, is investigated and prosecuted by the criminal authorities; SUGEVAL may refer relevant matters to the Public Prosecutor's Office.

5.4 Shareholder Disclosure

Disclosure of Substantial Shareholdings and Changes

Any person that, directly or indirectly, acquires 10% or more of the subscribed capital of an issuer registered with the RNVI must notify the issuer, the relevant stock exchange and SUGEVAL. The rule covers shares and other securities that directly or indirectly confer a right to subscribe for or acquire shares; holdings of the acquirer's economic interest group, or held on its behalf, are aggregated. Directors, supervisory-body members and senior managers of RNVI-registered issuers must also disclose all transactions in the issuer's shares, regardless of size. An acquisition intended to reach a significant participation may also trigger a mandatory public tender offer addressed to all holders of the target's voting shares.

Thresholds and Disclosure

The principal disclosure threshold is 10% or more of the subscribed capital of an issuer registered with the RNVI. It applies to any individual or entity acquiring shares or securities that directly or indirectly confer a right to acquire shares, including through an intermediary or economic interest group. Directors, supervisory-body members and senior managers of RNVI-registered issuers must also disclose all transactions in the issuer's shares. For mandatory tender-offer purposes, a significant participation is generally 25% or more of the target's outstanding voting capital. An acquirer seeking between 25% and 50% must generally offer to acquire at least 10% of the target's capital; an acquirer seeking to exceed 50% must generally offer to acquire enough shares to reach at least 75% of the target's capital.

Consequence of Non-compliance

Failure to comply with the substantial shareholding disclosure obligations constitutes a serious infringement and is subject to the statutory sanctions, which may include monetary fines, including a fine of 200 base salaries, depending on the applicable statutory classification.

5.5 Internal Controls and Whistle-Blower Regimes

Corporate Compliance and Internal Controls

Costa Rica does not impose a single compliance-programme requirement on all private companies. Internal controls are principally driven by the company's activities and applicable sectoral rules, including anti-corruption, AML, labour, public-procurement and financial-sector requirements. A risk-based programme is therefore recommended, particularly for companies operating in regulated sectors or with material compliance exposure.

Whistle-Blowing and Reporting Mechanisms

Under Law No 10437, private employers with more than 50 employees must maintain an identifiable and accessible internal channel for corruption reports. The channel must allow anonymous and electronic reporting, protect the confidentiality of the whistle-blower's identity, and include anti-retaliation safeguards; employers must keep the reporting procedures accessible and publicise them periodically.

Recommended Governance Framework

Companies should implement a risk-based compliance framework with board or senior-management oversight, a written code of conduct, risk assessments, internal controls, training, reporting and investigation procedures, and documented escalation and remediation. Employers subject to Law No 10437 should integrate their statutory reporting channel and anti-retaliation protections into that framework.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Principal Laws and Regulations Governing Secured Transactions

Secured transactions in Costa Rica are governed principally by the Movable Guarantees Law (Law No 9246), the Civil Code, the Commercial Code, the Civil Procedure Code, and asset-specific registry rules. Law No 9246 provides a unified regime for security over movable assets and rights, including inventory, equipment, receivables, contractual rights, proceeds, crops, shares, quotas and other transferable assets with economic value; certain registrable movables remain subject to special regimes. Common security includes movable guarantees, mortgages over real estate, mortgage bonds (*cédulas hipotecarias*), pledges or other security over specially registrable assets, security trusts and personal guarantees.

Key Considerations to Perfect and Enforce Securities

A movable guarantee is created by agreement between the parties; registration in the *Sistema de Garantías Mobiliarias* generally makes it effective against third parties and establishes priority. A real-estate mortgage must be granted by public deed and registered with the National Registry to be effective against third parties and obtain registry priority. Mortgage bonds and security trusts must be properly constituted and registered where the underlying assets are registrable. Movable guarantees may be enforced judicially or, if agreed, through an out-of-court process before a notary public, licensed auctioneer or trustee. Mortgages and mortgage bonds are generally enforced through judicial proceedings. A qualifying enforceable debt instrument (*título ejecutivo*), such as a promissory note or notarised debt instrument, can support expedited collection, but does not replace the registration required to preserve priority against third parties.

Acquisition Financing and Security Packages

Acquisition financings are commonly structured as senior secured debt, supported by security over target shares or quotas, receivables, bank accounts, inventory, equipment, material contracts and, where applicable, real estate. The security package may combine movable guarantees, mortgages, mortgage bonds (*cédulas hipotecarias*), security trusts and corporate or personal guarantees. Priority is principally determined by the relevant registration and publicity rules. Where there is more than one lender, the lenders commonly enter into an intercreditor agreement to determine who is paid first, who may enforce the security, and how recoveries are shared. These agreements are contractual and do not change the priority established by the relevant security registrations. In larger transactions, a security trust may be used to hold and enforce collateral for the benefit of multiple lenders. Corporate approvals, capacity, corporate benefit, financial-assistance restrictions and insolvency risk should be

reviewed where the target or other group companies guarantee or secure acquisition debt.

Recent Legislative or Regulatory Changes

The principal recent structural development remains Law No 9246, which modernised secured lending by expanding the availability of non-possessory security over movable assets and rights and establishing the electronic Movable Guarantees Registry. In addition, lenders must consider Costa Rica's statutory maximum-interest-rate regime under Article 36 bis of Law No 7472, as amended by Law No 9859; the applicable caps are recalculated and published by the Central Bank twice yearly and may affect loan and microcredit pricing.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Key Principles of Contract Formation, Interpretation and Enforceability

Costa Rican commercial contracts are governed principally by the Commercial Code, supplemented by the Civil Code. The main principles are contractual freedom, good faith and the binding effect of valid agreements. A valid contract generally binds the parties as law.

Requirements for the Valid Formation of a Commercial Contract

A commercial contract generally requires valid and freely expressed consent, legal capacity, a lawful and sufficiently determined object, and a lawful purpose. Consideration is not required. Most commercial contracts may be entered into orally or in writing, but certain transactions (such as transfers or security over registrable assets) require a public deed, registration, or both.

Grounds for Invalidity

A contract may be wholly or partly invalid for lack or defect of consent, lack of capacity, an unlawful or impossible object or purpose, or failure to comply with a mandatory formality. Clauses that breach mandatory law, public policy or good customs may also be unenforceable.

Interpretation and Enforcement of Commercial Contracts

Courts generally interpret contracts by reference to their wording, the parties' intention, and good faith. Parties may allocate risk, limit liability and agree remedies, subject to mandatory law and limits on abusive or unfair terms. Commercial disputes may be resolved through the courts or, where agreed, arbitration or other alternative-dispute-resolution mechanisms.

7.2 Termination and Remedies

Remedies for Breach of Contract

The principal remedies are specific performance, termination of the contract, and damages. In reciprocal contracts, the non-breaching party may generally require performance or seek termination with damages. Recoverable damages must be the direct and immediate consequence of the breach; agreed penalty or liquidated-damages clauses are generally enforceable.

Termination and Wrongful Termination

A party may terminate where the contract permits it or where the other party fails to perform a reciprocal obligation. Terminating without a valid contractual or legal basis may itself be a breach, giving the other party a claim for performance, termination, damages, or other agreed remedies.

Force Majeure, Impossibility and Hardship

Costa Rican law recognises force majeure and fortuitous events as defences where an unforeseeable event beyond a party's control prevents performance. The event must directly cause the non-performance and does not automatically terminate the contract; its effect may be suspension, excuse of performance, or, where performance becomes definitively impossible, termination. A party remains liable if it contributed to the event or expressly assumed the risk. Costa Rica has no general codified equivalent to common-law frustration of purpose or hardship, so commercial contracts commonly address these issues through express force-majeure, hardship and change-in-circumstances clauses.

7.3 Intellectual Property in Commercial Transactions

Key Intellectual Property Considerations in Commercial Transactions

In commercial transactions, the key IP issues are confirming ownership, validity, scope of protection and any existing licences, liens or transfer restrictions affecting trade marks, patents, copyrights and trade secrets. Assignments and licences should clearly define the rights transferred or licensed, territory, exclusivity, duration, royalties, permitted use, sublicensing and ownership of improvements or derivative works. Patent assignments and licences must be registered to be effective against third parties; trade mark licences are generally valid without registration, although registration is advisable for third-party effect. Copyright assignments should expressly address the economic rights transferred, as moral rights remain with the author. Trade secrets are protected principally through confidentiality obligations and appropriate technical and organisational safeguards.

Ownership of Intellectual Property Created in Business Relationships

Ownership depends on the applicable IP regime and the parties' agreement. For works created in an employment relationship, the author retains moral rights, while economic rights are generally presumed assigned to the employer to the extent required for its ordinary activities, unless agreed otherwise. For commissioned or joint-development arrangements, express provisions on ownership, assignment, use rights and improvements are important to avoid disputes. Costa Rica has no specific statutory regime for ownership of AI-generated content.

Available Remedies for Intellectual Property Rights Infringement

Rights holders may seek civil remedies, including injunctions, damages, seizure and destruction of infringing goods, as well as customs border measures. Criminal penalties may also apply to specified infringements, including trade mark counterfeiting and copyright violations.

7.4 Consumer Protection

Consumer Protection and Commercial Agreements

Consumer protection is governed principally by the Competition and Effective Consumer Protection Law (Law No 7472) and its regulations. The Law imposes mandatory disclosure obligations on suppliers, including clear and accurate information on product or service characteristics, price, financing terms, warranties and material risks; advertising and promotional statements are binding and form part of the consumer contract. Consumers have an eight-day withdrawal right for qualifying door-to-door sales. Adhesion contracts are subject to particular scrutiny, and abusive terms – including certain unilateral-modification, liability-limitation or waiver provisions – may be void or unenforceable. These consumer-protection rules prevail over inconsistent contractual terms.

Enforcement Mechanisms

Consumers may file complaints with the National Consumer Commission or bring court proceedings for damages and other relief. The Commission may investigate, impose fines, order refunds, repairs or replacements, void abusive terms, and impose interim measures, including seizure of goods, service suspension, or cessation of the challenged conduct. Serious conduct may also result in criminal exposure.

Unfair Practices, Advertising and E-commerce

Misleading advertising, unfair commercial practices, and abusive terms in adhesion contracts are prohibited. Consumer contracts and advertising are subject to a protective standard: unclear or misleading information may result in corrective advertising, administrative sanctions, and civil liability. Online sales are currently subject to the same consumer-protection rules. Law No 10946, enacted in June 2026, creates a dedicated digital-services and e-commerce framework (including online disclosure, pricing, complaint-handling and anti-dark-pattern rules), but takes effect 12 months after publication.

8. Foreign Investment

8.1 Competition and Merger Control

Laws or Regulations in Relation to Merger Control

Costa Rica's merger-control regime is governed principally by the Competition and Effective Consumer Protection Law (Law No 7472), as strengthened by Law No 9736, and is administered by COPROCOM. A concentration must be notified before implementation in Costa Rica where: (i) at least two parties have carried on activities affecting Costa Rica during either of the prior two fiscal years; (ii) their combined Costa Rican gross sales or productive assets equal at least 30,000 base salaries; and (iii) at least two parties each have Costa Rican gross sales or productive assets of at least 1,500 base salaries. Successive transactions completed within two years are aggregated. COPROCOM applies a two-phase review to assess whether the transaction may materially harm competition. It may approve, condition or prohibit the transaction. All telecommunications-sector concentrations require prior notification to Telecommunications' Superintendence; financial-sector transactions may also require input or approval from CONASSIF on prudential grounds.

Failure to Notify

Late filing is a minor infringement; failure to notify, implementation without required authorisation, or submission of false or misleading information is a serious infringement. If the conduct produces anti-competitive effects, it is a very serious infringement. COPROCOM may impose turnover-based fines, require corrective measures, and may order partial or full deconcentration or termination of control where appropriate.

Anti-competitive Conduct

Cartels and abuse of dominance are very serious infringements. COPROCOM may order the conduct to cease or be corrected, impose fines of 0.1% to 10% of the company's total annual revenue or sales, and impose other measures necessary to restore competition. Civil damages claims may also arise where the applicable requirements are met.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign-Investment Review and Approval

Costa Rica generally permits 100% foreign ownership and does not have a general foreign-investment screening or pre-clearance regime. Foreign investors establish or acquire Costa Rican companies under the same general corporate rules as domestic investors; no approval or fee applies solely because an investor is foreign. Transactions may nevertheless require merger-control clearance, sector licences or approvals, and compliance with tax, labour, immigration and beneficial-ownership rules.

Restricted Sectors and Assets

Restrictions are sector-specific. Key examples include the following.

- Maritime Terrestrial Zone (ZMT) concessions: concessions are generally unavailable to entities whose capital is more than 50% foreign-owned, subject to statutory exceptions.
- Private security: an authorised private-security company may not sell its shares to foreigners.
- Certain private power-generation projects: companies selling electricity to the Instituto Costarricense de Electricidad under the limited-capacity regime must have at least 35% Costa Rican ownership.

Telecommunications, financial services, insurance, public services and concessions are generally subject to licensing, ownership-disclosure and regulatory-approval requirements; the level of restriction depends on the relevant activity. Non-compliance may result in denial, suspension or cancellation of the relevant authorisation or concession, and invalidity of prohibited arrangements.

National Security Review

Costa Rica does not have a general national-security review process for foreign investments comparable to the Committee on Foreign Investment in the United States. National-security, public-interest and prudential considerations may nevertheless be addressed through sector-specific concession, licensing, financial-supervision or competition-review processes.

Investment Incentives

The principal incentive is the Free Trade Zone Regime, administered through Ministry of Foreign Trade and Foreign Trade Promoter (PROCOMER). Eligible businesses may obtain exemptions from import duties, certain local taxes, taxes on remittances abroad, and corporate-income-tax benefits, subject to the applicable category, location and compliance with investment, employment and operational commitments. Corporate-income-tax benefits generally last longer outside the Greater Metropolitan Area.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Privacy and Data Protection Framework

Costa Rica's principal data-protection law is the Law on the Protection of Individuals Regarding the Processing of Personal Data (Law No 8968) and its implementing regulation. It applies to public and private databases and regulates the collection, use, storage, disclosure and transfer of personal data. The Data Protection Agency (PRODHAB) supervises compliance, registers covered databases, investigates complaints and may impose sanctions. Sector-specific rules impose additional confidentiality and access controls. In the financial sector, banking secrecy, supervisory confidentiality and the General Superintendency of Financial Institutions (SUGEF) Credit Information Center rules apply to financial and credit data. Health information is sensitive personal data and is also protected by patient-confidentiality, medical-ethics, Ministry of Health and electronic-health-record rules. Credit-reporting activities are subject to Law No 8968 and, in the supervised financial sector, the applicable SUGEF credit-information framework.

Consent, Processing and Breach Obligations

Processing generally requires the data subject's prior, informed, express and specific consent, unless a statutory exception applies. Organisations must provide notice of the purpose, intended use, recipients and controller; keep data accurate, relevant and not excessive; and implement appropriate technical, physical and organisational security measures and confidentiality safeguards. Sensitive personal data (eg, health, religious beliefs, political opinions, ethnicity and sexual orientation) is subject to additional restrictions. Data subjects have rights of access, rectification, deletion and opposition. Following a personal-data security incident, the controller must notify both PRODHAB and affected individuals within five business days of becoming aware of the incident. The notice must state the nature of the incident, the data affected, corrective actions taken or planned, and how further information may be obtained.

Cross-Border Transfers and Data Localisation

Costa Rica does not impose a general data-localisation requirement. International transfers generally require the data subject's express, informed consent, and an unauthorised transfer to a foreign database is a serious infringement. Transfers to processors, service providers or entities within the same economic-interest group may be exempt where the recipient does not use the data for its own distribution, disclosure or commercialisation. Controllers remain responsible for processor compliance and security measures.

9.2 Anti-Money Laundering, Sanctions and Corruption

AML

Costa Rica's AML framework is governed principally by Law No 7786, as comprehensively amended by Law No 8204 and subsequent amendments, together with risk-based rules issued by CONASSIF and the relevant supervisors. It applies to supervised financial institutions and designated non-financial businesses and professions, including money-transfer and currency-exchange businesses, trust and third-party asset managers, casinos, real-estate businesses, dealers in precious metals and stones, certain credit providers, pawnshops, trust-service providers, and lawyers, notaries and accountants when conducting specified client transactions. Subject entities must conduct customer due diligence, identify beneficial owners, keep transaction records, monitor higher-risk activity, and report suspicious transactions confidentially to the Financial Intelligence Unit (UIF) of the Costa Rican Drug Institute. Separately, the RTBF regime requires companies, private trusts and other covered structures to report ultimate beneficial owners and persons exercising control.

Sanctions, Trade Restrictions and Export Controls

Costa Rica does not maintain a broad unilateral economic-sanctions regime comparable to those of the United States, European Union or United Kingdom. It does, however, implement targeted asset-freezing measures connected with United Nations Security Council designations concerning terrorism financing and proliferation financing. Subject institutions must freeze or immobilise covered funds and assets without prior notice and report to the UIF. Businesses engaged in cross-border activity should assess applicable Costa Rican restrictions and the sanctions rules of any foreign financial institutions, counterparties or jurisdictions involved.

Anti-Corruption and Anti-Bribery

Costa Rica's anti-corruption framework includes the Law Against Corruption and Illicit Enrichment in Public Office (Law No 8422), the Criminal Code, and the Law on the Liability of Legal Entities for Domestic Bribery, Transnational Bribery and Other Offences (Law No 9699). Law No 9699 applies to Costa Rican and foreign private entities operating in Costa Rica and may impose criminal liability for specified corruption offences committed for their benefit by directors, employees or intermediaries. A compliance programme is not mandatory for every private company, but an effective risk-based prevention and control model may mitigate liability and penalties. Key elements include anti-bribery policies, third-party due diligence, financial controls, training, reporting channels and internal investigations. Multinational groups may also follow the US Foreign Corrupt Practices Act, the UK Bribery Act or ISO 37001 where relevant, but these are not general Costa Rican requirements.

Enforcement Powers of Regulatory Authorities

The UIF and the relevant financial-sector supervisors – including SUGEF, SUGEVAL, Pension Supervisory Authority and the General Insurance Superintendency of Costa Rica – may obtain information, inspect regulated entities and enforce AML obligations within their respective mandates. The Tax Administration may sanction RTBF non-compliance. The Public Prosecutor's Office investigates and prosecutes money laundering, terrorist financing and corruption offences; courts may order freezing, seizure, forfeiture and criminal penalties. For corporate corruption offences, Law No 9699 permits fines, loss of public benefits, disqualification from public contracting, cancellation of permits or concessions, and, in exceptional cases, dissolution of the legal entity.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Requirements and Transaction Risk

Costa Rica's environmental framework is based principally on the Organic Environmental Law (Law No 7554). Projects or activities that may alter environmental resources, generate waste, or involve toxic or hazardous materials may require a prior environmental-impact assessment and approval from the National Environmental Technical Secretariat (SETENA) before commencing. Environmental due diligence in corporate transactions commonly covers SETENA approvals and environmental commitments, water-use and wastewater-discharge permits, waste-management compliance, land-use restrictions, and pending environmental complaints or sanctions. Contaminated sites are subject to soil-cleanup standards under Executive Decree No 37757-S, making contamination assessments particularly relevant for industrial, manufacturing, fuel-storage and real-estate transactions. Environmental liability may result in remediation obligations, administrative sanctions, suspension or cancellation of permits, and civil liability for environmental damage. Costa Rica has domestic carbon-compensation and carbon-credit mechanisms, but not a general economy-wide emissions-trading system.

Climate-Related Litigation and Corporate Environmental Liability

Costa Rica has a strong environmental-protection framework, but climate-specific corporate litigation remains less developed than disputes concerning environmental permits, contamination, water resources, land use, biodiversity and compliance with environmental approvals. Climate-related impacts may nevertheless be considered in environmental-permitting and administrative proceedings where they are relevant to the project's environmental effects. For businesses, the principal exposure is environmental liability for contamination, permit non-compliance, remediation duties and resulting operational disruption. Buyers should therefore assess environmental

permits, compliance history, pending proceedings and restoration obligations, and consider representations, indemnities and remediation arrangements in higher-risk transactions.

Occupational Health and Safety Obligations

Costa Rica is a unitary jurisdiction and does not have separate federal and provincial occupational-health-and-safety regimes. The framework is administered nationally through the Labor Code, Executive Branch regulations, the Ministry of Labor and Social Security, and the Occupational Health Council. Employers must protect workers' life, health and physical integrity by identifying and managing workplace risks, implementing preventive measures, providing appropriate training and protective equipment, and maintaining mandatory occupational-risk insurance. Additional obligations may apply according to the industry and workplace risks. Workplaces with ten or more employees must establish an Occupational Health Committee. Those with more than 50 permanent employees must also establish an Occupational Health Department. In corporate transactions, due diligence should cover compliance with these requirements, workplace accidents and claims, occupational-risk insurance, inspections, and outstanding corrective measures.

Licensing, Permitting and Industry-Specific Regulation

Businesses generally require a municipal business licence (*patente municipal*) and, where applicable, a health permit (*permiso sanitario de funcionamiento*) from the Ministry of Health. Depending on the activity and location, environmental approval, construction permits, land-use certificates, water concessions, and waste or wastewater authorisations may also be required. Executive Decree No 43432-S. Sector-specific requirements can be material in corporate transactions. Cannabis and hemp activities require the licences and permits applicable under the relevant regulatory regime; energy projects may require concessions, environmental approvals and water rights; financial services are subject to authorisation and prudential supervision by the relevant financial regulator, including SUGEF; and pharmaceutical products and establishments generally require Ministry of Health registrations and operating permits. In addition, there are registration requirements for food, food supplements, cosmetics, medical devices, agrochemicals, veterinarian products and animal food as well. Permits, concessions, registrations and product authorisations may be tied to the relevant entity, facility or activity and may not transfer automatically following a merger, asset sale, reorganisation or change of control. Due diligence should therefore confirm their validity and whether the transaction requires prior approval, notice, amendment, transfer or reissuance.

9.4 Artificial Intelligence

Costa Rica does not currently have a comprehensive AI-specific law. The use of AI is governed by existing rules on data protection, consumer protection, intellectual property, non-discrimination and civil liability, particularly where AI processes personal data or affects consumers. Three AI bills remain pending before the Legislative Assembly:

- Bill No 23,771 (AI Regulation in Costa Rica), which would regulate AI development, deployment and use while protecting human dignity and fundamental rights;
- Bill No 23,919 (Responsible Promotion of AI), which is based on ethics, responsibility, equality and transparency; and
- Bill No 24,484 (Implementation of AI Systems), which would establish adoption and governance guidelines for AI in the public and private sectors.

Each has been reported out of committee but has not been enacted. Costa Rica consequently has no general AI-specific statutory requirements for transparency, bias testing, explainability or human oversight. However, the pending bills and the government's National AI Strategy point toward future rules focused on transparency, accountability, protection of fundamental rights and prevention of discriminatory outcomes.

9.5 Other Regulatory Compliance Requirements

There is no applicable information in this jurisdiction.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment and Labour Law

Employment relationships in Costa Rica are governed principally by the Labor Code, the Constitution, social-security legislation, occupational-health-and-safety regulations and other employment statutes. The regime is employee-protective: statutory rights are minimum standards that generally cannot be waived or reduced by agreement. The Labor Code regulates employment contracts, working time and overtime, rest periods, holidays, annual leave, minimum wages, termination, severance and workplace safety. Whether an employment relationship exists depends on the facts – particularly personal service, employer supervision and remuneration – rather than job title. Private-sector employees are generally entitled to two weeks' paid annual leave after 50 weeks of continuous service and a statutory Christmas bonus (*aguinaldo*). Employers must comply with the applicable minimum wage, register employees and remuneration with the Costa Rican Social Security Fund (CCSS), make required social-security contributions and withholdings, and maintain occupational-risk insurance. Collective labour law also regulates freedom of association, unions, collective bargaining agreements, strikes and collective disputes. Employment due diligence commonly covers payroll and CCSS compliance, accrued benefits, working-time practices, insurance, employee classification, collective arrangements, pending disputes, and termination or severance exposure.

Termination of Employment

Costa Rican law generally permits an employer to terminate an indefinite-term employment relationship without cause, provided the dismissal is not discriminatory, retaliatory or otherwise prohibited by special protections. This is not "at-will" employment: the employer must generally pay statutory notice (or payment in lieu) and severance. A dismissal with cause must be supported by a statutory ground, including those in Article 81 of the Labor Code; the employee is then generally entitled only to accrued and non-waivable benefits. An employee may also terminate for serious employer breach, which is the closest equivalent to a constructive-dismissal claim. Fixed-term and project-based contracts normally end on expiry or completion. Early termination without just cause may require compensation for proven losses and, where the employer terminates, applicable statutory indemnities. Employers should document the grounds and process, as wrongful or protected dismissals may result in damages, back pay, reinstatement or other remedies. Certain employees, including pregnant or breastfeeding employees and employee representatives, have additional protection against dismissal.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

Costa Rican employers may agree compensation above the statutory minimum wage, including fixed pay, commissions, productivity payments and bonuses. The arrangement should be documented carefully, as regular or habitual payments may be treated as salary for purposes of vacation, *aguinaldo*, social-security contributions and other employment entitlements; a nominally discretionary benefit may become enforceable if paid regularly without a clear reservation of discretion. The arrangement should also reflect the individual's status as an employee, director or independent contractor, since substance prevails over contractual labels. Equity incentives – particularly awards by a foreign parent – require labour, tax, social-security, foreign-exchange and, where relevant, securities-law analysis. Change-of-control arrangements should distinguish transaction bonuses, retention awards, accelerated vesting and termination payments; mandatory employment rights cannot be waived in advance. Private medical insurance is generally not treated as salary.

Restrictive Covenants

Confidentiality covenants are generally enforceable during and after employment where they protect properly defined confidential information or trade secrets. They should exclude public information, prior lawful knowledge, independently developed information and legally required disclosure. Post-termination non-competes and non-solicitation covenants are assessed restrictively because they limit freedom to work. They should protect a legitimate business interest, be clear and proportionate in duration, geographic scope, restricted activities and relevant competitors, custom-

ers or employees, and – particularly for non-competes – provide adequate economic compensation during the restricted period. Customer and employee non-solicitation restrictions should be limited to relationships with which the executive had material contact or about which the executive obtained confidential information. Available remedies may include damages, contractual penalties and interim relief, subject to judicial review. Severability language is advisable, but parties should not assume that a court will rewrite an overly broad covenant.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership

The principal forms are registered title ownership, condominium ownership, co-ownership, and ownership through a trust. Condominium owners hold exclusive title to their unit plus an undivided interest in common areas; co-owners hold undivided interests in the same property. In the ZMT, coastal land is generally state-owned and may be occupied only under a concession, rather than private title. The first 50 metres from the high-tide line is public land and cannot be privately owned; the following 150 metres is generally subject to concession rights.

Foreign Ownership and Transfers

Foreign individuals and foreign-owned entities generally have the same rights as Costa Rican nationals to acquire, hold, lease, mortgage and sell titled real estate. Residency, citizenship and local ownership participation are generally not required. Transfers are normally completed by public deed before a Costa Rican notary and registered with the National Registry to be effective against third parties. The principal exception is the ZMT: concessions are restricted for non-resident foreigners and entities with more than 50% foreign ownership, subject to limited statutory exceptions. Foreign purchasers are generally subject to the same taxes as local purchasers, including the 1.5% real-estate transfer tax, stamp duties, registration and notarial fees, annual municipal property tax of 0.25% of the registered value, and the luxury-home tax where applicable. The transfer tax may also apply to a transaction that transfers control of a Costa Rican company holding real property.

11.2 Commercial Real Estate Transactions

Commercial Real-Estate Framework

Commercial real-estate transactions are governed principally by the Civil Code, Commercial Code, Notarial Code, National Registry and Property Registry rules, municipal zoning and planning rules, environmental legislation, and, where applicable, the Condominium Property Law and the ZMT Law. Costa Rica has a central public land-registration system administered by the National Registry. The Real Estate Registry records ownership, mortgages, easements, restrictions, liens, judicial annotations and condominium regimes. Registration is key to third-party effectiveness and priority, so registry and cadastral searches are central to due diligence.

Acquisitions, Dispositions and Due Diligence

Due diligence normally covers title and cadastral records, easements, mortgages and other encumbrances, zoning and land use, municipal taxes, environmental permits and liabilities, and the seller's corporate authority where the property is entity-owned. Acquisitions may be structured as a direct asset purchase or an acquisition of the property-owning entity; the latter requires additional corporate, tax and liability due diligence and may still trigger real-estate transfer tax where control changes. Title insurance is not mandatory and is less common in domestic transactions; parties typically rely on registry certifications, cadastral review, notarial verification and contractual protections. Environmental review is particularly important for industrial, agricultural, hospitality and development assets because contamination, water, forestry, wetlands and land-use issues can result in remediation obligations, sanctions and operational restrictions.

Commercial Mortgage Financing

The rules on the creation, registration, priority and judicial enforcement of mortgages and mortgage bonds are addressed in **6.1 Transaction Financing and Security Interests**. In commercial real-estate financing, the principal issues are confirming that the mortgage is properly documented and registered, that it ranks ahead of existing registered liens and charges, and that the lender has an effective enforcement route

following default. Lenders commonly require a first-ranking mortgage together with additional collateral, such as assignment of lease income and insurance proceeds, movable guarantees, security trusts and corporate guarantees.

Commercial Leases

Commercial leases are governed principally by the General Urban and Suburban Lease Law (Law No 7527), supplemented by the Civil and Commercial Codes. The parties generally negotiate rent, rent adjustments, operating expenses, maintenance, insurance, assignment, subletting and renewal terms; however, the statutory minimum term is generally three years, and failure to give at least three months' notice before expiry may result in tacit renewal. Assignment and subletting should be expressly addressed in the lease. On default, landlords may seek eviction, recovery of unpaid rent, enforcement of deposits or guarantees, and contractual penalties where enforceable.

Recent Developments

Recent developments include new environmental-permitting requirements for certain urban development projects and greater flexibility for qualifying ZMT concession holders. Law No 10939 requires specified projects subject to SETENA environmental assessment to submit urban-tree protection and planting plans. Law No 9974 permits an eligible ZMT concession holder, after at least half of the concession term has elapsed, to request an early extension to support new investment, improvements or refinancing.

DOMINICAN REPUBLIC



Law and Practice

Contributed by:
José Manuel Alburquerque Prieto, Gina A. Hernández Volquez, Patricia Solano Perez and Miguel Gil Molina
Alburquerque Abogados – Consultores

Contents

1. Business Entities P.186
1.1 Business Organisations p.186
1.2 Incorporation and Ongoing Compliance p.186
1.3 Share Issuances p.187
1.4 Distributions and Return of Capital p.187
1.5 Control Person Reporting p.188

2. Corporate Governance P.188
2.1 Legal Framework p.188
2.2 Directors' Duties and Liabilities p.189
2.3 Board Composition and Independence p.190
2.4 ESG and Disclosure Obligations p.190
2.5 Conflicts of Interest and Related-Party Transactions p.190

3. Shareholder Rights and Agreements P.191
3.1 Shareholder Rights p.191
3.2 Shareholder Agreements p.192

4. Mergers and Acquisitions P.192
4.1 Legal Framework p.192

5. Capital Markets P.193
5.1 Securities Regulation and Public Offerings p.193
5.2 Continuous Disclosure p.193
5.3 Insider Trading p.194
5.4 Shareholder Disclosure p.194
5.5 Internal Controls and Whistle-Blower Regimes p.195

6. Secured Transactions P.196
6.1 Transaction Financing and Security Interests p.196

7. Commercial Contracts P.196
7.1 Contract Formation and Enforceability p.196
7.2 Termination and Remedies p.197
7.3 Intellectual Property in Commercial Transactions p.197
7.4 Consumer Protection p.198

8. Foreign Investment P.199
8.1 Competition and Merger Control p.199
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.199

9. Regulatory Compliance P.200
9.1 Privacy and Data Protection p.200
9.2 Anti-Money Laundering, Sanctions and Corruption p.200
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.201
9.4 Artificial Intelligence p.202
9.5 Other Regulatory Compliance Requirements p.202

10. Employment and Labour P.202
10.1 Employment Standards and Workplace Regulation p.202
10.2 Executive Compensation and Restrictive Covenants p.203

11. Real Property and Commercial Leasing P.204
11.1 Requirements for Land Ownership p.204
11.2 Commercial Real Estate Transactions p.204

Contributed by: José Manuel Alburquerque Prieto, Gina A. Hernández Volquez, Patricia Solano Perez and Miguel Gil Molina, **Alburquerque Abogados – Consultores**

Alburquerque Abogados – Consultores is a full-service law firm in Santo Domingo, Dominican Republic, with over 45 years of experience providing corporate, and investment legal services to global and local clients. The firm, with five partners and five associates, advises multinational corporations, foreign investors and regional companies on cross-border transactions, foreign investment and regulatory compliance, guiding clients' establishment, local consolidation and market expansion across strategic sectors, including hospitality, real estate, food and beverage, tourism, energy, free zones, finance, M&A, tax and aviation. The firm's renowned multidisciplinary lawyers provide legal solutions for market entry, business expansion and operations in the country. As the exclusive representative of the Dominican Republic in TerraLex, one of the world's leading law firm networks supporting clients in cross-border and international matters, the firm serves as a trusted adviser for regional investment.

Authors



José Manuel Alburquerque Prieto is the managing partner at Alburquerque Abogados and a leading authority in the Dominican Republic's corporate and commercial sector, with more than 35 years of experience. José Manuel is widely recognised for his expertise in high-value cross-border transactions, M&A, financing and the structuring of complex development projects. As a partner, he combines strategic insight with in-depth regulatory knowledge to advise investors, developers and international groups on matters of significant economic impact that have helped shape the Dominican economy. He is also an active member of key professional associations, including the IBA, ABA, AMCHADR, ASIEX and CCIFD.



Gina A. Hernández Volquez is a partner in the corporate and investment department at Alburquerque Abogados and a recognised leader in the Dominican Republic's corporate and commercial sector. She advises domestic and international clients on high-value transactions, including M&A, project development and cross-border investments, combining strategic insight with deep regulatory expertise. Her practice focuses on identifying complex, tax-efficient structures and incentive regimes to optimise outcomes. She serves as co-chairperson of the Real Estate Practice Group at TerraLex and is an active member of the IBA, the Legal Committee of BRITCHAM-DR and the legal committee of CAMACOES. She is a certified legal project manager.



Patricia Solano Perez is a senior associate in the corporate and investment department at Alburquerque Abogados, advising clients on corporate and cross-border transactions. She assists with company structuring, planning, building and development regulations, incorporations, IP registration, contract drafting and review, including corporate due diligence, acquisitions, operating permits in regulated sectors and regulatory compliance matters, including environmental regulations and anti-money laundering programmes. Collaborating with partners, she co-ordinates filings, contractual management and transactional support, ensuring that client objectives and compliance with Dominican law are efficiently achieved. Her expertise makes her a key contributor to the firm's work. She is an active member of ASIEX.



Miguel Gil Molina is an associate in the corporate practice at Alburquerque Abogados, with expertise in corporate, contractual, civil, labour and tax matters. He advises local and international clients, from mid-sized businesses to corporations, on company incorporation, restructuring and transformation. He specialises in complex contracts, project execution, cross-border transactions, corporate due diligence, financial advisory, permitting and licensing, ensuring regulatory compliance. He also advises on civil and tax matters, helping clients optimise structures and leverage incentives. He contributes significantly to the firm's complex, high-stakes mandates. He is a member of the legal committee of ANJE.

Contributed by: José Manuel Alburquerque Prieto, Gina A. Hernández Volquez, Patricia Solano Perez and Miguel Gil Molina, **Alburquerque Abogados – Consultores**

Alburquerque Abogados – Consultores

Gustavo Mejía Ricart and Abraham Lincoln Avenues
Piantini Tower, 13th floor
Piantini, PC 10148
Santo Domingo
Distrito Nacional
Dominican Republic

Tel: +1 809 54 4646
Email: info@alburquerque.com.do
Web: www.alburquerque.com.do

1. Business Entities

1.1 Business Organisations

Dominican law recognises several forms of business entities under Law No 479-08 on Commercial Companies and Individual Limited Liability Enterprises. The most widely and commonly used are:

- limited liability companies (*Sociedades de Responsabilidad Limitada* or SRLs);
- simplified joint-stock companies (*Sociedades Anónimas Simplificadas* or SASs); and
- joint-stock companies (*Sociedades Anónimas* or SAs).

Other less common vehicles include partnerships, individual limited liability enterprises (EIRLs), joint ventures, silent partnerships and branches of foreign companies.

The choice of entity depends principally on the number and nature of investors, particular governance requirements, requirements around transferability of shares, financing needs and applicable regulations, which may restrict certain activities to one or more type of entity.

In light of the above, SRLs are commonly used for closely held businesses and subsidiaries, SASs are commonly used for businesses in need of greater flexibility for sophisticated governance and investment arrangements, and SAs, which have the most restricted governance requirements, are generally preferred for larger businesses, capital-raising structures and certain regulated activities for which incorporation of this type of entity is mandatory.

Shareholders of SRLs, SASs and SAs generally benefit from limited liability up to the amount of their investment. Tax treatment is not usually the principal differentiating factor between these corporate forms, as taxes are not generally determined by entity type but rather by other considerations such as annual income, operation size, and others.

1.2 Incorporation and Ongoing Compliance

Incorporation

Incorporation of commercial entities in the Dominican Republic generally involves three main steps:

- registration of the trade name with the National Office of Industrial Property (ONAPI), typically completed within one business day for a filing fee of approximately USD80;
- execution and registration of the constitutional documents with the competent Chamber of Commerce and Production to obtain the Mercantile Registry, typically within three to five business days; and
- registration with the Dominican Tax Administration (DGII) to obtain a National Taxpayer Registry (RNC) number, which generally requires an additional five to ten business days and carries no filing fee.

Required documents generally include the company's bylaws and incorporation documents, information and identification documents for the shareholders and managers, and evidence of the company's registered

office for tax purposes. Documents issued abroad ordinarily require apostille and, where applicable, translation into Spanish for official registration.

Government fees depend principally on the type of entity (commercial entities or individuals; local or foreign) and its capital. Mercantile Registry fees are calculated according to the company's capital and generally start at approximately USD40 for companies with capital of up to USD1,670. In addition, most companies are subject to an incorporation tax equal to 1% of their registered capital, subject to a minimum payment of USD17; EIRLs are exempt from this tax. These amounts do not include any legal, notarial, apostille, legalisation and translation fees.

An ordinary non-regulated incorporation can generally be completed within approximately two to three weeks once all required documents are available, although timing may vary depending on the relevant authorities and whether any objections are raised during the procedures.

After these initial main steps have been completed, companies must proceed with any ancillary registration procedures related to their operations and sector-specific requirements.

Ongoing Compliance

Companies must maintain their corporate books and ownership records, approve annual accounts and management matters, maintain and renew their Commercial Registry registration every two years, and register material corporate changes with the appropriate Chamber of Commerce. Information filed with the DGII, including shareholder and ultimate beneficial ownership information, must also be kept up to date.

Companies are additionally subject to annual and periodic tax filings with the DGII, including the corporate income tax return, and regulated businesses may face further licensing, reporting and capital requirements depending on their sectors and operating needs.

1.3 Share Issuances

In the SAs and SASs, capital is divided into shares, while SRLs issue participation quotas rather than shares. For SAs and SASs, the bylaws establish authorised capital, while subscribed and paid-in capital represents the portion actually committed and contributed by shareholders. Dominican law uses a par-value system rather than no-par-value shares.

Share capital may be increased by companies through additional issuances within the authorised amount or, where necessary, an amendment to increase the authorised capital to allow the paid-in capital to increase accordingly. Increases must be subject to applicable corporate approvals and registrations. Likewise, capital reductions and amendments require corporate approvals and registrations, which differ depending on company bylaws and type. Contributions may be made by shareholders in cash or in kind, and in such cases, certain in-kind contributions require independent valuation and the filing of a particular report in conjunction with the appropriate corporate documentation for filing.

SAs and SASs may establish different classes or series of shares with different voting, dividend, liquidation, conversion, redemption and transfer rights. The SAS offers particularly broad flexibility for investor arrangements. Class rights, pre-emptive rights and sector-specific restrictions should be considered when establishing or subsequently modifying the capital structure.

1.4 Distributions and Return of Capital

Distributions

Dividends must generally derive from available profits reflected in the company's financial statements and as approved by the shareholders at a general meeting. Distributions may not reduce shareholders' equity below subscribed and paid-in capital plus legally or contractually non-distributable reserves. Certain companies must also allocate part of their annual profits to a statutory legal reserve.

The return of contributed capital are generally implemented through a formal capital reduction, subject to the required shareholder approvals and, where applicable, creditor-protection procedures.

Repurchases and Redemptions

An SA may acquire its own shares in the circumstances permitted by Law No 479-08. Repurchases may be

carried out as part of a capital reduction or approved by an ordinary general assembly and funded from available profits or permitted reserves, provided they are not motivated by losses and are supported by adequate cash flow. Treasury shares are subject to statutory limitations and do not carry ordinary dividend or quorum rights while held by the company.

SRLs are generally prohibited from acquiring their own quotas, except in connection with certain capital reductions for cancellation.

Share redemption may be performed in SAs and SASs as a result of a capital reduction procedure. Likewise, in these types of entities, share capital may be reduced by decreasing the nominal value of each share, as approved by the shareholders. There is no statutory procedure for the redemption of shares in SRLs, although indirect redemption may be possible in specific circumstances.

The reduction of the share capital in an SA and SAS may be voluntary, on account of losses, as the result of a restructuring process or mandatory. A capital reduction becomes mandatory where losses reduce the company's net equity below two-thirds of its authorised share capital and the company fails to restore its equity within the following financial year. In these cases, redemption may be chosen by the company as the preferred form of reduction.

For ordinary private companies, there is no broad standalone financial-assistance prohibition, although general corporate-interest, conflict-of-interest and creditor-protection rules remain applicable. Listed companies are subject to additional restrictions under securities legislation.

Dominican law does not apply a single common-law-style solvency test. Creditor protection is instead achieved through capital-maintenance requirements, restrictions on the source of repurchase funds, cash-flow requirements and creditor rights in capital reductions.

1.5 Control Person Reporting

Private Dominican companies are subject to ultimate beneficial ownership reporting.

This means that companies must identify and report to the DGII all natural persons who ultimately own or control them. This generally includes individuals who hold, either directly or indirectly, at least 20% of the entity and/or those exercising effective control through other means. Where no such individual can be identified, the general rule is to identify the individual occupying the highest managerial position in the company as the ultimate beneficial owner.

Beneficial ownership information is reported through the RNC and the annual tax compliance process and must be updated when relevant changes occur. Additional ownership or change-of-control notification and approval requirements may apply in regulated sectors.

Likewise, companies are subject to reporting those who, under applicable legislation, are jointly liable for tax obligations. This reporting procedure is carried out with the DGII, and companies must designate the jointly liable person through a general meeting or equivalent corporate body, on the understanding that the tax administration may appoint such persons if the company fails to do so.

2. Corporate Governance

2.1 Legal Framework

In the Dominican Republic, the main corporate governance provisions are set out in Law No 479-08 on Commercial Companies and Individual Limited Liability Enterprises, as amended, which establishes the governance and management bodies for the various legal corporate structures recognised in the Dominican Republic.

The Law provides that the General Shareholders' Meeting is the supreme governing body of the company and the management of corporate business is entrusted to the managers or directors. It also establishes oversight bodies such as the Audit Committee, Statutory Auditor, and Supervisory Board, depending on the specific legal form of the entity.

On the other hand, in the financial sector, Monetary and Financial Law No 183-02, which governs the banking system, serves as the foundation for the Cor-

porate Governance Regulations for Financial Intermediation Entities issued by the Monetary Board. These regulations require clear committee structures, internal controls, fit and proper assessments for Senior Management, and conflict-of-interest management.

Furthermore, Securities Market Law No 249-17 regulates the requirements for companies issuing public securities or trading on the Dominican Republic Stock Exchange (BVRD). It also mandates the strict adoption of good governance codes and the mandatory inclusion of independent directors to protect investors.

More recently, the enactment of Law No 155-17 against Money Laundering and the Financing of Terrorism, has directly impacted corporate governance by requiring boards of directors of Obligated Entities, which are designated as such because of their higher exposure to money laundering risks, to implement rigorous due diligence, transparency, and audit policies.

2.2 Directors' Duties and Liabilities

Directors or managers have the duty to act with loyalty and diligence as a "prudent businessperson." In addition to these duties, there are the duties of accountability, fidelity, and confidentiality, which are established in the Law on Commercial Companies and Individual Limited Liability Companies.

The duty of loyalty implies that the director must refrain from any situation that could give rise to a conflict of interest with the company, avoiding taking advantage of their position to benefit from business opportunities presented to the company that come to their knowledge by reason of their position. Like the previous duty, loyalty entails the obligation of the director to report or communicate any situation of direct or indirect conflict of interest with the company.

The duty of diligence imposes on directors the obligation to perform their duties with dedication and attention through effective, rather than passive, participation in the management bodies. It likewise presupposes that directors have the necessary knowledge or information regarding the affairs affecting the company in order to adopt appropriate measures or corrective actions in a timely manner.

The duty of accountability is exercised by submitting the annual management report for the preceding fiscal year to the Shareholders' Meeting. Additionally, the manager must guarantee the quality of the financial information contained in the financial statements and the management report, as well as that of the financial information that serves as the basis for preparing the financial statements and is provided to government entities, shareholders, or third parties.

The Companies Law implicitly contains the duty of confidentiality or secrecy incumbent upon directors, as the legislature establishes that directors are obligated to maintain confidentiality regarding company business and corporate information to which they have access by reason of their position and which has not been officially disclosed by the company, except upon the request of a competent public or judicial authority.

For its part, the duty of fidelity connects the director to the defence of the corporate interest through effective protection, above and apart from their own interests or those of third parties.

In this regard, the Tenth Chamber of the Civil and Commercial Court of First Instance of the National District, Specialized in Commercial Matters, established that the director was obligated to act with loyalty, diligence, and transparency, providing clear, truthful, and timely information to the shareholders, thus guaranteeing their right to information regarding the actual situation of the companies. The court concluded that the director had indeed committed the reported omission because she had gone four years without submitting the corresponding management report, which must be presented annually. In the same vein, the court established that, given the irrefutable, sufficient, and consistent evidence that the director had carried out management acts contrary to the corporate interest, characterised by conflicts of interest, the use of corporate funds without supporting documentation or prior authorisation, and the omission of the duty to render accounts, it had legitimate grounds to order her removal.

A directors are required to act as a "prudent businessperson" – that is, exercising the level of care, pru-

dence, diligence, and loyalty that a reasonable and professional person would apply in managing their own business affairs. If they failing to do so, they may be sanctioned, removed, or held personally liable with their own assets for any damage caused.

Directors shall be liable, individually or joint and severally, as the case may be, to the company or to third parties, for violations of legal or regulatory provisions applicable to companies; for breaches of the bylaws, their duties, and obligations; and for misconduct or negligence committed in their management.

2.3 Board Composition and Independence

In the Dominican Republic, the legal and regulatory framework governing the composition of management bodies clearly distinguishes between private companies, regulated by Law No 479-08 on Commercial Companies and Individual Limited Liability Enterprises, as amended, and companies listed on the stock market, regulated by Law No 249-17 on the Securities Market and the regulations issued by the Superintendency of the Securities Market (SIMV).

Neither Law No 479-08 nor Law No 249-17 imposes nationality or residence restrictions on managers or directors. The entire board of directors may be composed of non-resident foreigners. However, in practice, it is recommended to have at least one local resident director or legal representative to streamline administrative procedures, judicial notifications, and the execution of documents before local institutions.

Regarding independence standards, Law No 479-08 does not require the presence of independent directors in private companies. Instead, internal management oversight in a corporation is exercised through the mandatory appointment of a statutory auditor, which is optional in limited liability companies, whereas in limited partnerships by shares, management is supervised by a Supervisory Board. In contrast, Law No 249-17 and the regulations of the SIMV require the inclusion of independent directors, who must not have significant financial, employment, commercial, or family ties with the company, key executives, or majority shareholders. These directors must actively participate in the Audit Committee and the Risk and Nomination Committee.

In the Dominican Republic, there are no legal quotas or mandatory requirements regarding gender, age, or background diversity in the composition of boards of directors; nevertheless, the SIMV and regional corporate governance guidelines promote diversity of skills, professional experience, background and gender.

2.4 ESG and Disclosure Obligations

There is no unified “General ESG Law” that establishes unified obligations for the private sector. Since there is no legal provision that obligates the board to subordinate shareholder interests to environmental or social causes, directors must consider ESG factors to the extent that environmental or labour non-compliance generates legal, financial, operational, or reputational risks that compromise the company’s assets or expose the director to personal liability.

In that regard, the General Law on the Environment and Natural Resources (No 64-00) requires environmental impact assessments, licences, and prior authorisations for projects with an environmental impact, while also imposing civil, administrative, and criminal liability for environmental damage.

Likewise, the Law on Integral Management and Co-processing of Solid Waste (No 225-20) establishes extended producer responsibility and a regime for industrial waste management.

For its part, the SIMV has issued guidelines and resolutions to promote good corporate governance and the issuance of green, social, and sustainable securities.

The adoption of international frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD) or the International Sustainability Standards Board (ISSB) standards (IFRS S1 and S2) is not universally mandatory by law for private companies; however, financial entities and listed issuers are incorporating these standards voluntarily or due to pressure from multilateral and international investors.

2.5 Conflicts of Interest and Related-Party Transactions

The Companies Law regulates and imposes limits on transactions conducted between directors and

partners/shareholders, or between directors and the company, which could place the director in a conflict between their own interests and those of the managed company. In that regard, directors are prohibited from carrying out the following transactions without the prior authorisation of the General Shareholders' Meeting:

- borrowing money or assets from the company;
- using company assets, services, or credit for their own benefit or for the benefit of relatives, represented parties, or affiliated companies;
- using, for their own benefit or that of related third parties, corporate business opportunities of which they became aware by reason of their position, provided that such use is detrimental to the company;
- proposing amendments to the corporate bylaws, agreeing on the issuance of securities, or adopting policies or decisions aimed at serving their own interests or those of related third parties rather than the corporate interest;
- preventing or obstructing investigations intended to establish their own liability or that of executives involved in the management of the company;
- inducing managers, executives, employees, or statutory auditors/external auditors to submit irregular accounts, present false information, or conceal information;
- presenting irregular accounts, providing false information, or concealing essential information from the shareholders;
- engaging in acts that are illegal or contrary to the corporate bylaws or the corporate interest, or using their position to obtain undue advantages for their benefit or for related third parties, to the detriment of the corporate interest; and
- engaging, on their own account or on behalf of third parties, in activities in competition with the company, unless expressly authorised by the General Shareholders' Meeting.

The above prohibitions are subject to the penalty of nullity of the relevant transaction or operation. Any benefits or profits obtained by directors from transactions carried out without the authorisation of the General Shareholders' Meeting shall accrue to the benefit of the company, without prejudice to the corresponding claim for damages.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights

According to Law No 479-08 on Commercial Companies and Individual Limited Liability Enterprises and its amendments, shareholders have the following main rights.

- Voting: by general rule, shareholders have the right to attend and vote at general and special shareholders' meetings. Each share carries one vote, except at the constitutional assembly, where votes are assigned according to the percentage of ownership and in total do not exceed ten. Votes can be expressed by physically signing the list of shareholders and the assembly, or by any electronic or digital means allowed by the law on electronic commerce.
- Access to information: regardless of their participation percentage, shareholders have the right to access the documents relating to the matters on the agenda of the meetings, at least 15 days preceding the celebration. In the particular case of annual ordinary meetings, shareholders may obtain:
  (a) the audited financial statements;
  (b) the management reports from the Board of Directors and the statutory auditor;
  (c) the draft resolutions to be submitted to the meeting by the person convening it; and
  (d) the exact total amount of remuneration paid to directors during the previous year, certified by the statutory auditors.

At any time, any shareholder shall also have the right to obtain, at the registered office, access to the documents and information concerning the last three financial years, as well as the minutes and attendance lists of the meetings corresponding to those periods. If shareholders represent at least 5% of the company's capital, they shall have the right to be apprised at any time of the company's financial condition and accounts, upon prior written request in this sense.

- Approval of fundamental changes: fundamental changes are generally reserved to the extraordinary general meeting. Unless the Bylaws establish a higher quorum, according to Law No 479-08, the statutory quorum is more than 50% of subscribed and paid-in shares on first call, and one-third on second call. Fundamental changes include:
  (a) amendments to the bylaws;
  (b) capital share modifications;
  (c) transformation, merger or demerger of the company;
  (d) dissolution of the company;
  (e) disposition of the company's entire fixed assets or liabilities;
  (f) securities offering; and
  (g) limitations on pre-emptive rights.
- To approve the increase of the obligations of the shareholders, their unanimous approval is required.

Statutory Remedies

When it comes to statutory remedies available to shareholders to enforce their rights within the company, the Law provides ut singuli actions (in representation of the company) and individual or direct actions (in the shareholders´ own name):

- Ut singuli actions: shareholders representing at least one-twentieth (1/20) of the subscribed and paid-up share capital may, individually or as a group, initiate a corporate liability action against the directors, to pursue or defend the corporate action against the directors. In this case, the plaintiffs shall be entitled to seek redress for the full extent of the loss suffered by the company, to which any compensation awarded shall be paid.
- Direct actions: any shareholder may file individually, regardless of the percentage held (even a single share), as they are asserting a right of their own. In this case, the plaintiffs shall be entitled to seek redress for the full extent of the loss suffered personally.

In the case of denial of access to information, a shareholder who has been denied access to the documents and information established by the Law may additionally request the judge in summary proceedings to order its disclosure, without prejudice to any daily penalty payment that may be imposed for each day of delay in complying with such request.

Liability actions against administrators shall be time-barred after three years, calculated from the commission of the harmful act or, if such act has been concealed, from its discovery. However, for acts classified as serious crimes, the action shall be greater according to the Code of Criminal Procedure.

3.2 Shareholder Agreements

Shareholder agreements are valid and recognised by the law provided they do not contravene rules of public policy, mandatory provisions of the bylaws, or the corporate interest of the company. They are normally intended to regulate, among the parties and for a certain time, matters related to the control and conduct of the company's business, the rules for the purchase and sale of shares, the exercise of pre-emptive or preferential rights, collective voting, capital structure, and any other legitimate interest the shareholders may have.

Shareholder disputes concerning corporate matters are normally resolved according to the rules provided in the Bylaws of the Company, which generally include an arbitration clause. Without prejudice to the foregoing, Law No 479-08, along with the rules of civil and commercial procedure, offers a means of pursuing claims through ordinary judicial proceedings before the competent commercial courts, including direct or collective actions, annulment of corporate resolutions or winding-up petitions.

In the case of partnership disputes, it is common practice to include an arbitration clause in partnership agreements, with different stages including conciliation or mediation as measures preceding arbitration, with such clauses being binding on the shareholders that signed or adhered to the agreement.

4. Mergers and Acquisitions

4.1 Legal Framework

The principal statute governing private mergers and acquisitions in the Dominican Republic is Law No 479-08 on Commercial Companies and Individual Limited

Liability Enterprises. On the other hand, public companies and securities transactions that include tender offers are governed by Law No 249-17 on the Securities Market.

Private M&A

A private M&A operation can generally be structured under the following schemes:

- a share acquisition, under which the buyer acquires the equity of the target;
- an asset acquisition;
- a statutory merger; or
- a demerger.

A combination of these structures could be used as well.

Mergers are defined by Law No 479-08, and the process requires a merger project agreement and the holding of an extraordinary general meeting to approve the process. At least one of the companies will be dissolved without liquidating its assets, through the universal transfer of its assets and liabilities to the company or companies absorbing the business.

Public M&A

Law No 249-17 recognises both voluntary and mandatory public acquisition offers (OPA), as well as mergers. The SIMV is the regulatory and supervisory body responsible for authorising, monitoring, and regulating public offering processes within the Dominican securities market.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The capital markets in the Dominican Republic are governed by Law No 249-17 on the Securities Market, as amended, alongside the general regulations issued by the Executive Branch and regulatory circulars promulgated by the supervisory authorities.

The primary regulatory bodies that regulate the capital markets are as follows.

- SIMV: the primary regulatory and supervisory authority responsible for overseeing, inspecting, and regulating all market participants, public offerings, stock exchanges, central securities depositories, and investment fund managers.
- The National Securities Council: the highest body of the Superintendency, with functions that are essentially regulatory, supervisory, and controlling in nature.
- The Central Bank of the Dominican Republic: regulates monetary policy, foreign exchange, and liquidity, interacting directly with capital markets through the issuance and clearance of central bank securities.

The primary requirements are as follows.

- Market registration: the entity must apply for its registration and the registration of its securities in the Securities Market Registry administered by the SIMV.
- Corporate governance: the entity must maintain a transparent organisational structure, an active board of directors, clear policies, and the formal holding of shareholder meetings.
- Financial audits and tax standing: the entity must submit recent audited financial statements and demonstrate that the company is up to date with its tax obligations with the DGII.
- Prospectus requirement: the offering prospectus is the written public document for any public offering, containing the specific characteristics of the securities being offered, as well as general relevant data and information regarding the issuer and the parties involved in the public offering process.
- Credit rating: for debt securities and structured products, issuers must obtain at least one independent credit rating from a rating agency registered with the SIMV.

The SIMV review process for a public offering typically takes between three to six months, depending on the complexity of the structure and the completeness of the initial filing.

5.2 Continuous Disclosure

Under Law No 249-17 on the Securities Market and regulatory circulars issued by the SIMV, entities with

securities listed in the Securities Market Registry and traded on the BVRD are subject to strict ongoing reporting and disclosure obligations.

These obligations are designed to maintain market transparency, protect investors, and prevent insider trading. Listed entities must regularly submit and publish standardised financial and operational information to both the SIMV and the public, including quarterly financial statements, annual audited financial statements and corporate governance and compliance reports.

A material event is defined under Law No 249-17 as any act, fact, decision, or situation – whether financial, legal, operational, or corporate – that is capable of significantly influencing the price, liquidity, or trading volume of a listed security, or affecting a reasonable investor's decision to buy, hold, or sell that security.

The issuer is legally obligated to report the material event to the SIMV and the BVRD immediately upon its occurrence or becoming aware of it, often within strict statutory timeframes, usually not exceeding one business day or on the same day before the market opens.

In exceptional cases, an issuer may request temporary confidential treatment from the SIMV for a pending negotiation or event if public disclosure would compromise the company's legitimate interests. However, this exception is strictly conditioned upon maintaining total secrecy; if any information leaks, the issuer must disclose the material event immediately.

5.3 Insider Trading

Law No 249-17is the main regulatory framework for market abuse and insider trading in the securities-market regime.

Members of the board of directors, key executives of market participants and their employees, as well as persons linked to them by virtue of their office, employment, or position, are presumed to have access to inside information, unless proven otherwise. These persons, regarding the offeror or the target company, may not acquire or sell securities of any kind issued by the target company, its parent company, or an affiliate, from the moment action is initiated to study, plan, or decide upon a public tender offer for shares until the conclusion of that process.

Persons who do not comply with the above shall be liable to return to the parties directly harmed any profit, gain, commission, or advantage obtained from the transaction, without prejudice to any administrative, civil, or criminal liabilities that may arise.

The SIMV is the principal securities-market regulator and administrative enforcement authority. It is empowered to impose administrative sanctions directly on natural or legal persons – whether or not subject to its regulation – for the commission of an infringement established by law.

5.4 Shareholder Disclosure

Substantial Shareholdings and Changes

In the case of companies that are not listed on the stock market, for SAs, the general rule is the freedom of transfer of shares unless the bylaws or a shareholder agreement includes prohibition or limitation of transferability. In the case of an SRL, the general rule is that ownership interests held through quotas are considered intuitu personae, and every transfer to third parties must be approved in advance by the other members of the company.

In general, for all types of companies, ownership information is public, as all shares and quotas are nominative. Changes of the composition of the company must be approved at a shareholders' meeting or recorded in the minutes of such meeting and registered before the corresponding Chamber of Commerce, including the modification of the Mercantile Registry, which makes the transaction enforceable against third parties.

In the case of listed companies, additional reporting is required to investors, and to the SIMV.

Tax and Transparency Regulations (Anti-Money Laundering)

Under Law No 155-17 on Anti-Money Laundering and the Financing of Terrorism, all commercial entities must identify and report the ultimate beneficial owner, defined as the natural person or persons who directly or indirectly own or control 20% or more of the share capital. This reporting process is executed

at the incorporation of a company and whenever there is a change in share ownership. The information must be reported to the DGII by updating the RNC.

Non-compliance with the reporting obligations constitutes a breach of formal duties under the Tax Code and is subject to fines and may result in a declaration of joint and several liability for the members of the board and the company's administrators.

5.5 Internal Controls and Whistle-Blower Regimes

Securities intermediaries are required to implement an Anti-Money Laundering, Countering the Financing of Terrorism, and Countering the Proliferation of Weapons of Mass Destruction (AML/CFT/PWMD) Prevention Program, which must include:

- policies and procedures to assess and mitigate AML/CFT/PWMD risks;
- employee selection and training criteria;
- a code of ethics and good conduct;
- a disciplinary sanctions framework;
- internal and external whistleblowing channels;
- the designation of a qualified management-level compliance officer responsible for overseeing strict adherence to the compliance program and serving as liaison with the Financial Analysis Unit and the SIMV, with temporary absences governed by Article 17 of these Regulations (regarding the appointment of deputies); and
- customer due diligence policies for clients and business associates, alongside a comprehensive risk management framework, as detailed below.

Additionally, entities must maintain an independent Board of Directors in accordance with applicable legislation.

The SIMV maintains an open channel for receiving complaints and reports, which may be submitted online by completing the designated form. Any person may file a complaint – and may elect to withhold their identity – regarding any act or practice deemed contrary to applicable regulatory provisions that affects or may affect the complainant, other citizens, or investors, requesting the corresponding investigation and corrective measures.

Complaints are evaluated by the Superintendency, which, upon completion of the appropriate administrative process, may proceed with conducting investigations, imposing administrative sanctions, and requiring corrective actions.

For risk management purposes, applicable regulations require securities intermediaries to adopt an organisational structure that clearly defines the obligations, duties, and responsibilities of each governing body, as well as the reporting lines and interrelationships among the areas involved in risk management.

The Board of Directors bears ultimate responsibility for risk management, and its functions include defining and approving the risk management strategy and policies of the securities intermediary, as well as ensuring the provision of the necessary resources for their proper implementation, among other duties.

The Risk Committee, the Risk Management Unit, and Senior Management are responsible for clearly and explicitly communicating internally the strategy, policies, and procedures set forth in the Risk Management Policy Manual, thereby promoting a corporate risk management culture aimed at creating awareness and engaging all personnel in the implementation of this management framework.

Additionally, the internal organisation shall comprise specific units designed to ensure proper operational execution under the principle of functional segregation, including: the Risk Unit, Treasury and Sales/Business Units, the Operations Unit, and the Financial Controller/Internal Control Unit.

Furthermore, the Securities Intermediary must implement a comprehensive set of strategies, policies, methodologies, procedures, information systems, and tools through which the entity manages its risks in alignment with its risk appetite, thereby providing reasonable assurance regarding the achievement of its objectives.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Regulatory Framework

The principal laws and regulations governing secured transactions include the following:

- the Dominican Civil Code;
- Law No 108-05 on Real Estate Registry, for the registration of mortgages and liens over real estate property, including land, buildings, apartments and other registrable properties; and
- Law No 45-20 on Movable Collateral, which establishes an electronic system for the registration of pledges over movable assets, including: specific items of movable property, generic categories of assets, real rights over movable property, contractual rights, and present or future assets – whether determined or determinable, tangible or intangible – or the entirety of the debtor-guarantor's movable property.

Perfecting and Enforcing Security Interests

In the case of real estate properties, mortgages and liens are registered with the corresponding Title Registry office (*Registro de Títulos*). Based on the Torrens System, the Dominican model requires registration to constitute rights over the property. The system provides public faith in the registry, making registered rights enforceable against third parties.

On the other hand, in the case of movable assets, perfection of the security interests is also required to make the rights enforceable against third parties and to establish priority. While there is a traditional process to register pledges over moveable assets before the court, in recent years, with the approval of Law No 45-20, there is an electronic system to register the pledges through the Electronic System of Movable Warranties (*Sistema Electrónico de Garantías Mobiliarias*). In the particular case of vehicles, there is a special procedure before the National Directorate of Internal Taxes that registers an opposition over the registration certificate. In the case of shares, it is possible, but not mandatory, to notify the Mercantile Registrar at the relevant Chamber of Commerce, enabling the inclusion of an annotation in the company's certificate relating to the shares that have been issued.

Typical Structures in Financing

The Dominican market is very active in structuring complex and diversified financing for acquisition projects, including both local and international players in some cases, and involving Dominican collateral governed and registered under the local jurisdiction.

It is very common to include a combination of securities for large-scale financing, affecting both real estate mortgages and securities over movable assets, including inventory, machinery and equipment, licences and permits and IP rights.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Dominican commercial contracts are principally governed by the Dominican Civil Code and supplemented by the Commercial Code and applicable special legislation. As per statutory principles, any and all validly concluded agreements have the force of law between the parties and must be performed in good faith.

In general, a valid contract under the Dominican Civil Code requires:

- consent;
- capacity;
- a certain object; and
- a lawful cause.

Dominican law does not require "consideration" as a separate common-law concept. Contracts are formed by consent unless a particular transaction requires a written instrument, notarisation, registration or another statutory formality required by the Civil Code or other application regulations. However, written proof is regarded by the Dominican Civil Code as the preferred form of evidence over other types of evidence, and the law requires that agreements involving sums of money being transferred must be made in writing. Oral or witness evidence is not admissible to prove matters beyond those contained in the written agreement.

As such, it is common practice for commercial contracts and agreements in general to be made in writing by the parties, particularly where one party intends to enforce particular conditions during the relationship.

Electronic contracts and qualifying digital signatures are recognised under Law No 126-02, although their use is not yet widely accepted among competent authorities. Therefore, wet ink is generally still used in a large portion of agreements.

Contract validity may be questioned if an essential requirement is absent or if consent is affected by error, fraud or duress, or if the object or cause is unlawful, in which case the entire operation is deemed null from the start under the statutory principles of the Dominican Civil Code.

For interpretation and application purposes, Dominican courts interpret agreements primarily by seeking the parties' common intention and their objectives rather than relying exclusively on the literal wording, particularly in cases of long-held relationships where certain conditions and motives may have been altered by the parties throughout the relationship's duration.

Commercial parties generally have substantial freedom to allocate risk, including through liability limitations and penalty clauses, subject to mandatory law, public policy and good faith. Dominican law does not recognise a standalone commercial doctrine of unconscionability, although abusive conduct may be addressed through other general or sector-specific legal principles.

7.2 Termination and Remedies

The main remedies for contractual breach are claims for specific performance, termination and damages. In bilateral contracts, under the Dominican Civil Code, the non-defaulting party may generally seek performance where possible or desirable; or termination for breach of obligations, together with damages arising from the breach, where appropriate. In such cases, general statutory requirements dictate that, unless otherwise agreed by the parties, the non-defaulting party must request the specific performance or termination and damages through judicial proceedings, and said termination must be declared by the courts before the relationship can be considered legally terminated.

As such, commercial contracts frequently establish termination events, cure periods and termination procedures in order to ensure that statutory requirements do not cause unnecessary delays in the termination or in allowing breaches to be remedied, where applicable. A party terminating an agreement without a valid basis, whether contractual or statutory, may itself be liable for breach and for any resulting damages from the termination.

Dominican law recognises force majeure in cases where an unforeseeable event beyond the debtor's control prevents the performance of their obligations under the agreement. Depending on the circumstances and the nature of the obligation, this may excuse liability and suspend or extinguish the affected obligation.

There is no separate general doctrine directly equivalent to common-law frustration of purpose, nor a broad statutory hardship doctrine automatically allowing renegotiation where performance has become substantially more difficult for the parties. Parties therefore commonly address force majeure, hardship, price adjustment and material changes in circumstances expressly in their contracts.

7.3 Intellectual Property in Commercial Transactions

Industrial property is principally governed by Law No 20-00, while copyright is governed by Law No 65-00.

Patents, trade marks and other industrial property rights may generally be assigned or licensed, with registration with ONAPI being important for enforceability against third parties, as publicity through registration is a statutory requirement for the holding of these rights. Copyright economic rights may also be transferred or licensed, while moral rights receive separate statutory protection.

Ownership of IP created within a commercial relationship depends on the type of right and the contractual arrangement between the parties. In cases of patentable inventions created during the performance

of an agreement, the rights to the IP belong to the employer or the person who commissioned the work, in accordance with statutory rules. If the value of the patent exceeds the value estimated by the parties at the time of the agreement's conclusion, the inventor is entitled to special remuneration as established by the applicable courts, unless otherwise agreed upon by the parties. Where an employer is not bound to engage in inventive activity, the employee must notify the employer of the invention, and the employer must, in turn, notify the employee of their interest in it, after which the rights will belong to the employer. Statutory requirements state that any contractual agreements that are less favourable than applicable statutes will be considered null and void.

Copyright requires particular care because economic rights created by employees or commissioned authors should be expressly addressed in the contract, rather than assuming automatic ownership by the employer/owner of the commission, given that statutory requirements state that the author is the owner of the IP created and that there is no particular legislation governing copyright in the context of employment relationships.

Joint-development agreements should therefore allocate ownership of background and newly developed IP, filing and enforcement rights, confidentiality and licensing rights.

Regarding AI-generated work, Dominican legislation does not yet provide a comprehensive specific regime for AI-generated works, making contractual allocation particularly important in these cases.

Remedies for infringement in IP matters include injunctions or cessation orders, claims for damages, seizure or destruction of infringing goods and conservatory measures. Administrative, customs and, for certain infringements, criminal remedies may also be available.

7.4 Consumer Protection

The main consumer protection statute in the Dominican Republic is Law No 358-05, administered by the National Institute for the Protection of Consumer Rights (Pro Consumidor). Its protections are mandatory for all consumer relationships in the country and therefore limit contractual freedom in business-to-consumer relationships.

In general, Law No 358-05 states that suppliers must provide clear and truthful information regarding goods, services, prices, and material conditions to consumers as part of their main disclosure obligations. Particular rules also apply to contracts of adhesion, which are subject to statutory form, fairness requirements, and registration with Pro Consumidor, which reviews adhesion agreements and verifies the absence of abusive contractual clauses. Abusive clauses may be ineffective, and consumer contracts are generally interpreted in favour of consumers where ambiguity exists.

Dominican law does not establish a universal cooling-off period for every consumer transaction; withdrawal or cancellation rights depend on the transaction and applicable legislation. Rules against misleading advertising and unfair commercial practices apply, while e-commerce is additionally supported by Law No 126-02 on Electronic Commerce, Documents and Digital Signatures.

Regarding enforcement mechanisms, Pro Consumidor is the government institution tasked with the protection of consumer interests and rights and therefore has the authority to investigate complaints, inspect businesses, monitor advertising, promote conciliation, confiscate and destroy products and printed materials, impose administrative sanctions prescribed by law and classified according to their severity, and close down businesses that fail to comply with applicable authorisation and registration requirements.

Consumers may initiate an administrative complaint procedure before Pro Consumidor, which may result in an investigation and the imposition of sanctions and other measures. Consumers may also pursue judicial remedies through ordinary courts, including termination, restitution, damages and the non-enforcement of abusive clauses.

8. Foreign Investment

8.1 Competition and Merger Control

Competition Law in M&A structures

Law No 42-08 of the General Law for the Defense of Competition does not include mandatory merger notification or approval prior to their execution. The Law regulates anti-competitive agreements, abuse of dominant position, and other restrictive practices that may affect the market of a determined sector.

Special Regimes Governing M&A

There are no specific provisions regulating, prohibiting, or restricting M&A under Law No 479-08. Nevertheless, specific sectors and industries have special laws that establish prior authorisation or notification certain governmental entities, including:

- General Electricity Law No 125-01, which empowers the Superintendency of Electricity to authorise M&A for electric companies.
- General Telecommunications Law No 153-98, which requires telecommunication providers to obtain authorisation from INDOTEL for the transfer, use or ownership of concessions and licences granted for their operations.
- Financial Monetary Law No 183-02, which requires the prior authorisation of the Monetary Board for mergers, absorptions, and spin-offs involving financial entities.
- Insurance and Surety Law No 146-02, which requires companies to apply for authorisation from the Superindendency of Insurance before any transfer or acquisition of shares, as well as before any mergers.
- Securities Law No 19-00, as amended by Law No 249-17, under which the National Council of the Stock Market must be informed of and approve any process related to a merger or change of control involving participants in the securities market. In the case of investment funds, the SIMV must approve the process.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

The primary legislation governing foreign direct investment (FDI) in the country is Law No 16-95 on Foreign Investment. In line with the Constitution of the Dominican Republic, it guarantees national treatment, ensuring that foreign investors share identical constitutional rights, obligations, and legal protections as local citizens. No prior governmental authorisation is required to establish or structure foreign investment.

Prohibitions and Restrictions on Foreign Investment

Law No 16-95 prohibits foreign investment in matters related to the disposal and storage of toxic, hazardous, or radioactive waste that is not generated within national borders. Industrial operations that directly threaten public health or disrupt environmental balance are also restricted.

Regarding limitations to foreign investment, there are specific legal regimes for sensitive or state-monopolised asset classes that have equity caps or require rigorous operational authorisations from the relevant regulatory bodies, including: mining, aviation and maritime activities, telecommunications, insurance and financial services.

Incentives for Foreign Investments

The Dominican laws provide several statutory incentive programmes to attract foreign capital. The most relevant include:

- Tourism Development (CONFOTOUR, Law No 158-01, as amended): provides a 15-year tax exemption for eligible tourism infrastructure, including income, share capital increase tax and assets tax, as well as exemptions on customs duties, VAT, property transfer tax and other taxes related to the construction of the infrastructure and first furnishing of the premises.
- Free Trade Zones (Law No 8-90): offers exemptions lasting 15 to 20 years from corporate income tax, customs duties, and VAT.
- Border Development (Law No 12-21): extends tax exemptions for up to 20 years for operations near the Haitian border.
- Renewable Energy (Law No 57-07): grants import duty and VAT exemptions on equipment, alongside reduced withholding taxes on foreign loans.

Recent Policy Changes

In the past, companies in the Dominican Republic could face administrative fines or civil lawsuits, but criminal liability was limited to individuals. However, under Law No 74-25, which establishes the new penal code, legal entities can now be held directly and criminally liable for offences committed on their behalf, in their interest, or for their benefit. This change has impacted both Dominican and foreign-owned companies, which are currently reviewing and adapting their compliance programmes.

9. Regulatory Compliance

9.1 Privacy and Data Protection

In the Dominican Republic, the protection of personal data is regulated by Law No 172-13 on the Protection of Personal Data Stored in Files, Public Registries, Data Banks or Other Technical Data Processing Means Intended for Providing Reports, Whether Public or Private.

This law requires operators of private data files to obtain the consent of the data subject to collect and process their personal data, subject to specific statutory exceptions.

In all cases, the data subject must be informed of the rights they hold in relation to their archived and managed personal information, such as the exercise of the rights to access, rectification, cancellation, and opposition.

Dominican legislation does not provide for an independent supervisory authority exclusively dedicated to general data protection (a role that, within the financial/credit sector, falls under the Superintendence of Banks). Therefore, international data transfers are governed by Article 44 of the Dominican Constitution and Law No 172-13 on the Protection of Personal Data, as well as sector-specific regulations issued by bodies such as the Superintendence of Banks.

As a general rule, the international transfer of personal data requires the prior, informed, and express consent of the data subject. Explicit consent is not required when the transfer is strictly necessary for the execution of a contract between the data subject and the data controller, or for reasons of judicial co-operation and public interest.

Regarding data localisation, national legislation does not impose a mandatory requirement to host commercial data on local servers. Companies may utilise foreign cloud infrastructure, provided they guarantee the security measures required by Law No 172-13. Conversely, financial institutions and credit information companies are subject to oversight by the Superintendence of Banks pursuant to the Monetary and Financial Law (No 183-02). These institutions must ensure that state regulators have unimpeded access to information and records, which frequently necessitates maintaining local mirrors or primary servers within the national territory.

9.2 Anti-Money Laundering, Sanctions and Corruption

Law No 155-17 on Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction provides for two types of obliged entities (financial and non-financial) that must comply with the main obligations imposed by the law, such as implementing a risk-based anti-money laundering and counter-terrorist financing programme, appointing a compliance officer, establishing KYC policies, training personnel, submitting suspicious transaction and cash transaction reports, and adopting a Code of Ethics, as well as data protection and anti-corruption policies in order to mitigate risks.

The Dominican Republic does not maintain an independent, unilateral economic sanctions regime. Instead, it enforces international sanctions primarily mandated by the United Nations Security Council (UNSC), implemented into domestic law through Law No 155-17 on Money Laundering and the Financing of Terrorism and Law No 267-08 on Terrorism.

The Ministry of Foreign Affairs and the National Anti-Money Laundering Council enforce binding UNSC sanctions lists targeting sanctioned individuals, organisations, and states.

Failure to comply with sanctions, export controls, and AML/CFT obligations carries severe administrative, civil, and criminal penalties:

- Administrative fines: ranging from 100 to 400 minimum wages for AML compliance failures, alongside licence revocation or operational suspension.
- Customs penalties: seizure and forfeiture of goods, along with fines of up to twice the customs value of the merchandise for unauthorised exports or false declarations.
- Criminal Liability: individuals and legal entities involved in violating UN sanctions, terrorist financing or smuggling may face imprisonment of between 10 and 20 years under Law No 155-17 and Law No 267-08.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

The primary legal framework governing environmental obligations in the Dominican Republic is General Law No 64-00 on Environment and Natural Resources, overseen by the Ministry of Environment and Natural Resources. This Law primarily affects commercial and real estate developments, energy projects, industrial facilities, and mining activities, which require an environmental licence or permit prior to construction or operation. Under Law 64-00, projects are categorised based on environmental risk, requiring an Environmental Impact Assessment, an Environmental Assessment, or an Environmental Management Plan.

The Dominican Republic does not currently have a mandatory national carbon tax or an emissions trading scheme. However, the country is a signatory to the Paris Agreement and has adopted Decree No 601-21, which established the National Climate Change Policy. Renewable energy projects benefit from tax incentives under Law No 57-07 on the Development of Renewable Energy Incentives.

Law 64-00 provides for administrative fines, operational suspensions, and criminal penalties for corporate officers and entities that cause severe environmental degradation or operate without valid permits. Environmental litigation brought by groups has increased significantly, particularly in relation to mining, infrastructure, and coastal tourism developments affecting protected zones or water resources.

Occupational health and safety is governed at the national level by the Labor Code (Law No 16-92), Law No 87-01 on the Social Security System, and specifically Regulation No 522-06 on Occupational Health and Safety. A single national regulatory framework applies across all provinces and municipalities, enforced uniformly by inspectors from the Ministry of Labor. Employers must establish a Risk Prevention Plan, provide free personal protective equipment, conduct required ergonomic and hazard assessments, train staff, and report workplace accidents to the Ministry of Labor and the Dominican Social Security Institute within 24 hours. Any workplace employing 15 or more workers is legally required to establish a Joint Health and Safety Committee.

General business operations in the Dominican Republic typically require the following.

- Registration with the Chamber of Commerce and the DGII.
- Municipal operating permits: municipal authorisation, issued by local city halls.
- Sanitary permits: issued by the Ministry of Public Health or the Directorate General of Medicines, Food and Sanitary Products (DIGEMAPS) for businesses dealing in food, cosmetics, pharmaceuticals, or chemical products.

Specialised regulatory frameworks heavily dictate M&A structures, change-of-control approvals, and closing timelines:

- Financial services and fintech: regulated by the Monetary and Financial Law (Law No 183-02) under the supervision of the Superintendence of Banks (SB) and the Monetary Board. Any transfer of shares representing a change of control or a significant stake in a bank or financial entity requires prior approval from the Monetary Board.
- Pharmaceuticals and healthcare: regulated under General Health Law No 42-01. Transferring ownership of pharmaceutical plants, distribution networks, or product sanitary registrations requires

formal approval and re-issuance through DIGEMAPS.
- Medical and recreational cannabis: remain strictly illegal under Law No 50-88 on Drugs and Controlled Substances. Consequently, commercial operations or transactions involving cannabis products are prohibited in the jurisdiction.

9.4 Artificial Intelligence

The Dominican Republic does not currently have a law or dedicated regulatory authority specifically governing AI. Instead, the deployment and use of AI systems are regulated through a combination of constitutional provisions, digital governance strategy frameworks, and general legislation, as set out below.

- Article 44 of the Dominican Constitution (right to privacy and personal data protection) and Law No 172-13 on Comprehensive Personal Data Protection. Key principles such as prior consent, purpose limitation, and data subject rights apply directly to AI training sets and automated processing.
- Law No 53-07 on High Technology Crimes and Offences, which criminalises identity theft, unauthorised data access, system disruption, and electronic fraud.
- National AI Strategy: in August 2023, the Dominican government launched the National Artificial Intelligence Strategy (*Estrategia Nacional de Inteligencia Artificial*- ENIA), overseen by the Executive Branch through the Government Office of Information and Communication Technologies (OGTIC). While ENIA is a strategic roadmap rather than a binding statute, it sets the framework for ethical AI adoption, public-sector integration, talent development, and governance principles.
- Public-sector governance: Resolution No OGTIC-GTI-001-2024 and general IT governance standards issued by OGTIC establish baseline guidelines for digital transformation and automated tools within state entities, emphasising security, interoperability, and ethical handling of citizen data.

Bills aimed at creating a formal framework for AI governance and ethical development are under discussion within the Dominican National Congress. Proposed initiatives seek to establish risk-based classification models, mandatory algorithmic auditing for high-risk applications, and a national registry for corporate AI systems used in public-facing services.

OGTIC, alongside sectoral regulators (such as the Superintendence of Banks for fintech-related AI models), is actively promoting regulatory sandboxes to test AI applications in controlled environments prior to full market deployment.

9.5 Other Regulatory Compliance Requirements

Law No 44-26 was recently passed, amending Law No 74-25, which establishes the new Criminal Code of the Dominican Republic. This law introduces a new regime of criminal liability for legal entities when, as a result of a breach of their duties of management, control, or supervision regarding their governing bodies, representatives, or subordinates, these individuals commit offences or violations of the law.

In that regard, to avoid incurring liability, legal entities – regardless of their commercial activity – are required to implement a Regulatory Compliance, Criminal Risk Prevention, and Corporate Governance Programme that is suitable for the company's operations. This programme must protect the entity from criminal liability arising from the commission or omission of fraudulent acts, failure to comply with applicable regulations by its governing bodies, representatives, or subordinates, or breach of the duty of care. This legal provision will enter into force on 5 November 2026.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Legal System

Private employment relationships are mainly governed by Law No 16-92 (the "Labor Code"), which is complemented by several pieces of legislation, including the Constitution, social security legislation and regulations concerning occupational health and safety and other employment matters. The Labor Code establishes mandatory minimum rights in areas such as remuneration, working hours, leave, Christmas salary, mandatory profit-sharing, collective rights (unions) and termination procedures/rights.

Key Aspects of the Termination of Employment Agreements

For indefinite-term contracts, which are the default type of employment contract unless expressly agreed upon by the parties, the principal unilateral termination mechanisms are: (i) *desahucio* (termination without cause), (ii) *despido* (dismissal by the employer for statutory cause) and (iii) *dimisión* (termination by the employee for statutory cause).

- *Desahucio* (termination without cause): either party may terminate an indefinite employment contract. Consequences may vary depending on who executes the termination. An employer may generally terminate an indefinite employment contract without cause through *desahucio*, subject to statutory restrictions, by providing notice or payment in lieu of notice, together with the corresponding severance payment. Notice ranges from seven to 28 days depending on length of service, while severance is likewise calculated by reference to seniority according to a formula provided for in the Labor Code.
- *Despido* (dismissal by the employer): dismissal for cause requires that the employer allege one of the statutory grounds and notify both the employee and the labour authority within 48 hours, under penalty of invalidity. If the employer does not succeed in proving the alleged cause, the dismissal may be declared unjustified, in which case the employee is entitled to notice, severance and an amount equal to the salaries that would have accrued from the filing of the claim until the final judgment, capped at six months' salary.
- *Dimisión* (termination by the employee for a just cause): this operates similarly to constructive dismissal, meaning an employee may terminate an agreement for serious breaches attributable to the employer. If the termination is deemed justified, the employer generally becomes liable for to the same compensation applicable to an unjustified dismissal: notice, severance and an amount equal to the salaries that would have accrued from the filing of the claim until the final judgment, capped at six months' salary. If the *dimisión* is declared unjustified, the employee may be required to pay the employer an amount equivalent to the applicable notice period. Enhanced protections apply to certain employees, particularly during pregnancy, maternity-related periods and in specified trade-union contexts.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation generally may include salary, bonuses, benefits, long-term incentives and equity awards, but employee arrangements remain subject to mandatory labour law. For these types of mixed compensation arrangements, particular attention should be paid to whether recurring or guaranteed payments constitute salary for the purposes of calculating employment benefits and termination payments, as well as to income-tax withholding and social security treatment.

Equity incentives are generally structured contractually and should address termination, transfer restrictions, tax treatment, and change-of-control consequences. Change-of-control arrangements may provide enhanced severance or bonuses, but employees cannot waive mandatory statutory employment rights through agreements with employers.

Post-employment restrictive agreements are assessed by courts in light of contractual freedom, legitimate business interests, and the constitutional freedom to work, which is considered highly important under labour law and for the overall welfare of workers. In that sense, non-competes are vulnerable to annulment by courts if excessive or unreasonable in duration, geographical scope or the activities they restrict, as they are seen as infringements of workers' rights to work. Consequently, narrowly tailored non-compete provisions may be easier to defend in a court of law.

Confidentiality obligations are generally more readily enforceable and are reinforced by statutory trade-secret protection. Employers should, generally, favour targeted restrictions protecting confidential information and customer relationships over unnecessarily broad restraints on employment.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Dominican real estate property is held through registered ownership under the Torrens system, governed by Law No 108-05 on Real Estate Registration. Ownership and other registrable real rights are registered with the Title Registry responsible for the jurisdiction in which the real estate is located, as evidenced by a Certificate of Title. Dominican law also recognises several other rights and interests that may be included as part of the official documentation and the status of Certificates of Title, such as co-ownership, condominium ownership, usufruct, mortgages and leasehold interests.

Foreign individuals and foreign-owned entities may generally acquire, hold, and dispose of Dominican real estate property on substantially the same basis as Dominican persons, without a general residency or nationality requirement. However, the acquisition must comply with the local ordinary tax and Title Registry procedures, and sector-specific land-use, environmental or other restrictions may apply depending on the property.

Direct property transfers are generally subject to a 3% transfer tax, subject to exemptions and special regimes. No additional transfer tax generally applies solely because the purchaser is foreign or a non-resident of the Dominican Republic.

11.2 Commercial Real Estate Transactions

Acquisitions and Due Diligence

Commercial acquisitions of real estate may be structured as either direct asset purchases or acquisitions of the entity owning the property. Due diligence, in any case, should cover:

- the registered title;
- any mortgages and leans;
- cadastral status;
- corporate authority of the person executing the sale/purchase;
- zoning;
- licences;
- leases;
- taxes;
- litigation; and
- environmental matters.

Title insurance is not mandatory and is commonly used in real estate acquisitions.

Environmental matters are governed principally by Law No 64-00 and related regulations. Depending on the location and proposed use, environmental permits or authorisations may be required for the use of the land, and contractual allocation of environmental risk does not necessarily exclude statutory liability.

Mortgage Financing

Mortgages over registered property must be registered with the Title Registry to be effective against third parties as it grants public notice of the security interest. Priority of execution is principally determined by registration, making it essential to verify of existing mortgages, liens and other encumbrances central to lender due diligence prior to the awarding of any mortgage-backed financing agreements.

As such, upon default, secured creditors may enforce their mortgage through the procedures established by law, with the applicable route depending on the nature of the financing and the creditor.

Commercial Leasing

Law No 85-25 on Real Estate Leases and Evictions, enacted in 2025, now provides the principal statutory framework for commercial leases. Commercial lease terms remain substantially contractual, and parties should clearly regulate duration and renewal, rent adjustments (which are uncapped in commercial leases), permitted use, maintenance, assignment and subletting, defaults and termination.

Automatic renewal is assumed if neither party expresses its intention not to renew the agreement prior to its termination. Assignment and subletting should likewise be addressed expressly. Remedies for default include unpaid rent, damages, termination and eviction, subject to statutory procedures.

Contributed by: José Manuel Alburquerque Prieto, Gina A. Hernández Volquez, Patricia Solano Perez and Miguel Gil Molina,
Alburquerque Abogados – Consultores

Recent Developments

Law No 85-25 represents the most significant recent change, replacing the former lease framework and modernising landlord-tenant and eviction rules. The Real Estate Registry has also continued its digitalisation and standardisation efforts, including electronic services and updated registration criteria intended to increase predictability and efficiency.

ECUADOR



Law and Practice

Contributed by:
Randy Arévalo, Verónica Regalado, Juan José Flores Rabascall and María Paula Vinueza
VIVANCO & VIVANCO

Contents

1. Business Entities P.208
1.1 Business Organisations p.208
1.2 Incorporation and Ongoing Compliance p.208
1.3 Share Issuances p.209
1.4 Distributions and Return of Capital p.209
1.5 Control Person Reporting p.210

2. Corporate Governance P.210
2.1 Legal Framework p.210
2.2 Directors' Duties and Liabilities p.211
2.3 Board Composition and Independence p.211
2.4 ESG and Disclosure Obligations p.211
2.5 Conflicts of Interest and Related-Party Transactions p.212

3. Shareholder Rights and Agreements P.212
3.1 Shareholder Rights p.212
3.2 Shareholder Agreements p.213

4. Mergers and Acquisitions P.214
4.1 Legal Framework p.214

5. Capital Markets P.215
5.1 Securities Regulation and Public Offerings p.215
5.2 Continuous Disclosure p.216
5.3 Insider Trading p.216
5.4 Shareholder Disclosure p.216
5.5 Internal Controls and Whistle-Blower Regimes p.217

6. Secured Transactions P.217
6.1 Transaction Financing and Security Interests p.217

7. Commercial Contracts P.218
7.1 Contract Formation and Enforceability p.218
7.2 Termination and Remedies p.219
7.3 Intellectual Property in Commercial Transactions p.219
7.4 Consumer Protection p.220

8. Foreign Investment P.220
8.1 Competition and Merger Control p.220
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.221

9. Regulatory Compliance P.222
9.1 Privacy and Data Protection p.222
9.2 Anti-Money Laundering, Sanctions and Corruption p.222
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.223
9.4 Artificial Intelligence p.224
9.5 Other Regulatory Compliance Requirements p.224

10. Employment and Labour P.225
10.1 Employment Standards and Workplace Regulation p.225
10.2 Executive Compensation and Restrictive Covenants p.225

11. Real Property and Commercial Leasing P.226
11.1 Requirements for Land Ownership p.226
11.2 Commercial Real Estate Transactions p.227

Contributed by: Randy Arévalo, Verónica Regalado, Juan José Flores Rabascall and María Paula Vinueza,
VIVANCO & VIVANCO

VIVANCO & VIVANCO is one of Latin America's oldest law firms, founded in 1902 and originally established as an international representation agency promoting business across the region. Today, the firm combines that legacy with a modern, multidisciplinary, business-oriented practice serving clients across Latin America, Europe and the United States. It has offices in Argentina, Colombia, Costa Rica and Ecuador, together with subsidiaries in more than 14 cities. The firm emphasises specialised practice groups, personalised service and strong regional co-ordination, allowing it to advise on both local and cross-border matters. Its lawyers have also participated in legislative drafting processes and in the development of significant local and multinational projects, reflecting deep technical capability and regional insight. VIVANCO & VIVANCO also maintains a recognised pro bono commitment through the Arsenio Vivanco Neira Foundation, with a particular focus on Latin American society and education.

Authors



Randy Arévalo is director of the Guayaquil office of VIVANCO & VIVANCO, where his practice focuses on corporate and commercial law, real estate, fiduciary structures and securities law. He advises developers, investors and corporate groups on incorporations and restructurings, share transfers, capital increases and in-kind contributions, as well as the structuring of collective investment funds and trust vehicles for real estate projects. He is a member of the International Association of Young Lawyers and has contributed as an expert to the World Bank's B-READY project for two consecutive years. Randy is certified as a Data Protection Officer by Universidad de Especialidades Espíritu Santo.



Verónica Regalado is the Director of the Special Procedures Department at VIVANCO & VIVANCO, and the firm's Andean Hub Co-ordinator. With nearly two decades of experience, her practice focuses on corporate law, advising companies and family groups, including family offices, on the structuring, organisation and protection of their assets and businesses. She complements her practice with experience in corporate governance, having served as a Member of the Board of Directors of Banco del Austro (2014–2018) and as Director of VGV Corporate since 2011. Verónica holds a law degree from Universidad San Francisco de Quito and completed post-graduate studies at Universidad Andina Simón Bolívar.



Juan José Flores Rabascall is an associate in VIVANCO & VIVANCO's Guayaquil office, and in-house counsel for a real estate group. His practice focuses on corporate law, real estate, data protection and civil litigation. He advises corporate groups on capital increases, corporate structuring, share transfers and the legal structuring, management and execution of real estate projects. Juan also advises on technical implementation of data privacy regulatory compliance. He holds a certification in Trust Design and Management with a Legal Focus from Universidad de Especialidades Espíritu Santo (UEES), and is an academic member at Universidad Tecnológica Ecotec.



María Paula Vinueza is an attorney and an associate at VIVANCO & VIVANCO, where she focuses on corporate and business law. She advises domestic and foreign companies on corporate structuring, corporate governance, transactions and ongoing corporate matters. In addition to her work at the firm, she has served as in-house counsel for corporate clients, giving her a practical understanding of business needs and internal decision-making processes. María is a certified mediator and holds a diploma in compliance and anti-money laundering prevention, allowing her to integrate regulatory and risk considerations into her corporate advisory practice.

Contributed by: Randy Arévalo, Verónica Regalado, Juan José Flores Rabascall and María Paula Vinueza,
VIVANCO & VIVANCO

VIVANCO & VIVANCO

Avenida Francisco de Orellana
Edificio World Trade Center
Torre B, Piso 6, Of. 605
Guayaquil
Ecuador

Tel: (+593) 46008613
Email: rarevalo@vivancoyvivanco.com
Web: vivancoyvivanco.com

1. Business Entities

1.1 Business Organisations

Main Commercial Vehicles

The main corporate vehicles used in Ecuador are as follows.

- The S.A.S. (Simplified Joint Stock Company) is the most flexible and economical. It requires one or more shareholders, no minimum capital and private incorporation.
- The S.A. (Joint Stock Company) is ideal for large ventures/capital markets. It features freely transferable shares, and requires 100% subscription and 25% paid-in capital upfront.
- The *Cía*. *Ltda*. (Limited Liability Company) is designed for closed/family businesses, with a maximum of 15 partners. It requires 50% paid-in capital, and transfers require unanimous consent.

Other Entities and Vehicles

The following are also relevant.

- The foreign branch requires a local representative. The parent company retains full liability.
- Consortiums are formed through temporary joint agreements (often for public tenders) and are taxed as companies without separate legal personality.
- Commercial trusts and benefit and collective interest companies (BICs) – trusts manage assets/real estate, while "BIC" is a social-purpose designation, rather than a distinct entity type.

Key Decision Factors

The key factors to be considered when choosing a structure are as follows.

- Liability – S.A.S., S.A. and *Cía*. *Ltda*. have limited liability, while sole traders, partners and parent companies of foreign branches have unlimited liability.
- Taxation – the standard corporate income tax rate is 25%. A Simplified Regime for Entrepreneurs and Popular Businesses (*Régimen Simplificado para Emprendedores y Negocios Populares*, or RIMPE) is available for small businesses.
- Regulatory treatment – annual financial/UBO (ultimate beneficial owner) filings are mandatory, and external audits are required if certain asset thresholds are met.
- Foreign investment – subsidiaries shield parent liability better than branches.

1.2 Incorporation and Ongoing Compliance

Entity Types and Key Requirements

The main requirements for each entity type are as follows.

- The S.A.S. requires a private document and a minimum of one shareholder, but no minimum capital. The process takes three to seven days, and there are no notary/registry fees.
- The S.A. requires a public deed and admission to the Mercantile Registry. There is a minimum of one shareholder, and USD800 minimum capital. The process takes two to four weeks, and notary/registry fees apply.

- The *Cía*. *Ltda*. requires a public deed and admission to the Mercantile Registry. It can have between one and 15 partners, with a minimum of USD400 capital. The process takes two to four weeks, and notary/registry fees apply.

It should be noted that boards with three or more members require gender parity.

Incorporation Procedure

The incorporation procedure follows these steps.

- Name reservation – the chosen name is reserved via the SUPERCIAS portal.
- Execution and registration – the private by-laws (S.A.S.) or notary deed (S.A./*Cía*. *Ltda*.) are signed and then registered with SUPERCIAS or the Mercantile Registry.
- Tax and local set-up: the taxpayer identification number (*Registro Único de Contribuyentes*, or RUC) is obtained from the Internal Revenue Service (SRI), followed by the Municipal Licence (*Patente*).

Ongoing Compliance

The following obligations are ongoing.

- Annual filings – financial statements must be filed with SUPERCIAS by April 30th, and the annual SUPERCIAS asset fee must be paid.
- Governance and disclosure – the annual shareholder meeting must be held by March 31st. UBOs must be disclosed annually.
- Registers and labour – minute/share books must be maintained, and employees must be registered with the Ministry of Labour (*Sistema Único de Trabajo*, or SUT) and the Social Security Institute (*Instituto Ecuatoriano de Seguridad Social*, or IESS).

1.3 Share Issuances

Statutory Rules Governing Share Capital

Under the Ecuadorian Companies Act (*Ley de Compañías*), S.A. and S.A.S. entities issue shares, while Limited Liability Companies (*Cía*. *Ltda*.) issue social quotas.

- Authorised v issued capital – by-laws may set an authorised capital ceiling for future issuances without charter amendments. Issued capital is the subscribed amount.
- Par value and premiums – all shares must have a fixed USD par value (no par shares are prohibited). Any excess paid over par goes into a share premium reserve (*prima de emisión*).
- Alterations – capital changes (increases, reductions, debt conversions, splits) require extraordinary general assembly approval and SUPERCIAS/Mercantile Registry filing.

Share Classes and Rights

The S.A.S. allows broad contractual flexibility, while the S.A. is rigidly regulated.

- Voting and economic rights – classes may grant multiple, limited or non-voting rights (non-voting rights are capped at 50% capital in an S.A.). Preferred shares offer priority dividends and liquidation preferences.
- Conversion and pre-emption – shares can feature conversion mechanisms. Statutory pre-emptive rights apply to new issuances, although S.A.S. shareholders can waive or modify them.
- Each shareholder's voting strength is determined by their paid-in capital contribution; consequently, any provision in the by-laws that limits voting freedom is legally void, notwithstanding private agreements between shareholders regarding their votes. For limited liability companies (*Cía*. *Ltda*.), any equity transfer to third parties requires unanimous consent.

1.4 Distributions and Return of Capital

Key Requirements on Distributions and Returns of Capital

The following requirements must be met.

- Real profits and loss absorption – dividends must come solely from approved net liquid profits or retained earnings, and prior losses must be covered first. Distributing fake profits triggers personal liability for management.
- The legal reserves are:
  (a) S.A. – 10% of annual profits up to 50% of capital;
  (b) *Cía*. *Ltda*. – 5% of annual profits up to 20% of capital; and

(c) S.A.S. – optional unless mandated by the by-laws.

- Approval and priority – declared dividends require general meeting approval (becoming enforceable debts), and preferred share rights take priority over common shares.
- Returns of capital must be executed via a formal capital reduction (SUPERCIAS and Mercantile Registry filing) and distributed pro rata, unless waived.

Buybacks, Redemption, Cancellation, Solvency and Financial Assistance

- Share buybacks (S.A./S.A.S.) must use net profits or free reserves (not social capital). Voting and dividend rights are suspended; shares must be reissued within five years or cancelled.
- Redemption and cancellation – redemption applies to preferred shares per issuance terms. Share cancellation requires a formal capital reduction.
- Solvency test and creditor protection – capital returns require a solvency report from the legal representative. They cannot result in negative net equity, and they give creditors a statutory right to oppose.
- Financial assistance prohibition – companies cannot grant loans, advances or guarantees secured by their own shares or to fund the acquisition thereof.

1.5 Control Person Reporting

Disclosure Obligations

The following must be reported.

- Real owners (UBOs) – the actual people behind the business (even through complex parent companies) must be revealed if they hold 10% or more of shares/profits or exercise true management control. If nobody meets this threshold, the top executive (General Manager) must be listed. The UBO must be reported to SUPERCIAS and the SRI.
- Annual update (by April 30th) – a full report of directors, managers and direct owners must be submitted.
- The eight-day transfer rule – SUPERCIAS must be notified within eight business days whenever shares are bought or sold.
- Regulated businesses – real estate companies, car dealers and high-value sellers must also report to the Financial and Economic Analysis Unit (*Unidad De Análisis Financiero y Económico*, or UAFE).

Consequences of Missing or Late Reports

If reports are not filed on time, or are not filed at all, the penalties include:

- higher income tax, with the rate increasing from 25% to 28%;
- frozen profits and voting, with foreign owners losing voting rights and becoming unable to receive dividend payouts; and
- frozen operations, with business certificates blocked, thereby halting banking access and legal contracts.

2. Corporate Governance

2.1 Legal Framework

Primary Legislation

Corporate governance in Ecuador is built mainly on the Companies Law, which sets the rules on shareholders' meetings, boards, managers, directors' duties and minority rights for all commercial companies, including the simplified joint stock company (S.A.S.). The Organic Monetary and Financial Code adds specific governance requirements for banks, insurers and other regulated financial institutions. The Securities Market Law imposes additional disclosure, audit and conduct obligations on issuers whose securities are publicly offered.

Secondary Regulation

The following secondary regulations are of relevance:

- resolutions of the Superintendency of Companies, Securities and Insurance (*Superintendencia de Compañías*, *Valores y Seguros*, or SCVS), which develop the Companies Law and securities rules in practice;
- the Codification of Monetary, Financial, Securities and Insurance Resolutions, issued by the financial policy regulator; and
- the Organic Law on Personal Data Protection, which shapes how companies handle shareholder, employee and client information.

Codes and Best Practices

The SCVS has issued Ecuadorian corporate governance standards that are largely voluntary for ordinary companies but are increasingly expected of issuers. Separately, savings and credit co-operatives and similar entities must follow the 2025 Good Co-operative Governance Standard issued by the Superintendency of Popular and Solidarity Economy, adapting their internal rules by April 2026.

2.2 Directors' Duties and Liabilities

Core Fiduciary Duties

Directors and managers in Ecuador owe two main duties to the company: the duty of diligence requires them to act with the care of a prudent and informed business person, while the duty of loyalty requires them to put the company's interests ahead of their own and to disclose and avoid conflicts of interest. Recent reforms to the Companies Law also recognise a business judgement rule, protecting decisions made in good faith, on an informed basis and without personal interest.

Judicial Interpretation

Published case law on directors' duties remains limited. Many disputes are resolved through arbitration or before the SCVS, so courts have not yet developed a detailed body of doctrine. In practice, judges focus on whether the director followed the law, the by-laws and shareholder resolutions.

Personal Liability

Directors may be held personally and jointly liable when they:

- cause damage to the company, shareholders or third parties through negligence, bad faith or breach of the law or by-laws;
- fail to comply with tax and labour obligations as legal representatives; or
- use the company to commit fraud, which allows courts to disregard the corporate veil.

2.3 Board Composition and Independence

Private Companies

Ecuadorian law gives private companies broad freedom in designing their governance structure. A board of directors is optional, and many companies are managed directly by a general manager and a president appointed by the shareholders. There are no general nationality or residence requirements for directors, although in practice the legal representative needs local tax registration and a reliable presence in Ecuador to deal with authorities.

Listed Companies and Issuers

Issuers of publicly offered securities face stricter standards. They must set up an audit committee whose members are independent from day-to-day management, and they are subject to closer oversight by the SCVS. Banks and insurers must also have their directors qualified by the relevant regulator, which reviews suitability, experience and potential conflicts.

Independence and Diversity

The regulator's voluntary governance standards recommend independent directors and diverse boards.

Savings and credit co-operatives must apply gender equity in board nominations and have boards of between three and nine members, under the 2025 co-operative governance standard.

When the board of directors has three or more members, at least one member must be female.

2.4 ESG and Disclosure Obligations

Legal Framework

Ecuador's Constitution recognises the rights of nature, and the Organic Environmental Code imposes strict liability for environmental damage. Recent reforms to the Companies Law also allow companies to adopt BIC status, which commits them to social and environmental goals upon which they must report annually.

Disclosure Requirements

There is currently no mandatory climate-related financial disclosure regime for ordinary companies. However, ESG reporting is growing through other channels:

- issuers of green, social and sustainable bonds must disclose how proceeds are used and verify their impact;

- financial institutions are increasingly expected to assess environmental and social risks in their lending; and
- savings and credit co-operatives must report on social responsibility and publish a social balance.

Directors' Duties

Directors' duties are owed to the company, and the law does not expressly require them to weigh stakeholder interests. In BIC companies, however, directors must consider those interests as part of the company's purpose.

Best Practices

Boards are encouraged to assign ESG oversight to a specific committee, to integrate ESG risks into enterprise risk management, and to report voluntarily under recognised international standards.

2.5 Conflicts of Interest and Related-Party Transactions

General Rules for Companies

Under the Companies Law, directors and managers with a personal interest in a transaction must disclose it and abstain from taking part in the decision. Transactions between the company and its directors generally require prior approval from the board or the shareholders' meeting, depending on the by-laws. Directors who ignore these rules may be personally liable for any resulting damage.

Financial Institutions and Issuers

Stricter rules apply in regulated sectors:

- banks and other financial institutions face strict limits on loans and exposures to related parties, as defined in the Organic Monetary and Financial Code and regulator rules;
- securities issuers must disclose related-party transactions in their audited financial statements and report material events to the market; and
- co-operatives cannot contract with relatives of their directors, managers or key officers, nor with companies in which those persons hold more than 10%.

Tax and Disclosure

Related-party transactions are also subject to transfer pricing rules. Companies above certain thresholds must file annual reports with the tax authority, showing that prices reflect market terms. In practice, many companies adopt internal conflict-of-interest policies and require annual declarations from directors and senior officers.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Core Rights

Ecuadorian law grants shareholders a set of fundamental rights that the by-laws cannot remove. These include:

- participating in profits and in any surplus on liquidation;
- equal treatment within each share class; and
- attending and voting at general meetings.

Shareholders also hold statutory pre-emptive rights on new issuances, although S.A.S. shareholders may waive or modify them. Voting power is proportional to paid-in capital, and by-law clauses restricting the freedom to vote are void, although shareholders may agree privately on how to vote. In limited liability companies (*Cía. Ltda.*), transfers to outsiders require unanimous consent.

Access to Information

Shareholders have unrestricted access to financial statements, management and audit reports, meeting minutes and the shareholder list. Other company records may be examined under management supervision, and access may be refused only on objective grounds, unless holders of at least 50% of the capital support the request. Before a meeting, shareholders may submit written questions on agenda items and ask to postpone an item for up to three days if information is insufficient. A breach of these rights gives rise to damages rather than the annulment of the meeting.

Fundamental Changes

The general meeting decides on by-law amendments, mergers, spin-offs, transformations, dissolution and the purchase or sale of essential assets. An asset is presumed essential when the transaction exceeds 25% of total assets in the latest approved balance sheet. Shareholders dissenting from these asset transactions or a transformation may withdraw and receive the fair value of their shares.

Statutory Remedies

Holders of 10% of the capital may require a general meeting to be called and, if management fails to act within 15 days, may ask the SCVS to convene it. Holders of 5% may also add one item to the agenda of a convened meeting, within 72 hours of the notice. Challenge routes include:

- administrative suspension – within ten days, any shareholder may ask the SCVS to suspend a resolution that breaches the law or by-laws, or that results from abusive voting;
- judicial challenge – resolutions that harm the company for the benefit of certain shareholders may be challenged within one year, or five years if contrary to public order, and shareholders who voted in favour become jointly liable;
- appeal – shareholders who were absent or voted against may appeal within 30 days through summary proceedings; and
- nullity – resolutions adopted in breach of the law or by-laws may be declared void.

Judges may also fine claimants who litigate abusively, up to 5% of the company's equity.

3.2 Shareholder Agreements

Typical Uses

Shareholder agreements are widely used in joint ventures, private equity transactions and family businesses. They typically address voting commitments, rights of first refusal, tag-along and drag-along rights, lock-ups and exit mechanisms. In an S.A., the by-laws cannot restrict share transfers, so any such restrictions must be set out in a private agreement. S.A.S. by-laws, by contrast, may themselves prohibit transfers or require prior approval.

The SCVS's Ecuadorian Corporate Governance Standards (*Normas Ecuatorianas para el Buen Gobierno Corporativo*) are voluntary unless incorporated into the by-laws, which requires two thirds of the capital. They recommend disclosing agreements to the other shareholders and, in widely held companies, avoiding provisions that bind directors' votes or govern their appointment.

Enforceability

Agreements bind their parties but generally not third parties, unless a third party knew of them. Depositing the agreement at the company's offices is a key practical step, as the company must then comply with it, and votes cast in breach are not counted. Following a breach, the affected party may seek specific performance or termination, in both cases with damages.

Dispute Resolution

Mediation and arbitration clauses may be included in the by-laws or in a shareholder agreement. By-law arbitration clauses also bind future shareholders, but adding or removing them requires unanimous approval.

Oppression of Minority Shareholders

Ecuador recognises a specific oppression action, comparable to common law unfair prejudice remedies. Any non-controlling shareholder may sue majority shareholders whose conduct undermines minority rights, within one year of the oppressive resolution. Courts may cancel the resolution, order the conduct to cease or require the company to purchase the minority's shares at fair value.

Derivative Actions

If the general meeting approves proceedings against directors but the company fails to file within one month, any shareholder may sue on its behalf. Claims for breach of the duty of loyalty may be brought directly, without meeting approval. Derivative actions also extend to conflicted shareholders, shareholders who abuse their votes and shadow directors, and are time-barred after five years.

Abuse of Voting Rights

A vote is abusive when it is cast to harm the company or other shareholders, or to obtain an unjustified

advantage. Where the minority or a deadlocked group abusively blocks a resolution, courts may order its implementation, which is a useful tool against deadlock.

Exit and Winding-Up

Ecuadorian law does not allow shareholders to petition for winding-up on just and equitable grounds. Disputes are instead generally resolved through buy-outs, withdrawal rights or the exclusion of a shareholder. The SCVS may dissolve a company at a party's request where achieving its corporate purpose becomes clearly impossible.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Sources of Law

M&A transactions in Ecuador are primarily governed by:

- the Companies Law and the regulations of the SCVS, which cover mergers, spin-offs, transformations and share transfers;
- the Securities Market Law (Book II of the Organic Monetary and Financial Code) and the regulations of the Financial Policy and Regulation Board, which govern tender offers for listed companies;
- the Organic Law on Regulation and Control of Market Power, under which the Superintendency of Economic Competition (SCE) reviews and clears concentrations; and
- sector-specific rules for banking, insurance, telecommunications, mining and hydrocarbons, which may require additional regulatory approvals.

Labour, tax, data protection and investment rules also play a decisive role in how transactions are structured.

Private Acquisitions

Most acquisitions involve unlisted companies and are structured as share purchases. Shares in an S.A. or S.A.S. are transferred by private assignment, which becomes effective against the company once recorded in its share register. The SCVS must then be notified within eight days.

In a *Cía*. *Ltda*., transfers to third parties require unanimous partner approval. Transforming the target into an S.A. or S.A.S. before the sale may therefore facilitate the transaction.

Asset purchases are less common. Where the assets exceed 25% of the seller's total assets, shareholder approval is required, and dissenting shareholders may withdraw.

Statutory Mergers and Spin-Offs

Companies may merge by absorption or by forming a new company. Each company's general meeting approves the merger terms, the SCVS approves the public deed, and the merger takes effect upon registration. The absorbing company succeeds to the rights and obligations of the absorbed company, including licences and permits, provided it meets the applicable requirements.

The Companies Law also offers streamlined routes:

- a parent may absorb a wholly owned subsidiary by decision of its legal representatives or board, without a meeting of the subsidiary's shareholders;
- where one company owns more than 90% of another, management may approve an abbreviated merger, although holders of 1% may request a general meeting within 15 days of the notice; and
- reverse mergers, combined operations and inbound cross-border mergers, in which an Ecuadorian company absorbs a foreign company, are expressly regulated.

Spin-offs may be total, partial or by segregation of a business unit. These alternatives allow sellers to carve out the relevant business before a sale.

Role of the Courts and Creditors

Ecuador does not provide for court-sanctioned schemes of arrangement, and courts intervene only in specific circumstances. Once the SCVS approves certain corporate acts, an extract is published online and creditors may oppose registration before a civil judge within six days. In mergers by absorption, this step may be avoided where the absorbing company assumes the absorbed company's liabilities and has sufficient resources to discharge them.

Tender Offers

Acquiring a significant stake in a listed company requires an SCVS-authorised tender offer and, where applicable, competition clearance. Tender offers remain uncommon given the limited number of listed companies.

There is no statutory squeeze-out mechanism. In a merger, however, the absorbing company may offer to acquire minority shares at fair value.

Key Structuring Considerations

- Tax: gains on direct or indirect transfers of Ecuadorian shares are subject to a single 10% income tax. Restructurings, mergers and spin-offs are tax-neutral where the same beneficial owners retain the same proportions, and mergers fall outside the scope of VAT.
- Labour: a buyer of a business must honour existing employment contracts. Ecuadorian-domiciled shareholders holding at least 25% may incur subsidiary liability for employee claims, in proportion to their stake.
- Data protection: disclosing employee or client data during due diligence requires a valid legal basis, so anonymised data rooms are advisable.
- Foreign investment: no prior authorisation is required and profits may be freely repatriated, although beneficial ownership must be disclosed.

Common Deal Structures

Negotiated share purchase agreements are the usual structure, often supported by escrow arrangements or deferred payment mechanisms. Buyers frequently integrate the target through a subsequent merger by absorption, while sellers may use a spin-off to separate the business being sold.

Recent Legislative and Regulatory Changes

The 2023 reforms to the Companies Law introduced the streamlined merger procedures outlined above and additional spin-off modalities. In October 2025, the SCE issued non-binding guidelines on the assessment of concentrations, giving notifying parties greater predictability.

Judicial Developments

The most significant recent ruling is Constitutional Court Judgment 51-25-IN/25 of September 2025, which invalidated a June 2025 law that had barred S.A.S. companies from strategic sectors such as mining, with retroactive effect. Consequently, the S.A.S. remains available as an acquisition vehicle for all lawful activities, although its shares cannot be listed.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework

Ecuador's securities rules sit in Book II of the Organic Monetary and Financial Code (COMF), known as the Securities Market Law. Detailed rules appear in the codified resolutions of the Financial and Monetary Policy and Regulation Board. Together they cover offerings, exchanges, brokers, fund and trust managers, rating agencies and issuers.

Regulatory bodies

- The board sets policy and issues binding rules.
- The SCVS supervises the market, keeps the Public Securities Market Registry and alone approves public offerings.
- The Quito and Guayaquil stock exchanges issue self-regulatory rules, which the SCVS must approve.

Public Offerings

A public offering is any invitation to the public, or part of it, to buy or sell securities. Before launching, an issuer must:

- obtain a credit rating for debt and securitisations;
- register the issuer and securities in the Registry;
- issue an SCVS-approved prospectus; and
- comply with standard issuance rules.

Legal representatives are liable for the prospectus. An issuer's bonds, securitisations and accepted invoices cannot exceed 200% of equity unless extra guarantees cover 120% of the excess; banks and savings co-operatives face a 50% limit.

The SCVS has 15 days to approve a complete file, with silence counting as approval. Financial issuers need their own supervisor's approval. Approval lasts nine months, and is extendable once. Issuers report material events within three business days and file semi-annual statements.

Exchange Listing

After SCVS approval, securities must also be registered with a stock exchange, which admits them based on that approval. Registering with Quito or Guayaquil covers both. Exchanges require extra documents and reports, and may suspend securities that break their rules, separately from SCVS sanctions.

Prospectus Exemptions

Ecuador has no general private offer exemption: any public offer needs approval, whatever its size. The SCVS can stop offers that look public but lack approval. The following limited cases are not public offerings:

- offers to existing shareholders, and transfers by inheritance, gift, merger or to a trustee;
- direct sales between two parties, without intermediaries, of unregistered securities; and
- state sales up to 1% of a company's capital, if the board allows.

Small and medium-sized companies can use the Special Stock Exchange Registry (REB), which is a simpler segment. Only institutional investors or qualified investors (people with investment experience) may buy.

Resale Restrictions and Consequences

Ecuador sets no minimum holding period. Resale still has limits: offering issued securities to the public needs SCVS approval, and securities in the REB can be traded only there.

Breaking the rules can lead to:

- offer suspension for up to 30 days, then cancelled registration;
- fines from six to 418 basic salaries (minimum monthly wages), or up to 20–50% of a transaction's value, within those limits;
- bans from serving as director or officer; and
- possible civil or criminal liability.

5.2 Continuous Disclosure

Continuous Disclosure Requirements

Entities registered with the SCVS, not only exchange-listed ones, must keep information current. They file:

- half-year financial statements;
- audited annual accounts and management reports with the exchanges, and with the SCVS only if it does not already supervise the issuer; and
- updates within three days of any change.

Material Events

Legal representatives must report anything that could influence investment decisions, such as mergers or director changes, to the SCVS (and exchanges where relevant) within three business days. Confidentiality needs three-quarters of directors' approval, with SCVS notice the next business day. False reports are sanctioned.

5.3 Insider Trading

Market Abuse and Insider Trading

Inside information is knowledge of facts that are able to move securities prices before they become public. Directors, officials and others with access, and their close relatives, must keep such information secret and may not trade on it, reveal it or advise others to trade on it. Price manipulation is banned. The Criminal Code (COIP) punishes fictitious trades, fraudulent price-fixing and false information with three to five years' prison, but has no specific insider trading offence.

Enforcement Powers

The SCVS can inspect participants and investigate, fine, disqualify and suspend offerings and registrations. It reports crimes to prosecutors. Exchanges sanction rule breaches.

5.4 Shareholder Disclosure

Shareholder Disclosure

Ecuador regulates significant shareholdings in companies registered with the SCVS.

Thresholds and Entities Covered

- Holders of 10% or more of a registered company, and its managers, must notify the SCVS and exchanges five business days before trading.
- Transfers by inheritance, gift or merger reaching 10% are reported to the exchanges within 24 hours.
- Reaching 35% or 51% of voting shares requires a public takeover offer (OPA) to all shareholders.

Consequences of Non-Compliance

Trading without the required notice or OPA is an administrative infringement, punishable by fines and disqualification.

5.5 Internal Controls and Whistle-Blower Regimes

Compliance Programmes and Internal Controls

Directors must act with an orderly businessperson's care. Brokers, exchanges and fund managers must run an anti-money laundering programme comprising a registered prevention manual, client due diligence, staff training, independent testing and a compliance committee. Each appoints a compliance officer and a deputy.

Whistle-Blowing

These firms must report suspicious operations within five days and transactions of USD10,000 or more monthly. The identity of staff who file such reports is protected. Citizens must also report suspicious activity through the financial intelligence unit's secure channel.

Governance Frameworks

Companies must adopt conflict-of-interest procedures for directors, and must register beneficial owners with the tax authority.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Principal Laws and Types of Security

Secured lending in Ecuador is governed mainly by:

- the Civil Code, which regulates pledges, mortgages and anticresis, and ranks creditors;
- the Commerce Code, which covers commercial, agricultural and industrial pledges, retention of title, guarantees and factoring;
- the Companies Law, which covers pledges over shares;
- the Monetary and Financial Code, which covers guarantee trusts; and
- the General Code of Procedure, which governs court enforcement.

The main forms of security are as follows.

- Commercial pledge – movable assets, shares, bills of exchange or receivables are delivered, endorsed or recorded in favour of the creditor.
- Agricultural or industrial pledge – specified assets stay with the debtor.
- Mortgage – real estate stays with the debtor. In anticresis, the creditor holds the property and collects its income.
- Retention of title – the seller of movable goods keeps ownership until the price is paid.
- Guarantee trust – the debtor transfers assets to a trust that secures the debt.
- Personal guarantee and factoring – a commercial guarantor is jointly liable with the debtor, and assigned receivables pass with their guarantees.

Perfection and Enforcement

Each type of security has its own formalities. A mortgage needs a public deed and registration; without registration it has no value, and its date counts only from registration. Agricultural and industrial pledges need a written contract and registration in the local registry, and take effect between the parties and against third parties only from that date. Retention of title must be in writing and registered at the Mercantile Registry where the goods are delivered.

A commercial pledge needs a written contract with recognised signatures, and its privilege lasts only while the creditor holds the asset. Pledged shares are noted in the company's share ledger, and a pledged receivable requires delivery of the title and notice to the debtor. A guarantee trust needs a public deed,

and the lender must approve in writing the assets and their value.

Priority follows the Civil Code. The order is as follows:

- employee claims, which prevail even over mortgaged property – other first-class claims, such as social security and certain State debts, reach mortgaged property only if other assets are insufficient;
- pledge creditors, on the pledged asset; and
- mortgage creditors, by date, and by registration order if the date is the same.

Trust assets cannot be seized by the debtor's creditors, unless the contract allows it.

A creditor holding an executive title, such as a notarised contract, mortgage deed or promissory note, can use executive proceedings. The debt must be clear, due and quantifiable, and the debtor's defences are limited. Pledged assets are sold at public auction or awarded to the creditor at an expert valuation; clauses letting the creditor keep the asset are void. The creditor can bid and offset the price against the debt. Mortgage creditors need not wait for a general insolvency process, but must post a prudent guarantee for first-class claims.

Acquisition Financing

Acquisition financing mixes ordinary security with company law limits. Lenders can take pledges over the target's shares, mortgages and guarantee trusts. In a share pledge, the owner keeps the votes and dividends, unless the parties agree otherwise. To pledge shares in a limited company, all partners must agree. A company cannot lend money against its own shares. If a listed company gives security over 10% or more of its assets to related parties, an independent expert must prepare a report.

In a guarantee trust, the trustee never becomes the debtor. Banks can benefit from these trusts only for certain listed loans, such as housing or infrastructure, and the trust must be registered in the Securities Registry. Priority among lenders follows the legal order described above.

Recent Changes

Since 2023, promissory notes and bills of exchange (whether physical, dematerialised or electronic) and loan contracts accepted electronically are executive titles; the auction rules were also changed. In 2021, the rules on banks as beneficiaries of guarantee trusts were reformed. The 2024 anti-money laundering law, reformed in 2025 and 2026 and implemented by a February 2026 regulation, bars cash payments of USD10,000 or more, except for obligations arising from financial system products. It also requires companies to register their beneficial owners, and obliges financial institutions to apply customer due diligence. The Commerce Code, issued in 2019 and last reformed in 2025, contains the pledge and retention-of-title rules.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation

Ecuador follows the civil law tradition and has no consideration doctrine; its functional equivalent is causa. A valid contract requires capacity, consent free from defects, a lawful object and a lawful cause. Commercial contracts are generally consensual and may be proven by any lawful means, but some transactions are formal. Real estate transfers require a public deed recorded in the Property Registry, and distribution agreements must be in writing. Electronic signatures are fully valid and have become standard practice, including before notaries.

The 2019 Commercial Code replaced a framework dating back to 1906 and regulated contracts that had long remained innominate despite being common in practice, including supply, agency, distribution, franchising and joint ventures. Parties now negotiate against statutory default rules rather than a blank slate.

Invalidity

Absolute nullity arises from an unlawful object or cause, the omission of a required formality, or acts of absolutely incapable persons, and cannot be ratified. Relative nullity arises from defects of consent (mis-

take, duress or fraud) or relative incapacity, and may be cured by ratification.

Interpretation and Enforcement

A valid contract is "law for the parties" and must be performed in good faith, binding the parties to everything flowing from the nature of the obligation. Where intent is clearly established, it prevails over literal wording. Liability caps and exclusions are generally enforceable, but a waiver of future fraud is void, and gross negligence is treated as equivalent to fraud. Penalty clauses are enforceable but may be judicially reduced when excessive. There is no general B2B unconscionability doctrine, although abusive clauses are void in consumer contracts.

Parties may choose a foreign governing law, subject to public policy and mandatory rules. Arbitration under the Arbitration and Mediation Law is increasingly the preferred forum for commercial disputes, offering speed and specialisation that ordinary courts often cannot.

7.2 Termination and Remedies

Remedies

In bilateral contracts, every agreement carries an implied resolutory condition. If one party fails to perform, the non-breaching party may elect either specific performance or termination, and in both cases may claim damages. Damages cover actual loss (*daño emergente*) and lost profits (*lucro cesante*). They are limited to foreseeable losses, except in cases of fraud, where the breaching party also answers for unforeseeable direct consequences. As a rule, damages accrue only once the debtor is in default. A party may also withhold its own performance while the other remains in breach (exceptio non adimpleti contractus).

Termination

Ecuadorian law does not recognise unilateral termination for breach as a default rule: termination must be declared by a court or arbitral tribunal. Parties increasingly negotiate express termination clauses to accelerate exit, but their self-executing effect remains debated, and prudent drafting pairs them with arbitration. Long-term and typified commercial contracts, such as agency and distribution, carry additional notice and compensation rules under the 2019 Commercial Code. Wrongful termination is itself a breach, exposing the terminating party to damages and, where still possible, to an order of specific performance.

Force Majeure, Hardship and Frustration

Force majeure is defined as an unforeseeable event that cannot be resisted. It excuses the debtor unless the debtor was already in default or contractually assumed the risk. Ecuador has no general statutory hardship (*imprevisión*) doctrine, and frustration of purpose is not recognised as an autonomous ground for termination. The COVID-19 pandemic tested this gap. The 2020 Organic Humanitarian Support Law encouraged renegotiation of affected contracts on a temporary basis, but did not create a permanent hardship remedy. As a result, market practice has shifted toward bespoke hardship, renegotiation and price-adjustment clauses, which are now standard in long-term supply, construction and real estate development agreements.

7.3 Intellectual Property in Commercial Transactions

IP is governed by the 2016 Organic Code of the Social Economy of Knowledge, Creativity and Innovation (*Código Ingenios*), together with Andean Community Decisions 486 (industrial property) and 351 (copyright), and is administered by the National Service of Intellectual Rights (SENADI). Assignments and licences of registered rights should be recorded with SENADI to be enforceable against third parties, and recordal is also relevant for the tax treatment of royalties. Trade secrets are protected as undisclosed information under *Código Ingenios* and through unfair competition rules, so robust confidentiality covenants remain essential in any deal.

Ownership of IP Created in Commercial Relationships

Código Ingenios reversed the traditional employer-friendly rule, which is the single most important IP point in Ecuadorian M&A and technology deals.

Copyright

Unless otherwise agreed or specially provided, ownership of works created under an employment relationship or on commission belongs to the author, not the employer or commissioning party. Moreover, such

authors retain a right to equitable remuneration for the exploitation of their work, except in the case of software, and this right applies even where ownership of the work is transferred. Express assignment clauses in employment and service contracts are therefore indispensable, and IP chain-of-title is now a standard due diligence item.

Patents

Patent rights over inventions developed in performance of a contract belong to the commissioning party or employer, unless otherwise agreed, but inventors hold an inalienable right to participate in ownership and in the benefits of exploitation in a percentage of no less than 25%.

Joint development

Absent agreement, co-ownership rules apply, making contractual allocation critical.

AI-generated content

Authorship presupposes a human creator. There is not yet any specific legislation or case law on AI-generated works, so ownership must be allocated contractually.

Remedies

Rights holders may pursue administrative enforcement before SENADI (cease-and-desist orders and fines), civil actions for injunctions and damages, precautionary measures including seizures, and border measures. Criminal liability is limited to commercial-scale counterfeiting and piracy.

7.4 Consumer Protection

Principal Framework

Consumer relationships are governed by the Organic Consumer Protection Law (LODC). Its provisions are of public order, prevail over ordinary laws, and must be interpreted in the manner most favourable to the consumer in case of doubt. In practice, this means commercial terms cannot contract out of the LODC in B2C dealings. Key features include:

- cooling-off – a statutory right of return, mainly for sales concluded outside commercial premises or at a distance;
- unfair terms – abusive clauses are void, including those excluding provider liability, allowing unilateral modification or imposing waivers of the consumer's procedural rights; and
- disclosure – mandatory information duties on price, characteristics, warranties and contractual conditions.

E-commerce is further governed by the Electronic Commerce Law, the e-commerce provisions of the 2019 Commercial Code and the 2021 Organic Personal Data Protection Law, which now shapes most online consumer contracting.

Enforcement

The Ombudsman's Office (*Defensoría del Pueblo*) handles consumer complaints and mediation. Infringements are prosecuted before judges with jurisdiction over contraventions, who can impose fines and order full reparation. The competition authority sanctions misleading advertising and deceptive practices as unfair competition.

Approach of Courts and Regulators

Enforcement remains largely complaint-driven and fragmented, which is precisely what the legislature has tried to fix. A comprehensive bill to replace the 2000 law, adding specific rules on e-commerce and digital platforms and a dedicated sanctioning regime, passed first debate in May 2025. However, the committee recommended shelving it at second debate, and a new reform bill was introduced in early 2026. For businesses, the practical takeaway is to align online terms with international standards: platform regulation is coming, and the direction of travel is clear.

8. Foreign Investment

8.1 Competition and Merger Control

Framework

Merger control is governed by the Organic Law on Market Power Regulation and Control (LORCPM) and its regulations, and enforced by the SCE. Only horizontal and vertical transactions require mandatory prior notification. Conglomerate deals have been excluded from mandatory control by the authority's own precedents, so do not require notification.

Thresholds and Timing

Notification is mandatory when either of the following two thresholds is met:

- turnover – the parties' combined turnover in Ecuador exceeds an indexed threshold, which stood at approximately USD92 million in 2024; or
- market share – the parties hold a combined share of 30% or more of the relevant market.

A recent reform created uncertainty as to whether turnover is now measured only in the affected relevant market, although the SCE's notification form still refers to the parties' total turnover in Ecuador.

The filing deadline is unusually tight, at eight calendar days from the conclusion of the agreement. Pre-filing consultations and a fast-track procedure are available. The substantive test asks whether the transaction may significantly restrict competition, with the SCE assessing market definition, shares and concentration indices (HHI).

What's New

On 6 October 2025, the SCE issued its non-binding Guidelines for the Analysis of Economic Concentration Transactions, which clarify jurisdictional questions, simplified review scenarios and the treatment of ancillary restraints such as non-compete clauses.

Failure to Notify

Failure to notify a transaction subject to prior control, or closing before authorisation, is a serious infringement. It exposes the parties to turnover-based fines and to corrective measures, including the reversal of the transaction.

Anti-Competitive Conduct

Cartels and abuse of dominance are sanctioned with fines calculated as a percentage of turnover, together with cease-and-desist orders and corrective remedies. A leniency programme is available for cartel participants who self-report. Private parties may also claim damages before the courts.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Review and Approval

Ecuador has no general foreign investment screening regime. Under the Organic Code of Production, Trade and Investment (COPCI), foreign investors receive national treatment and may freely establish companies, acquire shares and repatriate profits. Foreign direct investment is registered with the Central Bank for statistical purposes only. There is no approval requirement, no deal-size threshold and no filing fee.

Restricted Sectors

The Constitution reserves strategic sectors to the State, including hydrocarbons, mining, energy, telecommunications and water. Private and foreign capital participates through concessions, delegated management and public-private partnerships rather than outright ownership. Further sector-specific rules apply.

- Financial services – acquisitions of significant holdings require prior authorisation from the banking and insurance regulators.
- Media – foreign ownership of national media is restricted.
- Border and coastal areas – acquisitions of real estate by foreigners are subject to security-related authorisation.

These restrictions are enforced through sector licensing; non-compliant transfers may be denied registration or approval, or declared void.

National Security Review

There is no standalone national security review process. Security considerations operate only through the sector-specific rules outlined above.

Incentives

The main tool is the investment contract, which grants stability to tax incentives for its term, along with customs and foreign currency outflow tax (ISD) exemptions on capital goods and access to arbitration. The December 2023 Organic Law on Economic Efficiency lowered the minimum investment required to sign an investment contract from USD250,000 to USD100,000. The same reform relaunched the former special economic development zones (ZEDEs) as free

trade zones, with more flexible rules and tax benefits for operators and users. Sector incentives also exist for tourism, renewable energy and PPP projects.

Recent Developments

The reforms of 2023 lowered barriers to investment contracts and revamped the free trade zones. Ecuador has also expanded its trade network, notably with the China FTA. The main remaining constraint is constitutional. Article 422 limits the State's ability to submit investment disputes to international arbitration, and voters rejected lifting this restriction in the April 2024 referendum. Investors therefore rely on investment contracts and arbitration clauses within the constitutional exceptions.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Data protection is governed by the 2021 Organic Personal Data Protection Law (LOPDP), its 2023 General Regulation, and a fast-growing body of secondary rules issued by the Superintendency of Personal Data Protection (SPDP). The SPDP became fully operational in 2025, and that year marked the shift from a "law on paper" to active supervision. Sector rules overlay the LOPDP, notably for credit information and banking secrecy, health data and telecommunications.

Key Obligations

The LOPDP is closely modelled on the EU's GDPR.

- Legal bases – consent must be free, specific, informed and unambiguous, but it is only one of several legal bases, alongside contract performance, legal obligation and legitimate interest.
- Accountability – controllers must keep a record of processing activities, conduct impact assessments for high-risk processing, enter into data processing agreements with processors and honour data subject rights.
- Data Protection Officer – in July 2025, the SPDP approved the Regulation on the Data Protection Officer, which details such officer's appointment, independence and protection against retaliation.
- Breach notification – breaches must be notified to the SPDP and, where they affect data subjects' rights, to the individuals concerned, within short statutory deadlines. The SPDP's Technical Regulation on Security Breach Notification was approved in April 2025 and is already being updated. Notifications are filed digitally through the SPDP's national system.
- Sanctions – fines are calculated as a percentage of turnover, under a fining methodology approved in 2025.

Cross-Border Transfers and Localisation

In the most significant development of 2026, the SPDP issued the General Regulation on National and International Transfers of Personal Data on 28 January 2026. International transfers not covered by an adequacy decision or recognised safeguards must now be registered in the National Data Protection Registry. Recognised safeguards include binding corporate rules, codes of conduct and certification. Controllers must also keep an updated record of all transfers, and a transitional regime allows previously undeclared transfers to be regularised. There is no general data localisation requirement, but intra-group data flows and cloud arrangements now require documented safeguards, making transfer mapping a priority for multinational groups.

9.2 Anti-Money Laundering, Sanctions and Corruption

The framework was overhauled in 2025. The Organic Law on the Prevention, Detection and Combat of Money Laundering and the Financing of Other Crimes entered into force on 29 July 2025, replacing the previous law. The changes most relevant to businesses are as follows.

- Wider scope of obliged entities – reporting entities now include virtual asset service providers, lawyers, accountants and notaries, alongside financial institutions and designated non-financial businesses such as construction companies, real estate agents and vehicle dealers.
- Risk-based compliance – obliged entities must implement internal compliance programmes, subject to independent audit, and apply enhanced due diligence on beneficial owners and politically exposed persons.

- Cash restrictions – notaries may no longer authorise title transfers paid in cash, which is a significant change for real estate transactions.
- Implementing regulation – the regulations issued under Executive Decree 298 in January 2026 created a national AML co-ordination council, strengthened cash limits and empowered the UAFE to freeze funds administratively in urgent cases.

Ecuador has no autonomous economic sanctions regime. Targeted financial sanctions by the UN Security Council are implemented through the AML framework: obliged entities must screen against binding lists and report matches. Export controls are limited to sector-specific rules. In practice, the greater exposure for local businesses comes from foreign regimes such as OFAC, which drive the requirements of correspondent banks.

The COIP establishes criminal liability for legal entities, and 2021 reforms criminalised private-to-private bribery, alongside recognising effective compliance programmes as a factor in assessing corporate liability. Companies typically structure programmes around a compliance officer, risk mapping, third-party due diligence, gifts-and-hospitality policies and whistleblowing channels, often aligned with ISO 37001.

The UAFE and the sector superintendencies supervise and sanction obliged entities through fines, licence measures and, now, administrative freezes. The Attorney General's Office prosecutes money laundering and corruption offences, and the Comptroller General audits the use of public funds.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Requirements

The 2008 Constitution is unusual: it recognises nature as a holder of rights and establishes strict and joint liability for environmental damage. Environmental actions are also imprescriptible. The Organic Environmental Code (COA) and its regulations implement this framework. Projects require a registration or an environmental licence, depending on their impact level, issued through the online system SUIA, with environmental impact studies and public participation required for higher-impact projects. In transactions, environmental licences and remediation obligations follow the asset or project, and transferring a licence requires authority approval. Environmental due diligence is therefore not optional. Ecuador has no carbon tax or emissions trading system, and carbon markets remain voluntary.

Climate Litigation and Corporate Liability

Ecuador is a global reference in rights-of-nature litigation. In the *Los Cedros* case (2021), the Constitutional Court annulled mining permits in a protected forest on rights-of-nature grounds. In the 2023 Yasuní referendum, voters mandated the phase-out of oil extraction in Block 43. Courts have also ordered the progressive elimination of gas flaring in the Amazon. For investors, the practical consequence is that constitutional actions can suspend permits already granted, so permitting risk now extends beyond regulatory compliance to rights-of-nature and prior consultation challenges.

Health and Safety

Ecuador is a unitary state, so there is no federal–provincial interaction. OHS obligations derive from the Labour Code and the 2022 Regulation on Occupational Health and Safety. They are supervised by the Ministry of Labour, while the IESS manages occupational risk insurance. Employers must maintain risk assessments, safety committees and medical surveillance proportional to their size.

Licensing and Sector Regimes

Every business needs municipal operating licences. Regulated sectors require specific authorisations:

- hydrocarbons, mining and energy from the energy and mining regulator;
- telecoms from ARCOTEL;
- pharmaceuticals and food from ARCSA; and
- banking, insurance and securities from the respective superintendencies.

In M&A, changes of control in regulated entities frequently require prior approval or notification, which should be built into transaction timelines as a condition precedent.

9.4 Artificial Intelligence

Ecuador has no AI-specific legislation. AI systems are governed by general rules, the most relevant of which is the LOPDP. It grants individuals the right not to be subject to decisions based solely or partially on automated processing, requires impact assessments for high-risk processing, and imposes transparency duties on controllers. Constitutional non-discrimination guarantees, consumer protection rules on information and misleading practices, and the human-authorship requirement under *Código Ingenios* complete the picture. In practice, AI governance in Ecuador today is data protection governance.

Policy and Proposed Legislation

2026 has been a defining year, albeit without a law.

- National strategy – in March 2026, the government adopted the Strategy for the Promotion of the Development and Ethical and Responsible Use of Artificial Intelligence, a 2025–2029 roadmap built on three axes: AI governance, capacity and technology, and adoption.
- First bill shelved – on 15 September 2026, the National Assembly voted, with 88 votes, to shelve the Organic Law on the Regulation and Promotion of Artificial Intelligence, which would have classified AI systems into four risk levels (low, moderate, high and extreme). Lawmakers criticised its prohibitive approach and its fiscal cost.
- New bill pending – a new Organic Law for the Development, Ethical Use and Governance of Artificial Intelligence was filed on 1 September 2026. It follows a risk-based model, recognises rights of individuals affected by AI and includes innovation incentives, with particular focus on protecting minors.
- Criminal law – a separate bill to amend the COIP would penalise AI-generated fake intimate content and treat the use of AI as an aggravating circumstance for certain offences.

Practical Obligations

Pending legislation, organisations deploying AI should treat LOPDP compliance as the baseline, implementing documented legal bases, impact assessments for profiling and automated decisions, human review mechanisms, and contractual allocation of liability with AI vendors. The direction of travel points to a risk-based model inspired by the EU AI Act, so early alignment with that model is the prudent course.

9.5 Other Regulatory Compliance Requirements

Beyond the regimes previously outlined, foreign investors most often underestimate the following four areas.

- Corporate reporting – companies supervised by the SCVS must file annual financial statements and shareholder and management information. Companies above statutory thresholds must also file external audit reports. Non-compliance can lead to fines and, ultimately, to the company's dissolution.
- Beneficial ownership – companies must report their shareholders and beneficial owners to the SRI and update this information annually. Opaque structures, particularly those involving entities in tax havens or preferential tax regimes, face higher tax rates and specific deduction limitations.
- Foreign currency outflow tax (ISD) – payments abroad, including dividends, imports and service fees, are subject to ISD unless an exemption applies. ISD is a key structuring variable for cross-border transactions and intra-group flows.
- Labour profit-sharing – employers must distribute 15% of their annual profits to employees. This is a mandatory cost that directly affects valuation and should be reflected in any financial model.

A further labour obligation affects larger employers, which must meet a minimum quota for hiring persons with disabilities; non-compliance is sanctioned with fines.

Compliance is increasingly digital. Electronic invoicing is mandatory, and the SRI and the Superintendency of Companies cross-check data automatically, so inconsistencies between tax, corporate and AML filings are now detected far more quickly than in the past. For new entrants, the practical recommendation is to build a single integrated compliance calendar from day one, covering corporate, tax, labour, data protection and AML obligations.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment Framework

The employment regulatory framework in Ecuador is led by the Constitution, which guarantees non-waivable rights, job stability and fair compensation. Likewise, the Labour Code regulates the employment relationship, defining contractual modalities, working hours, salary payments, statutory bonuses and the calculation of overtime and supplementary hours. In addition, the Ministry of Labour regularly issues Ministerial Agreements that regulate specific employment contracts, administrative procedures and working schedules tailored to various economic sectors. Furthermore, the Social Security Law mandates compulsory enrolment for all payroll employees from their first day of work, while an approved Internal Work Regulation establishes the company's operational rules and disciplinary regime.

Termination Procedures and Just Cause (Visto Bueno)

To legally terminate an employment relationship without incurring wrongful dismissal indemnities, employers must substantiate the termination under statutory grounds set by law. The formal mechanism to establish just cause is the administrative procedure known as *Visto Bueno*, conducted before a Labour Inspector from the Ministry of Labour. This petition must be filed within a strict, non-extendable one-month deadline from either the commission of the infraction or the date the employer became aware of it. Common grounds include unexcused absences for more than three consecutive days, severe indiscipline, manifest ineptitude, and workplace harassment or violence.

During this administrative procedure, both parties submit evidence within a formal hearing, enabling the Labour Inspector to issue a reasoned decision. This decision may be challenged by either party through administrative channels and subsequently before the judicial courts. Without a favourable *Visto Bueno* resolution, any unilateral termination is treated as wrongful dismissal, triggering the obligation to pay statutory severance.

Wrongful Dismissal Claims and Remedies

Wrongful dismissal occurs when an employer unilaterally terminates an employment contract without statutory grounds or a favourable *Visto Bueno* ruling. In such cases, Ecuadorian law entitles the employee to statutory severance payments calculated based on length of service and compensation. Except for special protected categories (such as pregnant workers or union leaders), the standard legal remedy is monetary compensation rather than job reinstatement. Judicial claims for these payments and unpaid benefits may be brought before Labour Courts within a general three-year statute of limitations.

Constructive Dismissal and Employer Liability

Constructive dismissal occurs when employer actions force an employee to resign by substantially and adversely altering their agreed working conditions. Practices such as unilateral job demotions, unexpected compensation reductions or systematic wage delays entitle the employee to request a *Visto Bueno* against the employer. If the administrative or judicial authority confirms the employer's breach, the company is required to pay indemnities equivalent to a wrongful dismissal. To mitigate these legal risks, companies must strictly document all organisational changes and maintain effective internal dispute resolution mechanisms.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation Structuring

Executive incentive structuring in Ecuador fundamentally depends on whether the officer is legally classified as a commercial manager or as an employee under an employment relationship. According to the Labour Code, legal representatives holding general administrative powers of attorney act as commercial managers and are excluded from standard labour regulations. Consequently, their fees and performance bonuses are freely negotiated without statutory obligations to pay mandatory employment benefits such as 13th and 14th month salaries, reserve funds or the 15% profit-sharing allocation. Conversely, senior executives without legal representation are protected by labour law, which mandates guarantees for social security enrolment, paid vacations, overtime and supplementary hours, agreed bonuses, profit shar-

ing, statutory bonus salaries, and wrongful dismissal severance.

Equity-Based Incentives

The introduction of the S.A.S. has provided flexibility for issuing special share classes tailored for retention programmes. Despite this corporate option, phantom shares and cash-settled stock appreciation rights remain the most widely used tools in Ecuador as bonuses or long-term incentives. These synthetic incentives grant executives the right to receive financial payouts tied to company valuation without granting shareholder status, thereby eliminating corporate deadlock risks or minority litigation. Governed by freedom of contract principles, these plans feature vesting schedules or specific performance targets with clear payout rules, executed through commercial service contracts or payroll performance bonus agreements.

Tax and Social Security Implications

All monetary compensation received by an executive constitutes taxable income that must be reported as a bonus within the personal income tax base. For payroll employees, these amounts are also subject to mandatory contributions to the IESS. To ensure that these payments are deductible as operating expenses in the company's corporate income tax return, employers must timely execute all corresponding tax withholdings and social security contributions. Any failure to withhold or contribute results in the rejection of the tax deduction and the assessment of tax adjustments and interest charges against the company.

Change of Control Provisions

These control agreements are fully valid and enforceable for commercial managers under general freedom of contract principles. Within these management agreements, parties may freely agree on financial compensation or contractual penalties triggered by an early removal resulting from a corporate merger or acquisition. However, for executives employed under a labour relationship, these benefits must be structured as independent extraordinary bonuses in addition to mandatory, non-waivable statutory severance payments. Rigorous drafting must prevent these bonuses from being reclassified as part of the executive's regular salary, thereby avoiding retroactive claims for social security contribution recalculations.

Restrictive Covenants

The validity and enforceability of restrictive covenants in Ecuador vary substantially depending on the legal framework under which they are agreed upon.

Non-competition

During the employment relationship, the duty of non-competition is mandatory, and its breach constitutes just cause for dismissal through a *Visto Bueno* procedure. However, post-employment non-compete clauses in labour contracts are considered null and void for violating the constitutional right to work. In contrast, commercial non-compete covenants are fully enforceable provided they are limited in time, geographic scope and objective, and include express financial compensation.

Non-solicitation

Agreements prohibiting the diversion of clients or the poaching of key employees are broadly recognised under commercial and competition laws. Their procedural enforceability before courts is significantly enhanced by incorporating penalty clauses that predetermine liquidated damages, avoiding complex expert evidence on damages.

Confidentiality

Confidentiality and trade secret protection agreements are highly effective and may extend indefinitely following the executive's departure. Ecuadorian legislation authorises civil precautionary measures and even criminal sanctions for the unauthorised disclosure or exploitation of commercial secrets.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership and Acquisition

The Ecuadorian Civil Code recognises individual and collective private property rights, authorising co-ownership and horizontal property regimes for subdivided independent units. Real estate may be acquired through purchase, donation, dation in payment, acquisitive prescription, testate or intestate succession, or structured via trusts. In urban areas, land use and development are regulated by Land Use and

Management Plans (PUGS) enacted by local municipal governments. In addition, the Constitution recognises community and ancestral land rights belonging to indigenous communities, which remain inalienable, unseizable and indivisible.

Requirements and Restrictions

Foreign individuals enjoy the same civil rights to acquire, encumber and sell real estate as Ecuadorian citizens, requiring only a valid passport to execute public deeds without prior legal residency requirements. For foreign corporations acquiring real estate as a passive asset or non-recurring investment, the Companies Law does not mandate branch domiciliation, requiring only the registration of a local general power of attorney. However, if property ownership or usage forms part of regular and ongoing commercial operations, the foreign entity is required to formally establish a local branch with the Superintendency of Companies.

Territorial Restrictions and Public Domain Assets

Ecuadorian legislation enforces specific geographic and legal boundaries on real estate acquisition.

- Border security zones – the Public Security Act strictly prohibits foreign individuals and corporations from acquiring or holding real estate or concessions within 20 kilometres of land borders or ten nautical miles of maritime coastlines, subject to narrow statutory exceptions.
- Galapagos Special Regime – all real estate transactions, land subdivisions or investment developments within the insular province require prior authorisation from the Governing Council of the Special Regime of Galapagos.
- Public domain property – assets such as roads, public squares, rivers, beaches and territorial waters belong to the public domain and are strictly inalienable, unseizable and imprescriptible, making private ownership legally impossible.

Tax Framework, Exemptions and Foreign Currency Outflow Tax

Ecuador does not impose discriminatory taxes based on foreign nationality, but property transfers are subject to local municipal transfer taxes (*Alcabalas*) and urban capital gains taxes (*Plusvalía*). In addition, specific cantons such as Guayaquil levy an additional surcharge benefiting the *Junta de Beneficencia*, alongside mandatory regulated notary fees and Property Registry filing fees defined by local municipal ordinances. At the national level, capital gains realised by natural persons from occasional real estate sales (up to two non-habitual transfers per fiscal year) are exempt from Income Tax. When a non-resident owner sells property and repatriates the funds abroad via the financial system, the transfer is subject to the Foreign Currency Outflow Tax (ISD), while foreign capital is incentivised through a five-year Temporary Fiscal Residency for real estate investments of at least USD150,000.

11.2 Commercial Real Estate Transactions

Legal Framework and Real Estate Registration

The regulatory framework governing commercial real estate transactions in Ecuador is based primarily on the Civil Code and the Code of Commerce, and secondarily on the Companies Law and the Organic Code of Territorial Organisation (COOTAD). Property conveyances and the creation of in rem rights strictly require the execution of a public deed before a notary public. Furthermore, the land registration system is decentralised, with an independent Property Registry operating in each canton. Mandatory registration of the public deed at the Property Registry of the canton where the asset is located is a constitutive legal requirement for ownership transfer and enforceability against third parties.

Due Diligence, Title Insurance and Environmental Liability

Acquiring or disposing of commercial real estate requires rigorous legal due diligence to mitigate operational and financial risks. Key considerations include the following.

- Title search and ownership chain – this involves reviewing historical acquisition deeds and obtaining the Ownership History Certificate to verify the uninterrupted chain of title.
- Encumbrance Certificate – this is an official document issued by the Property Registry confirming the absence of mortgages, liens, foreclosures, prohibitions on transfer, or pending lawsuits affecting the asset.

- Land use and municipal compliance – verification of the Land Use Certificate under local Land Use and Management Plans (PUGS) to ensure the property is zoned for the intended commercial operations.
- Municipal appraisal – reviewing the cadastral appraisal certificate to ensure transaction pricing complies with statutory limits and avoids rescission claims based on gross disparity.

Title insurance is not a customary or standard practice in Ecuador, as legal certainty is achieved through comprehensive due diligence and official public land registry certificates. Regarding environmental liability, the COA imposes strict and joint liability for environmental remediation on property owners and operators. Consequently, conducting Phase I and Phase II environmental site assessments is highly recommended for industrial and complex commercial assets, to avoid inheriting historical contamination liabilities.

Commercial Mortgage Financing

Commercial real estate financing is typically secured through mortgages executed via public deed and registered at the local Property Registry. Under the Civil Code, mortgage claims rank as third-class preferred credits, granting the lender priority over the proceeds from the judicial sale of the encumbered asset. This priority can only be displaced by first-class privileged claims, such as labour liabilities, statutory child support or direct tax debts, if the debtor possesses no other assets. When multiple mortgages encumber the same property, priority among creditors is determined strictly by the chronological order of their registration.

Upon a payment default, the lender initiates judicial foreclosure proceedings to obtain an attachment order and register a prohibition to sell the asset. Subsequently, the property is appraised by a court-appointed expert for public auction. In Ecuador, judicial foreclosures are conducted exclusively through the online auction system managed by the Judicial Council. Lenders are strictly prohibited from directly appropriating or taking possession of the mortgaged asset without completing the public auction process.

Commercial Leases

Commercial property leases are governed by the Code of Commerce and the Civil Code under general freedom of contract principles, distinguishing them from residential tenancies governed by the Tenancy Law. Parties to a commercial lease are free to negotiate duration, rent amounts, adjustment formulas and security deposits. By statutory default, tenants are strictly prohibited from assigning the lease or subletting the premises without the express written consent of the landlord.

Furthermore, commercial legislation does not grant tenants an automatic right to lease renewal or first refusal upon expiration. To prevent unwanted tacit renewals, commercial agreements typically include express expiration terms and structured renewal procedures. In cases of tenant default or breach of contract, parties commonly rely on contractual penalty clauses and dispute resolution through mediation and arbitration centres. In the absence of an arbitration clause, landlords must pursue judicial eviction and contract termination before civil courts.

Recent Developments

Ecuadorian authorities have recently tightened anti-money laundering controls through regulations issued by the UAFE. A notable regulation strictly prohibits cash payments equal to or exceeding USD10,000 for real estate transactions, requiring mandatory banking channels. For transactions under this threshold, parties must submit a sworn declaration confirming the lawful origin of funds. In addition, national tax regulations continue to exempt capital gains earned by natural persons from occasional real estate sales, provided the seller conducts no more than two transfers per fiscal year outside their ordinary business.

Trends and Developments

Contributed by:
Randy Arévalo, Verónica Regalado, Maria de los Angeles Perez and Karen Arévalo Villarreal
VIVANCO & VIVANCO

VIVANCO & VIVANCO is one of Latin America's oldest law firms, founded in 1902 and originally established as an international representation agency promoting business across the region. Today, the firm combines that legacy with a modern, multidisciplinary, business-oriented practice serving clients across Latin America, Europe and the United States. It has offices in Argentina, Colombia, Costa Rica and Ecuador, together with subsidiaries in more than 14 cities. The firm emphasises specialised practice groups, personalised service and strong regional co-ordination, allowing it to advise on both local and cross-border matters. Its lawyers have also participated in legislative drafting processes and in the development of significant local and multinational projects, reflecting deep technical capability and regional insight. VIVANCO & VIVANCO also maintains a recognised pro bono commitment through the Arsenio Vivanco Neira Foundation, with a particular focus on Latin American society and education.

Authors



Randy Arévalo is director of the Guayaquil office of VIVANCO & VIVANCO, where his practice focuses on corporate and commercial law, real estate, fiduciary structures and securities law. He advises developers, investors and corporate groups on incorporations and restructurings, share transfers, capital increases and in-kind contributions, as well as the structuring of collective investment funds and trust vehicles for real estate projects. He is a member of the International Association of Young Lawyers and has contributed as an expert to the World Bank's B-READY project for two consecutive years. Randy is certified as a Data Protection Officer by Universidad de Especialidades Espíritu Santo.



Maria de los Angeles Perez is a paralegal in VIVANCO & VIVANCO's Guayaquil office, where her practice focuses on corporate and commercial law, real estate, labour law and data protection. She advises companies and individuals on structuring efficient asset management solutions tailored to their specific needs. She graduated in Law from ECOTEC University, with an emphasis on tax and commercial law, which provides a solid foundation for her work in corporate and asset structuring.



Verónica Regalado is the Director of the Special Procedures Department at VIVANCO & VIVANCO, and the firm's Andean Hub Co-ordinator. With nearly two decades of experience, her practice focuses on corporate law, advising companies and family groups, including family offices, on the structuring, organisation and protection of their assets and businesses. She complements her practice with experience in corporate governance, having served as a Member of the Board of Directors of Banco del Austro (2014–2018) and as Director of VGV Corporate since 2011. Verónica holds a law degree from Universidad San Francisco de Quito and completed post-graduate studies at Universidad Andina Simón Bolívar.



Karen Arévalo Villarreal is an associate at VIVANCO & VIVANCO in Quito, which she joined in 2023. Her practice focuses on regulatory and corporate matters for foreign investors and companies, including investment-based residence, the mobility of executives and staff, and filings before Ecuadorian authorities. She also supports the firm's corporate and regulatory practice. Karen graduated top of her class in Law from Universidad Hemisferios, and also holds a degree in Political Science and International Relations and a Master's in Criminal Procedure and Oral Litigation.

Contributed by: Randy Arévalo, Verónica Regalado, Maria de los Angeles Perez and Karen Arévalo Villarreal, **VIVANCO & VIVANCO**

VIVANCO & VIVANCO

Avenida Francisco de Orellana
Edificio World Trade Center
Torre B, Piso 6, Of. 605
Guayaquil
Ecuador

Tel: (+593) 46008613
Email: rarevalo@vivancoyvivanco.com
Web: vivancoyvivanco.com

Sports Corporations in Ecuador: Opening Professional Football to Private Capital

The end of the associative model

The most significant corporate development of 2026 in Ecuador came from an unexpected field: professional sport. The Organic Law on Sport, Physical Education and Recreation (LODEFR), published in Official Register No 223 on 11 February 2026, replaced the 2010 Sports Law and created the sports corporation, or *sociedad anónima deportiva* (SAD). For the first time, Ecuadorian football clubs can become commercial companies with capital divided into shares, open to private and foreign investment.

The framework was completed in June 2026. The General Regulation to the LODEFR was issued by Executive Decree No 422, and on 24 June 2026 the Superintendency of Companies, Securities and Insurance (SCVS) issued Resolution No SCVS-INC-DNCDN-2026-002, which regulates the transformation of existing clubs into SADs.

The reform responds to four structural limits of the associative model, under which clubs operated as non-profit corporations or foundations.

- Capitalisation – a non-profit association has no share capital, so it cannot offer investors an equity stake in exchange for their contribution.
- Governance – many club by-laws lack safeguards against abuse of power, clear decision-making procedures and transparency mechanisms comparable to those of the Companies Law.
- Oversight – clubs were subject to less demanding accounting and audit standards than SCVS-supervised companies.
- Planning – professional management of broadcasting, sponsorship and commercial revenue, multi-year budgets and youth development policies requires a business structure.

These limits weigh most heavily on the clubs that matter most to investors. Clubs with large fan bases and costly infrastructure, such as Barcelona SC, and clubs with growth-oriented models, such as Independiente del Valle, need organised finances to attract capital at an international level. The SAD gives them, for the first time, a corporate vehicle designed for that purpose.

Legal nature and dual regulatory framework

An SAD is a commercial *sociedad anónima* whose capital is divided into negotiable shares and whose corporate purpose is limited to sporting activities and related commercial activities. Shareholders are liable only up to their contribution, unless a court or arbitral tribunal disregards the company's legal personality under the Companies Law.

The key to the regime is that each SAD belongs to two legal worlds at once.

- At the corporate level, the Companies Law governs incorporation, governance, capital, shareholder rights, accounting, audit and dissolution, under the supervision of the SCVS.
- At the sporting level, the LODEFR and its regulations govern authorisation, sports registration, competitions and relations with federations and leagues, under the national sports authority.

For investors, this means two layers of oversight: one of the market and one of sporting integrity.

Several features distinguish the SAD from a club. Its highest body is the shareholders' meeting, a board of directors is optional, and its legal representative is not subject to the re-election limits that apply to club officers. As profit-making entities, SADs cannot receive subsidies, transfers or grants from the sports authority, although they keep general tax incentives for sport. Specific tax rules from the Internal Revenue Service (SRI) are still pending.

The law requires the abbreviation "SAD" in the company name, while the SCVS resolution refers to "S.A.D.". The accepted form should be confirmed when reserving the name.

Two routes in: incorporation and transformation

An SAD can be incorporated from scratch or created by transforming an existing club. A new SAD follows the general rules for any *sociedad anónima* and then applies for entry in the National Registry of Sports Organisations.

A transformation, not a dissolution

The transformation route is the more innovative of the two. The club adopts the legal form of a commercial company without being dissolved and without losing its legal personality. The SAD is the legal successor of the club and retains all its rights and obligations, including player contracts, sporting recognitions and sporting rights. No new club is born: the same legal entity continues, with its full history, brand and fan base, under a new organisational structure.

Transformation is voluntary. The SCVS resolution makes it available to specialised or professional clubs organised as non-profit corporations or foundations, although the LODEFR itself uses broader wording. The voluntary design reduces the risk of legitimacy conflicts with members. Argentina offers a useful contrast: the opening promoted there in 2024 met strong resistance from the national football association and from clubs defending their social role.

Requirements of Article 181 of the LODEFR

Article 181 subjects transformation to three requirements:

- an express resolution of the general assembly in accordance with the by-laws;
- authorisation from the sports authority after verifying that the club has met its legal and sporting obligations; and
- any further requirements set by the SCVS.

The sports authority may refuse authorisation if the club owes money to athletes, coaches or other entities of the national or international sports system, or if it faces judicial or administrative proceedings affecting its institutional integrity.

The transformation roadmap

- Preparation – the legal representative files a sworn statement on the lawful origin of members' contributions, reported to the Financial and Economic Analysis Unit (UAFE). The previous year's financial statements are audited by an SCVS-approved firm. The club prepares the draft by-laws, an explanatory report on the reasons for and consequences of the change, and an asset valuation by an expert registered with the Judiciary Council, which must accompany the notice of meeting.
- Members' vote – an extraordinary general assembly is called at least 15 calendar days in advance, including through a national newspaper. Transformation requires the favourable vote of two-thirds of all members, not only those present. The same session considers the financial statements, approves the by-laws and capital, appoints the legal representative and allows dissenting members to withdraw.
- Sports authority approval – without this, the club cannot go before the SCVS.
- Superintendency approval – within 60 days of that approval, the club files the conversion instrument and its financial statements, and the Superintendency orders registration.

Once the transformation is approved, the process is expected to take between 30 and 60 days. The club's president retains legal representation until registration and the appointment of the definitive legal representative.

Dissenting members may withdraw instead of becoming shareholders. However, because club assets cannot be divided, they receive no share of said assets.

Two registrations and the six-month deadline

An SAD exists once it is registered in the Mercantile Registry, but it cannot compete until it is also registered with the sports authority. If an SAD has no sports registration six months after its commercial registration, the SCVS may order its dissolution.

The law does not distinguish between new and transformed SADs, so transformed clubs should assume that the deadline applies to them as well. Sports registration requires an annual sports plan, a federation report, performance indicators and compliance with infrastructure standards. The sporting file should therefore be prepared in parallel with the corporate one, not after it.

SAD ownership: the multi-club restriction

An SAD can have a single shareholder, whether an individual or a company, and there is no maximum number of shareholders. The defining ownership rule is a restriction on multi-club holdings. No person may hold shares, directly or indirectly, in more than one SAD in the same sport. Holdings through subsidiaries or holding structures count. The rule protects the integrity of competitions and limits conflicts of interest, but it is also where the framework is least settled.

- The law's exception – the LODEFR exempts SADs that do not compete at the same time in the same category and series.
- The regulation's silence – the SCVS resolution omits that exception but refers back to the law. In our view, the law should prevail.
- The practical risk – promotion and relegation can bring two clubs into the same series, turning a compliant structure into a non-compliant one from one season to the next.

Until this is clarified, investors should seek confirmation from the authorities before structuring a multi-club investment.

Conversely, one SAD may hold more than one club, provided they do not compete at the same time in the same sport, category and series. Compliance must be verified by the SAD's legal representative and, in a public offering, also by the brokerage house and the stock exchange.

Share transfers and anti-money laundering checks

SAD shares are registered and negotiable. A transfer follows the Companies Law: it is documented by an assignment, becomes effective once entered in the share register and is reported to the SCVS, subject to any conditions in the by-laws. Three additional checks apply.

- Multi-club test – the SAD should confirm that the buyer and its group comply with the restriction described above.
- Anti-money laundering – SADs must monitor and report suspicious transactions to the UAFE and the Attorney General's Office. Professional football clubs in Serie A and Serie B are also reporting entities under the Anti-Money Laundering Law in force since July 2025, so buyers should expect thorough source-of-funds checks.
- Notice to the sports authority – failing to report changes in shareholders is a serious infringement and may lead to cancellation of the sports registration.

If the shareholders decide to open the capital to the public, the rules on primary public offerings apply, with brokerage houses involved under SCVS supervision. This creates, for the first time, a potential route to an organised capital market for Ecuadorian sport.

Initial capital, losses and inherited debts

For a transformed club, the starting point is its audited financial statements. The external audit determines the club's net equity, and the general assembly fixes the initial share capital on that basis. The assembly may also set a higher figure or authorise the issue of shares at a premium, which allows the entry valuation to recognise the value the club has accumulated. The by-laws may define how capital is allocated between continuing members and new investors.

The capital can never be lower than the minimum set by the SCVS. Neither the LODEFR nor its regulations fix a figure, and the general minimum for a *sociedad*

anónima is currently USD800. Investors should watch for a specific, higher threshold for SADs.

If the audit shows losses, continuing members must contribute enough to cover such losses and reach the agreed capital, as approved by the assembly that resolves the transformation. Two points are critical.

- Transformation does not clean the balance sheet. The SAD inherits all the club's debts.
- Members' personal assets remain protected. Under the General Regulation, the club's debts cannot be claimed from members personally. The contribution is a condition for continuing, not a liability.

The audit, the expert valuation, the interim financial statements and the transformation balance sheet may show different figures, so they should be co-ordinated early.

Open questions

The framework is new, and several points await secondary regulation or clarification.

- Minimum capital – no SAD-specific figure has been set, so the general USD800 minimum applies until the SCVS sets one.
- Multi-club exception – the law exempts SADs that do not compete simultaneously, but the SCVS resolution omits the exception.
- "Proceedings affecting institutional integrity" – the scope of this ground is undefined, yet it can block the sports authority's authorisation.
- Tax treatment – SRI rules are pending on the transformation itself and on dividends.
- Anti-money laundering – specific UAFE rules for SADs are pending.
- Protection of club identity – the right of withdrawal does not address the dilution of historic members or the protection of symbols, colours and home ground.

The identity issue can be managed through the by-laws. Governance mechanisms such as minority quotas or veto rights over identity-related decisions can balance the interests of investors and fans.

There is also a structural paradox. The clubs most in need of capital tend to be the most indebted, yet Article 181 allows the sports authority to refuse transformation where sporting debts are unpaid. Without a financial restructuring plan, the SAD may remain open mainly to financially sound clubs.

Practical recommendations

For investors

An investor in an SAD does not finance an empty structure: it acquires a stake in an entity with a track record, a brand and a fan base, supervised by the SCVS and backed by audited accounts and an anti-money laundering verification from day one. According to public information available as of October 2026, no Serie A club has yet completed its transformation, so early movers will have more room to negotiate terms. Before investing, they should:

- obtain audited and interim financial statements, together with a report on sporting and judicial contingencies;
- verify the sports authority's authorisation and the status of the SCVS filing;
- map their group structure against the multi-club restriction, including indirect holdings;
- review the political and economic rights granted by the by-laws;
- prepare source-of-funds documentation for anti-money laundering checks; and
- obtain tax advice on the investment and on dividends, given the pending SRI rules.

Once invested, they should account for ongoing duties. An SAD must:

- present its sports plan every year;
- report by-law changes affecting its sporting purpose within ten working days;
- keep the sports authority informed of its shareholders, staff and squad; and
- submit a technical report every six months.

Breaches can lead to cancellation of the sports registration.

For clubs

A club considering transformation should start with a comprehensive audit of its assets, liabilities and judicial contingencies, since future shareholders will inherit them. It should settle or restructure debts with athletes, coaches and sports entities before seeking authorisation. It should then design the by-laws and share allocation with legal and financial advice, and communicate transparently with members so that the two-thirds vote is informed, not merely formal.

Finally, the club must model its viability without public subsidies. That means projecting whether commercial, broadcasting and sponsorship revenue can offset the state support it will lose, and building a realistic timetable around the 15-day notice period, the 60-day filing window and the six-month registration deadline.

Conclusion

The SAD is the deepest reform of the legal organisation of professional sport in Ecuador in more than a decade. It offers a voluntary framework that combines legal continuity, SCVS oversight, mandatory audits, anti-money laundering controls and rules of competitive integrity. It places Ecuador within a regional and European trend that already includes Spain, Portugal, Chile and Brazil.

For investors able to manage the additional regulatory layer, the SAD may become the standard model for professional sport in the country. Its greatest risk, however, is the belief that a change of corporate form is enough to improve management. The SAD does not replace financial discipline, good governance or the relationship with the sporting community; it is only the instrument. If authorities refine the open questions and clubs protect members, athletes and creditors, the SAD can become an engine of modernisation rather than an empty shell.

EGYPT



Law and Practice

Contributed by:
Ragy Soliman, Ziad Bahaa-Eldin, Ehab Fedaa, Hossam Gramon, Menna Sultan, Darah Zakaria, Mohmed Fathy and Alia Monieb
ADSERO-Ragy Soliman & Partners

Contents

1. Business Entities P.238
1.1 Business Organisations p.238
1.2 Incorporation and Ongoing Compliance p.238
1.3 Share Issuances p.239
1.4 Distributions and Return of Capital p.240
1.5 Control Person Reporting p.240

2. Corporate Governance P.241
2.1 Legal Framework p.241
2.2 Directors' Duties and Liabilities p.241
2.3 Board Composition and Independence p.241
2.4 ESG and Disclosure Obligations p.242
2.5 Conflicts of Interest and Related-Party Transactions p.242

3. Shareholder Rights and Agreements P.243
3.1 Shareholder Rights p.243
3.2 Shareholder Agreements p.243

4. Mergers and Acquisitions P.244
4.1 Legal Framework p.244

5. Capital Markets P.245
5.1 Securities Regulation and Public Offerings p.245
5.2 Continuous Disclosure p.245
5.3 Insider Trading p.246
5.4 Shareholder Disclosure p.246
5.5 Internal Controls and Whistle-Blower Regimes p.247

6. Secured Transactions P.247
6.1 Transaction Financing and Security Interests p.247

7. Commercial Contracts P.248
7.1 Contract Formation and Enforceability p.248
7.2 Termination and Remedies p.249
7.3 Intellectual Property in Commercial Transactions p.249
7.4 Consumer Protection p.249

8. Foreign Investment P.250
8.1 Competition and Merger Control p.250
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.251

9. Regulatory Compliance P.252
9.1 Privacy and Data Protection p.252
9.2 Anti-Money Laundering, Sanctions and Corruption p.252
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.253
9.4 Artificial Intelligence p.253
9.5 Other Regulatory Compliance Requirements p.253

10. Employment and Labour P.253
10.1 Employment Standards and Workplace Regulation p.253
10.2 Executive Compensation and Restrictive Covenants p.254

11. Real Property and Commercial Leasing P.255
11.1 Requirements for Land Ownership p.255
11.2 Commercial Real Estate Transactions p.256

Contributed by:
Ragy Soliman, Ziad Bahaa-Eldin, Ehab Fedaa, Hossam Gramon, Menna Sultan, Darah Zakaria, Mohmed Fathy and Alia Monieb,
ADSERO-Ragy Soliman & Partners

ADSERO-Ragy Soliman & Partners is a law firm that aims to provide its clients with unparalleled quality services and innovative legal solutions with a global reach. By handling legal, strategic, operational and financial matters, the firm has developed a depth of expertise that is well rounded. The services encompass structuring, mergers and acquisitions, capital markets, debt finance, corporate governance, and complex high-stakes commercial and securities litigation. The lawyers have a breadth of experience in several jurisdictions – a valuable resource that allows the firm to offer practical cross-border solutions.

Authors



Ragy Soliman is the founder and managing partner of ADSERO – Ragy Soliman & Partners. With over 25 years of exceptional legal, strategic and financial experience, he serves as co-head of the M&A and restructuring practice. Ragy has executed over 100 M&A and 60 debt and equity transactions globally, including a ground-breaking USD25.7 billion telecommunications merger. His extensive business acumen includes executive roles and board memberships across major global stock exchanges. Beyond his transactional prowess, Ragy handles complex litigation and arbitration cases while remaining dedicated to cultivating highly knowledgeable, commercially minded lawyers to serve ADSERO's premier international and local clientele.



Ziad Bahaa-Eldin is a senior partner at ADSERO, heading the financial regulatory and capital markets practice. A lawyer and economist with three decades of experience, he holds a PhD in Financial Law from the London School of Economics. He formerly served as Egypt's Deputy Prime Minister for Economic Development, Minister of International Cooperation, and executive chair of the FRA and GAFI. Dr Bahaa-Eldin has drafted pivotal Egyptian financial legislation and advised global institutions including the World Bank. Currently, he chairs the Bank of Alexandria, holds multiple board memberships and is a weekly newspaper columnist.



Ehab Fedaa is a partner and head of the general corporate practice area at ADSERO. With over 25 years of experience, he specialises in corporate structuring, advisory and secretarial services. He advises multinational and national companies across various industries including oil, gas, energy, cosmetics, pharmaceuticals, real estate, hospitality and retail. His broad expertise includes doing business in Egypt, advising clients on optimal legal frameworks to drive the corporate governance life cycle. Additionally, Ehab has participated in notable mergers and acquisitions deals. He has represented several top industry leaders like Nissan Motors, Pfizer, Ezdehar, Uber, AstraZeneca Egypt for Pharmaceutical Industries, CGP Group and Wadi Group with success.



Hossam Gramon is a partner at ADSERO RagySoliman and Partners, leading the banking and finance practice group. Qualified since 2001, he brings over two decades of legal experience in finance, acquisitions and capital markets within Egypt. He is a recognised expert in sovereign bonds, sukuk, Islamic finance, project financing and non-banking financial services. Hossam regularly advises major international and local financial syndicates, including Goldman Sachs, JP Morgan, EBRD, HSBC and CIB. His exceptional market contributions have consistently earned him prestigious industry recognitions. He is globally ranked as a top leading legal professional by Chambers and Partners, among other leading law directories.

Contributed by:
Ragy Soliman, Ziad Bahaa-Eldin, Ehab Fedaa, Hossam Gramon, Menna Sultan, Darah Zakaria, Mohmed Fathy and Alia Monieb,
ADSERO-Ragy Soliman & Partners



Menna Sultan is counsel in ADSERO RagySoliman and Partners' general corporate, commercial and regulatory department, where she leads the e-commerce, retail and logistics practice. She has over ten years of experience with top-tier Egyptian law firms, including a five-year in-house secondment at Amazon, and advises clients on doing business in Egypt. Her expertise covers trade, general and product compliance, consumer protection, data privacy, employment, and day-to-day corporate and commercial matters. She advises leading e-commerce, retail and logistics companies across sectors including FMCG, fashion and automotive. Menna is qualified to practice law in Egypt and is fluent in Arabic and English.



Darah Zakaria is counsel in the general corporate, commercial and regulatory department of ADSERO and head of the telecommunications, media and technology (TMT) practice. With over nine years of experience at top-tier Egyptian law firms, she specialises in commercial law, intellectual property, M&A, banking and capital markets. As TMT head, she provides multinational companies with comprehensive regulatory and corporate support for operating in Egypt. Her diverse expertise spans employment law, privacy compliance, and strategic guidance for local start-ups. Darah also handles complex corporate transactions, including incorporations, taxation and due diligence. Fluent in Arabic and English, she is qualified to practice in Egypt.



Mohmed Fathy is a partner at ADSERO and leads its real estate, tourism, hospitality and construction practice. He has over 15 years of legal experience advising leading and multinational clients on real estate development, hotel development and management, construction projects, the pharmaceutical sector, joint ventures, corporate restructuring, M&A, and energy and infrastructure projects. He has also handled complex litigation and arbitration, including CRCICA and ICSID proceedings. In addition to his legal practice, Mohamed is a lecturer at Cairo University and holds a PhD from Queen Mary University of London and an LLM from Indiana University. He is also a CEDR-accredited mediator.



Alia Monieb is a partner and head of the employment practice at ADSERO since 2019, providing comprehensive support on Egyptian employment and HR matters. With over a decade of experience, she guides local and multinational clients through the full employment life cycle, from onboarding, policy design, contract localisation and benefits to complex terminations, redundancies and amicable settlements. She regularly handles employee transfers, outsourcing arrangements, government inspections, employment investigations and labour compliance, and advises on the employment aspects of restructurings, M&A and post-acquisition integrations. Alia also delivers tailored training to HR departments, including organisations with over 1,000 employees. She is fluent in Arabic, English and French.

ADSERO-Ragy Soliman & Partners

1 El Gabalaya St
Al Gabalayah, Zamalek
Cairo Governorate 11211
Egypt

Tel: +20 2 2735 3203
Email: info@adsero.me
Web: www.adsero.me

Contributed by:
Ragy Soliman, Ziad Bahaa-Eldin, Ehab Fedaa, Hossam Gramon, Menna Sultan, Darah Zakaria, Mohmed Fathy and Alia Monieb,
ADSERO-Ragy Soliman & Partners

1. Business Entities

1.1 Business Organisations

Available Legal Structures

Investors in Egypt can choose from several forms of legal entities when establishing a local business. The most common corporate forms are joint stock companies (JSCs) and limited liability companies (LLCs). A more recent form is the sole proprietorship company with limited liability (SPC), which was introduced pursuant to Law No 4 of 2018.

In addition, Egyptian law recognises partnerships, namely general partnerships and limited partnerships, which are governed by the provisions of Egyptian Law No 17 of 1999.

Liability Considerations

The extent of the investor's liability is an important consideration when selecting the appropriate legal structure. Partnerships are generally less attractive to investors seeking to ring-fence their personal assets, as the liability of the general managing partners may extend to their personal financial assets, depending on the type of partnership and the applicable legal framework.

For similar reasons, SPCs may not always be the preferred structure where the investor seeks a clear separation between its personal financial liability and that of the SPC. Accordingly, investors seeking stronger asset protection and a clear distinction between the investor's assets and those of the business would generally consider an LLC or JSC.

Factors Affecting the Choice Between an LLC and a JSC

The choice between an LLC and a JSC will generally depend on the nature and future plans of the business, as well as its financing requirements.

A JSC may be more suitable where the investor requires higher bankability, particularly for large-scale projects where a more formal corporate governance framework is desirable, such as a flagship manufacturing entity or a holding company. It may also be preferable where there are plans to list the company on the Egyptian Exchange (EGX) or undertake a public offering.

An LLC may be preferable where procedural simplicity, flexibility in management and comparatively lower establishment and operating costs are the primary considerations, particularly where there are no plans to list the company, issue securities to the public or rely extensively on sophisticated capital-market financing tools.

1.2 Incorporation and Ongoing Compliance

Company Incorporation and Registration Procedures

Incorporating a company in Egypt generally commences with obtaining a non-confusion certificate for the proposed company name, confirming that it is not identical or confusingly similar to the name of an existing company.

The company must then secure premises to serve as its headquarters by entering into a lease agreement. Following this, an incorporation application is submitted to the General Authority for Investment and Free Zones (GAFI) by virtue of the power of attorney granted by the founders, together with payment of the applicable incorporation fees, which are determined based on the company's capital.

Once GAFI approves the application, the Articles of Incorporation are executed and notarised before the notary public and the Bar Association, as applicable.

Thereafter, the company is registered with the Chamber of Commerce, followed by registration with the Commercial Registry to obtain its commercial registration number. The company then applies for its tax card and opens a file with the Social Insurance Authority. Finally, the company registers with the Value Added Tax Authority, if required under Article 2 of the VAT Law.

The incorporation process generally takes approximately 5 to 20 business days, depending on whether the normal incorporation route or the VIP route is followed. The VIP route involves payment of additional fees to GAFI and may expedite the incorporation process.

Ongoing Compliance Requirements

Ongoing compliance matters include convening an annual General Assembly meeting to approve the financial statements for each fiscal year.

The company must also maintain certain statutory ledgers, including:

- the Partners' Register – containing the partners' details and their respective quotas;
- the General Assembly Register – recording the resolutions adopted at General Assembly meetings;
- the board of directors' minutes ledger – for JSCs, recording the deliberations, resolutions and actions taken during board meetings;
- the daily ledger; and
- inventory ledgers.

In addition, companies with foreign investment in their shareholding structure are required to submit quarterly foreign direct investment reports to GAFI. Companies must also ensure that their corporate records, statutory registrations and regulatory filings remain accurate and up to date throughout their operations.

1.3 Share Issuances

Share Capital

The rules governing share capital in Egypt are primarily regulated by Companies Law No 159 of 1981 (the "Companies Law") and Capital Market Law No 95 of 1992 (the "Capital Market Law)", together with their respective Executive Regulations.

Joint Stock Companies

For JSCs, the share capital is divided into equal nominal value. The articles of association determine the nominal value of each share, which may not be less than EGP1 or exceed EGP1,000, or the equivalent thereof in a foreign currency.

The capital structure of a JSC generally comprises issued capital, authorised capital and paid-up capital.

- Issued capital: The issued capital must be fully subscribed and meet the applicable minimum requirements: EGP500,000 for JSCs offering shares for public subscription and EGP250,000 for closed JSCs.
- Authorised capital: The articles of association may provide for authorised capital exceeding the issued capital by up to ten times. This enables the company to increase its issued capital, within the authorised limit, without having to amend the authorised capital each time.
- Paid-up capital: This represents the portion of the issued capital that has actually been paid by the shareholders. Upon incorporation, each subscriber must pay at least 10% of the nominal value of cash shares, increasing to 25% within three months, with the remaining balance payable within five years.

Accordingly, Egyptian law adopts a par-value share structure for JSCs, with the nominal value of the shares being specified in the articles of association. The concept of no-par-value shares is therefore not applicable to JSCs under the Companies Law.

Limited Liability Companies

For LLCs, the capital is divided into equal quotas rather than shares. The quotas must be fully paid upon incorporation. Generally, the Companies Law does not prescribe a minimum issued capital requirement for the incorporation of an LLC.

Different Classes of Shares and Associated Rights

The Companies Law permits JSCs to issue ordinary shares and preferred shares. Ordinary shares generally carry equal rights, while preferred shares may confer preferential rights in relation to voting, dividends or the proceeds of liquidation.

Shares of the same class must carry equal rights, privileges and restrictions, ensuring that shareholders holding shares of the same class are treated consistently. However, the same preferred shares may not have both preferential voting rights and preferential rights to liquidation proceeds. The issuance of preferred shares requires the approval of the Extraordinary General Assembly by a three-quarters majority of the shares existing before the relevant capital increase.

1.4 Distributions and Return of Capital

Under the Companies Law, companies are subject to a general legal obligation to distribute dividends. However, a company may resolve not to distribute dividends where such decision is based on legitimate and reasonable grounds.

Distribution Mechanism

Dividends are distributed pursuant to a general assembly resolution based on the board of directors' proposal and in accordance with the percentage stipulated in the company's articles of association.

The board of directors shall implement the following for the distribution of the profits among employees:

- deduct all expenses required for the calculation of the net profits, putting aside all consumptions and allocations required to be calculated and put aside, as per the accountancy rules ("net profits"); and
- put aside from the net profits (i) at least 5% for the formation of a legal reserve and (ii) the regular reserve put in place by the company's articles of association, if any.

This step will result in calculation of the distributable profits, where:

- the company's Ordinary General Meeting (OGM) must finally decide on the distributed dividends, which may be less than the distributable profits upon the recommendation of the board; and
- the employees of the company will be entitled to their share, which is equivalent to 10% of the distributed dividends.

The employees' 10% share of distributed dividends may not exceed their aggregate annual salaries. Any surplus must be allocated to an account to be invested for the employees' benefit and may be distributed to employees in years when no profits are generated due to reasons beyond the company's control, or used to establish housing projects or services for the benefit of employees.

The repurchase, redemption and cancellation of shares are regulated under Article 48 of the Companies Law and GAFI Circular No 12 of 2018, which permit companies to hold treasury shares and set out the applicable rules and requirements as follows:

- shareholding limit – a company may not, by any means, acquire or hold more than 10% of its total issued shares; and
- disposal period – acquired shares must be disposed of within one year – otherwise, the company must reduce its share capital by their nominal value.

Employee Incentive Schemes and Bonus Shares Through Employee Stock Option Plans

The company may dispose of such shares through an employee and management incentive scheme or may distribute them to its shareholders as bonus shares.

1.5 Control Person Reporting

Beneficial Ownership Register in the Commercial Register

Under Article 13 bis of the Executive Regulations of the Commercial Register Law, companies registered in the Commercial Register are required to maintain a separate register known as the Beneficial Ownership Register (the "UBO Register"). The UBO Register must be updated promptly upon the occurrence of any event requiring an update, and the relevant Commercial Registry Office must be notified accordingly.

Beneficial Ownership Disclosure Requirements for Banks

In addition, under Law No 194 of 2020 on the Central Bank and Banking System and the AML/CFT framework of the Central Bank of Egypt (CBE), companies maintaining banking relationships are required to provide information identifying their beneficial owners as part of the banks' know your customer (KYC) and customer due diligence (CDD) procedures.

The CBE's AML/CFT requirements include the identification and verification of UBOs, obtaining relevant information concerning them, keeping such information up to date and conducting ongoing monitoring of the customer relationship. Accordingly, companies should ensure that their beneficial ownership information is accurate and kept current for both Commercial Registry and banking purposes.

Contributed by:
Ragy Soliman, Ziad Bahaa-Eldin, Ehab Fedaa, Hossam Gramon, Menna Sultan, Darah Zakaria, Mohmed Fathy and Alia Monieb,
ADSERO-Ragy Soliman & Partners

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Egypt is governed by a combination of legislation, executive regulations, regulatory decisions and circulars issued by GAFI and the Financial Regulatory Authority (FRA).

The principal framework comprises the Companies Law, its Executive Regulations and Investment Law No 72 of 2017 and its Executive Regulations. These laws establish the fundamental framework for corporate establishment and management, shareholders' rights, general assemblies, boards of directors, directors' duties and liabilities, corporate restructuring and investment activities and incentives.

GAFI circulars, decisions and instructions supplement this framework by regulating practical matters such as incorporation, amendments to constitutional documents, appointment of directors, general assemblies, capital increases and reductions, mergers, liquidation and corporate filings.

Listed companies and companies engaged in non-banking financial activities are additionally subject to the Capital Market Law, the FRA Listing and Delisting Rules (the "Listing Rules"), and relevant FRA circulars and board decisions covering disclosure, financial reporting, shareholder protection, related-party transactions and corporate actions.

2.2 Directors' Duties and Liabilities

Under Egyptian companies law, directors are subject to fundamental fiduciary duties, principally the duties of loyalty, good faith, care and diligence. Directors are expected to act in the best interests of the company, exercise sound and informed judgment, avoid conflicts of interest and refrain from deriving improper personal benefits from their position or corporate opportunities.

The Companies Law provides the principal statutory framework governing directors' responsibilities and liability. Egyptian courts have generally interpreted these obligations by emphasising directors' responsibility for lawful and prudent corporate management. Where directors engage in misconduct, negligence or self-dealing, or otherwise breach their statutory or constitutional obligations, they may be held personally liable for the resulting losses, subject to applicable legal requirements.

Accordingly, the Egyptian legislator places significant emphasis on directors' good faith, proper exercise of managerial authority and accountability for acts or omissions that cause harm to the company and its shareholders.

Directors are expected to exercise reasonable care, skill, diligence and good faith in managing a company. They must act in the best interests of the company, exercise their powers for proper purposes, make informed decisions, avoid conflicts of interest and comply with applicable laws and the company's constitution. The required standard may depend on a director's responsibilities, knowledge and experience.

Directors are generally not personally liable for company debts due to the company's separate legal personality. However, they may incur personal liability for breaches of legal or fiduciary duties, fraud or dishonesty, wrongful or reckless trading while the company is insolvent, misuse of company assets, undisclosed conflicts of interest or other statutory breaches. Liability may also arise from personal guarantees or personal torts, such as fraud or negligent misrepresentation. Accordingly, directors are generally protected for genuine business decisions but may be held liable for misconduct or negligence.

2.3 Board Composition and Independence

Under Egyptian Companies Law, JSCs, including public and closed JSCs, are governed by a shareholders' general assembly and a board of directors. The board must consist of at least three members, including the chair. There are no specific requirements under Egyptian law regarding the nationality or residency of directors in Egypt. However, the legal framework governing certain activities may impose Egyptian nationality requirements, such as in the case of importation and commercial agency activities. Shareholders elect directors, subject to applicable eligibility and integrity requirements; individuals convicted of certain financial crimes may be prohibited from serving on a board of directors.

Regarding independence, Egyptian law permits independent directors, although they are not necessarily mandatory for all companies. As a best practice, companies should appoint independent directors without significant ties to major shareholders.

Publicly listed companies and companies subject to the regulatory oversight of the FRA are subject to the general requirements of the Companies Law as well as additional requirements arising from the FRA and the EGX rules. Consequently, listed companies generally face stronger expectations concerning board independence, transparency and governance.

For example, the applicable listing and regulatory rules governing publicly listed companies and companies subject to the regulatory oversight of the FRA require the majority of the members of the board of directors to be non-executive, with at least half of the non-executive directors being independent. The board of directors should also include at least one female member.

2.4 ESG and Disclosure Obligations

In Egypt, ESG disclosure is increasingly becoming a regulatory requirement rather than a voluntary practice. The main requirements are set out in FRA Decision Nos 107 and 108 of 2021, which require listed companies and certain non-banking financial institutions to disclose ESG information in their annual reports. Non-banking financial institutions with capital or net equity of at least EGP100 million are subject to these requirements. Companies meeting the EGP500 million threshold must also provide climate-related financial disclosures in line with the Task Force on Climate-related Financial Disclosures (TCFD) framework.

Directors' duties in Egypt increasingly require consideration of environmental, social and stakeholder interests, particularly through ESG reporting, risk management and corporate governance requirements. Directors of listed and regulated companies are expected to oversee climate and ESG risks and related disclosures. However, the Companies Law does not expressly impose a general fiduciary duty requiring directors to consider environmental or broader stakeholder interests. Instead, such considerations arise mainly from sector-specific regulations, including FRA corporate governance rules for non-bank financial companies. Therefore, directors' consideration of ESG and stakeholder interests is increasingly important but remains primarily regulatory rather than a general statutory fiduciary obligation.

Best practices for boards include integrating ESG and climate-related risks into the company's overall risk governance framework and ensuring regular monitoring and reporting. Boards should oversee the preparation of ESG disclosures and quarterly progress reports for inclusion in annual reports, while ensuring transparency and accountability to shareholders through the general assembly. Establishing a risk committee to oversee different categories of risk is also important. Boards should ensure clear internal regulations defining directors' responsibilities, sufficient time commitment, alignment with company and shareholder interests, and compliance with board diversity requirements.

2.5 Conflicts of Interest and Related-Party Transactions

Egyptian conflicts-of-interest and related-party transaction rules are principally governed by the Companies Law, its Executive Regulations and, for listed companies, the CML, FRA regulations and EGX Listing Rules.

Directors and managers must disclose any personal interest that conflicts with the company's interest in a transaction. The conflict must be recorded in the board minutes, and the interested director may not vote on the relevant resolution. Certain transactions involving the company's directors or the founders within five years as of the incorporation, including specified self-dealing arrangements and competing activities, require General Assembly approval.

For listed companies, additional requirements apply to related-party transactions depending on the transaction, and General Assembly approval may be required, with the interested shareholder excluded from voting. Listed companies must also make prescribed disclosures to the FRA and EGX, including applicable disclosures when shareholders or related parties reach specified ownership thresholds.

Separately, transactions involving mergers, acquisitions, changes of control or other economic concentrations may fall within Egypt's Competition Law No 3 of 2005 (ECL) and be subject to notification or review by the Egyptian Competition Authority (ECA). These competition-law requirements operate independently from corporate approval and related-party disclosure requirements.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

The principal legislation governing corporate entities in Egypt is the Companies Law and its Executive Regulations, which regulate the main corporate forms, including JSCs and LLCs.

Voting and Participation

Shareholders may attend general meetings in person or proxy, vote, discuss agenda items and question the board, managers and auditor. Meetings are held in the head-office city unless the articles of association specify otherwise, and may be conducted by videoconference to the extent permitted by GAFI. The articles of association may provide for cumulative voting in board elections.

General Meetings

In JSCs, an OGM requires a 25% quorum at first call (increasable by the articles of association to 50%), with no minimum at second call. An Extraordinary General Meeting (EGM) requires 50% at first call and 25% at second. Resolutions are passed by shares represented: an absolute majority at an OGM, ⅔ at an EGM and ¾ for fundamental changes, including increasing authorised capital, reducing capital, early dissolution, changing the corporate purpose or mergers. Holders of 5% may require an OGM; holders of 10% may require an EGM. In LLCs, articles of incorporation amendments require partners holding ¾ of the capital.

Information Rights

Shareholders may inspect specified company records and review financial statements and auditors' reports. Holders of at least 10% have information rights regarding related-party transactions.

Minority Protections

Resolutions contrary to law or the articles of association/articles of incorporation are void, while resolutions favouring or prejudicing particular shareholders may be challenged by qualifying shareholders within one year. Shareholders may also pursue company claims against directors, and 10% holders may request an inspection into serious violations by directors or auditors. Dissenting shareholders may withdraw in specified restructurings. Further remedies and dispute-resolution mechanisms are discussed in **3.2 Shareholder Agreements**.

3.2 Shareholder Agreements

Shareholder agreements (SHAs) are used in Egypt to supplement the statutory framework, regulating governance, funding, transfers, exits and dispute resolution, subject to mandatory provisions of Egyptian law. The Companies Law expressly recognises SHAs.

Governance and Enforceability

SHAs commonly regulate board composition, reserved matters, distributions, deadlock and exit arrangements. They bind their parties but cannot override mandatory law or required corporate approvals and formalities. An SHA may bind non-signatory shareholders if approved by an EGM representing at least ¾ of the capital, subject to higher thresholds for certain matters. In practice, pre-emption rights, rights of first refusal, rights of first offer, general meeting quorums and reserved matters are mirrored in the articles of association/articles of incorporation, subject to statutory limits and GAFI's acceptance.

Reserved matters are generally implemented through enhanced voting thresholds without encroaching on statutory powers. Tag-along, drag-along, lock-up and call and put provisions remain contractual. Provisions not reflected in the articles of association are unenforceable against third-party transferees, meaning breach gives rise to contractual remedies. Specific performance may be unavailable on public-order grounds; remedies for breach of transfer provisions may be limited to damages.

Derivative Actions
Any shareholder may pursue civil liability claims against board members for breaches in the performance of duties.

Unfair Prejudice and Oppression
Egyptian law does not provide a standalone oppression remedy. Minority shareholders rely on statutory tools, including challenging general assembly resolutions adopted to favour or harm specific shareholders, director liability claims, inspection requests and contractual SHA protections.

Winding-Up
Where losses reach half of shareholders' equity, an EGM considers dissolution. Partners may seek judicial dissolution for serious cause.

Forum
Companies Law disputes fall under economic courts' jurisdiction.

4. Mergers and Acquisitions

4.1 Legal Framework
Egyptian M&As are principally governed by the Companies Law, Investment Law No 72 of 2017, Capital Markets Law No 95 of 1992, Central Depository and Registry Law No 93 of 2000 and the ECA. Sector-specific laws may impose additional regulatory, licensing or security approvals.

Structuring Considerations
Transaction structure is principally driven by liabilities, licences, tax, financing, regulatory approvals and timetable. Share and quota acquisitions preserve the target's legal personality, licences and contracts, subject to applicable change-of-control provisions. Asset acquisitions allow greater flexibility in selecting assets and liabilities but generally require asset-by-asset transfer formalities and require licences to be transferred or reissued.

Mergers and Court Involvement
Egyptian law provides statutory merger and demerger procedures but does not provide a general court-sanctioned scheme of arrangement comparable to those available in certain common-law jurisdictions. Mergers require corporate approvals, valuation and prescribed administrative procedures. Courts principally become involved where a transaction's validity, implementation or legal effects are disputed.

Tender Offers
Acquisitions of listed companies, and of companies that have publicly offered their shares, are regulated by the Capital Markets Law and FRA rules. Mandatory tender offers are triggered on acquiring ⅓ of the capital or voting rights. They are triggered again on crossing 50%, ⅔ and 75%, and on acquiring a further 5% within 12 months between those thresholds. These offers require FRA approval and are subject to disclosure and pricing rules. JSC share transfers are completed through the central-depository framework under Law No 93 of 2000.

Bank and Non-Bank Financial Institutions' Acquisitions
Under Central Bank and Banking System Law No 194 of 2020, acquiring more than 5% and up to 10% of a bank's capital or voting rights requires notification to the CBE. Acquiring more than 10%, or any interest resulting in effective control, requires prior CBE approval. Similarly, acquiring 10% or more of a non-bank financial institution, such as an insurance, leasing, factoring, mortgage finance or consumer finance company, requires the prior approval of the FRA.

Foreign Investment
Foreign investors may generally own 100% of Egyptian companies, subject to sector-specific restrictions and applicable security approvals.

Merger Control
Since 1 June 2024, qualifying economic concentrations have been subject to suspensory pre-closing clearance by the ECA. The current notification thresholds are:

- combined Egyptian turnover or assets exceeding EGP900 million, with at least two parties each having Egyptian turnover exceeding EGP200 million; or

- combined worldwide turnover or assets exceeding EGP7.5 billion, with the target having Egyptian turnover exceeding EGP200 million.

Parliament approved amendments in April 2026 would increase these thresholds, but their entry into force remains subject to the full legislative process.

Common Deal Structures

Share and quota acquisitions of controlling or 100% interests are the most common structures, sometimes combined with a primary capital increase where new funding is injected into the target. Asset acquisitions, statutory mergers, demergers and joint ventures are also very frequently used based on the specific strategic transaction goals.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Egypt's capital markets are governed by the CML and its Executive Regulations, the Central Depository Law, the Law establishing the FRA, the Companies Law and FRA decrees, notably the Listing Rules. The FRA is the principal regulator: it approves prospectuses and licenses market participants. The EGX operates the market and applies the Listing Rules under FRA supervision.

An IPO has three stages.

- The EGX Listing Committee admits the shares once the issuer meets the main Listing Rules conditions: fully paid-in capital of at least EGP100 million, two years of audited financial statements, pre-tax profit from its core activity of at least 5% of paid-in capital in the last financial year and at least five million shares.
- FRA registration and prospectus approval, supported by an independent financial adviser's fair value study, valid for six months. FRA review generally takes four to six weeks.
- Offering at a fixed price or through book-building within a price range, after the prospectus is published in the press.

After the offering, the issuer must have at least 300 shareholders and a free float of at least 10%. Follow-on offerings require a shareholders' resolution, an FRA-approved prospectus and observance of pre-emption rights unless validly waived.

The CML and the Listing Rules provide no prospectus exemptions for public offerings of securities. That said, a company may nonetheless be admitted to listing on the EGX without conducting a public offering provided that listing criteria are satisfied prior to listing.

There is no single hold period, but privately placed securities may not be offered to the public without a prospectus. On listing, holders of 10% or more must retain at least 51% of their shares, topped up to 25% of capital by other shareholders where necessary. The lock-up runs for at least 24 months and until periodic financial statements for two financial years have been issued. Transfers to institutional or strategic investors assuming the lock-up require FRA and general assembly approval. Special purpose acquisition company (SPAC) founders face a 100% lock-up for 12 months. Off-exchange or non-compliant trades are void, and breaches may attract imprisonment, fines, trading suspension or delisting.

5.2 Continuous Disclosure

Listed entities must submit to the FRA and the EGX:

- audited financial statements and the board's report annually;
- financial statements with the auditor's limited review, and a report on shareholding structure, board composition and treasury shares on a quarterly basis; and
- an activity report reflecting the company's true financial position and, after a cash capital increase, confirmation that proceeds were used as disclosed on a semi-annual basis.

Summaries of the annual and semi-annual financial statements must also be published in two widely circulated newspapers.

Additionally, listed entities shall promptly notify the EGX of:

- changes to information in the listing application, prospectus or annual board report;
- general assembly resolutions, and board resolutions approving financial statements or dividend distributions;
- capital increases, and acquisitions of investments exceeding 10% of the company's equity;
- administrative measures, arbitral awards or court judgments that may affect its financial position, equity, share price or investors' decisions; and
- custodial sentences against board members or senior executives.

Material events, including resolutions related to the amendment of the nominal value of the company's shares and cash dividends distributions, shall be notified to the EGX for publication on trading screens before the next trading session. If information leaks, or the event occurs during a session, the EGX may suspend trading until disclosure.

5.3 Insider Trading

The CML bars anyone holding material non-public information, including directors, executives, employees, advisers and recipients, from dealing in the issuer's securities or disclosing it before public release. The Listing Rules prohibits insiders and holders of 20% or more from trading for a period of five working days before or one working day after material disclosure, on documented advance notice.

Listed companies are required to maintain a register including all insiders and holders of 20%; they are also required to document in writing material events under negotiations and notify the EGX in case of insider information leak. The CML criminalises price manipulation.

The FRA chair and the head of the EGX may bar violators from buying on the EGX for up to six months, and the EGX may suspend or delist securities. For FRA-licensed firms, the FRA may suspend activities for up to 30 days, revoking licences if violations remain unremedied.

The CML lays down the following statutory penalties.

- Insider dealing: Imprisonment for at least two years and/or a fine ranging from EGP50,000 (or the profit/loss avoided) up to EGP20 million (or twice the profit/loss avoided).
- Illegal disposal of securities: A fine between EGP5,000 and EGP100,000.
- Failure to launch a mandatory tender offer: A fine between EGP100,000 and EGP500,000, plus restitution of the securities' value. Settlement requires submitting the offer and paying 1–10% of the securities' value to the FRA
- Executive regulations violations: A fine between EGP2,000 and EGP1 million.

5.4 Shareholder Disclosure

Substantial shareholdings are governed by the CML, its Executive Regulations and the Listing Rules. Principal shareholders and their related parties must disclose direct and indirect holdings every January and July, and notify the EGX of each change, including through subscription rights, crossing 5% or a multiple thereof. Each disclosure must identify related parties and whether holdings are direct, indirect or in concert.

A shareholder reaching 25% must disclose its investment plans and intended management policies. Acquiring 33.3%, 50%, 66% or 75% of capital or voting rights triggers a mandatory tender offer for remaining shares. No violation arises where a related party, unaware of the other's trades, exceeds a threshold by up to 1%, or for holdings resulting from discretionary portfolio management by a licensed manager.

Regarding changes in interests, as per the Listing Rules, companies shall have the Nomination and Remuneration Committee assess board nominations, particularly independent candidates, and notify the FRA in advance of any auditor replacement, stating reasons and a handover plan ensuring reasonable transition.

Concerning obligations according to thresholds:

- board members, employees and their related parties disclose each purchase or sale reaching 3% of the company's securities;

- at 10%, the holder becomes a principal shareholder (counting direct, indirect, concert and related party holdings) subject to periodic disclosure;
- principal shareholders notify every increase or decrease crossing 5% or a multiple thereof (15%, 20%, 25%, etc);
- at 25%, disclosure of investment plans and intended management policies is required; and
- at 33.3%, 50%, 66% and 75%, a mandatory tender offer is required.

The obligations apply to individuals and legal entities, including funds and their related parties, and to the issuer's board members and employees. Related parties include a shareholder's spouse and minor children, and entities it controls.

Breaches are punishable by a fine of EGP2,000 to EGP1 million. The FRA chair and the head of the EGX may prohibit the violator from buying securities on the EGX for up to six months, and the EGX may suspend trading in the security until the required disclosure is made.

5.5 Internal Controls and Whistle-Blower Regimes

The Listing Rules require listed entities to:

- maintain audit, nomination and remuneration committees monitoring financial reporting and executive appointments;
- enforce insider blackout windows and updated insider lists;
- document material negotiations in writing;
- prepare detailed board annual reports and certified board minutes;
- comply with controls over asset acquisitions or mergers; and
- regularly publish audited standalone and consolidated financial statements.

Egyptian law does not mandate internal whistle-blowing mechanisms for listed entities. The Egyptian Corporate Governance Code recommends a "comply-or-explain" policy, supplemented by a direct FRA channel. That said, listed companies must promptly disclose material information and events, potentially capturing conflicts of interest, related-party transactions and other concerns.

Listed companies should adopt a board-approved compliance framework comprising:

- a compliance function reporting directly to the audit committee;
- written policies on insider dealing, disclosure and AML/KYC;
- a risk management framework overseen by a risk committee;
- a whistle-blowing policy consistent with the Code of Corporate Governance; and
- regular training and periodic independent review.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Security interests in Egypt are regulated by several laws. Real estate mortgages fall under the Civil Code (Law No 131 of 1948), security over most movables under Law No 115 of 2015 and its Executive Regulations (the "Movables Collateral Law") and fonds de commerce mortgages under Law No 11 of 1940. Insolvency ranking is set by the Civil Code and the Restructuring, Preventive Composition and Bankruptcy Law (Law No 11 of 2018).

Common forms of collateral include real estate mortgages, security over movables, share pledges, assignments of receivables and contractual rights by way of security, and pledges over bank accounts and insurance proceeds, each with distinct creation and perfection requirements.

A real estate mortgage is perfected by registration with the notary public, making it enforceable against third parties and setting priority by registration date; unregistered, it binds only the parties. Movable security covers receivables, future assets, bank accounts, inventory, equipment and certain IP rights. The Movables Collateral Law permits non-possessory security perfected by registration with the Egyptian Collateral Registry (ECR), supervised by the FRA. Registration makes the security enforceable against third parties,

with priority by registration date, subject to statutory exceptions. Share pledges are registered with Minister for Central Clearing, Depository and Registry (MCDR).

This distinction extends to enforcement. Real estate mortgages are generally enforced through court-supervised public auctions, while movable security can largely be enforced out of court after notice to the debtor and registration of an enforcement notice with the ECR. In insolvency, statutory priority claims such as judicial expenses and certain taxes are paid first. Secured creditors then recover from their collateral's proceeds, subject to priority rules and enforcement costs, and any balance goes to unsecured creditors. Any shortfall ranks pari passu with unsecured claims.

Because security and its ranking largely determine recovery, acquisition financing typically begins with due diligence on the borrower and the target company, which lenders treat as a determining factor for proceeding. The package commonly includes a pledge over the target's shares, security over the borrower's bank accounts and receivables, and an assignment of its rights under the acquisition documents. As Egyptian law does not recognise the trust, security for syndicated or multi-tranche facilities is typically held by a security agent. Since statutory ranking rules apply in insolvency, intercreditor and subordination arrangements are mainly contractual matters between creditors.

Finally, recent developments shaping financing practice include the Central Bank and Banking Sector Law (Law No 194 of 2020), the Law Regulating the Use of Non-Cash Payment Methods (Law No 18 of 2019), and CBE regulations and circulars on electronic banking and electronic know-your-customer (eKYC) and the licensing of payment service operators (PSOs) and payment service providers (PSPs).

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Contracts in Egypt are principally governed by Egyptian Civil Code No 131 of 1948 (the "Civil Code"), supplemented by Commercial Code No 17 of 1999 and sector-specific legislation. Under the Civil Code, a contract is concluded through matching expressions of will, whether oral, written, implicit or expressed through customary signs, subject to applicable formalities. Under Article 147, a contract constitutes the law of the parties and may be amended or revoked only by mutual consent or on grounds recognised by law.

Validity requires consent, capacity, a defined subject matter, a lawful cause and any mandatory formalities. The age of majority is 21 under Article 44. Legal entities contract through authorised representatives acting within their powers.

Grounds for invalidity include missing essential elements, illegality, incapacity and defects in consent, including mistake, fraud and duress. Egyptian law distinguishes between absolute nullity, generally invocable by any interested party or raised by the court, and relative nullity, which protects a particular party.

Under Article 150, clear contractual wording must be respected. Ambiguities are resolved by determining the parties' common intention, considering the transaction, good faith and commercial usage, with doubt interpreted in favour of the obligor. Article 148 requires performance in good faith, including obligations arising from law, custom and equity.

Mandatory restrictions include:

- adhesion contracts – Article 149 permits courts to modify or disregard abusive terms notwithstanding contrary agreement; and
- exclusion of liability – Article 217 permits contractual exclusion or limitation of liability, except for fraud or gross negligence; exclusion of tortious liability is void.

Liquidated Damages

Articles 223–225 provide that agreed damages are not payable without loss and may be reduced if excessive or where the obligation has been partly performed. Recovery exceeding the agreed amount requires proof of fraud or gross negligence.

7.2 Termination and Remedies

Principal remedies include specific performance, revocation and compensation. Under Article 157 of the Civil Code, where a party to a bilateral contract fails to perform after being placed in default, the other party may seek performance or revocation, with compensation where appropriate. Article 158 permits agreement on automatic termination.

Specific performance is generally available where performance remains possible. Article 203 provides for performance in kind, subject to statutory conditions, while compensation may be awarded where performance is impossible or insufficient. Termination may arise by agreement, under an express contractual clause or through judicial revocation. Wrongful termination may itself constitute a breach giving rise to compensation.

Under Articles 215 and 165, a debtor may be exempt from liability where non-performance or damage results from an external cause beyond their control, subject to any agreement providing otherwise.

Article 147 (2) addresses unforeseen circumstances. Where exceptional, general and unforeseeable events make performance excessively onerous, without rendering it impossible, and threaten the debtor with excessive loss, the court may adjust the obligation to a reasonable level after balancing the parties' interests. Any agreement excluding this judicial power is void.

7.3 Intellectual Property in Commercial Transactions

The principal legislation is Intellectual Property Rights Law No 82 of 2002, covering patents, utility models, industrial designs, trade marks, trade names, geographical indications, copyright, related rights, undisclosed information and trade secrets.

Commercial agreements should address ownership, assignment, licensing, permitted uses, territory, duration, confidentiality and enforcement. Under Article 149, copyright assignments must be written and specify the rights transferred, scope and purpose of exploitation, duration and territory. Economic rights not expressly assigned remain with the author, while moral rights generally cannot be assigned.

Article 95 permits trade mark licensing, while Article 96 establishes certification and registration requirements for effectiveness against third parties. Under Article 7, rights in commissioned inventions generally belong to the commissioning party. Employers may hold rights in employee inventions arising within the employment relationship. Article 6 addresses jointly created inventions, establishing equal patent rights among contributors unless otherwise agreed.

Contractual drafting is particularly important for commissioned copyright works and commercially created IP, given the differing statutory ownership rules. Egypt has no comprehensive statutory regime specifically allocating copyright ownership of purely AI-generated works. Protection therefore depends on whether the output satisfies statutory copyright requirements and, where human contribution exists, the applicable authorship and contractual arrangements.

Available infringement remedies include civil damages, precautionary measures, seizure of infringing goods and, where applicable, criminal penalties. Article 115 permits precautionary measures in trade mark infringement proceedings, including establishing infringement and seizing relevant goods and materials.

7.4 Consumer Protection

The principal legislation is Consumer Protection Law No 181 of 2018 and its Executive Regulations (CPL). It imposes mandatory obligations concerning product safety, quality, disclosure, advertising, invoicing, warranties and after-sales services. Articles 3–5 require compliance with applicable safety and quality standards, disclosure of material product information and Arabic-language consumer-facing documents, including electronic records and contracts.

For distance and e-commerce transactions, Article 37 requires sufficient pre-contractual information, including supplier identity and registration details, product characteristics, price and payment arrangements. Article 40 grants consumers a 14-day withdrawal right following receipt of goods, subject to statuto-

ry exceptions. Article 17 provides a general 14-day return or exchange right without requiring a reason, subject to exceptions. Under Article 21, defective, non-conforming or unsuitable goods may be returned or exchanged for a refund within 30 days.

The Consumer Protection Agency (CPA) may investigate violations, request information and documents, suspend misleading advertisements and issue binding decisions in certain consumer disputes. Under Article 52, it may order replacement or refunds in disputes involving consumers and suppliers or advertisers. The CPL prescribes administrative fines of up to EGP2 million for various violations, including breaches of consumer information, advertising and distance-contracting requirements.

Misleading advertising and unfair commercial practices are addressed through the CPL's disclosure and advertising rules. Applicable Supreme Council for Media Regulation requirements may also govern advertising materials. Depending on the online activity, Anti-Cyber and Information Technology Crimes Law No 175 of 2018 may impose additional obligations.

8. Foreign Investment

8.1 Competition and Merger Control

Merger Control

Egypt's merger control regime is governed by the ECL and its Executive Regulations.

An "economic concentration" is any change of control or material influence resulting from:

- a merger, acquisition of control or material influence in a person;
- the establishment of a joint venture; or
- the acquisition of an existing entity undertaking a joint venture project.

An economic concentration requires pre-closing approval from the ECA if, for the last financial year, the concerned persons' aggregate annual turnover or assets: (i) in Egypt exceed EGP900 million, with at least two persons each having Egyptian turnover exceeding EGP200 million; or (ii) worldwide exceed EGP7.5 billion, with at least one person having Egyptian turnover exceeding EGP200 million.

The ECA's review process comprises two phases: 30 working days for Phase I and, if referred to Phase II, a further 60 working days, extendable by 15 working days where commitments are submitted. The ECA assesses whether a concentration may limit, restrict or otherwise harm competition, considering market structure, competition, the parties' market positions and financial strength, alternatives, barriers to entry and expansion, and effects on consumers, investment, innovation and development.

The ECA may conduct ex post reviews of below-threshold concentrations that could restrict or harm competition. Concentrations in activities supervised by the FRA fall outside the ECA's jurisdiction and require FRA pre-closing clearance. The FRA must seek the ECA's advisory opinion before approval. Banks and other Central Bank-supervised entities, and public utilities directly managed by the State, are excluded from the ECL's application.

Failure to Notify

If a filing violation is established, the ECA shall require the violating party to remedy the violation or take corrective measures. Non-compliance shall render the transaction agreement void.

Where the ECA initiates criminal proceedings, failure to notify is punishable by a court-imposed fine of 1% to 10% of the relevant annual turnover, asset value or transaction value, whichever is higher, or EGP30 million to EGP500 million if the percentage cannot be calculated. The same fines apply to non-compliance with the ECA's conditional approval or rejection and obtaining clearance through knowingly false information or documents.

Consequences of Anti-Competitive Conduct

The ECL prohibits anti-competitive agreements and practices, including horizontal agreements, vertical restraints and abuse of dominance. Violations may trigger criminal action, initiated only upon the ECA chairperson's written request. Court-imposed fines are:

- 2% to 12% of relevant product revenues for horizontal agreements; or
- EGP500,000 to EGP500 million if incalculable.

Lower ranges apply to vertical restraints and abuse of dominance. Violations may be settled with the ECA. The ECA shall also require remedial or corrective measures and may issue cease-and-desist orders where a practice may cause irreparable harm to competition or consumers.

A new competition law, approved by the House of Representatives, awaits presidential ratification and publication, representing a significant reform of Egypt's competition framework.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Egyptian law does not impose a specific foreign investment review or approval requirements based on the investor being a foreigner or the value of the investment, except for certain sectors highlighted in the following. Nevertheless, companies operating in Egypt with foreign participation are subject to FDI reporting requirements to GAFI for statistical purposes.

Foreign Ownership Restrictions in Regulated Activities

The following restrictions apply:

- maritime and air transport generally require at least 51% Egyptian ownership;
- postal services require approval from the National Postal Authority;
- commercial agency companies must be 100% Egyptian-owned;
- domestic manpower activities require 100% Egyptian ownership, while overseas manpower activities allow up to 49% foreign ownership; and
- foreign shareholders cannot hold management rights in press institutions or media agencies.

Security Clearance Procedures

Foreign investors and certain foreign representatives of companies are subject to security clearance procedures through GAFI and other competent authorities.

Investment Incentives

General incentives include exemptions from stamp duty and certain notarisation and registration fees for five years, exemption from applicable fees for registering lands required for the company or investment and a unified 2% customs duty on imported machinery, equipment and devices required to establish the company.

Special incentives include a deduction from taxable net profits equivalent to 30% or 50% of investment costs, depending on the project's geographical location and activities. Certain eligible industrial projects may also receive a cash incentive ranging from 35% to 55% of tax paid on income generated from the relevant activity.

Additional incentives may include government contributions in utility and infrastructure costs. Free and special economic zones are subject to separate incentive regimes. Companies may obtain a golden licence (single approval) covering the establishment, operation and management of investment projects, primarily for strategic or national projects.

Recent Developments Affecting Foreign Investment

Law No 170 of 2025 establishes a framework enabling private sector participation through the acquisition or increase of shareholdings in state-owned companies. It signals a shift towards greater private sector participation in the economy.

Egypt has witnessed more industrial and investment zones, as well as free and economic zones, with the Suez Canal Economic Zone continuing to serve as Egypt's flagship logistics and industrial hub.

Companies with less than 51% Egyptian ownership, including wholly foreign-owned companies, may register in the Importers' Registry to undertake importation for trading purposes for up to ten years, extendable once for an additional ten years by Cabinet decision.

Recent tax reforms have also introduced tax benefits and measures aimed at simplifying tax procedures and facilitating settlement of tax liabilities. These include an exemption from capital gains tax on the

disposal of shares listed on the EGX, subject to the applicable stamp duty.

The Sovereign Fund of Egypt and the Future of Egypt Authority have continued to attract private and foreign investment through partnerships and the development and monetisation of state-owned assets.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Egypt's data protection framework is regulated by Personal Data Protection Law No 151/2020 (the PDPL), its Executive Regulations and guidelines issued by the Personal Data Protection Centre (PDPC). Sector-specific requirements may also apply, notably in the banking sector, which is subject to additional customer data confidentiality and protection requirements under Articles 140–142 of Central Bank and Banking System Law No 194 of 2020, as well as circulars and instructions issued by the CBE.

The PDPL establishes a licensing framework for controllers and processors, under which supplementary licences may be required depending on the specific processing activities they conduct. Processing must be conducted based on a PDPL-recognised legal basis, including data subject consent. Personal data must be collected and used only for disclosed, legitimate purposes and to the extent necessary to fulfil those purposes, with appropriate transparency and security measures in place.

Disclosure to third parties must similarly have an appropriate legal basis and be consistent with the purposes of collection; all such information, among other prescribed information, must be communicated to data subjects through a privacy notice. Data breaches must be notified to the PDPC within 72 hours and affected data subjects within three days thereafter, with shorter notification periods applying in certain circumstances.

Cross-border transfers are generally subject to PDPC licensing and data subject consent, and require consistency between the parties' activities or processing purposes, a legitimate interest of either party or the data subject, and an adequate level of legal and technical protection in the recipient jurisdiction. Exceptions may apply in prescribed circumstances, subject to the data subject's explicit consent. CCTV footage is subject to data localisation requirements and may not be transferred outside Egypt. As these requirements are not yet fully enforced in practice, their practical impact on businesses remains to be seen.

9.2 Anti-Money Laundering, Sanctions and Corruption

Egypt's AML/CFT framework is principally governed by AML Law No 80/2002, its Executive Regulations, Anti-Terrorism Law No 94/2015 and Egyptian Money Laundering and Terrorist Financing Combating Unit (EMLCU) Decision No 1/2024. Regulated entities must conduct risk assessments, customer and beneficial-owner due diligence, ongoing monitoring, enhanced due diligence for higher-risk relationships, suspicious-transaction reporting, record retention and tipping-off controls. The regime applies to financial institutions and specified non-financial businesses and professions.

Key legislation includes Anti-Terrorism Law No 94/2015, Law No 8/2015, EMLCU Decision No 1/2024, Import and Export Law No 118/1975 and Customs Law No 207/2020. Businesses must screen counterparties, comply with asset-freezing measures and verify applicable trade restrictions and authorisations. Breaches may result in fines, confiscation, licence measures and imprisonment.

Businesses must avoid offering or accepting improper benefits, corrupt influence arrangements, misuse of public funds and laundering corruption proceeds. Compliance programmes commonly include senior-management oversight, third-party due diligence, payment controls, gifts and hospitality procedures, employee training and internal reporting mechanisms.

The Administrative Control Authority investigates corruption-related misconduct, the Public Prosecution investigates and prosecutes criminal offences, and the Administrative Prosecution addresses administrative and financial misconduct. The EMLCU analyses suspicious-transaction reports and refers suspected offences to competent authorities, while the CBE

and the FRA may impose corrective directions, activity restrictions, suspension and other licence-related supervisory measures.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environment Law No 4 of 1994 requires an environmental impact assessment (through a three-tier screening) for new projects. The Waste Management Regulatory Authority now enforces extended producer responsibility registration for waste-generating businesses. No statutory contaminated-land regime exists; liability relies on the general tort principles under the Civil Code.

Egypt does not have a specific climate-related litigation regime. Corporate exposure arises through the statutory environmental requirements under the Environment Law (sanctioned by fines and business closures) as well as Civil Code tort claims.

Labour Law No 14 of 2025 (the "Labour Law"), together with (among others) Ministerial Decree No 211 of 2003 and Ministerial Decree No 249 of 2026, sets employer duties: safe workplaces, protective equipment, insurance, and occupational health and safety committees at higher-risk sites. Egypt has one national regime that applies uniformly, with no provincial-level regulatory differences.

GAFI is the central authority for investment approvals, and Industrial Licensing Law No 15 of 2017 streamlines factory permits. Further approvals may be required from sector-specific regulators, including the Egyptian Electric Utility Agency, the FRA and the Egyptian Drug Authority for energy, financial services and pharmaceuticals, respectively.

9.4 Artificial Intelligence

Egypt does not currently have a comprehensive AI-specific law. AI is regulated through existing legislation, sector-specific rules and policy instruments, principally the National AI Strategy 2025–30, the Egyptian Charter for Responsible AI 2023 (the "AI Charter"), the National AI Governance Framework 2026 and the National Guidelines for Trustworthy and Responsible AI 2026 (the "Responsible AI Guidelines"). The Framework adopts a risk-based approach to AI systems; while these instruments remain principally non-binding unless incorporated into legislation, a dedicated AI legislation is currently under development.

Pending its enactment, binding obligations arise mainly under the PDPL and its Executive Regulations, together with applicable cybersecurity, consumer-protection, IP and sector-specific laws.

Key expectations include the following.

- Transparency: Organisations should disclose AI use, explain the system's purpose, data use, capabilities and limitations, and provide accessible complaint or appeal mechanisms. Where personal data is processed, PDPL transparency requirements and data-subject rights apply.
- Bias and fairness: Organisations should use representative data, test for bias and imbalance, apply proportionate fairness criteria and document mitigation measures.
- Accountability: Responsibility should remain with identified persons, supported by proportionate human oversight, escalation and override mechanisms, audit logs and clear decision ownership throughout the AI life cycle.

9.5 Other Regulatory Compliance Requirements

Businesses in Egypt may be subject to various other regulatory compliance regimes depending on their activities, including competition and merger control, consumer protection, employment and labour, tax, anti-bribery and anti-corruption, corporate and commercial, import/export and customs, and product-specific requirements. Certain industries are also subject to sector-specific regulatory and licensing regimes, including banking and financial services, telecommunications, healthcare and pharmaceuticals.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Main Employment and Labour Laws in Egypt

The main laws are:

- the Labour Law – the primary statute governing private-sector employment, covering contracts, wages, working hours, leaves, investigations, termination and labour disputes;
- Social Insurance and Pensions Law No 148 of 2019;
- Comprehensive Health Insurance Law No 2 of 2018;
- Child Law No 12 of 1996;
- Trade Union Organizations and Protection of the Right to Organize Unions Law No 213 of 2017;
- Persons with Disabilities Law No 10 of 2018; and
- Civil Code No 131 of 1948.

Termination of Employment in Egypt: Key Legal Considerations for Employers

The general principles are as follows:

- termination is governed by the Labour Law, which protects employees regardless of company size or length of service;
- disciplinary dismissal requires a labour court decision – employers cannot dismiss unilaterally;
- lawful grounds include evidenced gross misconduct and approved economic downsizing; and
- dismissal during pregnancy, maternity leave or certified sick leave, or for union activity, is prohibited.

Resignation

Resignations must be ratified by the labour office to be valid, preventing reliance on pre-signed resignations. Employees may withdraw resignations within ten days – also before the labour office. The Labour Law now considers unjustified absence as an implicit resignation subject to compliance with statutory process.

Wrongful Dismissal

For limited-term contracts, if the employer terminates during the term of the agreement, the employee shall be entitled to a remuneration equivalent to one month's wage for each year of service, if the contract is renewed for more than five years. This is without prejudice to the employee's right in claiming a compensation for unfair dismissal.

For unlimited-term contracts, an unjustified termination entitles the employee to compensation of not less than two months' salary per year of service, in addition to other statutory and/or contractual entitlements.

The Labour Law also recognises circumstances akin to constructive dismissal, where the employee terminates the employment due to the employer's breach of a fundamental statutory, contractual or regulatory obligation, including cases of assault on the employee by the employer. Such cases are deemed as an unjustified employer-initiated termination.

10.2 Executive Compensation and Restrictive Covenants

Structuring Executive Compensation in Egypt: Key Considerations

The applicable framework depends on the individual's capacity. Board members and managers are not in an employment relationship, as they are appointed and dismissed through corporate resolutions, and are primarily governed by the Companies Law and the company's articles, relying on the Labour Law only for limited rights such as leave. For an additional layer of protection, it is generally recommended to conclude a management agreement setting out their duties, remuneration and exit terms. Senior and key personnel engaged under employment contracts, by contrast, are fully subject to the Labour Law.

In all cases, incentive arrangements, including bonuses and equity-based plans, may apply to any individual regardless of capacity and are usually governed by company policies. A change of control does not trigger termination; employment relationships are protected under the Labour Law and continue with the new owner. From a tax perspective, remuneration and incentives are generally subject to income tax, which the company withholds and remits, although certain statutory and non-statutory benefits, such as employee profit sharing, may be exempt.

Non-Compete, Non-Solicitation and Confidentiality Covenants

Concerning confidentiality, the employee has a duty to keep all information to which they have/had access confidential during their term of employment. A breach of confidentiality by the employee resulting in gross damages qualifies the employer to seek their termination through labour courts.

There is no specific statutory regime governing non-solicitation; enforceability therefore depends principally on the contractual terms and applicable general principles.

Concerning non-compete:

- during employment, the Labour law prohibits engaging in similar activities during employment, whether as a partner or an employee; and
- post-employment, the Civil Code governs non-compete restrictions and requires them to be limited as to duration, geographical scope and type of activity.

Courts asses any interpretation, enforceability or breach of any of these fundamentals on a case-by-case basis subject to their discretionary power.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of land ownership by companies include acquisition through purchase, lease-to-own and allocation of lands through governmental authorities such as the New Urban Communities Authority or the Industrial Development Authority.

Foreign ownership is restricted in certain asset classes and geographical areas, including the following.

- Agricultural lands: Foreigners are prohibited from acquiring agricultural, uncultivated or arable lands.
- Desert lands: Foreign ownership of desert land is generally capped at 49% of a company's capital. This restriction does not apply where the company acquires desert land necessary to carry out or expand its activities.
- Built properties and vacant lands: Foreign ownership of built properties and vacant lands is subject to restrictions, including ownership of a maximum of two properties nationwide, each intended for private residential use and not exceeding 4,000 square metres, excluding properties classified as antiquities under the applicable laws. Disposal of the built property is generally restricted for five years, and development of vacant land must commence within five years of acquisition. However, in certain designated new urban and tourist areas, non-Egyptians may be treated as Egyptians for the purpose of owning residential units in areas such as Hurghada, the Red Sea, Ras El-Hekma and Marsa Matrouh, subject to approval from the competent authorities.
- Sinai and other security-sensitive areas: Foreigners are generally prohibited from owning lands or real estate rights in the Sinai Peninsula. They may, however, acquire a usufruct right over a residential unit for up to 50 years, subject to prior approval from the Ministry of Defence, Ministry of Interior and General Intelligence Service. Foreigners are also prohibited from acquiring certain real estate rights in locations designated on national security, public order or environmental grounds.

Registration of Properties

Egyptian law provides that ownership of real estate property must be registered with the competent notary public office to be transferred to the purchaser. However, a significant portion of properties in Egypt remains unregistered. An unregistered owner may still possess and exercise the rights associated with the property, except that the legal title is not officially registered in its name. In practice, transactions involving unregistered properties are often documented through preliminary sale agreements.

Registration by foreigners or companies that are majority foreign-owned is also subject to applicable security clearance requirements. In practice, foreigners without a valid Egyptian residency permit or applicable exemption card may face restrictions in obtaining registration or notarisation services for real estate acquisitions.

Real Estate Taxation

Real estate tax is imposed on built-up properties, with the owner generally responsible for payment. Disposals of real estate properties by natural persons are subject to real estate transaction tax at 2.5% of the sale price, payable by the seller. These taxes also apply to resident foreigners.

11.2 Commercial Real Estate Transactions

Key Legal Framework Governing Commercial Real Estate Transactions

Commercial real estate transactions are primarily governed by the Civil Code, which regulates the sale, lease, usufruct and mortgage of real estate property. Depending on the property's nature, location and permitted use, additional legislation may apply, including laws governing new urban communities, industrial and tourism developments, investment, free zones and special economic zones.

Acts relating to real estate transactions that create or affect in rem rights must be registered with the notary public to be effective against third parties. Leases exceeding nine years are also subject to registration.

Key Considerations in Commercial Real Estate Acquisitions

The principal considerations in commercial real estate acquisitions include comprehensive due diligence covering:

- chain of title;
- the seller's authority to dispose of the property;
- registration status;
- encumbrances;
- building permits;
- land allocation conditions;
- outstanding financial obligations; and
- environmental compliance.

Although title insurance has not traditionally been common in Egypt, the FRA introduced a standard real estate title insurance policy in 2025 covering risks relating to title validity.

Commercial Mortgage Financing

Commercial mortgage financing is primarily governed by the Civil Code, Mortgage Finance Law, and Central Bank of Egypt Law. Mortgages must be registered to be effective against third parties, with priority generally determined by the date of registration. In the event of default, the law provides an enforcement process involving notices, an enforcement order and the public auction of the mortgaged property, with proceeds distributed among creditors according to their priority.

Key Considerations for Commercial Leases

Commercial leases are generally governed by the Civil Code, with renewal, assignment and subletting primarily subject to the parties' agreement. Leases exceeding nine years must be registered at the Notary Public to be effective against third parties, while shorter leases require date certification. The parties may also agree on contractual remedies, alongside remedies available under the Civil Code for actual losses and lost profits.

Recent Developments in Real Estate Regulations

Recent developments include discussions on a proposed draft law to regulate real estate development in Egypt and establish a union representing real estate developers. New rules have also been introduced governing the allocation of industrial lands, providing a unified process, more governance for their allocation and greater flexibility regarding their disposal.

The FRA has taken steps to regulate fractional real estate investment through real estate investment trusts (REITs) rather than any additional taxes or levies applicable to non-resident purchasers in the traditional models. The FRA has also introduced some regulations to facilitate the establishment of REITs and transformation of existing real estate companies into REITs. The FRA issued the second edition of the Egypt Real Estate Valuation Standards, replacing the framework in place since 2015 to enhance valuation practices and real estate market transparency.

Trends and Developments

Contributed by:
Ragy Soliman, Hana Awad, Salma Soliman and Abdelrahman El Sherif
ADSERO – Ragy Soliman & Partners

ADSERO – Ragy Soliman & Partners is a law firm with global reach committed to providing its clients with unparalleled services and innovative legal solutions. Drawing on experience across several jurisdictions, the firm brings a commercially grounded perspective on complex matters, informed by the legal, strategic, operational and financial matters that shape how businesses are structured, financed and governed. Its work spans incorporation, corporate structuring, mergers and acquisitions, capital markets, debt finance and corporate governance, as well as complex, high-stakes commercial and securities litigation.

Authors



Ragy Soliman is the founder and managing partner of ADSERO – Ragy Soliman & Partners. With over 25 years of exceptional legal, strategic, and financial experience, he serves as co-head of the firm's M&A and restructuring practice. Ragy has executed over 100 M&A and 60 debt and equity transactions globally, including a groundbreaking USD25.7 billion telecommunications merger. His extensive business acumen includes executive roles and board memberships across major global stock exchanges. Beyond his transactional prowess, Ragy handles complex litigation and arbitration cases while remaining dedicated to cultivating highly knowledgeable, commercially minded lawyers to serve ADSERO's premier international and local clients.



Hana Awad is a counsel in ADSERO's M&A and restructuring practice, bringing over a decade of experience. She advises clients on complex corporate restructurings, mergers and acquisitions, capital markets transactions, and commercial agreements. She also provides strategic corporate and regulatory advice, helping clients navigate complex legal frameworks to achieve their commercial objectives. Having worked with leading law firms in Egypt, Hana has developed extensive expertise in M&A, capital markets, and corporate and commercial practice. She delivers practical, commercially driven legal solutions tailored to her clients' needs. Hana is qualified to practise law in Egypt and speaks Arabic, English and French.



Salma Soliman is an associate in ADSERO's M&A and capital markets practice, focusing on domestic and cross-border M&A. She has experience advising clients on acquisitions, investments, corporate restructurings and group reorganisations. Her work includes due diligence, transaction structuring, antitrust and regulatory matters, and drafting and negotiating transaction agreements and ancillary documents. Her experience also extends to private capital and investment structures, including fund arrangements and special-purpose investment vehicles. Salma supports matters through negotiation, signing, closing and post-closing, with experience in corporate governance and implementing restructuring arrangements. Before joining ADSERO, she interned with leading technology and banking companies in Egypt.



Abdelrahman El Sherif is an associate in ADSERO's mergers & acquisitions and capital markets department. He advises clients on a broad range of M&A, capital markets, corporate and commercial matters, including regulatory compliance, financial structuring, corporate governance and antitrust matters. Abdelrahman has experience assisting clients on complex transactions, with a particular focus on legal due diligence, legal research, transaction structuring, and the drafting and review of transaction documents. His experience includes advising on corporate and regulatory matters, drafting private subscription notices (PSNs), and reviewing a wide range of commercial agreements.

Contributed by: Ragy Soliman, Hana Awad, Salma Soliman and Abdelrahman El Sherif, **ADSERO – Ragy Soliman & Partners**

ADSERO – Ragy Soliman and Partners

1 El Gabalaya St
Al Gabalayah
Zamalek
Cairo Governorate 11561
Egypt

Tel: +20 2 2735 3203
Fax: +20 2 2737 7116
Email: info@adsero.me
Web: www.adsero.me

Introduction

Egypt continues to strengthen its position as a strategic investment destination and a regional hub for manufacturing, logistics and exports, offering international investors access to a substantial domestic market and opportunities across the Middle East and Africa. Supported by ongoing economic reforms, investment incentives and government initiatives aimed at encouraging private sector participation, Egypt presents attractive opportunities for international businesses seeking to establish or expand their regional presence.

For many foreign investors, partnering with an established Egyptian business offers a compelling route into the market. Local partners can bring valuable assets, including land, production facilities, established distribution networks, industry expertise and familiarity with the local regulatory landscape. Such partnerships enable foreign investors to combine their capital, technology and international expertise with local partners' operational capabilities and market knowledge, creating a strong foundation for sustainable long-term growth.

The success of these joint ventures, however, depends not only on the commercial alignment of the parties but also on the legal and corporate framework established at the outset. Selecting the appropriate legal regime and corporate vehicle, structuring capital contributions, and the effectiveness and enforceability of shareholder protections under Egyptian law all play a key role in the venture's success.

Against this backdrop, this article examines the principal legal and practical considerations for foreign investors establishing joint ventures with Egyptian partners, with a particular focus on corporate structuring, capital contributions, governance arrangements and shareholder protections. It also considers how emerging market practice is shaping joint venture transactions in Egypt.

Two Layers of Structuring

Establishing a joint venture in Egypt involves two related structuring decisions. The first concerns the applicable legal regime, with investors generally choosing between the Companies Law (Law No 159 of 1981) and the Investment Law (Law No 72 of 2017). The second concerns the appropriate corporate form, with joint stock companies (JSCs) and limited liability companies (LLCs) among the most commonly adopted vehicles for joint ventures.

JSCs and LLCs may be established under either framework, with the General Authority for Investment and Free Zones (GAFI) serving as the principal authority responsible for their incorporation and administration.

Although related, the choice of legal framework and corporate form involves different considerations. Investors should assess both in light of the proposed business, their commercial objectives, the anticipated capital structure and the venture's growth strategy. Selecting the appropriate combination at the outset can provide a suitable framework for establishing and developing the joint venture.

Companies Law or Investment Law?

Egypt offers investors two principal legal frameworks for establishing a joint venture. While the Companies Law provides the general framework for establishing and operating companies, the Investment Law offers additional incentives and facilitation measures aimed at encouraging investment in key sectors, including manufacturing, logistics and energy.

For industrial joint ventures, the Investment Law can be particularly attractive. Depending on the project's activities and location, investors may benefit from exemptions from certain stamp duties and notarisation fees, a reduced customs duty rate of 2% on machinery and equipment imported to establish the project, customs exemptions for certain temporary imports, and deductions from taxable profits.

These incentives can translate into significant savings, particularly for capital-intensive projects. However, the Investment Law also imposes certain restrictions, including limitations on the transfer of shares issued in consideration for in-kind contributions, as discussed below.

The choice of legal regime should therefore reflect the joint venture's overall commercial objectives, balancing the available incentives against the flexibility required for its ownership structure and future development.

JSC or LLC: Choosing the Right Vehicle

Both JSCs and LLCs offer shareholders limited liability and may be wholly foreign-owned in most sectors. Certain activities, such as commercial agency, remain subject to Egyptian ownership or participation requirements, which may influence the decision to partner with a local investor.

The key differences between the two forms lie in their governance structures, financing options and operational flexibility.

When a JSC makes sense

A JSC is generally more suitable for larger or capital-intensive ventures, particularly where the business requires, or anticipates requiring, significant equity financing, a more formal governance structure or the flexibility to admit future investors.

A JSC offers several advantages, including the ability to raise capital through a public offering, issue shares at a premium and adopt a board-led governance structure. Its shares are centrally registered with the Misr for Central Clearing, Depository and Registry (MCDR), providing a clear record of ownership and a structured mechanism for granting security over shares to lenders.

The trade-off is greater formality and cost, including the requirement to have a board of at least three members and to meet minimum issued-capital requirements; central registration of shares; and ongoing custody fees.

When an LLC makes sense

An LLC offers a simpler, generally more cost-effective structure for closely held ventures, particularly where funding is expected to come primarily from shareholders.

Unlike a JSC, an LLC is managed by one or more managers rather than a board of directors. It has no general statutory minimum capital requirement and does not require central registration of its ownership interests (known as quotas). Quota transfers can also be completed without engaging a broker.

An LLC may offer less flexibility when raising additional equity. Its capital must be fully paid upon incorporation, and new quotas can only be issued at nominal value. Since quotas are not centrally registered, there is no equivalent central mechanism for recording security over them, which may make it less straightforward for lenders to take security over an LLC's ownership right.

Ultimately, the choice between a JSC and an LLC should reflect not only the venture's immediate operational needs but also its anticipated financing requirements, governance arrangements and growth plans. Although an LLC can later be converted into a JSC, choosing the appropriate structure from the outset may help avoid unnecessary costs and complications as the business develops.

Bringing Assets to the Table: In-Kind Contributions

In many Egyptian joint ventures, a local partner may contribute assets, such as land, factories, machinery or inventory, to the venture rather than cash. This asset contribution, known as an in-kind contribution, allows the contributing partner to receive shares in exchange for the assets transferred.

Although Egyptian law permits in-kind contributions, the process requires careful planning. The assets must be independently valued, with the valuation subject to review and approval by GAFI before shares can be issued in exchange. As this process can take several months, it should be factored into the venture's establishment and operational timetable.

Additional considerations include statutory limits on in-kind contributions, which may not exceed 75% of a company's issued capital upon incorporation; the remaining 25% must be contributed in cash. In addition, under the Investment Law, shares issued against in-kind contributions may not be transferred for two full financial years following registration of the capital increase, unless the Minister of Investment approves the transfer. Such approval is not commonly granted in practice.

These requirements should be addressed at the structuring stage, particularly where the parties envisage an early exit or phased acquisition of shares.

The parties should also plan the valuation and timing of any asset contributions, and account for the impact of the restrictions on future share transfers, to ensure that the structure supports their investment objectives and operational plans.

Will the Shareholders' Agreement Work in Egypt?

In cross-border joint ventures, foreign investors often prefer to govern their relationship through a shareholders' agreement governed by English law or another foreign law, with disputes referred to international arbitration. While Egyptian law generally recognises the parties' freedom to agree on these arrangements, it is important to ensure that the rights negotiated between the shareholders can also be effectively implemented at the company level in Egypt.

An Egyptian company remains subject to mandatory provisions of Egyptian law and its articles of association. In practice, authorities such as GAFI, the Commercial Registry and the MCDR will generally look to the company's constitutional documents and applicable Egyptian law when processing corporate actions, rather than relying solely on the shareholders' agreement.

Accordingly, aligning the shareholders' agreement with the company's articles of association at the structuring stage helps ensure that the protections negotiated by the parties are recognised and can be effectively implemented at the company level.

On enforcement, Egypt is a party to the 1958 New York Convention, and foreign arbitral awards may be enforced by the Egyptian courts in accordance with the Arbitration Law (Law No 27 of 1994). This gives investors a framework for enforcing their contractual rights, although an arbitral award does not, by itself, reverse a corporate action already registered at the company level.

Rights that can be built into the articles

Certain shareholder protections can be incorporated into the company's articles of association, subject to the applicable legal requirements and the company's legal form. These may include pre-emption rights on new share issuances, rights of first refusal on share transfers, board appointment rights and certain reserved matters.

Reflecting these protections in the articles helps ensure that they are recognised at the company level and can be taken into account when implementing the relevant corporate actions.

Where such rights are included only in the shareholders' agreement, their enforcement may remain contractual, and a corporate action taken in breach of those rights may nevertheless be validly implemented and registered. Incorporating key protections into the articles, where legally permissible, therefore provides an additional layer of protection and helps align the parties' contractual arrangements with the company's corporate governance framework.

Rights that remain contractual

Other commonly negotiated protections, such as drag-along and tag-along rights, put and call options, and deadlock buy-out mechanisms, are generally contractual and may not be fully reflected or implemented through the company's articles of association alone.

These mechanisms provide investors with additional flexibility in structuring their investment, managing changes in shareholding, and agreeing on future exit arrangements.

The key consideration is therefore not only whether a particular right is legally enforceable, but also how it can be implemented in practice. By incorporating appropriate contractual and corporate implementation mechanisms from the outset, investors can establish a comprehensive framework that supports the effective exercise of their negotiated rights throughout the life of the joint venture.

The Golden Licence: A Faster Track for Strategic Projects

For qualifying investment projects, Egypt offers a streamlined approval process through the Golden Licence, introduced under the Investment Law. Granted by the Council of Ministers, the Golden Licence provides a single approval covering the establishment, operation and management of a project, including construction permits and land allocation. It is particularly relevant to national and strategic projects, as well as certain public-private partnerships, where multiple regulatory approvals and co-ordination between government authorities would otherwise be required.

While the Golden Licence does not provide a blanket exemption from applicable regulatory requirements, it can facilitate the licensing process and reduce administrative hurdles for eligible projects. For investors considering large-scale manufacturing, infrastructure or other strategic investments in Egypt, assessing eligibility for the Golden Licence early in the process can be an important part of the investment structuring process, helping align regulatory requirements with the project's anticipated implementation timeline.

Other Practical Points to Plan For

Beyond corporate structuring and governance, other practical considerations can influence the implementation timeline and commercial arrangements of a joint venture in Egypt. Addressing these matters at an early stage can help investors plan more effectively and ensure a smoother transition from signing to operation.

Merger control

Since June 2024, qualifying economic concentrations, which may include the establishment of certain joint ventures, have been subject to a mandatory pre-closing notification and approval regime administered by the Egyptian Competition Authority (ECA). Investors should assess the applicable filing requirements and factor any required regulatory clearance into the transaction timetable.

Sector licensing

Depending on the nature of the business, additional permits and approvals may be required, particularly in regulated sectors such as manufacturing, food production, and healthcare. Identifying these requirements early allows investors to align the licensing process with the project's development and operational milestones.

Tax regimes

Egypt offers various tax incentives and simplified regimes aimed at supporting investment and business growth. In particular, the simplified tax regime introduced in 2025 may offer benefits to eligible smaller ventures. Investors should assess the available regimes against the joint venture's anticipated activities, projected turnover and long-term growth plans.

Key Takeaways

A well-structured joint venture in Egypt begins with aligning the parties' commercial objectives with the available legal and regulatory framework. In particular, investors should:

- Choose the right legal framework and corporate vehicle – Assess the applicable investment regime and select a corporate form that accommodates the venture's financing needs, governance arrangements and future growth.

- Structure capital contributions efficiently – Consider the valuation requirements, implementation timeline and potential transfer restrictions associated with in-kind contributions, and explore alternative structures where appropriate.
- Align contractual and corporate protections – Ensure that key shareholder rights and governance arrangements are, where legally permissible, reflected in the company's constitutional documents, and supported by appropriate contractual mechanisms.
- Plan for regulatory approvals – Identify applicable merger control, sector-specific licensing and other regulatory requirements early, and explore the potential benefits of the Golden Licence for qualifying projects.
- Build flexibility into the structure – Anticipate future capital requirements, changes in shareholding, additional investors and potential exit arrangements to ensure that the chosen structure can support the venture throughout its life cycle.

EU



Trends and Developments

Contributed by:
Ioannis Charalampopoulos, Petros Machas, Katia Zygoulianou and Giorgos Tsirogiannis
Machas & Partners

Machas & Partners is a full-service Greek law firm headquartered in Athens, with additional offices in London and Monaco. The firm's corporate and M&A practice has a successful track record in leading innovative domestic and cross-border transactions across various sectors such as technology, innovation and AI, real estate, hospitality, education and energy. It also has extensive experience in the formation and structuring of alternative funds, including hedge funds and other regulated entities. The team acts for acquirers, issuers, investee companies, sponsors and other market actors in private and public acquisitions, listings and private placements, venture capital and private equity investments, divestments and secondaries, corporate restructurings and joint ventures. It also advises on bespoke commercial arrangements include shareholders' agreements and carried-interest structures. Combining strong technical expertise with practical deal experience across market-leading, large-scale and niche transactions, the firm's transactional advice integrates corporate, regulatory and tax considerations with a view to generating exponential value for clients.

Authors



Ioannis Charalampopoulos is a partner and head of the corporate and M&A team of Machas & Partners. His expertise includes public and private M&As, disposals and divestments, corporate restructuring and project development transactions, with a particular experience in complex cross-border matters. Ioannis regularly advises sponsors, investors and targets on private equity and venture capital transactions, start-up and growth-capital investments, as well as in the formation of collective investment structures. He has substantial experience in structuring sophisticated fund vehicles and negotiating bespoke shareholders agreements and carried-interest arrangements. Ioannis advises on strategic entry and exit planning, distribution structures for the upstream flow of revenue to investors and performance-based management incentives.



Petros Machas is the founding partner and chairperson of Machas & Partners. He has developed a strong business approach and is renowned for his solid, proactive and effective multi-jurisdictional expertise across a broad range of legal areas, spanning from commercial litigation and arbitration to sophisticated cross-border corporate transactions, as well as estate, tax and succession planning acting for ultra high net worth individuals and multi-family offices. Petros is an expert in cross-border structures and has successfully negotiated complex commercial deals, leveraging his strategic foresight, intuition and innovative approach to generate exponential value. Petros is a registered European lawyer with the Solicitors Regulation Authority of England and Wales.

Contributed by: Ioannis Charalampopoulos, Petros Machas, Katia Zygoulianou and Giorgos Tsirogiannis, **Machas & Partners**



Katia Zygoulianou is a senior associate at Machas & Partners, specialising in capital markets, M&A, banking and finance, corporate law, and financial regulation, with a particular focus on the funds industry. Her experience includes primary and secondary public offerings, corporate and financing transactions, private equity and venture capital investments, and regulatory matters concerning entities supervised by the Hellenic Capital Market Commission and the Bank of Greece. She combines transactional and regulatory expertise with hands-on experience, allowing her to advise clients on both the execution of complex transactions and the practical regulatory considerations surrounding them. She has advised on complex capital markets and M&A transactions and has served as in-house legal counsel and compliance officer at a Greece-based listed alternative investment fund and its manager.



Giorgos Tsirogiannis is an associate in the corporate and M&A practice at Machas & Partners. He focuses his practice on M&A, due diligence investigations and general corporate law matters. He has extensive experience as a legal advisor in investment and real estate construction companies, having assisted both domestic and international clients on M&A projects, corporate governance issues, cross-border transactions and corporate reorganisations. His experience includes drafting commercial agreements, shareholder agreements, SPAs, conversions and migrations of companies, while he has gained significant experience in advising on security documents and private equity deals.

Machas & Partners

8, Koumpari Street
Kolonaki 10674
Athens
Greece

Tel: +30 210 7211100
Fax: +30 210 7254750
Email: info@machas-partners.com
Web: www.machas-partners.com

EU Corporate Law at an Inflection Point: Scale, Capital and Regulatory Conditionality

Introduction

European corporate law is moving on two complementary tracks. Initiatives promoting corporate-law harmonisation, deeper capital markets and digital infrastructure seek to make companies easier to establish, finance and scale across the Single Market, while merger control, foreign direct investment screening and the Foreign Subsidies Regulation subject ownership and strategic transactions to closer scrutiny. This tension is reflected in M&A activity, which remained selective in the first half of 2026. EMEA recorded more than 9,000 transactions with an aggregate value approaching EUR800 billion: deal volume declined by 10% year on year, while value increased by 51.8%. This divergence indicates that the market's recovery was concentrated in larger transactions, as geopolitical uncertainty, valuation gaps and regulatory scrutiny continued to influence transaction timing and shape cross-border investment and execution.

EU Inc.: an optional route through fragmentation

The proposed 28th Regime

On 18 March 2026, the European Commission published its Proposal for a Regulation establishing an optional EU-wide corporate legal framework ("EU Inc."), commonly referred to as the "28th Regime". The proposed Regulation reflects the EU's broader shift towards addressing the structural barriers that prevent European companies from scaling across the EU. The Commission identifies the fragmentation of the EU's corporate landscape as a significant source of cost and complexity for cross-border business.

The proposal seeks to address these barriers through a single, digital-by-default corporate framework, including no mandatory minimum capital, and simplified procedures for capital operations, share transfers and financing. This could facilitate venture capital, early-stage financing and convertible instruments, bringing EU corporate structures closer to international market practices. However, EU Inc. cannot by itself harmonise tax, insolvency, labour, social-security or all securities laws. A company may have one corporate form but still face different tax residence rules, employment requirements, licensing regimes and court practices. National registries and courts will also influence whether the regime is genuinely uniform or develops local variations.

Private equity and venture capital: the evolution of Europe's private capital market

Market overview

Private equity (PE) and venture capital (VC) have become an established part of the EU investment landscape, fuelling businesses with venture financing and contributing to the origination of potential M&A transactions. Although they traditionally targeted different market segments, the boundaries between investment strategies have become less rigid. Following exceptional activity in 2021, European private capital slowed amid inflation, higher interest rates, geopolitical uncertainty and tighter financing conditions. The market subsequently regained momentum: PE and VC investment reached EUR126 billion in 2024 and EUR135 billion in 2025, the second-highest annual level after 2021. Fundraising reached EUR147 billion in 2025, while funds held approximately EUR459 billion of dry powder at year-end. Substantial aggregate capital therefore coexists with selective deployment and concentration among established managers.

Private equity: strategic investment in a changing M&A environment

Private equity has entered a new phase in Europe. Following the market adjustment of 2022 and 2023, higher financing costs, greater valuation discipline and increased scrutiny from investors have reshaped both transaction execution and portfolio management. European buyout activity nevertheless remains substantial: buyout investment reached EUR90 billion in 2025, broadly in line with 2024 and 16% above the five-year average. In 2026, however, continued geopolitical and macroeconomic uncertainty, changing interest-rate expectations and pressure to return capital to investors are reinforcing the importance of disciplined underwriting and credible value-creation strategies.

In response, sponsors place greater emphasis on operational performance as a source of returns. Digital transformation and AI integration, process optimisation, international expansion, strategic acquisitions and stronger governance increasingly form part of portfolio-level value-creation plans. Investors favour

businesses combining resilient cash flows and strong market positions with scalable business models and identifiable opportunities for operational improvement. Buy-and-build strategies remain important, particularly in fragmented sectors, but successive add-ons also create merger-control and FDI-screening issues.

Private equity ownership structures have also become more varied. Alongside traditional control buyouts, sponsors pursue minority and growth investments, including in founder- and family-owned businesses seeking capital for expansion, internationalisation or succession. These transactions require carefully negotiated governance frameworks addressing board representation, reserved matters, veto rights, transfer restrictions and exit arrangements. Rollover equity and management incentive structures can preserve continuity and align the interests of sponsors, founders and management.

Venture capital: financing Europe's innovation economy

The VC ecosystem continues to mature, supported by an expanding range of specialist funds and international sources of capital. European VC transaction value reached EUR35.3 billion in 2025, an 11% increase on the previous year and the second-highest level on record. Capital concentrated on larger transactions, with deals exceeding EUR15 million accounting for 67% of total transaction value. Entering 2026, these figures point to a market in which substantial capital remains available but is increasingly directed toward companies capable of combining technological innovation with commercial scalability and credible pathways to growth.

The evolving market has also reshaped the relationship between founders and investors. While earlier financing cycles often emphasised rapid expansion and market share, investors now attach greater importance to commercial traction, capital efficiency and sustainable growth. As venture-backed companies progress through successive financing rounds, transaction structures and shareholder arrangements become more complex. Governance rights, liquidation preferences, anti-dilution protection and transfer and exit provisions assume greater importance as companies access private capital later and remain privately held for longer.

Artificial intelligence has emerged as one of the most significant investment themes in the European sector-agnostic VC market. Investor scrutiny increasingly extends beyond AI adoption to the defensibility of the underlying technology and business model, including intellectual-property ownership, lawful access to data, scalability, supplier dependency and the conversion of technical capability into sustainable commercial advantage. Capital continues to be directed toward deep tech, climate and energy technologies, cybersecurity, defence and dual-use technologies and other sectors aligned with Europe's strategic priorities. Investment in these areas reflects Europe's broader focus on technological sovereignty. In founder-led companies, differentiated voting rights or investor vetoes may protect long-term strategy but can entrench control; board expertise, information rights and reserved matters should permit oversight of model development, data practices and material supplier commitments without displacing management.

Secondaries and continuation vehicles

Private capital remains an essential part of the EU investment landscape, but the recovery is concentrated rather than broad. Higher financing costs, uneven growth and valuation uncertainty continue to separate high-quality assets from the wider market. Sponsors favour businesses with defensible margins, recurring revenue, pricing power or exposure to strategic themes, while sellers of less differentiated assets may defer exits or accept more complex consideration structures.

Liquidity and exits are equally important as venture-backed companies remain private for longer. European divestment value remained relatively strong at EUR45 billion in 2025 after the 2024 recovery, but volatility and selective buyer appetite continue to affect transaction timing. Alongside traditional exit routes and sponsor-to-sponsor transactions, liquidity pressure has accelerated secondary transactions, rollover structures and continuation vehicles, which can provide partial liquidity to founders, early investors and fund investors without forcing a premature full exit. They also require careful valuation, conflict manage-

ment, disclosure and meaningful investor choice or consent.

Governance and shareholder arrangements

Larger buyouts, add-ons and strategic combinations account for a greater share of activity. Venture investment is similarly selective: capital is available for credible paths to commercialisation, but governance, runway, unit economics and future-round terms receive closer attention. Articles and shareholders' agreements must allocate board appointment rights, reserved matters, transfer restrictions, pre-emption, anti-dilution protection, vesting, leaver treatment and exit rights. Growth companies must also reconcile founder control with the protections expected by successive investor classes. Investors seek stronger consent and information rights, downside protection and disciplined use of capital. Founders focus on dilution, control, vesting and the consequences of a down round. Preference shares, liquidation rights, pay-to-play provisions, convertible instruments and management incentives should be modelled across realistic exit values, not assessed only at headline valuation.

Greece as an emerging destination for private capital and hedge fund managers

Greece's private capital market has moved beyond the restructuring and distressed opportunities that characterised earlier periods and is emerging as a prominent destination for private equity, venture investment and alternative strategies, including hedge-fund management.

Improved macroeconomic conditions, privatisations, digitalisation, energy-transition investment and a growing technology ecosystem have expanded the opportunity set. The fragmented nature of parts of the Greek economy creates scope for platform investments and buy-and-build strategies, particularly where businesses have strong domestic positions and potential for operational improvement and international expansion. Domestic sponsors increasingly operate alongside international funds, family offices and strategic investors. Venture activity is scaling from a low base, supported by the Hellenic Development Bank of Investments: more than EUR732 million was raised in 2025, 35% more than in 2024, led by AI, SaaS and HealthTech. Venture investment nevertheless remains below the EU average, and access to scale-up finance is more limited than in Europe's larger VC markets. The next stage will depend on internationalisation, scale and deeper access to capital.

The framework has also become particularly supportive of alternative investment fund structures and professional management. EU passporting of Greek alternative investment fund managers enables the assumption of management of EU alternative investment funds without jeopardising the ability to assume or migrate the management of other non-EU existing collective investment vehicles, while the expected safe harbours relating to the acquisition of permanent establishment or tax residence have been included in clear statutory provisions. Recent amendments to carried-interest taxation provide further incentives as the advantageous general flat 15% rate may be further reduced to 5% for carried interest beneficiaries relocating their tax residence to Greece. These recent regulatory amendments upgrade Greece from an investment destination to a base for the implementation of regional and global management strategies.

EU Capital markets: towards deeper integration and competitiveness

Market overview

European IPO activity recorded a notable technical rebound in the first half of 2026, with proceeds more than 70% higher year on year, although absolute volumes remained below historical averages. ESMA reported that first-quarter IPO proceeds rose to EUR5.4 billion from a previous four-quarter average of just EUR1.6 billion, although overall equity offering activity remained weak. The total number of transactions fell to 219 in 1Q26 (down from a quarterly average of 240), dragging the five-year moving average of total equity values to its lowest level since 2012.

Equity capital markets are recovering unevenly. CSG NV's EUR3.8 billion Euronext Amsterdam listing in January 2026 was the EU's largest IPO since 2022 and the largest defence IPO globally, followed by further listings and dual-listing plans across the sector including Vincorion SE's listing on the Frankfurt Stock Exchange on 20 March 2026. Taken together, these developments mark the culmination of a six-year period, which began with Hensoldt's IPO in 2020, and

has progressively established defence equities as an increasingly recognised asset class. Looking ahead, the EU's commitment to increasing investment in the defence sector may shape future IPO activity as a growing number of companies in the industry seek to capitalise on strong market momentum and increased investor interest.

Technology may also drive future activity, with AI businesses reportedly representing roughly one third of European IPO candidates, while recent developments in the USA – including SpaceX's record-breaking IPO, which has paved the way, and the anticipated IPOs of OpenAI and Anthropic – are expected to stimulate investor appetite for technology IPOs in the EU. Among Europe's most anticipated IPO candidates is Revolut, currently valued at over USD115 billion following a secondary share sale.

Nonetheless, this potential boost may be tempered by the attractiveness of US capital markets to EU-based companies seeking access to deeper and more liquid markets, including through listings on the NYSE or Nasdaq – a trend that is particularly evident among European deep-tech companies. In mid-2026, nine European deep-tech and growth-stage companies, with a combined valuation of at least USD12.3 billion, including Paris-based nuclear reactor developer Newcleo and French quantum computing company Pasqal, announced plans to merge with US-listed SPACs.

The appeal of US markets reflects, in part, the structural limitations of EU capital markets, which remain significantly smaller and less liquid than those of the US, while businesses continue to rely heavily on bank financing. The five largest US venues account for approximately 74% of trading volume, whereas the ten largest EU venues account for around 75%. According to the Association for Financial Markets in Europe, EU equity market capitalisation stood at 62% of GDP in 2025 compared with 208% in the USA and 163% in Japan, while the EU equity-turnover ratio was 1.7, against 3.2 in the USA and 4.3 in China. Trading and settlement infrastructure remains fragmented across more than 300 venues, 14 central counterparties and 32 central securities depositories.

The beginning of a new era for EU capital markets

EU policymakers have intensified efforts to strengthen capital markets through adopted legislation, operational initiatives and pending proposals, including the Listing Act, the Savings and Investments Union (SIU) strategy and the proposed Market Integration and Supervision Package (MISP).

The Listing Act reforms, which apply in phases, ease aspects of listing and prospectus regulation and harmonise multiple-vote share structures for SMEs, reflecting a regulatory shift towards greater proportionality and competitiveness, and a recalibration of the existing requirements with the aim of facilitating capital formation while maintaining a high level of investor protection.

The Commission launched the SIU strategy in March 2025. The move beyond the earlier Capital Markets Union agenda reflects a broader policy ambition to deepen and integrate European capital markets across supervision, retail participation, cross-border investment, pension systems, and trading and post-trade infrastructure. The SIU is an operational policy programme whose individual legislative measures remain subject to their own adoption and application timetables.

Reforms also target private-market liquidity. A Commission consultation is exploring a multilateral, intermittent trading platform for private-company shares, covering secondary and potentially primary transactions; Euronext is considering capabilities comparable to the London Stock Exchange Group's PISCES framework. This remains exploratory but is directly relevant to PE and VC exits. Separate operational initiatives include the planned move to T+1 settlement by 11 October 2027 and EuroCTP's development of the first EU consolidated tape for shares and ETFs following ESMA authorisation on 27 July 2026, alongside plans for consolidated tape providers for bonds and derivatives.

The Market Integration and Supervision Package of December 2025 is the first major step towards implementing the SIU. Key proposals include expanded ESMA supervision over key market infrastructures and certain market participants, together with a "Hub-

and-Spoke" CSD network to enhance interoperability and integration with TARGET2-Securities. Euronext's operation across eight national markets following its acquisition of the Athens Stock Exchange illustrates the direction of market consolidation.

Blockchain: harnessing technology to improve capital markets efficiency

The use of Distributed Ledger Technology (DLT) in securities issuance has gained significant traction in recent years. Recent estimates from the Association for Financial Markets in Europe indicate that European issuers have issued nearly USD4 billion in DLT-based fixed-income instruments since 2021, including the first digital sovereign bonds issued by EU member states. Distributed-ledger technology and tokenisation may support programmable transfers, cap-table administration and automated distributions, but development is from a low base. Legal ownership, reconciliation with company registers, custody, interoperability, settlement finality and secondary-market liquidity remain material constraints.

In 2025, the Eurosystem launched two complementary initiatives: Pontes and Appia. Pontes is the near-term programme for connecting DLT platforms to TARGET Services so tokenised transactions can settle in central-bank money. Appia is the longer-term exploratory initiative on the architecture, standards and governance of a more integrated European tokenised market, with work beginning in September 2026 and a roadmap extending to 2028.

Regulatory conditionality in European M&A

Merger control and competitiveness

European M&A sits within a wider debate over whether enforcement should give greater weight to scale, innovation, resilience and investment. The Draghi Report intensified calls to remove barriers to European growth, while competition authorities remain concerned about concentration, loss of potential competitiveness and acquisitions that may entrench control over data, technology or infrastructure. The EU Merger Regulation's test remains whether a concentration, including the strengthening of a dominant position, would significantly impede effective competition. Therefore, claimed investment and innovation benefits must be supported by competition-relevant evidence, including timely, merger-specific efficiencies likely to benefit customers.

Jurisdictional analysis has also become less mechanical. Turnover thresholds remain the starting point, but transactions involving important businesses with limited current revenue can attract scrutiny through national rules or other procedural routes. Parties should assess EU and national regimes, minority interests, joint control and local filing concepts before signing and closing.

FDI screening expands

Regulation (EU) 2019/452 created a framework for co-operation rather than a single EU clearance. Member states retain national screening systems, producing different sector definitions, thresholds, filing triggers, timetables and sanctions. The direction of travel is nevertheless towards broader coverage, stronger co-ordination and closer attention to indirect ownership and security risks.

Screening is no longer confined to defence. Energy, transport, health, communications, semiconductors, artificial intelligence, cloud services, data, financial infrastructure, food security and critical inputs may be relevant. Minority acquisitions, internal reorganisations and greenfield investments can be caught in some jurisdictions. An EU-incorporated buyer may still be treated as foreign-controlled when ownership is traced through the group.

The diligence exercise must therefore include early mapping to identify filing triggers including ownership structures and ultimate beneficial owners, state links and government customers, financing sources, sensitive contracts and activities as well as critical technology and access to systems or data. Collecting this information late can delay filings and create inconsistent submissions across jurisdictions.

The Foreign Subsidies Regulation (FSR)

The FSR adds a distinct review of financial contributions from non-EU countries. For concentrations meeting the relevant thresholds, notification may be mandatory before implementation; below the thresholds, the Commission retains investigatory powers. The regime addresses possible distortions in the inter-

nal market and is conceptually separate from merger control and national-security screening. "Financial contribution" is broad and may include capital injections, grants, loans, guarantees, tax measures and public contracts. Multinational buyers therefore need reliable systems to identify and evidence relevant contributions across the group. The Commission may weigh negative and positive effects and can accept commitments or impose redressive measures. Parties should identify early whether funding could be characterised as facilitating the acquisition and whether its terms are market-conform.

Parallel reviews and transaction documents

A strategic acquisition may face merger, FDI and FSR reviews simultaneously, alongside sector licences, foreign merger filings and rules on subsidies or public procurement. These processes ask different questions and may involve confidential information that cannot be freely shared. A single regulatory workstream should co-ordinate facts, sequencing and advocacy while respecting each regime's procedural boundaries. Market actors evaluating bids should weigh execution certainty as well as headline price, including the bidder's ownership profile, financing and willingness to bear regulatory risk.

Transaction documents should identify required clearances, allocate responsibility for filings and authority engagement, protect sensitive information and coordinate strategy across reviews. Efforts standards should state the extent of any remedy obligation; long-stop dates and termination rights should reflect realistic preparation, review and remedy periods. Financing and valuation should also account for delay, reduced synergies and restrictions on control or information.

Cross-cutting governance and contract implications

Across these developments, investors, boards and market actors need an integrated view of capital, control and regulatory exposure. Financing decisions can alter voting power and exit incentives; regulatory conditions can reduce strategic flexibility; and digital or AI dependencies can affect valuation and resilience.

Shareholder agreements should anticipate change rather than assume a single financing or exit path. Information, consent, transfer provisions and exit rights, including pre-emption, drag-along, tag-along rights, as well as deadlock and dispute mechanics, should accommodate regulatory approvals, align with realistic transaction timetables and remain workable through new issuances, continuation transactions and changes of control.

Commercial contracts increasingly influence deal execution. Change-of-control, assignment, sanctions, subsidy, data-location, cyber-security and regulatory-cooperation clauses can determine whether value transfers at closing. Early contract diligence should identify consents and termination rights, as well as obligations that could conflict with proposed remedies or post-closing integration.

The practical lesson is to begin regulatory and governance design early. A structure optimised only for tax, speed or headline valuation may fail if ownership data are incomplete, investor rights cannot migrate or approvals require operational separation. Reliable corporate records, disciplined approvals and adaptable contracts improve the ability to raise capital and transact across borders.

Outlook

The EU is opening its markets with one hand while tightening control with the other: efforts to deepen private capital markets and integrate public capital markets have improved access to finance, but deployment remains selective and ownership harder to acquire. Capital will favour scale, proven managers and strategic sectors. Geopolitical uncertainty, technological change and shifting economic conditions as well as Europe's focus on technological innovation, energy transition, defence and economic resilience will continue to influence deployment. Corporate law harmonisation may reduce cross-border friction, but cannot substitute for deeper markets, predictable regulation or sound governance. Amidst such consolidation, jurisdictional advantages will influence market actors' decisions; in that context EU passporting, combined with competitive national tax and fund-management frameworks, could place Greece as a hub for sophisticated investment strategies and a base for elite hedge fund managers. In the European market now taking shape, successful strategy will increasingly depend on regulatory and transactional execution.

FINLAND



Law and Practice

Contributed by:
Dan Karlsson, Jorunn Skogberg, Heidi Furu, Nathalie Myrskog, Sara Huldin and Patricia Finnström
DKCO

Contents

1. Business Entities P.274
1.1 Business Organisations p.274
1.2 Incorporation and Ongoing Compliance p.274
1.3 Share Issuances p.274
1.4 Distributions and Return of Capital p.275
1.5 Control Person Reporting p.275

2. Corporate Governance P.275
2.1 Legal Framework p.275
2.2 Directors' Duties and Liabilities p.275
2.3 Board Composition and Independence p.276
2.4 ESG and Disclosure Obligations p.276
2.5 Conflicts of Interest and Related-Party Transactions p.276

3. Shareholder Rights and Agreements P.276
3.1 Shareholder Rights p.276
3.2 Shareholder Agreements p.277

4. Mergers and Acquisitions P.278
4.1 Legal Framework p.278

5. Capital Markets P.278
5.1 Securities Regulation and Public Offerings p.278
5.2 Continuous Disclosure p.279
5.3 Insider Trading p.279
5.4 Shareholder Disclosure p.280
5.5 Internal Controls and Whistle-Blower Regimes p.280

6. Secured Transactions P.280
6.1 Transaction Financing and Security Interests p.280

7. Commercial Contracts P.281
7.1 Contract Formation and Enforceability p.281
7.2 Termination and Remedies p.282
7.3 Intellectual Property in Commercial Transactions p.282
7.4 Consumer Protection p.283

8. Foreign Investment P.283
8.1 Competition and Merger Control p.283
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.284

9. Regulatory Compliance P.285
9.1 Privacy and Data Protection p.285
9.2 Anti-Money Laundering, Sanctions and Corruption p.285
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.286
9.4 Artificial Intelligence p.286
9.5 Other Regulatory Compliance Requirements p.287

10. Employment and Labour P.287
10.1 Employment Standards and Workplace Regulation p.287
10.2 Executive Compensation and Restrictive Covenants p.287

11. Real Property and Commercial Leasing P.288
11.1 Requirements for Land Ownership p.288
11.2 Commercial Real Estate Transactions p.288

DKCO was founded in 1994 and is a boutique business law firm with its head office in Mariehamn on Åland and further offices in Helsinki and Vaasa. Corporate and commercial work is handled by eight to ten lawyers, including four partners, drawn from all three offices. The team advises on shareholder arrangements and corporate governance, commercial contracts, mergers and acquisitions, and transaction structuring and financing, drawing on the firm's competition, procurement, permitting and disputes practices as mandates require. The lawyers work in Swedish, Finnish and English, which is particularly valuable for Swedish sponsors entering Finland and for Åland-connected structures. Recent work includes advising Stockholm Nordtech Midco AB on its acquisition of FinMeas Oy and acting for Silvestica Forest Finland Oy on land lease negotiations covering over 3,000 hectares of development-phase areas for industrial and renewable energy projects.

Authors



Dan Karlsson founded DKCO Attorneys-at-law in 1994 and serves as partner and chief executive officer. His corporate, finance and M&A practice centres on cross-border transactions into the Åland market from Sweden and mainland Finland, covering industrial, energy, marine and real estate assets. He advises clients on portfolio acquisitions, leads transaction structuring, risk assessment and deal timetables, and drafts and negotiates indicative bids ahead of legal due diligence. He acts for borrowers and lenders on acquisition and real estate finance, negotiating facility documentation and security packages under Finnish law. Dan has also chaired numerous general meetings on Åland.



Jorunn Skogberg is a partner at DKCO Attorneys-at-law. Her corporate and commercial practice serves clients mainly in the Åland Islands, advising on disputes and generational succession in family businesses. Jorunn has particular expertise in Åland's special legislation for companies, including the right of trade required for companies conducting business in Åland and the land acquisition rights or permits required for companies acquiring real property in the region. She also has broad experience serving as both estate administrator and liquidator.



Heidi Furu is a partner at DKCO Attorneys-at-law, where she has practised throughout her career. She became a partner in 2008 and heads the firm's employment team. She acts for employers, advising medium-sized and large corporations and public entities in Finland and the Åland Islands. She handles both corporate and employment matters, including shareholder disputes and generational transfers in family businesses, as well as co-operation negotiations, terminations and redundancies. She is a member of Women in Business Åland and a highly regarded lecturer in employment and corporate law.



Nathalie Myrskog is a partner at DKCO Attorneys-at-law and specialises in competition law and public procurement. She joined the firm in 2014 and became a partner in 2022. She represents companies and public entities in public procurement, competition, commercial contract and M&A matters. She advises industrial clients and businesses in renewable energy, and has acted for landowners in land lease and purchase negotiations for energy projects. She also lectures frequently on public procurement to both purchasers and suppliers.



Sara Huldin is an associate at DKCO Attorneys-at-law. She graduated with a Master of Laws (LLM) from the University of Helsinki in 2025 and joined the firm the same year. Sara advises clients on employment law, commercial real estate matters and other corporate law matters. Her experience in employment law includes co-operation negotiations, redundancies, drafting and reviewing employment and management agreements, and disputes between employers and employees.



Patricia Finnström is an associate at DKCO Attorneys-at-law. She graduated with an LLM from the University of Helsinki in 2025 and joined the firm the same year. Her practice focuses on corporate and commercial law, advising clients across a range of industries. She also assists contracting entities in public procurement, including tender procedures and procurement processes. In addition, she advises on privacy and data protection compliance.

DKCO

Köpmansgatan 4
Mariehamn
Finland

Unioninkatu 30
Helsinki
Finland

Tel: +358 20 527 4000
Email: info@dkco-law.com
Web: www.dkco-law.com

1. Business Entities

1.1 Business Organisations

The main Finnish business vehicles are the limited liability company (*osakeyhtiö*), the general partnership (*avoin yhtiö*), the limited partnership (*kommandiittiyhtiö*), the co-operative, the sole trader and the Finnish branch of a foreign company. The limited liability company is the standard form for commercial operations, as it is a separate legal person and its shareholders are not personally liable for its debts.

The choice of structure is driven by liability, tax treatment, governance flexibility, financing needs, any regulated activity and whether the business is owner-driven, member-driven (co-operative) or a foreign market entry (branch).

As regards liability, a limited liability company and a co-operative offer limited liability, whereas the partners in a general partnership are personally liable. In a limited partnership, at least one general partner is personally liable, while the liability of a silent partner is limited to its agreed contribution.

Limited liability companies and registered co-operatives are taxed as separate entities at the 20% corporate income tax rate (although the government submitted a proposal in September 2026 to reduce the rate to 18% from tax year 2027), whereas partnership income is generally allocated to the partners, and sole-trader income is taxed as the trader's income.

1.2 Incorporation and Ongoing Compliance

To incorporate a private limited liability company (no minimum share capital required), founders must sign a written memorandum of association specifying the date, all shareholders and their subscribed shares, subscription price and payment deadline, board members and financial period. Articles of association must be attached. The company must be notified for registration with the Trade Register within three months, accompanied by a board declaration of compliance and an auditor's certificate on share payment. The company is established upon registration. Concurrently, the company shall register with the Tax Administration for the prepayment register and, where the requirements for the respective register are met, the VAT register and the employer register.

Ongoing obligations include holding an annual general meeting within six months of the financial period's end, among other things, to adopt financial statements. Financial statements must be filed with the Tax Administration and the Trade Register. The board must maintain a public shareholder register and promptly notify the Trade Register of changes to registered matters such as changes to the board composition.

1.3 Share Issuances

As limited liability companies are the primary corporate vehicle for Finnish commercial operations, the rules described in the following on companies governed by the Limited Liability Companies Act (624/2006) (the "Companies Act"). A public limited liability company must have share capital of at least EUR 80,000, while a private limited liability company has no statutory minimum. Shares may be issued by the general meeting or by the board under an authorisation granted by the general meeting specifying the maximum number of shares by class.

Finland does not use the Anglo-American concept of authorised share capital. Shares may be without nominal value; if the articles of association provide for a nominal value, it must be the same for all shares, and the share capital may not be lower than the aggregate nominal value. Subscription prices are credited to share capital unless, on incorporation, the memorandum of association or articles of association, or, in a subsequent share issue, the issue resolution, allocates them in whole or in part to the reserve for invested unrestricted equity.

Shares belong to different classes if they differ in voting rights or distribution rights, or if the articles of association so provide. The default rule is one share, one vote, but the articles may create high-vote, low-vote or non-voting classes, and may attach preferential dividend or liquidation rights and inter-class conversion rights to a class. Transfer restrictions in the articles are generally limited to consent and redemption clauses, so wider transfer controls are usually dealt with in shareholders' agreements.

1.4 Distributions and Return of Capital

Under the Companies Act, distributions to shareholders are permitted only through statutory channels: dividends and distributions from the reserve for invested unrestricted equity, share capital reductions, acquisition/redemption of own shares and liquidation. Distributions must be based on the latest adopted and audited financial statements (taking into account material changes since completion) and may not exceed unrestricted equity less amounts required to remain undistributed under the articles or any capitalised development expenditure.

A mandatory solvency test applies: no distribution may be made if the company is or would become insolvent. Share capital reductions require a general meeting resolution and, unless used solely to cover losses, trigger a statutory creditor protection procedure.

Repurchase and redemption of own shares require general meeting approval, with board authorisations limited to 18 months and funded only from distributable assets (subject to the solvency test); treasury shares may be held, cancelled, or resold. A public company (including subsidiary holdings) may not hold more than one-tenth of all shares, with excess shares to be transferred within three years or cancelled; a private company may not acquire shares so that it holds all outstanding shares. Financial assistance for third-party acquisition of the company's own shares or parent company shares is prohibited, except within distributable funds for employee share schemes.

1.5 Control Person Reporting

The main obligation for private companies in Finland to report control persons is to file details of actual beneficial owners with the Finnish Trade Register. A beneficial owner is a natural person who exercises control over a legal person by directly or indirectly owning more than 25% of the shares, or by directly or indirectly exercising more than 25% of the votes in the legal person or otherwise effectively exercising control of the legal person.

The company must file a notification even if it has no beneficial owners. The obligation to file details of beneficial owners does not apply to sole traders, companies traded on a regulated market or foreign traders that have established a branch in Finland.

2. Corporate Governance

2.1 Legal Framework

The Finnish corporate governance framework is addressed in the following primarily by reference to limited liability companies, and in particular public and listed limited liability companies, as these are the standard form for Finnish commercial operations. Other Finnish business vehicles, including partnerships, co-operatives, sole traders and Finnish branches of foreign companies, exist and are governed by their own entity-specific legislation.

The principal statute is the Companies Act, which governs private and public limited liability companies and sets out mandatory governance organs, shareholder decision-making, the equal-treatment principle and management duties and liability. The Accounting Act (1336/1997) governs financial statements and management reports, while the Auditing Act (1141/2015) regulates statutory audits. For listed companies, the Securities Markets Act (746/2012) (SMA), Market Abuse Regulation (EU) No 596/2014 (MAR) and Nasdaq Helsinki rules impose disclosure and market conduct obligations.

The key soft-law instrument is the Finnish Corporate Governance Code 2026, issued by the Securities Market Association. It applies to companies listed on Nasdaq Helsinki and to Finnish companies traded on Nasdaq First North Premier Growth Market on a comply-or-explain basis.

2.2 Directors' Duties and Liabilities

Directors must act with due care and promote the interests of the company under the Companies Act. This statutory duty is commonly analysed as a duty of care and loyalty, reinforced by the equal-treatment principle, under which the general meeting, board, managing director or supervisory board may not confer an unjust benefit on a shareholder or another person at the expense of the company or another shareholder.

Finnish courts apply these duties fact-specifically, focusing on whether directors acted actively, informed themselves, supervised management and respected mandatory corporate procedures. In practice, the decisive question is typically whether the director acted in the best interests of the company on an informed basis.

A director, supervisory board member or managing director is liable to the company for damage caused intentionally or negligently in breach of the duty of care, and to the company, shareholders or third parties for damage caused intentionally or negligently by breaching the Companies Act or the articles of association. Personal liability may therefore arise from self-dealing, unlawful distributions, defective supervision, breach of equality or failure to react to serious financial distress.

2.3 Board Composition and Independence

A Finnish limited liability company must have a board of directors; unless the articles of association provide otherwise, the board has one to five ordinary members, and at least one member must reside in the European Economic Area (EEA) unless an exemption is granted. Legal persons, minors, persons under guardianship or restricted legal capacity and bankrupt persons are ineligible, and business prohibitions may affect eligibility.

Private companies are not subject to statutory independence or diversity requirements, although their articles of association or shareholder arrangements may impose governance requirements. Listed companies must additionally comply with the Finnish Corporate Governance Code on a comply-or-explain basis, which contains recommendations on board composition, including independence and diversity, that the board should take into account.

Public-interest entities, including listed companies within the Accounting Act definition, must also address audit committee requirements, including accounting or auditing expertise, independence and exclusion of persons participating in daily management.

2.4 ESG and Disclosure Obligations

The firm does not advise on ESG-matters.

2.5 Conflicts of Interest and Related-Party Transactions

Conflicts of interest are regulated by the general principles of the Companies Act, including the board's duty of care, the equal-treatment principle and the Companies Act's disqualification rules for board members and shareholders. For listed companies, the Companies Act contains more extensive and prescriptive related-party rules, under which conflicted related parties are excluded from decision-making on transactions that are outside the ordinary course of business or not on ordinary market terms.

Under the SMA, a Finnish share issuer admitted to trading on a regulated market must disclose material related-party transactions no later than when they become binding, including the related party's name, relationship, timing and value. Financial statements must also disclose material related-party transactions not concluded on normal market terms, subject to statutory exemptions and the requirement to give a true and fair view. The Finnish Corporate Governance Code further expects listed companies to maintain processes for identifying and evaluating related-party transactions.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

The Companies Act governs shareholder rights, which shareholders exercise at the general meeting. Every shareholder has the right to attend, including holders of non-voting shares unless the articles of association state otherwise. Any shareholder may put a matter on the agenda of the general meeting. As a rule, each share grants one vote, but the articles of association may provide shares with different or non-voting rights.

Most decisions require a simple majority of votes cast. Certain decisions may, however, according to the Companies Act, require a two-thirds majority of both the votes cast and the shares represented. Shareholders have the right to request detailed information on circumstances that may affect the evaluation of the financial statements or of a matter dealt with by the meeting.

Minority rights, typically exercisable by shareholders holding at least one-tenth of all shares, include the rights to:

- demand an extraordinary general meeting;
- postpone the approval of the financial statements to a continuation meeting;
- demand a minority dividend (at least half of the profit for the financial period, but not more than 8% of equity);
- apply for a special audit; and
- bring an action in their own name on behalf of the company against directors, the managing director or another shareholder, provided the company is unlikely to pursue the claim itself.

The derivative action is also available irrespective of shareholding where non-enforcement would breach the principle of equal treatment.

A decision of the general meeting may be challenged by an action of objection within three months of the decision; otherwise, it is deemed valid. That time limit does not apply to void decisions, except that an action relating to a merger or demerger decision may not be brought more than six months after its registration.

A decision is void if:

- no notice of the meeting was delivered or the notice provisions were materially breached;
- a required shareholder consent under Chapter 5, Section 29 was not obtained;
- the decision is clearly contrary to the principle of equal treatment and the affected shareholder has not consented; or
- the decision could not lawfully have been made even with the consent of all shareholders.

3.2 Shareholder Agreements

Shareholders' Agreements

Shareholders' agreements supplement the Companies Act and the articles of association. The Supreme Court (*Korkein oikeus* – KKO) has described them as agreements between shareholders on how they act as shareholders and as members of company bodies. They are enforceable under general contract law between the parties but cannot override mandatory company law. The company is bound only if it is a party. Typical provisions include:

- reserved matters requiring unanimity or qualified majority;
- board composition;
- financing;
- transfer restrictions and pre-emption rights;
- tag-along and drag-along rights;
- call and put options;
- leaver provisions;
- deadlock mechanisms;
- valuation;
- dispute resolution; and
- sanctions for breach such as damages and contractual penalties.

Restrictions on transfer may be included in the articles only as a redemption clause or a consent clause. A redemption clause in the articles has effect against the acquirer, who has no shareholder rights until it is determined whether the right is exercised, apart from the right to distributions and to pre-emption in share issues. A contractual right of first refusal, by contrast, binds only the contracting shareholder.

A shareholders' agreement may also not replace consents required by the Act. In KKO 2020:34, an offer obligation in the agreement did not amount to the shareholder's consent required for a directed redemption. An arbitration clause in the agreement binds only its parties unless its scope is expressly extended. The agreement and the articles should therefore be coordinated.

Legal Mechanism and Remedies

Finnish law has no general unfair prejudice or oppression remedy. Minority protection instead rests on the principle of equal treatment and on specific statutory remedies, alongside contractual remedies under the shareholders' agreement. A shareholder may challenge general meeting decisions through an action of objection or an action to declare a decision void. Board members, the managing director and shareholders who have intentionally or through negligence caused damage to the company intentionally or negligently, and shareholders for damage caused by intentionally or negligently contributing to a breach of the

Companies Act or the articles of association, may be liable for damage caused to the company.

Shareholders holding at least one-tenth of the shares, or who show that non-enforcement would breach equal treatment, may pursue a derivative action in their own name if the company is unlikely to do so. A shareholder may also apply for a special audit. A shareholder holding more than nine-tenths of the shares and votes has a squeeze-out right, and the minority a corresponding sell-out right.

Where a shareholder has intentionally abused their influence, the court may order that shareholder to redeem the other shareholder's shares at a fair price, assessed as if there had been no abuse.

As a last resort, the court may order liquidation or deregistration of the company. An arbitration clause in the articles binds the company, shareholders and management. Partnership disputes are governed by the Partnerships Act (389/1988), which provides for termination, withdrawal and court-ordered liquidation.

4. Mergers and Acquisitions

4.1 Legal Framework

The Companies Act governs, among other matters, corporate mergers, demergers and provisions relevant to share acquisitions of limited liability companies. The SMA regulates takeover bids, disclosure obligations and capital markets activities for listed companies. In addition, the Competition Act (948/2011) is relevant to mergers, as it contains the rules on merger control together with authorities such as the Finnish Competition and Consumer Authority (FCCA).

As limited liability companies are the most common form of business entity in Finland, the most common deal structures are share acquisitions (private companies), public tender offers (listed companies), statutory mergers and asset deals. Key structuring considerations depend on, among other things:

- ownership concentration;
- target listing status;
- liabilities to be assumed;
- creditor protection;
- tax;
- merger control;
- foreign-investment approvals; or
- other approvals.

The most recent change to Finnish public M&A regulation is the amendment to the SMA (163/2024), which extended the mandatory takeover bid and flagging obligations to companies whose shares are traded on a multilateral trading facility (MTF). A recent court decision of note is KKO 2025:94, which concerns determination of the redemption price in minority squeeze-out proceedings under Chapter 18 of the Companies Act. The decision clarifies the valuation principles applicable when special reasons exist to deviate from the tender offer price presumption set out in Chapter 18, Section 7, Subsection 3 of the Companies Act.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Finnish securities market regulation is highly harmonised with EU law. The key legislation consists of the Prospectus Regulation (EU) 2017/1129, as amended by the Listing Act (Regulation (EU) 2024/2809), MAR and the SMA. Listed companies are also subject to the rules of Nasdaq Helsinki Ltd, which operates the regulated market (the Helsinki Stock Exchange) and the Nasdaq First North Growth Market Finland (an MTF). The national competent authority overseeing capital markets is the Finnish Financial Supervisory Authority (FIN-FSA).

Public offerings are governed by Chapter 3 of the SMA and the Prospectus Regulation, supplemented by Nasdaq Helsinki's issuer rules. A FIN-FSA-approved prospectus is generally required for a public offer of securities or for admission to trading on the regulated market, unless an exemption applies. After listing, issuers must comply with MAR inside-information rules, periodic financial reporting and trading-venue disclosure rules, while shareholders and comparable persons are subject to separate major-holding notification obligations.

The FIN-FSA scrutiny period is generally ten working days, extended to 20 working days for certain first-time issuers and reduced to seven working days for qualifying EU Follow-on prospectuses under the Listing Act regime. The overall IPO process typically takes several months.

Stock exchange listing requirements operate alongside Finnish and EU securities regulation. For a regulated-market listing, the issuer must satisfy Nasdaq Helsinki's admission requirements, while any required prospectus is approved separately by the FIN-FSA. Nasdaq Helsinki's rules also impose continuing issuer obligations that complement statutory disclosure requirements. For Nasdaq First North Growth Market Finland, admission is typically based on a company description under the MTF rules, but a prospectus must be prepared where the Prospectus Regulation or national law requires one, including in connection with a public offer.

Prospectus exemptions must be assessed separately for the public offer and for admission to trading. The main public-offer exemptions include offers below the national prospectus threshold, which from 5 June 2026 is generally:

- EUR12 million over 12 months without passporting;
- offers addressed solely to qualified investors;
- offers addressed to fewer than 150 non-qualified investors per member state; and
- offers where the denomination or consideration is at least EUR100,000.

The Listing Act also introduced exemptions for certain follow-on issuances of fungible securities by listed issuers, provided the relevant conditions are met and a short information document is filed with the competent authority and made available to the public. Under the SMA, a basic information document is generally required for public offers that reach EUR1 million over 12 months but remain below the prospectus threshold.

Finland does not impose a separate statutory hold period on securities distributed under a prospectus exemption. Each resale is assessed as a separate offer under Article 5 of the Prospectus Regulation and may require a prospectus if it constitutes a public offer and no exemption applies; a further prospectus is not required where a valid one remains available with the responsible person's written consent.

Non-equity securities admitted to a qualified-investor-only market segment may not be resold to non-qualified investors without a prospectus. Non-compliance may lead to FIN-FSA action, including suspension or prohibition of the offer, public notice and administrative sanctions.

5.2 Continuous Disclosure

Listed companies in Finland whose securities are admitted to trading on a regulated market or an MTF are subject to ongoing and periodic disclosure obligations under MAR, the SMA and the rules of the relevant trading venue. The ongoing disclosure regime centres on inside information, which must generally be disclosed as soon as possible, subject to MAR rules on delayed disclosure and protracted processes. It also includes disclosure of managers' transactions and transactions by closely associated persons. Periodic reporting includes annual financial statements, the management report and half-yearly reporting; First North requirements are generally lighter than those for the main market.

Material events, including significant transactions and material changes in outlook, are normally disclosed through a stock exchange release, or a company release for First North issuers, via Nasdaq Helsinki and the issuer's official disclosure channels. The release is also made available on the issuer's website. Delayed disclosure is permitted only where the conditions under MAR are met, and the FIN-FSA must be notified after disclosure where required.

5.3 Insider Trading

Market abuse in Finland is primarily governed by MAR, which prohibits insider dealing, unlawful disclosure of inside information and market manipulation. These prohibitions are supplemented at the national level by the SMA and, as regards criminal liability, by Chapter 51 of the Finnish Criminal Code (39/1889), which transposes the EU Directive on criminal sanctions for market abuse (2014/57/EU).

The FIN-FSA supervises compliance and may obtain information and documents, conduct inspections and hear representatives of supervised entities and other market participants. It may impose administrative fines, public warnings and penalty payments. Serious suspected offences are referred to the police. Criminal sanctions include fines or imprisonment of up to two years, or up to four years for aggravated offences.

5.4 Shareholder Disclosure

In Finland, disclosure of substantial shareholdings, or flagging, is governed mainly by Chapter 9 of the SMA, which implements and supplements the Transparency Directive regime. Following amendments that entered into force on 19 April 2024, the obligation also applies to Finnish companies admitted to trading on Nasdaq First North Growth Market Finland, subject to the transition rules that applied in 2024.

Shareholders and persons comparable to shareholders must notify both the issuer and the FIN-FSA when a relevant holding or voting-right threshold is reached, exceeded or falls below. The issuer itself must also disclose threshold crossings resulting from transfers, acquisitions or annulments of its own shares.

The thresholds are 5%, 10%, 15%, 20%, 25%, 30%, 50%, ⅔ and 90% of the total votes or shares. The obligation covers direct and indirect holdings, controlled entities and chains of control. It also captures financial instruments that entitle the holder to acquire shares or create an equivalent long economic position, whether physically or cash settled.

Failure to comply with the flagging obligation may result in administrative sanctions imposed by the FIN-FSA, including administrative fines. A flagging notification must be made in writing without undue delay and no later than the trading day following the date on which the shareholder became aware, or should have become aware, of the transaction or other event triggering the obligation. In practice, investors close to a threshold should monitor aggregated direct and indirect holdings, voting rights and relevant financial instruments in advance, as late notifications may attract regulatory scrutiny.

5.5 Internal Controls and Whistle-Blower Regimes

The statutory baseline for corporate compliance in Finland is set by company-specific laws, such as the Companies Act and the Co-operatives Act (421/2013), which impose responsibility on the board of directors to oversee the administration of the company, including the appropriate organisation of its operations. In a listed company, the board's monitoring responsibility extends to the company's financial reporting system, internal control and auditing, as well as risk management systems. Additionally, the board of directors is responsible for monitoring the audit of the company.

Entities such as limited liability companies and co-operatives are required to establish an internal reporting channel for reporting information on breaches of legislation if the company regularly has at least 50 people employed. The person responsible for handling a report must investigate the accuracy of the report and, where necessary, act in the event of a breach.

The reporting person shall be protected against any form of retaliation by their employer as a result of the reporting of infringements. Obliged entities under the Act on Preventing Money Laundering and Terrorist Financing (444/2017) are also required to allow their employees to report any suspected violation of the Act in accordance with whistle-blowing procedures.

For listed companies, further recommendations regarding corporate governance and internal control are presented in the Finnish Corporate Governance Code.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Secured Transactions Law

Finnish secured transactions law is not codified in a single security code and does not provide for a single all-assets security instrument comparable to a common-law debenture; instead, security is based on asset-specific legislation and general principles of pledge law.

The main forms of security in commercial financings are share pledges, receivables pledges, bank account pledges, real estate mortgages and business mortgages, the latter sometimes being described as Finnish floating charges over qualifying movable assets. Security may also be taken over certain other assets, such as registered intellectual property (IP) rights, vessels, aircraft and certain vehicles, where relevant.

Financial collateral arrangements may benefit from a separate regime under the Finnish Act on Financial Collateral Arrangements (11/2004), implementing Directive 2002/47/EC, provided that the parties, secured obligations and collateral fall within the statutory scope.

Perfection Requirements

Perfection requirements are asset-specific. Real estate mortgages and business mortgages are registered security interests, while pledges over receivables, bank accounts and shares are generally perfected through notice, blocking or control arrangements, delivery of certificates or entries in the relevant book-entry, shareholder or other register, depending on the asset.

Priority is primarily determined by the type of security, the timing and effectiveness of perfection and mandatory statutory ranking rules. A business mortgage is an important exception to a simple priority analysis: in bankruptcy, it gives priority only to 50% of the value of the mortgaged assets after certain higher-ranking claims have been paid, with the balance ranking as an ordinary claim. Enforcement is generally available, but insolvency and restructuring proceedings, mandatory priority rules and claw-back rules may affect timing, process and recoveries.

Acquisition Financings

Finnish acquisition financings are structured by reference to the assets, obligors and lenders involved; where Finnish-law security is required, it is typically taken over identified Finnish assets rather than through a single all-assets security instrument. A typical Finnish security package includes share pledges, bank account pledges, receivables pledges and business mortgages, with real estate or other asset-specific security added where material.

Guarantees and security granted by Finnish companies within the acquisition structure must be assessed separately under the Companies Act, in particular against the prohibition on providing funds, loans or security to enable a third party to acquire shares in the company or its parent, and against corporate benefit, solvency, shareholder equality and unlawful distribution rules. In multi-lender financings, intercreditor arrangements and security agency provisions are commonly used to regulate contractual ranking, enforcement control and proceeds waterfalls, subject always to Finnish perfection requirements and mandatory insolvency priority rules.

Secured Finance Reform

No recent Finnish secured finance reform appears to have required a wholesale change to standard loan or security documentation. Financing practice has instead been shaped mainly by market conditions, including higher interest rates, more conservative credit processes, tighter covenants and the increased role of private credit in acquisition finance.

EU-level banking and insolvency developments, including the restructuring and insolvency framework and prudential reforms, as well as sector-specific Finnish regulation such as covered bond and mortgage bank rules, should still be monitored where relevant. These developments have generally affected structuring, diligence and negotiation practice more than the basic Finnish security package itself.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Finnish contract law rests on the principle of contractual freedom. A binding contract arises from a matching offer and acceptance (or other expression of mutual consent); consideration is not required. The principal statutes are the Contracts Act (228/1929), the Sale of Goods Act (355/1987), the Consumer Protection Act (38/1978) and the Code of Real Estate (540/1995). Further sector-specific legislation supplements these in areas such as insurance, construction and financial services.

Finland has ratified the United Nations Convention on Contracts for the International Sale of Goods (CISG), but declared it inapplicable to sales between Nordic countries. Finnish law does not impose general formal requirements for contract validity, meaning both oral and written agreements are enforceable. Notable exceptions include the sale of real estate, which under the Code of Real Estate must be in writing, signed and authenticated by a public purchase witness unless completed digitally in the official e-Property Commerce Service, where no purchase witness is required.

The Contracts Act sets out the principal grounds for invalidity, including duress, fraud, exploitation, unconscionable bargain, mistakes or transmission errors in declaration of intent or if the agreement contravenes honour and good faith. A contract or term may also be invalid if it contravenes mandatory law or public policy. Section 36 permits courts to adjust or set aside contract terms leading to unfair results, though this is rarely applied between B2B parties of comparable bargaining power and carries greater weight in consumer and employment contexts.

Finnish contract law places substantial weight on good faith and fair dealing. Interpretation is holistic, considering not only the contract text but also pre-contractual negotiations, the parties' intentions and loyalty duties. The law also recognises culpa in contrahendo, pre-contractual liability for blameworthy conduct during negotiations, and a party may be liable even without a concluded contract if negotiations are broken off in bad faith after the other party reasonably relied on agreement. Contractual limitation of liability is permitted but subject to the Section 36 reasonableness test and to mandatory liability rules in sector-specific legislation.

7.2 Termination and Remedies

Finland has no general code of obligations, but remedies for breach of contract are codified in detail in sector-specific legislation, principally the Sale of Goods Act, the Consumer Protection Act and the Code of Real Estate, and are supplemented by established uncodified general principles of contract law.

There is no general statutory regime for force majeure or hardship. The doctrine is addressed through sector-specific legislation, most notably the Sale of Goods Act, which exempts a party from liability for damages where the delay or defect is attributable to an impediment beyond the party's control. Crucially, force majeure operates principally to relieve a party from liability for damages; it does not extinguish the underlying obligation to perform.

Finnish law distinguishes between termination by notice (*irtisanominen*) and cancellation (*purkaminen*) in case of material breach, which may trigger restitution of performances already rendered. Pursuant to established Supreme Court jurisprudence (KKO 2019:13), even long-term contracts of indefinite duration may, as a rule, be terminated by notice, irrespective of whether the contract contains an express termination clause. The essential requirement is that the terminating party must give reasonable consideration to the interests of the counterparty.

Wrongful termination gives rise to damages under general tort law principles. The standard is full compensation: the injured party is restored to the financial position it would have occupied had the contract been performed. Indirect losses are recoverable only where the breach is attributable to negligence.

7.3 Intellectual Property in Commercial Transactions

Key IP issues in commercial agreements include:

- ownership of background IP, newly created IP and improvements;
- licence scope (permitted use, territory, exclusivity, duration);
- confidentiality and trade secret protection, including post-termination handling;
- assignments of rights and registrations; and
- warranties, liability allocation and IP infringement protection.

The employer's right to acquire the invention depends on the connection between the invention and the employment. The employee is entitled to reasonable compensation whenever the employer acquires rights in the invention, even if a prior agreement purports to exclude compensation. Regarding copyright, there is no general statutory transfer to the employer with the

exception of computer programs and databases, but the employer gains a right of use. For commissioned works, Finnish copyright law provides no automatic transfer to the commissioning party; the creator retains copyright unless contractual assignment is agreed.

Ownership of jointly developed inventions is typically governed by the joint development agreement between the parties. Finnish patent law follows the general principle that the inventor is the initial rightholder, and any transfer must be agreed upon contractually.

Finnish law currently has no established jurisprudence addressing copyright protection and AI-generated works. As an AI system cannot qualify as a natural person under the Copyright Act, output generated with limited human involvement is unlikely to qualify for copyright protection.

Civil disputes concerning patents, trade marks, copyright, registered designs and utility models are heard by the Market Court. IP infringement remedies include court-issued injunctions prohibiting continued infringement, reasonable compensation (even without fault), full damages for intentional or negligent infringement, destruction or alteration of infringing goods, publication of judgments, criminal sanctions under the Criminal Code (39/1889) (prosecuted before the Helsinki District Court), precautionary evidence preservation measures, right-to-information orders and customs detention of suspected infringing goods.

7.4 Consumer Protection

The principal statute is the Consumer Protection Act (38/1978), a general law governing marketing, contract terms, adjustment of agreements and consumer sales. It applies to the supply, sale and marketing of consumer goods and services from traders to consumers. Key provisions include a 14-day cooling-off period for off-premises selling and distance selling (ie, e-commerce), pre-contractual disclosure requirements on product characteristics, total price, delivery terms and cancellation rights, and a prohibition on contractual terms that, taking account of price and other relevant aspects, are to be regarded as unfair to consumers. EU directives, including the Unfair Commercial Practices Directive (2005/29/EC) and the Consumer Rights Directive (2011/83/EU), are implemented through the Act.

A practice is unfair if it contravenes generally acceptable business practice and materially impairs the consumer's informed decision-making. Misleading advertising – false or deceptive information in marketing or customer relationships – is assessed against the average consumer standard (reasonably informed and attentive, per CJEU case law). The Consumer Protection Act also prohibits aggressive practices, assessed by reference to the timing, location, nature, language, behaviour, persistence and exploitation of consumer vulnerability.

The Consumer Ombudsman operating within the FCCA enforces compliance through prohibitory injunctions (with conditional fines), Market Court proceedings and penalty fees of up to 4% of annual turnover under the Act on Certain Powers of the Consumer Protection Authorities (566/2020). The Consumer Ombudsman may also intervene in unlawful online content, including ordering content removal or blocking access. Individual consumer disputes are handled through the Consumer Disputes Board. Consumers may claim a price reduction where an unfair or misleading practice influenced their purchase, and traders are liable in damages for intentional or negligent violations.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control in Finland is governed by the Competition Act (948/2011) and enforced by the FCCA. Special rules on corporate acquisitions affecting defence, security or critical national interests apply under the Act on the Screening of Foreign Corporate Acquisitions (172/2012).

A concentration must be notified to the FCCA where the parties' combined turnover in Finland exceeds EUR100 million and at least two parties each exceed EUR10 million. Under the one-stop-shop principle, Finnish rules do not apply where the EU Merger Regulation (Council Regulation (EC) No 139/2004 – EUMR) thresholds are met, unless a referral mechanism is

invoked. Notification must be filed before implementation, either after the agreement is concluded (or a public bid announced), or earlier once the parties can demonstrate with sufficient certainty their intent to conclude the concentration.

The FCCA has 23 working days (Phase I) for its initial assessment. If the concentration may significantly impede effective competition, a Phase II investigation of up to 69 working days follows (extendable by the Finnish Market Court by up to 46 working days). The substantive test is whether the concentration may significantly impede effective competition, in particular by creating or strengthening a dominant position (significant impediment to effective competition – SIEC), corresponding to that applied under the EUMR.

If a concentration is implemented without notification, the Market Court may, on the FCCA's proposal, prohibit or order the dissolution of the concentration, or impose conditions. Penalty payments of up to 10% of each infringing undertaking's worldwide total turnover may also be imposed.

Anti-competitive agreements and abuse of dominance are prohibited under Sections 5 and 7 of the Competition Act, corresponding to Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). The FCCA may require cessation of an infringement and impose behavioural remedies; structural remedies may be imposed by the Market Court on the FCCA's proposal. The FCCA may also accept binding commitments eliminating the anti-competitive conduct. Penalty payments may not exceed 10% of worldwide turnover. Private damages claims are available under the Act on Compensation of Damages Related to the Infringement of Competition Law (1077/2016).

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign corporate acquisitions are screened under the Finnish FDI Act. Screening covers defence, security and other sectors critical to vital societal functions. The obligation is triggered when a foreign buyer acquires at least one-tenth, ⅓ or ½ of voting rights (or corresponding actual influence) in a Finnish target. Defence and security acquisitions require mandatory pre-closing approval from the Ministry of Economic Affairs and Employment (MEAE); for other critical sectors, notification is voluntary. No statutory time limits apply to defence/security transactions. For other critical interests, MEAE has six weeks for initial review and three months for further review before potential Council of State referral; inaction within these periods results in deemed approval. No filing fees apply. Failure to apply, failure to disclose information, or the provision of false information may be punished by a fine under Section 10 of the Finnish FDI Act.

Finland imposes no general prohibition on foreign ownership, but several sector-specific restrictions apply:

- financial services require authorisation from the FIN-FSA, with control changes subject to regulatory approval;
- real estate acquisitions require a Ministry of Defence permit under the Act on Transfers of Real Estate Requiring Special Permission (470/2019, as amended); and
- energy grid operations require a licence from the Finnish Energy Authority.

Regarding FDI screening, the defence sector faces the strictest requirements: "foreign buyer" includes all non-Finnish persons – including EU/European Free Trade Association (EFTA) nationals – whereas in other critical sectors only non-EU/EFTA interests are captured.

The Finnish FDI Act serves as Finland's national security review mechanism. The MEAE confirms an acquisition unless it may jeopardise a key national interest, including military defence, functions vital to society, national security, foreign and security policy objectives, and public order. Where such a risk is identified, the MEAE shall refer the matter to the Council of State, which may refuse confirmation. The MEAE may also impose conditions on approval to safeguard key national interests.

Finland does not maintain incentive programmes specifically targeting foreign investors; domestic and foreign investors are treated equally. In September 2026,

the government proposed reducing the corporate income tax rate from 20% to 18% and extending the business loss deduction period from ten to 25 years. Grants are available through Business Finland, ELY Centres and Finnvera. Finland has no free trade or special economic zones, but regional state aid (up to 20% intensity) applies in designated areas until 2027 (Commission decision SA.114318).

The most significant development is the ongoing overhaul of Finland's FDI screening regime. The Finnish FDI Act was amended in 2014 (496/2014) to expand entity definitions and in 2020 (682/2020) to implement the EU FDI Screening Regulation (2019/452). In June 2026, the MEAE published a draft proposal for a new FDI Act that would extend mandatory pre-closing approval to all non-Finnish investors (including EU/EFTA), cover greenfield investments in specified sectors, add new thresholds (66.6% and 90%), and transfer Phase I review to the National Emergency Supply Agency, with the MEAE retaining Phase II responsibility. The new Act is intended to enter into force in spring 2027.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Finland applies the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), specified nationally by the Data Protection Act (*tietosuojalaki*). In addition, sector-specific laws complement the GDPR in areas such as law enforcement (Act 1054/2018), electronic communications (Act 917/2014), employment privacy (Act 759/2004), health and social welfare (eg, Acts 785/1992 and 703/2023) and the financial sector (eg, the Credit Information Act, 527/2007).

Key compliance obligations include:

- identifying a lawful basis for processing;
- establishing deletion and retention periods;
- providing transparent information to data subjects;
- enabling data subject rights;
- restricting the processing of special categories of data;
- implementing appropriate technical and organisational security measures;
- conducting dataprotectionimpactassessments (DPIAs) for high-risk processing;
- appointing a data protection officer (DPO) where required;
- managing third-party processing;
- reporting data breaches; and
- maintaining records of processing activities.

In the event of a data breach, unless the breach is unlikely to pose a risk, the controller must notify the Data Protection Ombudsman without undue delay and within 72 hours (giving reasons if late), and processors must alert the controller without undue delay. Where the breach poses a high risk to individuals' rights and freedoms, the controller must also inform affected data subjects without undue delay.

Finland imposes no general localisation requirement for personal data; transfers outside the EEA are permitted subject to GDPR Chapter V safeguards (adequacy decision, SCCs or BCRs, and a transfer impact assessment). Within the Union the GDPR ensures the free movement of personal data. However, public contracting authorities and private companies may impose EU/EEA processing conditions in individual tenders and contracts.

9.2 Anti-Money Laundering, Sanctions and Corruption

The principal anti-money laundering and counter-terrorist financing obligations in Finland are set out in the Act on Preventing Money Laundering and Terrorist Financing (444/2017) (the "AML Act"). These obligations include carrying out customer due diligence measures and assessing the money laundering and terrorist financing risks in the customer relationships. When establishing a permanent customer relationship, obliged entities are required to identify their customers and verify their identities. The obliged entities must also identify the customers' beneficial owners.

Financial institutions, account operators, insurance or credit intermediaries, gambling operators, auditors, attorneys-at-law and others providing legal or financial services are among the obliged entities under the AML Act. These entities are required to report any suspicious transactions to the Financial Intelligence Unit.

The AML Act also requires compliance with financial sanctions under the Act on the Fulfilment of Certain Obligations of Finland as a Member of the United Nations and of the European Union (659/1967), as well as decisions to freeze funds under the Act on the Freezing of Funds with a View to Combating Terrorism (325/2013).

Supervisory authorities designated under the AML Act may impose administrative sanctions on legal and natural persons for failure to comply with AML requirements or sanctions-related obligations. Available sanctions are administrative fines, public warnings and penalty payments. Non-compliance may also result in criminal penalties.

The primary anti-corruption and anti-bribery obligations applicable to businesses in Finland are found in the Criminal Code (39/1889). The Criminal Code prohibits bribery both in business and against public authorities. Companies typically mitigate corruption risk through compliance programmes encompassing anti-corruption policies, risk assessments, whistleblowing mechanisms, internal supervision and employee training.

Several Finnish authorities co-operate in combating corruption. These include the National Bureau of Investigation (NBI), a national unit of the Finnish Police investigating corruption and bribery offences. Bribery offences may result in a fine or imprisonment under the Criminal Code.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Transactions are shaped by the Environmental Protection Act (527/2014), requiring environmental permits for activities that pose a risk of environmental pollution. The Åland Islands have their own environmental legislation. The Finnish legislation imposes strict liability for environmental damage under the polluter pays principle, making environmental due diligence a common practice in M&A transactions. Carbon pricing is managed through the EU Emissions Trading System and a national carbon tax included in the fuel tax.

Finland faces several key challenges in climate-related litigation and corporate environmental liability. Because Finnish law operates mainly through environmental permitting and strict liability for environmental damage, the main obstacles are establishing causation, demonstrating standing and attributing responsibility. Although the Act on Compensation for Environmental Damage (737/1994) requires only that the causal link between the activity and the damage be shown to be probable, even this threshold may be difficult to meet in climate-related cases.

Health and safety obligations derive primarily from the Occupational Safety and Health Act (738/2002) and from the Government Decrees. In Finland, employers must ensure that employees are properly instructed on their work, working conditions, equipment, and safe working practices, including any significant changes to work processes. They must also monitor workplace safety and address non-compliance with safety instructions. High-risk work requires a specific risk assessment.

The Occupational Safety and Health Administration supervises compliance with occupational safety and health legislation. Failure to comply may result in criminal liability for the employer or its representatives under the Criminal Code.

Finland allows most businesses to operate freely after registration in the Trade Register and Tax Administration registers. Corporations from outside the EEA establishing a branch in Finland, and natural persons with a place of residence outside the EEA, are required to obtain a licence granted by the Finnish Patent and Registration Office to engage in business activities. Specific industries – providing, for example, alcoholic beverages, pharmaceuticals, financial services, energy and transport – require additional licences from dedicated authorities.

9.4 Artificial Intelligence

The EU AI Act (Regulation (EU) 2024/1689) is directly applicable in Finland (1377/2025), supplemented by Finnish national legislation on supervision and enforcement. Regulations such as Finnish non-discrimination and data protection legislation apply to organisations deploying AI systems in Finland. Following the AI Omnibus simplification (Regulation (EU) 2026/1744), the rules for high-risk AI systems in sen-

sitive areas (under Annex III) apply from 2 December 2027, and for those embedded in regulated products (under Annex I) from 2 August 2028.

Under the AI Act, transparency obligations for providers and deployers apply depending on the AI system's function and use, while the GDPR mandates meaningful information about automated decision-making logic. Bias is addressed through data-governance requirements (relevant, representative data) for high-risk AI. Accountability is ensured via designated sector-specific national supervisory authorities, human oversight requirements and substantial penalties for non-compliance.

9.5 Other Regulatory Compliance Requirements

In Finland, businesses must adhere to the Finnish Accounting Act (1336/1997) and applicable standards issued by the Accounting Board. Financial statements must give a true and fair view of the company's financial position and results of operations. Furthermore, listed companies are required to prepare consolidated financial statements in accordance with the International Financial Reporting Standards (IFRS). Compliance with the Accounting Act is supervised by the Finnish Patent and Registration Office and the Financial Supervisory Authority.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

The Finnish Employment Contracts Act (55/2001) is the principal statute governing employment relationships. Other key legislation includes the Working Time Act (872/2019), Annual Holidays Act (162/2005) and Co-operation Act (1333/2021). Collective agreements also play a central role by establishing sector-specific minimum employment terms that may supplement statutory provisions.

When terminating an employment relationship, the type of employment contract in question is relevant. Generally, a fixed-term employment contract cannot be terminated before its expiry unless the parties have expressly agreed on the right of early termination.

Termination of an until further notice contract on personal grounds may be justified in situations such as where the employee has seriously breached or neglected obligations or applicable legislation, or where the employee's ability to perform their work has substantially changed. Before terminating employment, the employer must as a general rule provide support, guidance and a warning, allowing the employee an opportunity to improve. If the termination is based on reduced work capability, the employer must also assess redeployment options.

Financial and production-related terminations require genuine business reasons, an assessment of alternative work or retraining opportunities and objective selection criteria. Employers must ensure that the termination is based on proper reasons.

An unlawful dismissal may result in compensation of between three and 24 months' salary under Chapter 12, Section 2 of the Employment Contracts Act.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation arrangements in Finland are typically structured through salary and additional forms of compensation, such as cash bonuses, share options and pension arrangements. All of these alternatives require careful tax analysis. Share-based arrangements may also require further consideration depending on the company's structure, particularly regarding the type of shares offered and the timing of share option grants in light of insider trading regulations.

In general, employees are subject to non-compete during their employment under the Employment Contracts Act. Post-employment non-compete obligations may be agreed upon in an employment contract, subject to the statutory limitations set out in the Employment Contracts Act, which require a particularly weighty reason related to the employer's operations or the employment relationship, as well as mandatory compensation corresponding to 40–60% of the employee's salary.

Non-solicitation covenants have in some cases been treated as non-competition covenants when they

restrict the employee's ability to pursue their profession or engage in work within the same field. Confidentiality covenants are enforceable for trade secrets under the Employment Contracts Act and the Trade Secrets Act (595/2018).

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Land ownership is registered in the Title and Mortgage Register in accordance with the Code of Real Estate (540/1995). The most fundamental form of land ownership in Finland is direct ownership of real estate. Real estate can also be co-owned. Indirect ownership of real estate through limited liability companies is common as well.

There are no general restrictions on the foreign ownership or sale of real estate. However, non-EU/EEA individuals and entities, as well as entities in which a non-EU/EEA individual or entity holds at least one-tenth of the total number of votes or shares, require a mandatory permit from the Ministry of Defence. The Ministry of Defence may prevent real estate transactions involving Russian or Belarusian actors. Furthermore, a land acquisition permit is required to acquire real estate on the Åland Islands for anyone who does not have the Åland right of domicile.

11.2 Commercial Real Estate Transactions

The key legal framework in Finland governing real estate transactions is the Code of Real Estate, which governs ownership transfers, property and mortgage rights. The Real Estate Register Act (392/1985) governs the registration of real estate and other register units in land and water areas. The National Land Survey of Finland maintains the Land Title and Mortgage Register as well as the Real Estate Register, in which ownership rights and encumbrances are publicly recorded.

The Code of Real Estate requires purchase documentation to be in writing and authenticated by a public purchase witness, unless completed through the official e-Property Commerce Service, in which case no witness is required. Ownership changes must be publicly registered. Buyers should also check for real estate mortgages and registered special rights (e.g. leases or usufructs), which bind a third party in good faith once registered. Priority for mortgages is based on the order of registration. The buyer bears the consequences of defects it should have noticed on inspection. The seller is liable for defects in quality, possession and title. Environmental risk (soil contamination, polluter pay regime) is handled through due diligence, warranties and indemnities.

In mortgage financing, real estate mortgages and share pledges over the shares of a real estate holding company play a significant role, as the financing arrangements and tax treatment differ between them. The enforcement of a real estate mortgage requires an enforcement title from a district court (Enforcement Code (705/2007)), after which the security may be enforced through an enforcement officer. The creation or enforcement of a share pledge is not governed by the Code of Real Estate and does not require an enforcement title.

Commercial land leasing is governed by the Land Tenancy Act (258/1966). Key considerations include whether the lease is registrable (for third party protection and bankability), the lease term and renewal options, the transferability of the lease, the right to construct on the property, indexation of lease payment, and the allocation of liability for damages and costs.

Recent Code of Real Estate amendments enable parties to agree on a contractual withdrawal fee in informal real estate agreements, even though the underlying agreement remains non-binding with respect to the real estate transaction itself. The amendments also introduced the possibility of registering leasehold rights to water areas.

FRANCE



Law and Practice

Contributed by:
Eric Kopelman, Amaury Nardone, Constance Le Vert, Eva Kopelman, Delphine Brunet-Stoclet, Caroline Camière, Anne-Charlotte Goursaud-Treboz and Ghislain de Pazzis
Axipiter

Contents

1. Business Entities P.292
1.1 Business Organisations p.292
1.2 Incorporation and Ongoing Compliance p.292
1.3 Share Issuances p.292
1.4 Distributions and Return of Capital p.293
1.5 Control Person Reporting p.293

2. Corporate Governance P.293
2.1 Legal Framework p.293
2.2 Directors' Duties and Liabilities p.294
2.3 Board Composition and Independence p.294
2.4 ESG and Disclosure Obligations p.294
2.5 Conflicts of Interest and Related-Party Transactions p.295

3. Shareholder Rights and Agreements P.295
3.1 Shareholder Rights p.295
3.2 Shareholder Agreements p.296

4. Mergers and Acquisitions P.296
4.1 Legal Framework p.296

5. Capital Markets P.297
5.1 Securities Regulation and Public Offerings p.297
5.2 Continuous Disclosure p.297
5.3 Insider Trading p.297
5.4 Shareholder Disclosure p.298
5.5 Internal Controls and Whistle-Blower Regimes p.298

6. Secured Transactions P.298
6.1 Transaction Financing and Security Interests p.298

7. Commercial Contracts P.299
7.1 Contract Formation and Enforceability p.299
7.2 Termination and Remedies p.299
7.3 Intellectual Property in Commercial Transactions p.299
7.4 Consumer Protection p.300

8. Foreign Investment P.300
8.1 Competition and Merger Control p.300
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.301

9. Regulatory Compliance P.301
9.1 Privacy and Data Protection p.301
9.2 Anti-Money Laundering, Sanctions and Corruption p.302
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.303
9.4 Artificial Intelligence p.303
9.5 Other Regulatory Compliance Requirements p.303

10. Employment and Labour P.304
10.1 Employment Standards and Workplace Regulation p.304
10.2 Executive Compensation and Restrictive Covenants p.304

11. Real Property and Commercial Leasing P.305
11.1 Requirements for Land Ownership p.305
11.2 Commercial Real Estate Transactions p.305

Contributed by: Eric Kopelman, Amaury Nardone, Constance Le Vert, Eva Kopelman, Delphine Brunet-Stoclet, Caroline Camière, Anne-Charlotte Goursaud-Treboz and Ghislain de Pazzis, **Axipiter**

Axipiter is an independent French business law firm with offices in Paris and Lyon and around 30 lawyers. Its Corporate/M&A team advises companies, founders, management teams, family offices and investment funds on governance, acquisitions and disposals, private equity, venture and growth capital, reorganisations and capital-markets matters. The team regularly coordinates cross-border mandates and supports foreign groups establishing or expanding operations in France, as well as French groups expanding abroad. Axipiter combines this transactional practice with employment, corporate and international tax, customs, commercial litigation, competition, intellectual property, data, public business law, environmental, real estate and construction capabilities. Recent work includes advising shareholders on the sale of a French cybersecurity company to an international industrial group, investors on several health-tech, renewable energy and circular-economy financings, founders on disposals to French and European buyers, and corporate groups on acquisitions, reorganisations and French market-entry projects.

Authors



Eric Kopelman is a partner and co-head of Axipiter's Corporate/M&A department. He has advised entrepreneurs, corporate groups, executives and investment funds for 20 years on strategic transactions in France and internationally. His practice covers mergers and acquisitions, leveraged buyouts, venture and growth capital, external growth and corporate reorganisations. He regularly assists foreign groups entering France and French businesses expanding abroad. Eric also authors Axipiter's "Doing Business in France" publication, which provides international companies with practical guidance on establishing and developing operations in France. He co-founded Ambre Associés before joining Axipiter and is a member of the Paris Bar.



Amaury Nardone is the founding partner of Axipiter and co-head of its Corporate/M&A department. He advises entrepreneurs, industrial and service companies, listed issuers, investment funds and management teams on corporate matters, mergers and acquisitions, leveraged buyouts, capital-markets transactions and reorganisations in France and abroad. His work includes due diligence, acquisition agreements, warranties, complex securities, shareholder arrangements, management packages and senior or mezzanine financing. He regularly coordinates international matters. Before founding Axipiter, Amaury spent more than 25 years at Delsol Avocats, including as chair of its board for eight years. He is a member of the Lyon Bar, based in Paris and an auditor of the IHEDN's defence policy session.



Constance Le Vert is a partner and co-head of Axipiter's Corporate/M&A department. She advises institutional investors, investment funds, family offices, founders, SMEs and mid-cap companies on private equity, venture and growth capital, mergers and acquisitions, project finance and capital-markets matters. She also works on bond financings, corporate governance and the structuring and reorganisation of French and international groups. Her previous experience includes private practice at Ashurst, De Pardieu Brocas Maffei and Carbonnier Lamaze Rasle, as well as in-house investment roles at Caisse des Dépôts et Consignations and InfraVia Capital Partners. Constance is a member of the Paris Bar.



Eva Kopelman is a partner and heads Axipiter's Employment Law department. She advises French and international companies on individual and collective employment matters, restructurings, collective redundancies and the employment aspects of mergers, acquisitions, reorganisations and business transfers, including employment due diligence, employee consultation and post-acquisition integration. Her practice also covers sensitive departures, collective employee relations, internal

investigations and employment litigation. Before joining Axipiter, Eva practised at Jeantet, Gide and Freshfields Bruckhaus Deringer and worked in-house at Air France. She is a member of the Paris Bar and of the Association of European Attorneys.



Delphine Brunet-Stoclet is a partner and heads Axipiter's Intellectual Property department. She advises on the protection, exploitation and transfer of trade marks, designs, copyright, software and know-how, including portfolio strategy, licence and commercial agreements, transaction audits and the valuation of intangible assets. She also represents clients in intellectual property and unfair-competition disputes and acts as a mediator. Her sector experience includes manufacturing, design, furniture, cosmetics, fashion, advertising and media. Delphine is a member of the Paris Bar and of INTA, APRAM, AIPPI and IEAM.



Caroline Camière is a partner and heads Axipiter's Public Business Law department. She advises French and international companies, public bodies, developers, architects and technical consultants on public contracts, concessions, public property, urban planning and environmental law. Her work includes regulatory due diligence, permitting, environmental assessments, complex project structures and related disputes, including matters relevant to corporate and real-estate transactions. After a stint with CMS Francis Lefebvre, she practiced at Riva & Associés, Camiere Avocats, and Yucca. Caroline is a member of the Lyon Bar and has taught urban planning law at Jean Moulin Lyon III University since 2007. She also conducts training sessions on public procurement law for ACP Formation.



Anne-Charlotte Goursaud-Treboz is a partner and heads Axipiter's Real Estate and Construction department. She advises and litigates on commercial and residential leases, sale and purchase agreements, co-ownership, construction contracts, defects, statutory insurance, neighbourhood nuisance, soil pollution and the structuring of real-estate projects. Her experience covers offices, hospitals, shopping centres, hotels and renewable-energy assets. She previously practised at CMS Francis Lefebvre and DPA and worked with the environmental directorate of the Council of the European Communities. Anne-Charlotte is a member of the Lyon Bar, co-chair of its Green Bar Commission and trained in alternative dispute resolution.



Ghislain de Pazzis is a partner and co-head of Axipiter's Tax and Customs department. For more than 20 years, he has advised French and foreign companies and groups on corporate tax, VAT, local taxes, group taxation, reorganisations and transaction structuring. His practice also covers transfer pricing, customs, export controls, cross-border supply chains, international contracts and tax and customs disputes. Ghislain has particular experience in the aerospace, defence, transport, real-estate, chemical and pharmaceutical sectors. He is a member of the Lyon Bar.

Axipiter

5 rue de Téhéran,
75008 Paris,
France

31 avenue Maréchal de Saxe,
69006 Lyon,
France

Tel: (+33) 1 78 96 80 00
Email: erick@axipiter.fr
Web: www.axipiter.fr

Contributed by: Eric Kopelman, Amaury Nardone, Constance Le Vert, Eva Kopelman, Delphine Brunet-Stoclet, Caroline Camière, Anne-Charlotte Goursaud-Treboz and Ghislain de Pazzis, **Axipiter**

1. Business Entities

1.1 Business Organisations

Main Vehicles

French business activity is commonly conducted through a *société par actions simplifiée* (SAS), *société à responsabilité limitée* (SARL) or *société anonyme* (SA). Each has separate legal personality and limited liability, subject to fraud, guarantees and specific director-liability rules. The SAS is the default choice for private M&A, joint ventures and venture or private-equity investments because its articles may allocate governance and economic rights flexibly. It requires at least one shareholder and no statutory minimum capital beyond EUR1.

The SARL is more prescriptive and is often used for closely held or family businesses. Transfers to third parties generally require shareholder approval. The SA is designed for larger businesses and is the usual French form for admission of shares to trading on a regulated market; it has a minimum share capital of EUR37,000 and more formal governance. Other eligible public-company forms include the *société en commandite par actions* and the European company.

Other structures include the *société en nom collectif*, whose partners have unlimited joint liability, and civil companies for non-commercial or asset-holding activities. Foreign companies may operate through a branch, which has no separate legal personality, or a subsidiary. Partnerships are generally tax-transparent, whereas companies are normally subject to corporation tax, although elections and special regimes may apply.

1.2 Incorporation and Ongoing Compliance

Incorporation

Founders choose the form, name, registered office, corporate purpose, duration, share capital, financial year and governance, and adopt articles of association. Cash contributions are deposited with an authorised institution; contributions in kind may require an independent contribution auditor, subject to statutory exemptions. The initial directors and, where applicable, statutory auditor are appointed, and foreign directors should check immigration and regulated-activity requirements.

Incorporation is filed electronically through the national business formalities portal. The filing includes the articles, evidence of the registered office and capital deposit, details of officers and beneficial owners, and the publication certificate for the legal notice. The company acquires legal personality upon registration with the Trade and Companies Register and receives national identification numbers. Timing is commonly one to three weeks once a complete file is available, but regulated activities, foreign documents and beneficial-ownership checks may extend it.

Ongoing Compliance

Companies must maintain corporate registers and accounting records, approve annual accounts, allocate profits and file accounts with the registry, subject to confidentiality options for qualifying small businesses. Corporate decisions must comply with the law and articles, and changes are generally filed through the same portal. A statutory auditor is generally required when two of the following three thresholds are exceeded: EUR5 million in total assets, EUR10 million in net turnover, and 50 employees. Group, controlled-subsidiary, public-interest-entity and minority-request rules can require an appointment in other circumstances. Tax, payroll and sector-specific filings apply separately.

1.3 Share Issuances

The subscribed share capital is stated in the articles and divided into shares representing fractions of that capital. France does not use an Anglo-American concept of authorised but unissued capital: new shares require a shareholder decision or a valid delegation to the competent corporate body. The issue price may include a premium above nominal value, but shares cannot be issued below nominal value. An SAS may create ordinary or preference shares carrying tailored voting, dividend, liquidation, conversion or redemption rights, provided mandatory rules and the prohibition on excluding a shareholder entirely from profits or losses are respected. In an SA, statutory rules are more detailed, particularly for listed issuers and multiple-vote or non-voting instruments.

Capital increases are decided by the shareholders under the majority and quorum rules applicable to the relevant form, although authority may be delegated

within statutory limits. Existing shareholders of an SA or SAS benefit from preferential subscription rights on cash issues. Those rights may be waived individually or disapplied by the competent shareholder decision, generally on the basis of management and auditor reports.

Changes to class rights require the approvals specified by law and the articles; an SA normally requires a special meeting of the affected class. Private financings also use convertible bonds, bonds with warrants, founders' warrants and other securities giving access to capital. Corporate approvals, valuation protections, securities-law restrictions and employee incentive tax conditions should be checked together before issuance.

1.4 Distributions and Return of Capital

Dividends and Reserves

Distributions may be made from distributable profit and available reserves after approval of the annual accounts. At least 5% of annual profit, after carried-forward losses, is allocated to the legal reserve until it reaches 10% of share capital. No distribution may reduce net assets below share capital plus non-distributable reserves. Interim dividends require an interim balance sheet certified by a statutory auditor and are capped by the profit shown on that basis. In February 2025, the Cour de cassation also held that profit carried forward from a prior year can be allocated or distributed only by the annual meeting approving the accounts of the following financial year.

Unlawful dividends may be recovered from shareholders who knew, or could not have been unaware, that the distribution was irregular. Directors may incur civil or criminal liability. In a group, upstream distributions also require review of corporate benefit, financial-assistance, tax and insolvency constraints.

Capital Reductions and Buy-Backs

A capital reduction requires an extraordinary shareholder decision and, when it is not motivated by losses, may trigger a creditor-objection period. Equal treatment must be preserved unless all affected shareholders give consent. Private companies may repurchase shares only within statutory mechanisms – eg, a capital reduction, an employee plan or purposes authorised for an SAS. Shares acquired must be cancelled, transferred or otherwise dealt with within the applicable period. Listed issuers may operate buy-back programmes authorised by shareholders and compliant with the EU Market Abuse Regulation, AMF rules and disclosure requirements.

1.5 Control Person Reporting

Beneficial Ownership

Private companies must identify and report their beneficial owners through the business formalities portal and keep the filing current. A beneficial owner is generally an individual who directly or indirectly holds more than 25% of the capital or voting rights, or otherwise exercises control over management or governing bodies. If no individual can be identified, the legal representative is reported under the fallback rule.

Changes in ownership, control or personal details must be filed promptly. Access to beneficial-ownership information is restricted in accordance with EU case law and French rules, but competent authorities, regulated professionals conducting customer due diligence and persons demonstrating a legitimate interest may obtain information within the applicable framework. Incomplete or inaccurate reporting may expose the company and its representatives to fines, management disqualification and registry measures.

Share ownership itself is recorded in the company's securities accounts for companies limited by shares, or in the articles and registry filings for an SARL. Separate disclosure regimes apply to listed companies, regulated sectors, foreign-investment review and anti-money laundering checks.

2. Corporate Governance

2.1 Legal Framework

Sources and Allocation of Powers

French corporate governance is principally governed by the Civil Code, Commercial Code, Monetary and Financial Code, articles of association and, where relevant, the EU Market Abuse Regulation and listing rules. Certain companies with exclusively public or mixed capital structures are also governed in part by the General Code of Territorial Authorities (notably

local public companies and mixed-economy companies). The company's legal form determines which matters are reserved to shareholders and which belong to management. The articles of an SAS provide broad freedom to design boards, committees, reserved matters and decision procedures, but the president retains statutory authority to represent the company towards third parties.

An SA may use a one-tier board of directors with a chair and chief executive, or a two-tier supervisory board and management board. Public-interest entities and listed issuers face enhanced audit, internal-control, remuneration, gender-balance, sustainability and related-party requirements. The AFEP-MEDEF and Middlenext codes operate on a comply-or-explain basis for issuers that adopt them and strongly influence market practice.

Private companies typically supplement the articles, which are public, with shareholders' agreements covering board composition, information, vetoes, funding and transfers. Internal limits on management powers are generally ineffective against third parties acting within the corporate purpose, so delegations, signing policies and post-closing governance should be documented operationally as well as contractually.

2.2 Directors' Duties and Liabilities

Directors and corporate officers must act within their powers, comply with law and the articles and act in the corporate interest, taking into consideration the social and environmental implications of the company's activities. They owe duties of loyalty, care and confidentiality developed through case law. A parent-appointed director must exercise independent judgement for the company on whose board they sit, even when group interests are relevant.

Civil liability may arise towards the company, shareholders or third parties for breach of law, the articles or mismanagement. A third party generally needs to show a fault separable from the officer's functions. Shareholders may bring a derivative action on the company's behalf. Criminal exposure can arise from misuse of corporate assets or powers, inaccurate accounts, unlawful distributions, market abuse, corruption and other offences.

Liability is assessed by reference to each officer's conduct, although collegiate decisions can expose all participating directors unless dissent is properly recorded. Delegations of authority can transfer operational criminal responsibility when granted to a person with appropriate competence, authority and resources. D&O insurance and indemnities are common, but cannot cover criminal fines or eliminate mandatory liability.

2.3 Board Composition and Independence

Private Companies

An SAS must have a president, who may be an individual or legal entity; all other bodies are optional and defined by the articles. There is no nationality or residence requirement as a matter of general company law, although immigration, tax-residence and regulated-sector rules may matter. A SARL is managed by one or more individual managers. Private companies are not generally required to appoint independent directors.

Public Companies

An SA board ordinarily has three to 18 members, subject to temporary exceptions following a merger. Its articles may require directors to hold shares. Listed companies are expected to include independent directors under the governance code they apply and to establish specialised committees, particularly an audit committee. French law also imposes gender-balance rules for boards of larger companies and employee representation on boards when workforce thresholds are met.

The board determines strategy and monitors implementation; it cannot displace powers reserved to shareholders. Good practice includes a skills matrix, annual conflict declarations, board evaluations, documented information flows, succession planning and executive sessions. Diversity requirements increasingly extend beyond the board to senior-management populations in large companies.

2.4 ESG and Disclosure Obligations

Sustainability Framework

French companies may be subject to sustainability reporting under the EU Corporate Sustainability Reporting Directive (CSRD), as transposed and sub-

sequently amended. The 2026 EU reform reduces the future scope principally to companies exceeding both 1,000 employees and EUR450 million in net turnover, subject to national transposition and transitional rules for financial years beginning before 2027. In-scope companies report under European Sustainability Reporting Standards and obtain limited assurance. Groups should confirm the rules applicable to the relevant financial year, whether a French subsidiary is exempt through consolidated reporting and whether non-EU parent reporting will apply.

Large companies may also be subject to a vigilance plan covering serious human-rights, health and safety and environmental risks arising from their own operations and certain subsidiaries, subcontractors and suppliers. Climate, taxonomy, sustainable-finance and gender-pay disclosures may apply depending on size, activity and listing status. Listed issuers must ensure that sustainability information is consistent with regulated financial and inside-information disclosures.

Boards should map applicable obligations, approve materiality and risk assessments, allocate oversight and maintain auditable data and controls. The corporate interest expressly requires management to consider social and environmental issues, but does not create a general right for stakeholders to direct the company. A société à mission may incorporate a purpose and social or environmental objectives in its articles, with specific monitoring and verification.

2.5 Conflicts of Interest and Related-Party Transactions

Directors should disclose personal interests, abstain where appropriate and ensure that deliberations and minutes demonstrate an informed decision in the company's interest. The statutory framework is supplemented by articles, board rules and governance codes. Undisclosed conflicts may support liability, nullity in limited circumstances and reputational or regulatory consequences.

Regulated-agreement procedures apply to transactions between a company and specified officers, shareholders or related entities. In an SA, prior board approval is generally required, followed by a statutory auditor's special report and a shareholder vote. In an SAS, the procedure is usually post-completion reporting and shareholder review, subject to the articles and exceptions for ordinary-course transactions on arm's-length terms. A SARL has a comparable statutory process.

Group transactions require particular attention to corporate benefit, pricing, cash pooling, guarantees and financial assistance. French case law permits a group interest to be considered where the entities form a genuine group, the support pursues a common economic policy, and the burden is not disproportionate to the supporting company's financial capacity or liable to disrupt its financial equilibrium. Listed companies must also comply with market-abuse disclosure and enhanced approval and public-disclosure requirements for material related-party agreements.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Statutory and Contractual Rights

Shareholders vote on reserved matters, receive distributions lawfully declared, participate in capital changes and share in liquidation proceeds according to their rights. They are entitled to specified corporate documents before meetings and may ask written questions. Minority thresholds allow shareholders in certain forms to request agenda items, seek appointment of an expert to report on management transactions, call or obtain a court-convened meeting, and bring derivative actions.

Majority decisions may be set aside for abuse where they are contrary to the corporate interest and adopted solely to favour the majority at the minority's expense. A blocking minority may itself be liable for abusive obstruction when it prevents an essential transaction for the sole purpose of advancing its own interests. Emergency and merits proceedings can provide injunctions, nullity, damages or appointment of a provisional administrator, although courts avoid substituting themselves for corporate bodies.

An SAS offers broad scope to create vetoes, class consents and information rights in the articles. Rights appearing only in a shareholders' agreement bind

its parties but normally do not invalidate a corporate decision taken in breach. Investors therefore place structural governance and transfer restrictions in the articles where enforceability against the company and third parties is important.

3.2 Shareholder Agreements

Typical Provisions

Shareholders' agreements commonly regulate board representation, reserved matters, business plans, financing, information, anti-dilution, pre-emption, rights of first offer or refusal, lock-ups, permitted transfers, tag-along and drag-along rights, founder vesting, leaver arrangements and exit processes. Private-equity agreements also address management packages, liquidity waterfalls and lender rights.

The agreement must be consistent with mandatory company law and carefully coordinated with the articles. A perpetual agreement, which is not usual, may be terminable on reasonable notice; parties therefore use a fixed duration or objective end date. Transfer undertakings must identify price or a determinable pricing mechanism. Penalty clauses may be reduced or increased by a court if manifestly excessive or derisory.

Remedies include damages, contractual penalties and, where sufficiently precise and legally possible, specific performance. Courts may appoint a provisional administrator in exceptional circumstances or dissolve a company for just cause where serious dissension paralyses it. Forced-transfer promises and drag clauses require particular drafting to secure execution if a party defaults. In February 2025, the Cour de cassation confirmed the validity of an objectively triggered "Russian roulette" or "American" clause whose reciprocal mechanism made the transfer price determinable. Confidentiality and arbitration clauses are common, while listed-company agreements may trigger AMF disclosure and concert-party analysis. Tax, employment and financial-assistance consequences should be reviewed when the agreement confers benefits on managers or commits the company itself.

4. Mergers and Acquisitions

4.1 Legal Framework

Private and Public M&A

Private acquisitions are governed by general contract and company law, with sector rules for employee consultation, merger control, foreign investment, regulated businesses and tax. Share deals are most common, using a signing followed by conditions precedent or a simultaneous signing and closing. Asset deals, contributions, statutory mergers, demergers and universal transfers are used where perimeter, tax or succession considerations favour them.

Public takeovers are governed by the Monetary and Financial Code, AMF General Regulation and EU market-abuse rules. Mandatory offers generally arise when a person, alone or in concert, crosses 30% of capital or voting rights of a company listed on a regulated market, or increases a holding between 30% and 50% by at least 1% in less than 12 months. The AMF reviews offer documentation, timetable, equal treatment and, where required, the independent expert's fairness analysis.

Execution Points

Transactions commonly use locked-box or completion-account pricing, earn-outs, escrow, bank guarantees or W&I insurance. Before signing, parties assess social and economic committee (CSE) information and consultation, merger control, foreign direct investment (FDI) and sector approvals. For sales completed from 27 July 2026, the Law of 26 May 2026 removed the separate employee information procedure for companies whose CSE exercises the powers applicable at 50 employees and reduced the notice period to one month for other in-scope sales of a business or controlling interest; CSE consultation and other applicable procedures remain transaction-critical. Recent reforms also facilitate cross-border conversions, mergers and divisions within the EU and have modernised listed-company financing and governance. Recent case law reinforces drafting discipline: in February 2025, the Cour de cassation validated an objectively triggered reciprocal buy-sell clause, while its May 2025 decision on interdependent settlement and share-transfer agreements underlined the impor-

tance of joining all affected parties to proceedings seeking consequential invalidity or lapse.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Architecture and Offering Process

The AMF supervises issuers, public offers, market conduct and regulated-market disclosure; the *Autorité de contrôle prudentiel et de résolution* supervises regulated financial institutions. Euronext Paris operates the regulated market, while Euronext Growth and Euronext Access provide multilateral trading venues with lighter admission regimes.

An offer of securities to the public or admission to a regulated market generally requires an EU Prospectus Regulation approved by the AMF, unless an exemption applies. Preparation commonly includes issuer reorganisation, audited financial statements, due diligence, governance work, underwriting documentation and AMF review. Timing varies materially, but a first-time issuer should allow several months. Listing rules operate alongside securities law and impose free-float, financial-history, governance and ongoing obligations appropriate to the chosen venue.

Exemptions include offers solely to qualified investors, to fewer than 150 non-qualified persons per EEA state, with a denomination or minimum consideration of at least EUR100,000 per investor, and certain small offers. In France, since 5 June 2026, public offers below EUR12 million calculated over 12 months are exempt from the prospectus requirement, although an information document and filing may still be required depending on the offer. Securities law does not impose a general private-placement holding period, but contractual lock-ups, market-abuse rules and exemptions relied upon for resale must be respected. Non-compliance can result in AMF sanctions, civil liability and criminal offences.

5.2 Continuous Disclosure

Periodic and Inside Information

Issuers on a regulated market publish annual and half-yearly financial reports within statutory deadlines and provide governance, shareholding, remuneration and sustainability information as applicable. They must ensure equal and effective dissemination through regulated information channels and file information with the AMF. Euronext Growth issuers have a distinct, but still material, reporting framework.

Under the EU Market Abuse Regulation, an issuer must disclose inside information concerning it as soon as possible. Disclosure may be delayed on the issuer's responsibility when immediate publication would prejudice legitimate interests, delay would not mislead the public, and confidentiality can be maintained. The issuer documents the decision and notifies the AMF after disclosure, as required. Special rules apply to protracted processes and regulated financial institutions.

Transaction teams should establish a disclosure committee, restricted lists, clean teams and a documented leak response. Financial guidance, cyber incidents, litigation, management changes and M&A may be material depending on their price sensitivity. Information published in another context should be consistent with regulated disclosures and made available on the issuer's website for the required period.

5.3 Insider Trading

Prohibited Conduct

The EU Market Abuse Regulation prohibits insider dealing, recommending or inducing insider dealing, unlawful disclosure of inside information and market manipulation. Inside information is precise, non-public information relating directly or indirectly to an issuer or financial instrument that would be likely to have a significant price effect if made public. Legal persons can be liable alongside individuals.

Issuers and persons acting for them maintain insider lists, notify insiders and preserve records. Persons discharging managerial responsibilities and closely associated persons must report relevant own-account transactions once the annual threshold is reached and generally observe a 30-day closed period before financial reports. Market soundings, buy-backs and stabilisation benefit from specific frameworks when conditions are met.

The AMF may investigate, require documents and data, conduct inspections, cooperate internationally and impose substantial administrative fines and professional bans. Serious conduct may also be referred for criminal prosecution. Companies should use dealing codes, pre-clearance, training, information barriers and escalation procedures, particularly during confidential transactions.

5.4 Shareholder Disclosure

Statutory Thresholds

For issuers admitted to trading on a regulated market, a shareholder must notify the issuer and the AMF when crossing, upward or downward, statutory thresholds of 5%, 10%, 15%, 20%, 25%, 30%, one-third, 50%, two-thirds, 90% or 95% of capital or voting rights. Notification is generally due within four trading days. Holdings are aggregated with specified financial instruments and interests held in concert.

At 10%, 15%, 20% and 25%, the shareholder must also declare its intentions for the following six months, including financing, control and board plans. The issuer's articles may add thresholds from 0.5% upwards, reported to the issuer under the articles. Separate monthly disclosure by the issuer of total voting rights supports investor calculations.

Late disclosure can suspend voting rights above the unreported threshold, automatically for statutory thresholds and, subject to conditions, at another shareholder's request for articles-based thresholds. AMF sanctions may also apply. Crossing 30% can trigger a mandatory public offer unless an exemption is granted, so derivatives, concert arrangements and intragroup reorganisations should be analysed before execution.

5.5 Internal Controls and Whistle-Blower Regimes

Controls and Reporting Channels

Listed issuers describe internal control and risk-management arrangements in their governance reporting and maintain systems capable of producing reliable financial and sustainability information. Public-interest entities require an audit committee or equivalent body. Regulated sectors impose additional governance, compliance and fit-and-proper requirements.

The Sapin II framework requires companies meeting the statutory workforce and turnover thresholds, and groups headed in France meeting the consolidated test, to implement an anti-corruption programme. Core measures include a code of conduct, internal reporting channel, risk mapping, third-party due diligence, accounting controls, training, disciplinary measures and internal evaluation. The French Anti-Corruption Agency may review programmes and its sanctions commission may order remediation and impose fines.

Whistle-blower rules protect individuals reporting in good faith and without direct financial consideration facts within the statutory scope. Entities with at least 50 employees generally maintain an internal reporting procedure after consultation with employee representatives. Confidentiality, acknowledgement, feedback, GDPR compliance and anti-retaliation are essential. Groups should coordinate French procedures with global hotlines while preserving local rights, privilege and data-transfer safeguards.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Security Package

French law recognises pledges over shares, securities accounts, receivables, bank accounts, business assets, inventory and equipment, as well as assignments of receivables by way of security, mortgages over real estate and personal or autonomous guarantees. Choice of security depends on the asset, the obligor and whether the financing qualifies for simplified financial-collateral rules.

Perfection may require a written agreement, registration, account entry, dispossession, notification or control. Security over shares or partnership interests must follow the form, account-entry, notice and, where applicable, registration rules for the relevant instrument; business-asset pledges and mortgages are registered. Priority generally follows the applicable perfection or registration date, subject to statutory preferences. Enforcement routes include judicial sale, contractual appropriation where permitted and court

attribution, with insolvency stays and avoidance rules materially affecting recovery.

Acquisition financing commonly combines senior facilities, shareholder instruments and a security package granted at closing or after funds flow. French financial-assistance rules prohibit companies limited by shares, including an SA or SAS, from advancing funds, granting loans or providing security for the acquisition of their own shares; corporate benefit and group-support rules apply to all companies. Intercreditor agreements regulate ranking, turnover, enforcement and standstill. The 2021 security-law reform modernised and consolidated many security interests; transaction documents should use the current statutory forms and publicity registers.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

A contract requires consent, capacity and lawful, certain content; consideration is not a separate French-law requirement. Contracts are generally consensual unless legislation requires writing, notarisation, registration or specific consumer formalities. Electronic signatures and records can satisfy writing requirements if identity and integrity conditions are met.

Negotiations must be conducted in good faith. A party may terminate negotiations, but can be liable for wrongful conduct; damages do not normally include the profits expected from the unmade contract. Parties must disclose information that is decisive for consent when the other party legitimately does not know it, excluding valuation of the performance. Error, fraud, duress, incapacity and unlawful content can cause nullity.

Contracts bind the parties and must be negotiated, formed and performed in good faith. Courts seek the parties' common intention rather than relying solely on literal wording and interpret standard terms against the party proposing them. In adhesion contracts, a non-negotiable term creating a significant imbalance may be deemed unwritten. Clauses excluding liability cannot neutralise an essential obligation, and liability for fraud or gross misconduct cannot effectively be excluded. Commercial parties should specify hierarchy, entire agreement, notice, evidence and liability mechanics with precision.

7.2 Termination and Remedies

For non-performance, the creditor may suspend its own performance, seek specific performance, obtain a price reduction, terminate the contract and/or claim damages, subject to statutory conditions and proportionality. Contractual notice and cure provisions should be followed. Termination may result from an agreed clause, unilateral notice for sufficiently serious breach or a court order; wrongful termination exposes the terminating party to damages and may leave the contract in force.

Damages ordinarily cover foreseeable direct loss, except in cases of gross or intentional breach. Penalty clauses are enforceable but may be adjusted by a court if manifestly excessive or derisory. Parties often exclude indirect loss and cap liability, with carve-outs for fraud, gross fault, confidentiality, IP, data protection and other negotiated risks.

Force majeure requires an event beyond the debtor's control that could not reasonably have been foreseen at contracting and whose effects cannot be avoided by appropriate measures. Temporary prevention suspends performance unless delay justifies termination; permanent prevention discharges the affected obligation. Article 1195's hardship provision permits a party to seek renegotiation when an unforeseeable change makes performance excessively onerous and it did not accept that risk. Commercial contracts commonly exclude or tailor this mechanism.

7.3 Intellectual Property in Commercial Transactions

Ownership and Transfer

Assignments and licences should identify the rights, territory, duration, permitted uses, exclusivity, consideration, warranties and enforcement responsibilities. French copyright assignments must separately specify transferred rights and their scope, destination, territory and duration; assignments of future works are restricted. Trade-mark and patent transfers should be recorded with the INPI to be effective against third

parties. Know-how requires robust confidentiality and access controls.

Employee inventions follow a statutory regime distinguishing mission inventions, which belong to the employer with additional remuneration, from other inventions that may be claimed for a fair price. Software created by employees in the course of duties generally vests in the employer, but copyright in other employee or commissioned works does not automatically transfer without a compliant agreement. Joint-development contracts should allocate background IP, results, filing, exploitation and exit rights. Purely AI-generated material may lack human authorship and should not be assumed to attract copyright protection.

Remedies for infringement include interim and final injunctions, preservation and seizure measures, damages, recall or destruction and publication of the judgment; counterfeiting may also be criminal. M&A diligence should verify chain of title, open-source use, contractor assignments, domain names, trade secrets, licences, security interests and change-of-control clauses.

7.4 Consumer Protection

The Consumer Code imposes pre-contract information, transparent pricing, conformity guarantees, controls on unfair terms and specific distance and off-premises selling requirements. Consumers generally have 14 days to withdraw from distance and off-premises contracts, subject to exceptions and formalities. Digital content, digital services and goods with digital elements are subject to dedicated conformity and update obligations.

Terms creating a significant imbalance to the consumer's detriment may be deemed unfair and unenforceable. Aggressive or misleading commercial practices, hidden advertising, false environmental claims and manipulated online interfaces can trigger enforcement. E-commerce businesses must provide seller identity, ordering steps, payment and delivery information, withdrawal mechanisms and accessible terms on a durable medium.

The Directorate-General for Competition, Consumer Affairs and Fraud Control may investigate, issue injunctions, impose or seek administrative and criminal penalties, and coordinate product recalls. Consumers and approved associations may bring individual or group actions in specified fields. The EU Digital Services Act and platform rules add obligations for online intermediaries. International groups should localise consumer journeys rather than relying solely on a global template.

8. Foreign Investment

8.1 Competition and Merger Control

For transactions notified from 1 September 2026, French notification is mandatory when the parties' combined worldwide turnover exceeds EUR250 million and at least two parties each generate more than EUR80 million in France, provided the transaction lacks an EU dimension. For retail transactions, the corresponding thresholds are EUR100 million worldwide and EUR20 million of French retail turnover for at least two parties. Specific lower thresholds continue to apply in certain French overseas territories. A concentration includes mergers, acquisitions of sole or joint control and full-function joint ventures.

Transactions must not be implemented before clearance. Phase I is normally 25 working days from a complete filing, extendable in specified circumstances; an in-depth Phase II review is usually 65 working days, subject to suspensions and extensions. The *Autorité de la concurrence* tests whether the transaction significantly lessens competition, considering unilateral, coordinated, vertical and conglomerate effects and efficiencies. Remedies may be structural or behavioural.

Gun-jumping and failure to notify can attract fines of up to 5% of the notifying company's French pre-tax turnover for the last closed financial year, increased where relevant by the target's French turnover, plus remedial orders. Anticompetitive agreements and abuse of dominance are separately prohibited under French and EU law, with corporate fines potentially reaching 10% of worldwide group turnover. Transaction protocols should include information-sharing

safeguards, clean teams and conduct-of-business covenants that preserve the target's independence before clearance.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Scope of French FDI Review

Prior authorisation from the French Minister for the Economy is required where a foreign investor acquires control of a French entity, acquires all or part of a business line, or, if the investor is established outside the EU or EEA, crosses 25% of the voting rights in an unlisted French entity carrying out a sensitive activity. The investor test follows the chain of control. A separate regime applies when a non-EU/EEA investor crosses 10% of the voting rights in a French listed company carrying out a sensitive activity: the investor makes a prior notification and is exempt from a full authorisation request if the Minister does not object within ten business days.

Sensitive activities include defence, security, critical infrastructure and services, energy, water, transport, communications, public health, food security, certain media and R&D in critical technologies such as cybersecurity, AI, semiconductors and biotechnologies. A prior request may be made to confirm whether the target's activity is in scope. There is no filing fee. The initial review is 30 business days, followed, where necessary, by a further 45 business days; information requests can affect timing.

Clearance may be unconditional or subject to commitments on governance, information, supply, assets or French capabilities. The Treasury's 2025 report recorded 418 filings and 167 authorised transactions, 49% with conditions. Failure to obtain approval can lead to suspension, unwinding, injunctions and financial penalties. Sector approvals and EU co-operation may run in parallel. France offers grants, tax credits and investment programmes, but incentives depend on project, location and EU state-aid rules.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Core Data-Protection Obligations

The GDPR, the French Data Protection Act and CNIL guidance govern personal data, alongside sector rules for health, communications, finance, employment and cookies. Controllers need a lawful basis for each purpose, clear information, purpose limitation, data minimisation, accuracy, retention controls and appropriate security. Where consent is relied on, it must be freely given, specific, informed and unambiguous; France sets the age of digital consent at 15, and the CNIL actively enforces cookie consent. Controllers must honour individual rights, maintain processing records, use compliant processor agreements and carry out data-protection impact assessments for likely high-risk processing. Disclosure to third parties requires a lawful basis, transparency and appropriate contractual safeguards.

A personal-data breach must be documented and notified to the CNIL within 72 hours of becoming aware of it, unless it is unlikely to result in a risk to individuals' rights and freedoms. Affected individuals must be informed without undue delay where the risk is high, subject to exceptions. Administrative fines can reach EUR20 million or 4% of worldwide annual turnover, whichever is higher. The CNIL may also issue warnings, compliance orders with daily penalties, and temporary or permanent processing bans, and often publishes its sanctions. In addition, certain breaches of data-protection rules are criminal offences under Articles 226-16 et seq of the French Criminal Code, punishable by up to five years' imprisonment and a EUR300,000 fine for individuals (up to five times that amount for legal entities). Data subjects may also claim compensation for material or non-material damage, including through collective actions. The EU Digital Omnibus proposal would raise the notification threshold to high-risk breaches and extend the deadline to 96 hours, but it has not yet been adopted.

The GDPR, the French Data Protection Act and CNIL guidance govern personal data, alongside sector rules for health, communications, finance, employment and cookies. Controllers need a lawful basis for each purpose, clear information, purpose limitation, data mini-

misation, accuracy, retention controls and appropriate security. Where consent is relied on, it must be freely given, specific, informed and unambiguous; France sets the age of digital consent at 15, and the CNIL actively enforces cookie consent. Controllers must honour individual rights, maintain processing records, use compliant processor agreements and carry out data-protection impact assessments for likely high-risk processing. Disclosure to third parties requires a lawful basis, transparency and appropriate contractual safeguards.

A personal-data breach must be documented and notified to the CNIL within 72 hours of becoming aware of it, unless it is unlikely to result in a risk to individuals' rights and freedoms. Affected individuals must be informed without undue delay where the risk is high, subject to exceptions. Administrative fines can reach EUR20 million or 4% of worldwide annual turnover, whichever is higher. The CNIL may also issue warnings, compliance orders with daily penalties, and temporary or permanent processing bans, and often publishes its sanctions. In addition, certain breaches of data-protection rules are criminal offences under Articles 226-16 et seq of the French Criminal Code, punishable by up to five years' imprisonment and a EUR300,000 fine for individuals (up to five times that amount for legal entities). Data subjects may also claim compensation for material or non-material damage, including through collective actions. The EU Digital Omnibus proposal would raise the notification threshold to high-risk breaches and extend the deadline to 96 hours, but it has not yet been adopted.

Transfers to countries recognised as adequate by the European Commission (such as the UK, Switzerland, Japan, Brazil and, for certified organisations, the US under the Data Privacy Framework, whose validity is currently under appeal before the Court of Justice of the EU) may take place freely. Other transfers outside the EEA require safeguards such as standard contractual clauses or binding corporate rules, together with a transfer impact assessment and supplementary measures where necessary. There is no general data localisation requirement under French law, but specific rules apply in certain areas, such as public archives, classified defence information and tax records. In particular, since the April 2026 implementing decree of Article 31 of the SREN Act, State administrations, their operators and certain public interest groupings must use SecNumCloud-qualified (or equivalent EU-certified) cloud services when hosting particularly sensitive data with private providers. Anyone hosting health data on behalf of a third party must also be HDS-certified (*hébergeur de données de santé*), and the current HDS framework requires such data to be hosted within the EEA, with transparency on risks of access by third-country authorities. In transactions, parties should diligence lawful datasets, cyber incidents, cookies, AI training data and international flows, and should control personal-data disclosure through minimisation and clean-room protocols.

9.2 Anti-Money Laundering, Sanctions and Corruption

Banks, insurers, investment firms, accountants, lawyers in specified transactions and other regulated professionals must identify customers and beneficial owners, assess risk, monitor relationships, retain records and report suspicions to TRACFIN. Obligations intensify for politically exposed persons, high-risk jurisdictions and opaque structures. Commercial companies outside the regulated perimeter still face banking KYC, beneficial-ownership and criminal money-laundering exposure.

EU and French sanctions impose asset freezes, sector restrictions and trade controls. Businesses should screen counterparties, ownership and control, banks, goods, technology, end-use and destination. Dual-use items are governed by EU export-control rules; defence items and certain sensitive products require separate licences. Contractual sanctions clauses do not replace a documented compliance process.

Sapin II requires qualifying large companies and groups to maintain an anti-corruption programme. Bribery of public or private persons, influence peddling and illegal conflict of interest (to name only the most common offenses) can result in corporate and individual criminal liability, exclusion and reputational harm in addition to the annulment of unlawfully awarded public contracts. The Parquet National Financier, criminal courts, customs, Treasury and AFA have complementary powers. Risk-based third-party diligence, approval controls, gifts and hospitality rules, training,

accounting controls and investigations are central to transaction and post-acquisition compliance.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental due diligence should identify classified installations, environmental permits and planning permissions, soil and groundwater contamination, waste, emissions, protected sites, climate obligations and historic liabilities. Operators may face administrative remediation orders and civil or criminal liability; landowners can also be exposed in defined circumstances. Share deals preserve entity-level liabilities, while asset deals require analysis of permit transfer (and associated risks) and successor obligations. Carbon pricing principally arises through the EU Emissions Trading System for covered activities.

France's duty-of-vigilance regime and expanding climate and environmental litigation increase scrutiny of group risk mapping and public statements. Green claims must be substantiated. Employers must protect physical and mental health, assess occupational risks in a written risk-assessment document, implement prevention measures and consult employee representatives. Serious incidents may trigger reporting, inspection and criminal proceedings. Liability arising from the operation of a classified installation extends for 30 years following cessation of operations.

Licensing is sector-specific. Financial services, insurance, healthcare, pharmaceuticals, energy, transport, telecoms, defence, food and public-service activities can require regulator approval for operations or changes of control. Urban-planning and environmental authorisations may condition industrial and real-estate projects. Transaction timetables should therefore include an early regulatory matrix, permit portability review and allocation of remediation and compliance costs.

9.4 Artificial Intelligence

EU and French Framework

The EU AI Act applies directly in France using a risk-based model. Most prohibited practices and AI-literacy duties have applied since February 2025; governance rules and obligations for general-purpose AI models since August 2025; and the general enforcement framework and Article 50 transparency requirements since 2 August 2026. Following the revised implementation timetable, requirements for Annex III high-risk use cases apply from 2 December 2027 and those for high-risk AI embedded in regulated products from 2 August 2028.

Providers and deployers must first classify systems and their role. Depending on the category, obligations include risk management, data governance, technical documentation, logging, human oversight, accuracy, cybersecurity, conformity assessment, registration, incident reporting and transparency to individuals interacting with AI or exposed to synthetic content. Employment, credit, essential services and biometric uses warrant particular care. GDPR, consumer, product-safety, discrimination, employment and IP rules apply in parallel.

Businesses should maintain an AI inventory, procurement clauses, acceptable-use policy and approval process; document training data, testing and human review; and allocate incident and regulatory responsibilities. In M&A, diligence should identify proprietary models, third-party dependencies, data rights, open-source components, prohibited uses and future remediation costs. Enforcement can involve substantial turnover-based fines.

9.5 Other Regulatory Compliance Requirements

Additional Regimes

French businesses must consider competition, consumer, product-safety, cybersecurity, tax, customs, employment and sector regulation alongside corporate law. The EU NIS2 Directive is intended to expand cybersecurity risk-management and incident-reporting duties for essential and important entities, but, as at 3 October 2026, the French transposition legislation has not yet been enacted. Potentially in-scope businesses should nevertheless prepare against the directive and monitor the final French legislation and implementing instruments. The EU Digital Operational Resilience Act applies to much of the financial sector, while the Digital Services Act regulates online intermediaries and platforms.

Supply-chain and product businesses should assess CE marking, product traceability, market surveillance and the EU General Product Safety Regulation. Importers and exporters must classify goods, origin and value and manage VAT and customs records. Public-contract counterparties face procurement, integrity and performance requirements.

The applicable compliance perimeter should be mapped by entity, activity, workforce, turnover, data and geography. Acquirers should convert diligence findings into closing conditions, specific indemnities, remediation plans, governance reporting and integration priorities. A global policy is useful, but French employee consultation, whistle-blower, language, data and regulator expectations often require local procedures.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment Framework

The Labour Code, collective bargaining agreements, company agreements, employment contracts and case law regulate employment. Core rules govern working time and leave, remuneration, health and safety, equal treatment and non-discrimination, employee representation and social-security matters. Collective agreements often set more favourable or sector-specific terms.

Companies employing at least 11 employees for 12 consecutive months must establish a social and economic committee, with broader information and consultation rights in companies with at least 50 employees.

An indefinite-term employee may be dismissed only for a real and serious personal or economic cause and after the prescribed process. Personal dismissal normally requires an invitation to a preliminary meeting, the meeting itself, and a reasoned dismissal letter sent after the statutory waiting period. Notice and severance depend on seniority, contract and collective agreement, except in cases of gross misconduct. Protected employees require labour-inspector authorisation.

Economic dismissals are subject to specific requirements, including prior redeployment efforts and employee-representative consultation. Selection criteria must also be applied where several employees within the relevant professional category may be affected. Depending on the number of contemplated redundancies and the employer's workforce, a job-protection plan (*plan de sauvegarde de l'emploi* – PSE) and administrative validation or approval may also be required. Claims are heard by employment tribunals. Compensation for dismissal without real and serious cause is subject to the statutory scale, but null dismissals, including discrimination or whistle-blower retaliation, follow separate remedies.

10.2 Executive Compensation and Restrictive Covenants

Compensation and Incentives

Executive packages combine salary, variable compensation, benefits, severance and equity instruments. Corporate officers may not have an employment contract unless they perform genuine separate technical duties under subordination. Listed companies face shareholder votes, disclosure and governance-code constraints. Change-of-control protection must be coordinated with corporate approvals, regulated remuneration rules and tax and social-security treatment.

Equity tools include free shares, stock options, warrants and founders' warrants, as well as ordinary or preference shares and carried-interest mechanisms. Each has eligibility, vesting, holding, valuation and tax conditions. Good-leaver/bad-leaver terms and repurchase prices must be drafted carefully in light of corporate, employment and tax rules. The 2025–26 tax framework and transaction structure should be confirmed when grants are made and on exit.

A post-termination non-compete covenant is enforceable only if necessary to protect legitimate interests, limited in time and geography, proportionate to the role and accompanied by financial compensation. The applicable collective agreement may impose further conditions. Non-solicitation and confidentiality claus-

es do not always require compensation, but they must not operate as disguised non-competes. IP, confidentiality, return-of-property and data-access provisions should be reinforced for senior executives.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Ownership and Foreign Investors

Real estate may be held directly, jointly, through co-ownership, through a civil real-estate company or another corporate vehicle. Ownership and other rights in rem are evidenced through notarised deeds and registration with the land registry. Long leases, building leases and emphyteutic leases can allocate durable development rights without transferring freehold title.

Foreign individuals and companies can generally acquire, hold and dispose of French real estate without residence or nationality restrictions. They should nevertheless consider legal capacity, certified corporate documents, sanctions and AML checks, tax residence, financing and ownership structure. Agricultural land may be subject to SAFER pre-emption and operational approvals, while strategic assets or an entity conducting sensitive activities can raise foreign-investment issues.

Acquisition taxes, registration duties, VAT and capital-gains taxation depend on the asset, seller, purchaser and structure. Ultimate beneficial owners must be disclosed for acquisition vehicles. Notaries verify title, mortgages and public-law rights and collect applicable taxes. Non-resident ownership does not eliminate French filing, property-tax or representative obligations.

11.2 Commercial Real Estate Transactions

Acquisition and Financing

Commercial real-estate transfers are normally documented by a notarised deed registered with the land registry. Due diligence covers title, easements, security, leases, planning, construction, environmental condition, energy performance, co-ownership, insurance, tax and technical matters. Title insurance is less common than in common-law jurisdictions because notaries and registration verify title, although transactional insurance may cover identified risks.

Environmental diligence is essential for industrial sites. Parties allocate remediation risk contractually, but public-law liability may remain. Financing commonly uses a conventional mortgage or, where available, a lender's statutory special mortgage, assignments of rents and insurance, account pledges and share security. Registration determines mortgage priority, and enforcement is generally judicial.

Commercial Leases

The statutory commercial-lease regime commonly provides a nine-year term with tenant break rights every three years, subject to exceptions. Tenants generally benefit from renewal rights or an eviction indemnity. Assignment, subletting, service charges, works, indexation, reinstatement and guarantees require careful drafting. Since 28 May 2026, a qualifying commercial tenant without undisputed rent or service-charge arrears may request monthly rent payments. For leases concluded or renewed from 26 May 2026 and eligible for monthly payment, the aggregate security requested by the landlord is capped at one quarter's rent; statutory deadlines also govern the return of deposits and other security at the end of the lease.

Trends and Developments

Contributed by:
Eric Kopelman, Amaury Nardone, Eva Kopelman and Ghislain de Pazzis
Axipiter

Axipiter is an independent French business law firm with offices in Paris and Lyon and around 30 lawyers. Its Corporate/M&A team advises companies, founders, management teams, family offices and investment funds on governance, acquisitions and disposals, private equity, venture and growth capital, reorganisations and capital-markets matters. The team regularly coordinates cross-border mandates and supports foreign groups establishing or expanding operations in France, as well as French groups expanding abroad. Axipiter combines this transactional practice with employment, corporate and international tax, customs, commercial litigation, competition, intellectual property, data, public business law, environmental, real estate and construction capabilities. Recent work includes advising shareholders on the sale of a French cybersecurity company to an international industrial group, investors on several health-tech, renewable energy and circular-economy financings, founders on disposals to French and European buyers, and corporate groups on acquisitions, reorganisations and French market-entry projects.

Authors



Eric Kopelman is a partner and co-head of Axipiter's Corporate/M&A department. He has advised entrepreneurs, corporate groups, executives and investment funds for 20 years on strategic transactions in France and internationally. His practice covers mergers and acquisitions, leveraged buyouts, venture and growth capital, external growth and corporate reorganisations. He regularly assists foreign groups entering France and French businesses expanding abroad. Eric also authors Axipiter's "Doing Business in France" publication, which provides international companies with practical guidance on establishing and developing operations in France. He co-founded Ambre Associés before joining Axipiter and is a member of the Paris Bar.



Amaury Nardone is the founding partner of Axipiter and co-head of its Corporate/M&A department. He advises entrepreneurs, industrial and service companies, listed issuers, investment funds and management teams on corporate matters, mergers and acquisitions, leveraged buyouts, capital-markets transactions and reorganisations in France and abroad. His work includes due diligence, acquisition agreements, warranties, complex securities, shareholder arrangements, management packages and senior or mezzanine financing. He regularly coordinates international matters. Before founding Axipiter, Amaury spent more than 25 years at Delsol Avocats, including as chair of its board for eight years. He is a member of the Lyon Bar, based in Paris and an auditor of the IHEDN's defence policy session.



Eva Kopelman is a partner and heads Axipiter's Employment Law department. She advises French and international companies on individual and collective employment matters, restructurings, collective redundancies and the employment aspects of mergers, acquisitions, reorganisations and business transfers, including employment due diligence, employee consultation and post-acquisition integration. Her practice also covers sensitive departures, collective employee relations, internal investigations and employment litigation. Before joining Axipiter, Eva practised at Jeantet, Gide and Freshfields Bruckhaus Deringer and worked in-house at Air France. She is a member of the Paris Bar and of the Association of European Attorneys.



Ghislain de Pazzis is a partner and co-head of Axipiter's Tax and Customs department. For more than 20 years, he has advised French and foreign companies and groups on corporate tax, VAT, local taxes, group taxation, reorganisations and transaction structuring. His practice also covers transfer pricing, customs, export controls, cross-border supply chains, international contracts and tax and customs disputes. Ghislain has particular experience in the aerospace, defence, transport, real-estate, chemical and pharmaceutical sectors. He is a member of the Lyon Bar.

Axipiter

5 rue de Téhéran,
75008 Paris,
France

31 avenue Maréchal de Saxe,
69006 Lyon,
France

Tel: (+33) 1 78 96 80 00
Email: erick@axipiter.fr
Web: www.axipiter.fr



Investing in France in 2026: Turning Regulatory Complexity into Transaction Certainty

A market that remains open, but expects preparation

France continues to combine a large domestic market, a deep pool of technical talent and an active ecosystem of founders, corporates and investors. It also offers international buyers a legal environment that is codified and relatively predictable. The practical challenge is not whether foreign investment is welcomed, but whether the transaction has been prepared early enough across all relevant workstreams.

That distinction matters in 2026. Geopolitical scrutiny, tighter financing conditions, increasing regulation of data and technology, and pressure on sustainability claims have widened the gap between a commercially agreed deal and an executable one. A buyer can preserve speed and negotiating leverage by identifying the issues that affect timetable, price and post-closing integration before exclusivity or signing.

For international acquirers, the most successful French transactions are therefore approached as integrated projects. Corporate structuring remains central, but employment, tax, foreign-investment review, competition, IP, data, environmental and real-estate matters increasingly determine whether the deal closes on time and delivers its expected value.

Foreign direct investment review has become a mainstream deal issue

The French foreign direct investment (FDI) control regime is no longer relevant only to obvious defence assets. Its scope includes critical infrastructure and services, public health, food security, sensitive data and research and development in critical technologies such as artificial intelligence, semiconductors, cybersecurity and biotechnologies. Indirect acquisitions and intra-group changes can be caught, and the analysis follows the full ownership chain.

The latest activity figures illustrate the regime's importance. The French Treasury's annual report for 2025, published in September 2026, records 418 filings, compared with 392 in 2024. Of the decisions rendered on authorisation requests, 52% concerned transactions found eligible for review, and 49% of authorised investments were subject to conditions. Formal prohibitions remain rare, but conditions can affect governance, access to information, supply arrangements, intellectual property, strategic capacity and future disposals.

The practical conclusion is not that foreign buyers should avoid sensitive sectors. It is that scope analysis should begin when the target perimeter and investor chain are first known. The parties should determine whether an authorisation or an advance ruling is appropriate, decide who leads engagement with the Treasury, and reflect the process in the long-stop date, conduct covenants and risk allocation.

Where several approvals apply, sequencing is critical. French FDI review may run alongside merger control, sector authorisations, lender approvals and foreign filing processes. The buyer should also anticipate the information required from its ultimate owners and financing sources, as gathering and validating that information can take longer than the legal review itself.

Deal certainty begins before the letter of intent

Competitive processes often encourage short timetables and a narrow initial focus on valuation. In France, early legal structuring can improve the credibility of a bid without making it unnecessarily conditional. A concise regulatory and stakeholder map prepared before the letter of intent can identify the matters that genuinely affect signing or closing.

The applicable merger-control thresholds changed shortly before this Guide was prepared. For notifications made from 1 September 2026, the general French thresholds increased to combined worldwide turnover above EUR250 million and French turnover above EUR80 million for at least two parties. The retail thresholds increased to EUR100 million worldwide and EUR20 million of French retail turnover for at least two parties, while specific overseas thresholds remain. The reform removes some transactions from mandatory review, but parties must still test the EU thresholds, identify the correct turnover perimeter and avoid pre-clearance integration where a filing remains required.

The map should cover, at a minimum:

- merger-control and foreign-investment filings;
- consultation of the social and economic committee and any information rights affecting the process;
- change-of-control provisions in financing, material contracts, public contracts, leases and permits;
- regulated-activity approvals and the portability of authorisations;
- tax structuring, acquisition debt and the availability of security; and
- separation issues where the target is a business line or carve-out rather than a standalone company.

This exercise allows conditions precedent to be limited to matters that are objectively necessary. It also informs the long-stop date and the level of effort each party must undertake to obtain clearance. Vague obligations to use "best efforts" are less useful than a clear allocation of filing responsibility, information co-operation, remedies, appeal strategy and the consequences of conditions imposed by authorities.

The same discipline applies to interim operating covenants. A buyer needs protection against value leakage and unusual conduct between signing and closing, but it must not exercise control prematurely. Clean-team protocols and clear escalation routes help the parties exchange the information needed for planning while respecting competition law, confidentiality and the target's operational independence.

Pricing mechanisms are doing more work

Where buyers and sellers disagree on outlook, or where financing remains selective, the purchase-price mechanism becomes a tool for allocating uncertainty. Locked-box structures continue to offer simplicity and price visibility when reliable historical accounts and leakage protection are available. Completion accounts are better suited to businesses with volatile working capital, rapidly changing debt or a perimeter that is still being separated.

Earn-outs and other deferred consideration mechanisms can bridge a valuation gap, but they frequently shift disagreement into the post-closing period. The agreement should define the metric, accounting policies, permitted management actions, information rights, dispute process and treatment of acquisitions, disposals and exceptional items. If the seller remains involved, the interaction with employment status, governance and tax treatment must also be addressed.

Warranty and indemnity insurance is increasingly considered in competitive or sponsor-led transactions. It can facilitate a clean exit and provide a buyer with meaningful recourse, but it is not a substitute for diligence. Known issues, forward-looking obligations, transfer pricing, cyber incidents and some regulatory risks may be excluded or require specific underwriting. The timetable should allow the insurer to review the same evidence as the buyer and its advisers.

Governance is part of the investment thesis

Minority and consortium investments require more than a list of veto rights. French SAS companies offer considerable flexibility, but the articles of association and shareholders' agreement perform different functions. Rights that must bind the company or remain effective against third parties may need to appear in the articles, while commercially sensitive arrangements are often retained in the agreement.

International investors should translate their governance model into operational rules. Board composition, quorum, information flows, delegation of authority and signing policies should work in practice from closing. Reserved matters should protect the investor without paralysing ordinary business, and deadlock mechanisms should distinguish a temporary disagreement from a structural failure of the partnership.

Exit provisions also deserve early attention. Transfer restrictions, tag-along and drag-along rights, liquidity processes and valuation mechanics must fit the expected investment horizon and financing structure. Management incentives should be reviewed simultaneously from corporate, employment and tax perspectives, particularly where leaver provisions or repurchase mechanics can affect both enforceability and economics.

The target's intangible assets may be its principal assets

For technology, healthcare, consumer and service businesses, legal ownership of intellectual property and data often determines value. A French target may use software created by employees, founders, contractors and open-source communities under different legal rules. Copyright in commissioned work does not automatically vest in the customer, and employee-created IP follows specific regimes depending on the asset.

Buyers should verify chain of title, registration, licences, contractor assignments, open-source compliance and security interests. Trade secrets require evidence of reasonable protective measures, not merely a confidentiality clause. Brand portfolios should be checked against the territories and product categories in the business plan, and change-of-control clauses may affect core technology licences.

Data diligence has become equally important. The buyer should understand which datasets are collected, the lawful basis for processing, retention periods, major incidents, cookie practices and international transfers. A clean data room does not itself make disclosure lawful: personal data should be minimised, redacted or placed behind controlled access, and post-closing migration should have its own legal basis and security plan.

AI creates both value and inherited compliance risk

The EU AI Act moved into an important enforcement phase on 2 August 2026, when the general enforcement framework and new transparency requirements became applicable; its governance rules and obligations for general-purpose AI models had applied since August 2025. High-risk requirements follow the revised timetable. Even where a target is not an AI provider, it may deploy third-party tools in recruitment, customer service, fraud detection, pricing, content generation or product features.

Transaction diligence should therefore begin with an inventory rather than a generic warranty. The buyer needs to know which systems are used, the target's role in the regulatory chain, what data trained or feeds the system, whether individuals are informed, how outputs are reviewed and which vendors bear contractual responsibility. Undocumented experimentation by business teams can create material exposure even when the target does not describe itself as an AI company.

The acquisition agreement can address identified gaps through remediation covenants, specific indemnities, escrow or conditions where necessary. Post-closing integration should establish an approval process, acceptable-use policy, training and incident escalation. This protects regulatory compliance while allowing useful technology to remain part of the value-creation plan.

Employment planning affects both timetable and integration

Employment law is often treated as a diligence topic when it is also a transaction-management issue. Depending on transaction structure and the target's workforce, the social and economic committee may need to be informed and consulted before the relevant corporate decision is taken. The sequence must be built into the process without undermining confidentiality or creating inconsistent communications.

Buyers should review employee status, working time, variable compensation, collective agreements, employee representation, health and safety, pending disputes and the treatment of key executives. In a carve-out or business transfer, the application of mandatory automatic transfer rules and the treatment of shared employees require early analysis, as the parties are not free to determine which employees will transfer. Retention measures should be aligned with existing incentive rights and French tax and social-security treatment.

Integration planning should not wait for closing. Changes to reporting lines, policies, benefits, locations, tools and data access may require employee information, consultation or individual consent. A realistic first-100-days plan identifies which measures can be implemented immediately, which require a process and which should be preserved until the buyer understands the local organisation.

Tax developments should be mapped to the deal timetable

The 2027 Finance Bill, presented on 1 October 2026 and still subject to parliamentary debate, is expected to favour overall tax stability for businesses, a higher contribution from very large groups and a continued focus on high earners, rather than a structural overhaul. Recent targeted reforms signal a clear trend toward tightening existing tax planning mechanisms. The following five developments deserve attention before signing:

i) Share rollovers and reinvestment

Crucially for deals, the tax-deferral regime for contributions of shares to a holding company (*apport-cession*) was tightened for disposals of the contributed shares by the holding company from 21 February 2026: the reinvestment period is now three years, the minimum reinvestment is 70% of proceeds, and the reinvested assets or securities must be kept for five years. Sellers' rollover and reinvestment plans should therefore be tested early.

ii) Interest deductibility

Interest paid on loans from associated but non-related corporate shareholders can now be deducted up to a market rate, where this is higher than the standard cap, extending a benefit previously limited to related companies. This applies to financial years closing from 31 December 2025. However, the general cap on net financial expenses continues to apply and the market rate must be substantiated.

iii) Pillar Two

The 2026 Finance Act again adjusts the French rules on the global minimum tax for large groups. An acquisition can change the perimeter of a group in scope, so the target's Pillar Two position and reporting obligations should form part of diligence and integration planning.

iv) Large groups

The exceptional surtax on very large companies was extended for a second year, with the turnover threshold raised to EUR1.5 billion. The 2027 Finance Bill, presented on 1 October 2026, would partially extend it for a third year, at lower rates. This proposal remains subject to amendment during the parliamentary process.

v) Management incentives

Where gains made by executives on their equity are regarded as having been acquired in consideration for their functions, they are taxed as salary by default, with only the portion below a performance-based ceiling potentially taxed as a capital gain if the applicable statutory conditions are satisfied. For securities other than qualifying free shares, stock options and founders' warrants, those conditions include a holding period of at least two years and a genuine risk of loss. The 2026 Finance Act refined this regime, so sponsors should model manager returns on the current rules and revisit existing plans (see *Governance is part of the investment thesis* above).

Because tax rules change annually and often apply based on specific closing dates, effective dates must be strictly mapped against the deal timetable. For cross-border transactions, this analysis should also be coordinated with transfer pricing, VAT, customs and the intended post-closing operating model.

Real estate and environmental exposure can change the economics

Owned or leased sites should be reviewed as operational assets, not only legal documents. Title, planning permissions, classified-installation status, soil contamination, energy performance, repair obligations and change-of-control clauses can affect continued operation and future investment. In an asset deal, the transferability of permits and leases may determine the perimeter that can close.

The French commercial-lease framework provides significant tenant protection but also imposes formal rules on duration, renewal and allocation of charges. The Law of 26 May 2026 introduced, among other measures, a tenant right to request monthly rent payments and rules on the release of excess security. Buyers should reflect current cash-flow and guarantee arrangements in their model rather than relying solely on headline rent.

Environmental liabilities require both contractual allocation and an operational plan. An indemnity may pro-

tect value between the parties, but it does not prevent regulators from addressing the person liable under public law. Technical evidence, historical use and realistic remediation scenarios are therefore essential when a site is material to the investment thesis.

Dispute-resolution planning should begin before signing

Cross-border investors should anticipate how contractual and post-closing disputes will be handled. Governing-law, jurisdiction and arbitration clauses must be consistent across the transaction documents, particularly where the acquisition agreement, shareholders' agreement, transitional services and financing arrangements form part of the same transaction.

Warranty and indemnity procedures, limitation periods, evidence-preservation obligations and access to information after closing should be operational rather than merely standard. French courts can provide urgent interim relief, including protective and evidentiary measures, while arbitration can offer procedural flexibility and, where the parties so provide, confidentiality for international transactions.

Early co-ordination between the transactional and litigation teams can materially improve the enforceability of negotiated protections. Identified disputes should be reflected in pricing, specific indemnities or escrow arrangements, and the transaction documents should clearly allocate control of third-party claims and settlement decisions.

A practical route to a more certain closing

International investors can make a French acquisition materially more predictable by organising the transaction around a few decisions:

- establish the regulatory and employee-process map before committing to the timetable;
- align price mechanics with the quality of financial information and the source of uncertainty;
- document governance as an operating system, not simply a set of protections;
- treat IP, data and AI as assets with provenance, dependencies and compliance costs;
- design acquisition financing, tax structure and post-closing flows together;
- translate diligence findings into specific closing, pricing or integration actions; and
- assign owners and deadlines for the first 100 days before funds are transferred.

France remains an attractive and navigable jurisdiction for cross-border investment. The legal framework rewards buyers that prepare early, distinguish true execution risks from manageable compliance matters, and coordinate specialist workstreams around a single transaction strategy. In that setting, regulation becomes less an obstacle than a method for creating deal certainty and protecting value after closing.

GERMANY

Law and Practice



Contributed by:
Michael Rainer, Marc Klaas, Alexander Gottstein, Michael Below and Lion Bischoff
MTR Legal Rechtsanwälte

Contents

1. Business Entities P.316
1.1 Business Organisations p.316
1.2 Incorporation and Ongoing Compliance p.316
1.3 Share Issuances p.317
1.4 Distributions and Return of Capital p.317
1.5 Control Person Reporting p.318

2. Corporate Governance P.318
2.1 Legal Framework p.318
2.2 Directors' Duties and Liabilities p.318
2.3 Board Composition and Independence p.319
2.4 ESG and Disclosure Obligations p.319
2.5 Conflicts of Interest and Related-Party Transactions p.320

3. Shareholder Rights and Agreements P.320
3.1 Shareholder Rights p.320
3.2 Shareholder Agreements p.321

4. Mergers and Acquisitions P.321
4.1 Legal Framework p.321

5. Capital Markets P.322
5.1 Securities Regulation and Public Offerings p.322
5.2 Continuous Disclosure p.322
5.3 Insider Trading p.323
5.4 Shareholder Disclosure p.323
5.5 Internal Controls and Whistle-Blower Regimes p.323

6. Secured Transactions P.324
6.1 Transaction Financing and Security Interests p.324

7. Commercial Contracts P.324
7.1 Contract Formation and Enforceability p.324
7.2 Termination and Remedies p.325
7.3 Intellectual Property in Commercial Transactions p.325
7.4 Consumer Protection p.325

8. Foreign Investment P.326
8.1 Competition and Merger Control p.326
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.326

9. Regulatory Compliance P.327
9.1 Privacy and Data Protection p.327
9.2 Anti-Money Laundering, Sanctions and Corruption p.327
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.328
9.4 Artificial Intelligence p.328
9.5 Other Regulatory Compliance Requirements p.329

10. Employment and Labour P.329
10.1 Employment Standards and Workplace Regulation p.329
10.2 Executive Compensation and Restrictive Covenants p.330

11. Real Property and Commercial Leasing P.330
11.1 Requirements for Land Ownership p.330
11.2 Commercial Real Estate Transactions p.331

Contributed by: Michael Rainer, Marc Klaas, Alexander Gottstein, Michael Below and Lion Bischoff,
MTR Legal Rechtsanwälte

MTR Legal Rechtsanwälte is a German full-service business law firm advising national and international companies, institutional investors and private clients. The firm operates through a multidisciplinary team across eight German offices, with key locations including Cologne, Berlin, Düsseldorf, Frankfurt, Hamburg, Munich and Stuttgart. Its Corporate & Commercial practice covers corporate and commercial law, M&A, company formation and disposals, commercial contracts, distribution matters and related cross-border issues. The wider practice includes tax, banking and capital markets, employment, IT and data protection, intellectual property, real estate, restructuring and insolvency, compliance, dispute resolution and private client work. MTR Legal advises on ongoing corporate matters as well as complex transactions, disputes and cross-border mandates, drawing on co-operation with international law firms, tax advisers and auditors where required.

Authors



Michael Rainer is founder and CEO of MTR Legal and has more than 20 years of experience in management and entrepreneurship. His practice focuses on German and international commercial and corporate law, contract law and M&A, with additional experience in litigation and banking and capital markets law. His earlier professional experience includes business development and M&A at MTU Maintenance Hannover and advisory work for FRIEDRICH KOCKS GmbH & Co. KG. He is a member of the German-American Lawyers' Association (DAJV), the American Bar Association, the German-Chinese Lawyers' Association, the IBA and the UIA.



Marc Klaas is a partner at MTR Legal and has been with the firm since 2011. He advises on German and international commercial and corporate law, M&A transactions and IT law, and has extensive experience in complex civil litigation. His industry experience includes aerospace, automotive, IT and telecommunications, mechanical and plant engineering, venture capital and start-ups. Earlier in his career, he worked in the legal department of Porsche AG and as in-house counsel at SIAG Engineering GmbH. He is a member of the German Bar Association's International Business Law working group.



Alexander Gottstein is a salary partner at MTR Legal. His practice focuses on tax law, private clients, inheritance matters and succession planning. He advises high net worth individuals, family-owned businesses and national and international clients on complex tax and commercial matters. He studied law at Bucerius Law School in Hamburg and also attended Chicago-Kent College of Law in the United States. During his legal traineeship at the Regional Court of Cologne, he gained experience at CMS Hasche Sigle and DLA Piper UK LLP before qualifying as a lawyer.



Michael Below is a salary partner at MTR Legal. He advises on commercial and corporate law, IT law and real estate law and represents German and international clients in complex civil litigation. His professional training included work at the Federal Ministry of Food and Agriculture, Meilicke Hoffmann & Partner and Heuking Kühn Lüer Wojtek in Brussels, covering state aid, banking and capital markets, commercial and corporate, and competition law. He has particular sector experience in aerospace, automotive, IT and telecommunications and is a member of the German-American Lawyers' Association (DAJV).

Contributed by: Michael Rainer, Marc Klaas, Alexander Gottstein, Michael Below and Lion Bischoff,
MTR Legal Rechtsanwälte



Lion Bischoff is a senior associate at MTR Legal and has practised as a lawyer with the firm since 2022. He advises primarily on commercial and corporate law and general civil law. He studied law at Ruhr University Bochum, with academic focuses including criminal defence, criminal procedure, criminology and business law, and spent a semester at CY Cergy Paris Université. He also gained practical experience in Jordan and Mexico in corporate and contract law. He completed his legal traineeship with a focus on commercial and corporate law and general civil law.

MTR Legal Rechtsanwälte

Breslauer Platz 4
50668 Cologne
Germany

Tel: +49 221 9999220
Email: info@mtrlegal.com
Web: www.mtrlegal.com

Contributed by: Michael Rainer, Marc Klaas, Alexander Gottstein, Michael Below and Lion Bischoff,
MTR Legal Rechtsanwälte

1. Business Entities

1.1 Business Organisations

German law distinguishes principally between corporations and partnerships. The most commonly used corporate form is the *Gesellschaft mit beschränkter Haftung* (GmbH), a private limited liability company. Its statutory minimum share capital is EUR25,000. A variant is the *Unternehmergesellschaft* (*haftungsbeschränkt*), which may be established with lower initial capital but is subject to statutory reserve-building requirements. Larger enterprises and businesses seeking access to public capital markets may use the *Aktiengesellschaft* (AG), whose minimum share capital is EUR50,000. Other corporate forms include the *Kommanditgesellschaft auf Aktien* (KGaA) and the European Company (SE).

Partnership forms include the civil-law partnership (*Gesellschaft bürgerlichen Rechts* – GbR), the general commercial partnership (*offene Handelsgesellschaft* – OHG) and the limited partnership (*Kommanditgesellschaft* – KG). The GmbH & Co. KG, in which a GmbH acts as general partner, is widely used where partnership characteristics are sought without exposing an individual general partner to unlimited liability. Germany does not have a general domestic trust comparable to the common-law trust.

Choice of Structure

The choice is driven primarily by liability, governance, financing, taxation, disclosure requirements and the intended ownership structure. A GmbH provides separate legal personality and generally limits shareholder exposure to the assets of the company, while offering greater flexibility in governance than an AG. An AG is more extensively regulated, has a mandatory two-tier management structure and is designed to accommodate a potentially broader and changing shareholder base.

Tax considerations also influence structuring. Corporations are themselves subject to corporate income taxation, whereas partnerships are generally transparent for income or corporate income tax purposes at partner level, although trade tax may apply at partnership level. Regulatory requirements, employee co-determination, financing plans, succession arrangements and cross-border considerations should therefore be assessed before a legal form is selected.

1.2 Incorporation and Ongoing Compliance

For a GmbH, the articles of association must be notarised and the managing directors appointed. The articles may also be notarised by video communication under the statutory online procedure, provided that no other mandatory form requirement prevents this. The company must then open its capital account and make the required contributions. Before registration, at least one-quarter of each cash contribution must generally have been paid and the aggregate amount of cash contributions and agreed contributions in kind must reach at least EUR12,500; contributions in kind must be fully available to the company. The managing directors subsequently file the company for registration with the competent commercial register.

The GmbH acquires its full legal status upon registration. Persons acting in its name before registration may incur personal liability. There is no statutory processing period applicable to all registrations; timing depends on the completeness of the documentation, payment of capital and the workload of the relevant register court. Notarial and court fees are prescribed by law and depend on the transaction value and the documents required rather than being freely negotiated professional fees. Formation of an AG follows a more formal procedure, including notarised articles, subscription of the shares, appointment of the initial corporate bodies, a formation report and registration. Its statutory minimum capital is EUR50,000.

Ongoing Compliance

Companies must maintain proper accounting records, prepare annual financial statements and comply with applicable filing and disclosure requirements. Capital companies generally submit the relevant annual accounts electronically to the Company Register; the ordinary statutory deadline is one year after the relevant balance-sheet date, with shorter periods applying to certain capital-market-oriented companies.

Corporate changes must also be kept current. For a GmbH, changes concerning managing directors must be filed with the commercial register, and changes in

shareholders or their participations require an updated list of shareholders. Beneficial ownership information must additionally be maintained in the Transparency Register where required under the German Money Laundering Act (*Geldwäschegesetz* – GwG).

1.3 Share Issuances

For a GmbH, the stated share capital and the individual nominal amounts of the shares are set out in the articles of association. The minimum share capital is EUR25,000, and the sum of all nominal amounts must equal the registered share capital. Capital increases generally require a shareholder resolution amending the articles, notarisation and registration with the commercial register. German law also permits authorised capital for a GmbH where provided for in the articles, subject to statutory limits.

An AG must have share capital of at least EUR50,000. Shares may be issued as par-value shares or no-par-value shares. The Location Promotion Act (*Standortfördergesetz* – StoFöG), which entered into force on 10 February 2026, introduced a reduced minimum for shares where the articles so provide. Par-value shares may then have a nominal value of at least one euro cent, and the proportion of share capital represented by a no-par-value share may likewise be as low as one euro cent. Shares may not be issued below their statutory minimum issue amount.

An AG may increase capital through ordinary, conditional or authorised capital. Authorised capital permits the management board, subject to supervisory board involvement and the terms of the shareholder authorisation, to issue new shares for a period of up to five years and within the statutory quantitative ceiling.

Different Classes and Rights

Different classes may carry different dividend, liquidation or voting rights, provided that the statutory requirements are observed and the rights are clearly reflected in the articles. German AG law permits preference shares without voting rights and, subject to specific conditions, multiple-voting shares. The creation or alteration of class rights normally requires enhanced shareholder approval and may require separate approval by the affected class.

In a GmbH, greater contractual flexibility exists. Articles may provide for differing voting, profit participation, consent or nomination rights. Careful drafting is nevertheless required because rights intended to bind the company or future shareholders generally need to be contained in the articles, while purely contractual arrangements in a shareholders' agreement have a different enforcement regime.

1.4 Distributions and Return of Capital

German corporate law is based on strict capital-maintenance principles. In a GmbH, shareholders are generally entitled to the distributable annual surplus, subject to the articles, shareholder resolutions and statutory restrictions. Assets required to maintain the registered share capital may not be distributed to shareholders.

For an AG, dividends may generally be paid only from the balance-sheet profit determined in accordance with statutory accounting and corporate procedures. Repayment of capital contributions outside the mechanisms permitted by the Stock Corporation Act (*Aktiengesetz* – AktG) is prohibited.

Repurchases and Cancellation

A GmbH may acquire its own shares only within statutory limits, including requirements concerning full payment of the relevant shares and capital maintenance. A compulsory redemption of GmbH shares must have a basis in the articles of association; compensation arrangements must also comply with capital-maintenance requirements.

An AG may acquire its own shares only in the circumstances specified by statute. The commonly used shareholder-authorisation route is subject, among other conditions, to a limit of 10% of the share capital and capital-maintenance requirements.

German AG law also contains a specific financial-assistance restriction: transactions by which the company advances funds, grants loans or provides security to facilitate the acquisition of its own shares are generally ineffective, subject to statutory exceptions. A GmbH has no identical provision, but upstream or acquisition-related support remains constrained

by capital-maintenance rules, directors' duties and, where relevant, insolvency law.

1.5 Control Person Reporting

Germany does not operate a single "control person" reporting regime equivalent to those found in some common-law jurisdictions. The principal disclosure mechanism for private companies is the Transparency Register under the German Money Laundering Act.

A beneficial owner is generally a natural person who directly or indirectly holds more than 25% of the capital, controls more than 25% of the voting rights or exercises comparable control. If no natural person can be identified following the required checks, the senior managing official is generally treated as the beneficial owner for reporting purposes. German legal entities and registered partnerships must obtain, retain and submit the required beneficial ownership information and keep it current.

In addition, the GmbH shareholder list filed with the commercial register identifies shareholders and their holdings. A non-listed AG may be subject to separate notification requirements under the Stock Corporation Act where corporate shareholders cross certain participation levels. Listed companies are subject to the separate capital-markets disclosure regime discussed in **5.4 Shareholder Disclosure**.

2. Corporate Governance

2.1 Legal Framework

German corporate governance is primarily determined by the legal form of the company. The Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung* – GmbHG) governs the GmbH, while the Stock Corporation Act contains the detailed governance regime for the AG. Relevant additional rules arise from the Commercial Code, co-determination legislation, capital-markets law, insolvency law and sector-specific regulation.

An AG has a mandatory two-tier structure. The management board manages the company independently, while the supervisory board appoints and supervises the management board. Management functions may not generally be transferred to the supervisory board. A GmbH is structurally more flexible: managing directors conduct the business, while shareholders retain extensive powers to determine governance arrangements and issue instructions, subject to mandatory law.

German Corporate Governance Code

Listed companies are additionally influenced by the German Corporate Governance Code (*Deutscher Corporate Governance Kodex* – DCGK). Under Section 161 of the Stock Corporation Act, the management and supervisory boards of listed companies must annually declare whether the Code's recommendations have been and are being complied with and explain deviations.

As at 6 October 2026, the formally published Code remains the version dated 28 April 2022. A revised draft was published for consultation on 5 August 2026; the consultation has since closed, but the revised Code has not yet been published.

2.2 Directors' Duties and Liabilities

Members of an AG management board must exercise the care of a diligent and conscientious manager and act in the interests of the company. The statutory business judgement rule protects entrepreneurial decisions where the board member could reasonably assume, on the basis of adequate information, that the decision was in the company's interests. Courts distinguish between entrepreneurial decisions, for which management requires room to exercise judgement, and breaches of mandatory law, where such discretion does not apply.

GmbH managing directors are similarly required by Section 43 of the Limited Liability Companies Act to exercise the care of a prudent businessperson. Their obligations include compliance with law and the articles, proper organisation of the business, protection of the company's assets, and appropriate supervision and compliance arrangements.

Personal Liability

Directors may be personally liable to the company for losses caused by a culpable breach of duty. Depending on the circumstances, additional exposure may

arise from unlawful payments, tax or social-security defaults, failure to react appropriately to insolvency, regulatory breaches or tortious conduct.

For an AG, the Stock Corporation Act places the burden on the board member to demonstrate compliance with the required standard once the relevant conditions for a claim are established. D&O insurance is common but does not remove the underlying duty or cover every category of liability. The practical focus should therefore be on documented decision-making, reliable information, and functioning reporting and control processes.

2.3 Board Composition and Independence

An AG must have both a management board and a supervisory board. There is generally no German nationality or residence requirement for members merely by virtue of serving on either body. A GmbH requires one or more managing directors; a supervisory board is optional unless required by co-determination or other specific legislation.

Employee co-determination can significantly affect board composition. Companies within the relevant legal forms with normally more than 500 employees in Germany may fall within the one-third participation regime. Companies normally employing more than 2,000 employees are generally subject to parity co-determination under the Co-Determination Act (*Mitbestimmungsgesetz* – MitbestG), subject to statutory exceptions and group attribution rules.

Listed Companies and Diversity

For listed companies, supervisory board independence is addressed principally through the Corporate Governance Code rather than through a single general statutory independence definition. The Code recommends an appropriate number of shareholder representatives who are independent from the company, the management board and any controlling shareholder.

Statutory gender requirements apply to specified listed and co-determined companies. In particular, supervisory boards of listed companies subject to the relevant parity co-determination legislation must generally comprise at least 30% women and at least 30% men. An additional requirement applies to the management board of listed AGs subject to the relevant parity co-determination legislation: where the management board comprises more than three members, at least one woman and at least one man must be represented. Other listed or co-determined companies are subject to target-setting and related disclosure requirements.

Private companies face considerably fewer board-composition requirements unless co-determination or sector-specific rules apply.

2.4 ESG and Disclosure Obligations

German companies are subject to a combination of EU and domestic sustainability rules. One established domestic regime is the Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz* – LkSG), which generally applies to companies with their central administration, principal place of business, administrative seat or statutory seat in Germany, or a qualifying German branch, and at least 1,000 employees in Germany. It requires a risk-management framework covering specified human-rights and environmental risks, including risk analysis and preventive and remedial measures.

A reform of the Act remains pending. The government bill would abolish the statutory reporting obligation retroactively from the 2023 reporting period and restrict administrative fines to serious breaches, while leaving the substantive due-diligence duties in place. In the longer term, the Act is intended to be replaced by legislation implementing the amended EU Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD's general scope for EU companies is now limited to companies with more than 5,000 employees and net worldwide turnover above EUR1.5 billion.

Sustainability Reporting

The reporting framework remains in transition. Germany has not yet enacted legislation implementing the EU Corporate Sustainability Reporting Directive (CSRD). Until such legislation enters into force, the existing German non-financial reporting rules under Sections 289b et seq and 315b et seq of the Commercial Code continue to apply to entities within their scope.

Directive (EU) 2026/470 substantially narrows the future CSRD reporting scope. For EU undertakings, the reporting obligation will generally apply where both thresholds are exceeded: net turnover of more than EUR450 million and an average of more than 1,000 employees during the financial year, with corresponding consolidated thresholds for groups. EU member states ("Member States") must transpose the relevant changes by 19 March 2027.

Board Responsibility

German corporate law does not impose a free-standing duty on directors to maximise a separate set of "ESG interests". Environmental, social and stakeholder matters nevertheless become part of board responsibility where they are relevant to legal compliance, the company's long-term interests, material business risks, reporting obligations or the viability of the business model. Listed AGs must maintain an appropriate and effective internal control and risk-management system, which can encompass material sustainability risks.

Boards should therefore integrate material sustainability matters into existing governance rather than treat ESG as a separate reporting exercise. This includes clear responsibility allocation, reliable data and controls, documented risk assessment and supervisory-board oversight where the issues are material to the company.

2.5 Conflicts of Interest and Related-Party Transactions

Members of corporate bodies owe duties of loyalty to the company and must avoid allowing personal interests to interfere with the proper performance of their functions. Depending on the legal form and transaction, conflicts can trigger disclosure duties, voting restrictions, requirements for approval by another corporate body and potential liability.

German AG law contains specific rules for material related-party transactions of listed companies. Transactions exceeding the statutory threshold generally require prior supervisory board approval unless an exemption applies. Members affected by a conflict may not participate in the relevant approval decision.

The statutory related-party regime is supplemented by accounting disclosure rules, market-abuse requirements where inside information is involved, and the general duties of management and supervisory board members. Private GmbHs have greater organisational flexibility, but conflict transactions remain subject to directors' duties, shareholder competence, capital-maintenance rules and any approval requirements set out in the articles or rules of procedure.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder rights depend substantially on the legal form. GmbH shareholders generally determine matters through shareholder resolutions and may reserve significant decisions for themselves in the articles. They have extensive statutory information and inspection rights: management must, on request, provide information on company affairs and permit inspection of books and records, subject only to limited statutory grounds for refusal.

AG shareholders exercise their rights primarily through the general meeting. They vote on matters expressly allocated to shareholders by law, including elections to the supervisory board, appropriation of profits, amendments to the articles and specified capital and structural measures. At the general meeting, shareholders have a statutory right to information insofar as it is necessary for a proper assessment of an agenda item.

Minority Protection and Remedies

German law provides minority rights including rights to require meetings or agenda items where statutory thresholds are met, challenge defective resolutions and seek judicial enforcement of information rights. In an AG, shareholders representing at least 1% of the share capital or EUR100,000 of the proportionate share capital may, subject to further statutory conditions, seek judicial permission to pursue certain company claims in their own name for the benefit of the company.

Remedies vary according to the legal form and alleged breach, and may include actions for annulment or

nullity, damages, special-audit mechanisms and, in exceptional circumstances, dissolution or shareholder exit remedies.

3.2 Shareholder Agreements

Shareholder agreements are commonly used to regulate matters beyond the statutory governance framework. Typical provisions concern reserved matters, voting arrangements, information rights, financing obligations, rights of first refusal, pre-emption rights, tag-along and drag-along arrangements, succession, exit procedures and deadlock mechanisms.

A critical distinction is whether an arrangement is intended merely to bind the contracting shareholders or also to have corporate effect. Provisions that are to govern the company and future shareholders may need to be incorporated into the articles. For GmbH shares, form requirements are particularly important. Both the transfer of a GmbH share and an agreement creating an obligation to transfer such a share generally require notarisation. This can affect the form required for transaction documents containing transfer obligations, options or exit mechanisms.

Disputes and Remedies

Germany does not have a direct statutory equivalent of the broad common-law "oppression" or "unfair prejudice" remedy. Protection instead results from a combination of statutory shareholder rights, contractual claims, fiduciary duties between shareholders in appropriate circumstances and remedies developed by the courts.

Depending on the company and dispute, proceedings may involve challenges to shareholder resolutions, enforcement of information rights, damages claims, derivative proceedings, exclusion or withdrawal for serious cause, and dissolution. A GmbH may be dissolved by judgment for specified serious reasons on an action brought by shareholders holding at least 10% of the share capital.

Arbitration clauses are also common in sophisticated shareholder arrangements but must be structured carefully where corporate resolutions or disputes affecting all shareholders are to fall within their scope.

4. Mergers and Acquisitions

4.1 Legal Framework

Private M&A is governed by general contract and corporate law, principally the Civil Code, Commercial Code, Limited Liability Companies Act and Stock Corporation Act. Statutory reorganisations such as mergers, demergers and changes of legal form are governed by the Transformation Act (*Umwandlungsgesetz* – UmwG). Competition, foreign-investment, tax, employment, regulatory and sector-specific rules may apply in parallel.

The principal acquisition structures are share deals and asset deals. A share acquisition transfers the target entity while its assets and liabilities remain with it. An asset deal allows specified assets and liabilities to be transferred individually, but applicable transfer formalities, third-party consents, employee-transfer rules and regulatory permissions must be assessed. Transfers of GmbH shares require notarisation.

Germany has no general scheme-of-arrangement procedure corresponding to the English or Canadian model. Statutory mergers are implemented under the Transformation Act through corporate approvals, notarised documentation and registration rather than a general court-sanctioned compromise procedure.

Public M&A

Public takeovers are principally governed by the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz* – WpÜG), supplemented by the Stock Corporation Act, EU Market Abuse Regulation, Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG) and stock-exchange rules. Acquiring control of a target – generally 30% of its voting rights – triggers the mandatory-offer regime unless an exemption applies. Public transactions require close attention to offer documentation, equal treatment, financing certainty, disclosure and dealings in target securities.

Regulatory Overlays

Both private and public deals may require merger-control clearance and foreign-investment approval. These processes can affect signing conditions, long-stop dates, interim covenants and risk allocation and

should therefore be analysed before transaction documents are finalised.

German courts continue to influence transaction practice, particularly through general corporate and contract law. The Federal Court of Justice has, for example, made clear that making information available in a data room does not automatically discharge a seller's disclosure obligations; the circumstances must justify the expectation that the buyer would identify and appreciate the relevant information.

Judicial Developments

The Court has also held that the specific AG rule governing a transfer of substantially all assets is not applied analogously to a GmbH. Nevertheless, a sale affecting substantially the entire business may require shareholder involvement under GmbH corporate law, and questions of authority and third-party protection remain transaction-specific.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

German capital markets are governed by directly applicable EU legislation and German implementing and supplementary legislation. Principal instruments include the EU Prospectus Regulation, the Market Abuse Regulation, the Securities Trading Act, the Securities Prospectus Act (*Wertpapierprospektgesetz* – WpPG) and the Stock Exchange Act (*Börsengesetz* – BörsG). The Federal Financial Supervisory Authority (BaFin) is the principal securities regulator, while admission to a regulated market also involves the relevant stock exchange and its rules.

A public offer of securities or admission to trading on a regulated market generally requires an approved prospectus unless an exemption applies. BaFin reviews prospectuses for completeness, consistency and comprehensibility rather than assessing the commercial merits of the investment.

The statutory approval period under the Prospectus Regulation is generally ten working days following submission of a complete draft. It can be 20 working days in specified first-offer circumstances. Transaction timetables must additionally accommodate preparation, due diligence, financial information, marketing, stock-exchange admission and settlement.

Prospectus Exemptions

EU exemptions include offers addressed solely to qualified investors, offers to fewer than 150 non-qualified investors per Member State, securities with a denomination of at least EUR100,000 and offers requiring an investment of at least EUR100,000 per investor, among others.

Since 5 June 2026, Article 3 (2) of the Prospectus Regulation provides a prospectus exemption for offers with a total aggregated consideration in the EU of less than EUR12 million per issuer or offeror over a 12-month period. Germany applies this EUR12 million threshold; the former German EUR8 million threshold has been removed. Where this exemption is used in Germany, a securities information sheet (*Wertpapier-Informationsblatt*) is generally required unless a statutory exception applies. BaFin must decide within ten working days whether publication may proceed.

Listing and Resale

A prospectus exemption does not itself result in admission to a regulated market. The issuer must separately satisfy the listing and admission requirements of the relevant market.

German and EU law do not impose a general statutory resale holding period comparable to the private-placement holding periods found in some non-European jurisdictions. A resale may, however, constitute a new public offer and must independently satisfy the prospectus regime or an exemption. Contractual lock-ups, insider restrictions and market-abuse rules may also restrict disposal. Non-compliance can lead to administrative sanctions, civil liability and, depending on the breach, other regulatory consequences.

5.2 Continuous Disclosure

Listed issuers are subject to a combination of periodic financial reporting and event-driven disclosure obligations under German and EU law. The central event-driven obligation derives from the Market Abuse Regulation.

An issuer must disclose inside information directly concerning it to the public as soon as possible, subject to the statutory conditions permitting delay. The disclosure must allow fast access and a complete, correct and timely assessment of the information. Following amendments applicable in 2026, the treatment of intermediate steps in protracted processes has become more differentiated, making careful classification of the relevant event particularly important.

Where disclosure has lawfully been delayed, confidentiality must be maintained. Loss of confidentiality may trigger immediate publication. Issuers must also maintain insider lists and comply with related documentation requirements.

5.3 Insider Trading

The Market Abuse Regulation applies directly in Germany and prohibits insider dealing, unlawful disclosure of inside information and market manipulation. It is supplemented by the Securities Trading Act and other German enforcement provisions.

Persons possessing inside information may not use that information to acquire or dispose of relevant financial instruments or recommend or induce another person to do so. Issuers and persons acting on their behalf must maintain prescribed insider lists and ensure that persons included are aware of their obligations and potential sanctions.

Enforcement

BaFin has extensive supervisory and investigative powers and may request information and documents, investigate suspicious trading and impose administrative measures and sanctions within its remit. Serious breaches can also give rise to criminal proceedings conducted by the competent prosecution authorities. Companies therefore normally combine disclosure controls, insider-list processes, trading restrictions and escalation procedures for potentially price-sensitive information.

5.4 Shareholder Disclosure

The Securities Trading Act contains a detailed notification regime for voting interests in issuers for which Germany is the home Member State. A person reaching, exceeding or falling below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the voting rights must generally notify both the issuer and BaFin without undue delay and no later than four trading days. Attribution rules can cause voting rights held by subsidiaries, controlled entities or other persons to be included.

Separate rules cover certain instruments that provide an entitlement or economic exposure relating to shares, meaning that a disclosure analysis should not be limited to registered ownership.

Failure to comply can result in loss or suspension of shareholder rights in specified circumstances and administrative sanctions. In transaction planning, changes in voting control must also be co-ordinated with the 30% takeover-control threshold and any foreign-investment or merger-control implications.

5.5 Internal Controls and Whistle-Blower Regimes

Germany does not prescribe one uniform compliance programme for every company. The required system depends on legal form, size, risk profile and sector. Directors' general organisational and supervisory duties can nevertheless require appropriate compliance measures, while regulated entities are subject to more detailed requirements.

For a listed AG, Section 91 of the Stock Corporation Act expressly requires an appropriate and effective internal control and risk-management system taking account of the scope of the business and its risk situation. All AGs must maintain measures enabling developments threatening the company's continued existence to be identified at an early stage.

Whistle-Blowing

Under the Whistle-Blower Protection Act (*Hinweisgeberschutzgesetz* – HinSchG), employers with normally at least 50 employees must generally establish an internal reporting office. Certain regulated financial-sector employers are subject to the obligation regardless of employee numbers.

Effective governance should allocate compliance responsibility clearly, identify company-specific risks, implement proportionate policies and controls, pro-

vide confidential reporting channels, investigate material allegations and report significant matters to the appropriate management or supervisory body. Documentation and periodic testing are particularly important in demonstrating that the system operates in practice.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

German law does not have a single universal security interest or a central filing regime equivalent to Article 9 of the US Uniform Commercial Code. Security is instead created asset by asset under the applicable rules.

Common security instruments include pledges over shares, bank accounts and receivables; assignments of receivables by way of security; transfers of title to movable assets by way of security; mortgages and, more commonly in commercial financing, land charges over real estate; and security over intellectual property. A security transfer of movable property can be structured so that the debtor retains possession under Section 930 of the Civil Code.

Perfection and Priority

The steps required depend on the asset. Real-estate security requires registration in the land register. Under Section 873 of the Civil Code, an agreement and registration are generally required to create or transfer a right in land.

Other security interests may require possession, notice, contractual control or specific form requirements rather than public registration. Priority therefore needs to be analysed by asset class rather than by reference to a single national registry.

Acquisition Finance

Acquisition financing commonly combines share pledges, account and receivables security, security assignments or transfers over material assets and, where relevant, land charges and IP security. Intercreditor agreements govern ranking, enforcement proceeds and standstill arrangements between lenders.

Corporate-benefit and capital-maintenance considerations are material where target companies provide upstream or cross-stream security. An AG is additionally subject to statutory restrictions on financial assistance for the acquisition of its own shares. No recent reform has replaced the underlying asset-specific German security system, although changes in financial and restructuring regulation continue to affect financing documentation and enforcement analysis.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

German contract law is principally codified in the Civil Code. A contract is ordinarily formed through corresponding declarations of intent, usually offer and acceptance. Unlike common-law systems, German law does not require consideration.

The general principle is freedom of form. Statutory formalities nevertheless apply to particular transactions, including transfers of GmbH shares and agreements concerning German real estate. Failure to observe a mandatory form can render the agreement void.

Contracts are interpreted according to the parties' declarations, the circumstances and the principle of good faith. German law places greater emphasis on statutory default rules and good faith than many common-law systems.

Invalidity and Limitations

Contracts may be invalid or challengeable because of lack of capacity, failure to comply with mandatory form, illegality, violation of public policy, mistake, fraudulent misrepresentation or unlawful threats.

Particular care is required with standard terms. Section 307 of the Civil Code can invalidate clauses that unreasonably disadvantage the other party or fail applicable transparency requirements. Although the additional consumer-focused restrictions in Sections 308 and 309 do not apply directly between businesses, their underlying principles may influence the Section 307 assessment in B2B contracts.

Liability limitations are therefore assessed differently depending on whether they were individually negotiated or form part of standard terms. Complete exclusion of liability for intentional conduct is not permissible.

7.2 Termination and Remedies

The Civil Code provides a structured system of remedies. Depending on the breach, a party may seek performance or cure, damages, reimbursement of expenses, rescission or termination. Many remedies require an additional period for performance or cure unless a statutory exception applies.

An extraordinary termination may be available for continuing contractual relationships where serious circumstances make continuation until ordinary expiry unreasonable. Contractual termination rights can supplement the statutory regime. A party purporting to terminate without legal or contractual justification may itself be in breach and face damages or continued performance obligations.

Force Majeure and Hardship

German law has no single general statutory "force majeure" provision governing all commercial contracts. Force majeure is therefore often addressed contractually, while impossibility and related Civil Code rules determine whether performance obligations continue.

Section 313 of the Civil Code provides a statutory hardship doctrine where circumstances forming the basis of the contract have fundamentally changed and it would be unreasonable to hold one party to the unchanged agreement. The primary remedy is adaptation; rescission or termination may become available if adaptation is impossible or unreasonable.

7.3 Intellectual Property in Commercial Transactions

Commercial transactions should identify each relevant IP right, its registered owner, territorial scope, licences, encumbrances and chain of title. Patents and trade marks may be transferred or licensed, with recordal in the relevant register often advisable.

German copyright law differs fundamentally from systems allowing a complete assignment of copyright. Copyright itself is generally not transferable during the author's lifetime. Instead, the author grants exploitation rights, which may be exclusive or non-exclusive and limited by territory, duration or type of use.

Trade secrets require particular attention to confidentiality arrangements and actual protective measures because statutory protection depends on information being subject to appropriate secrecy measures.

Employee and Commissioned IP

Employee inventions are governed by the Employee Inventions Act (*Arbeitnehmererfindungsgesetz* – ArbnErfG/ArbEG). Service inventions can pass to the employer under the statutory claiming mechanism, with the employee generally becoming entitled to statutory remuneration.

For computer programs created by employees in the performance of their duties or under instructions, the employer generally has the exclusive authority to exercise the economic rights unless agreed otherwise. For other commissioned copyright works, ownership does not automatically transfer simply because the work was paid for. Contracts should therefore define the required exploitation rights expressly.

Purely autonomously AI-generated material may lack copyright protection where there is no sufficient human intellectual creation. AI-assisted works require a fact-specific assessment of the human creative contribution.

Remedies

Remedies for infringement can include injunctions, damages, information and accounting claims, destruction or recall measures and, where appropriate, interim relief. The available remedy depends on the IP right and circumstances.

7.4 Consumer Protection

German consumer protection is based principally on the Civil Code and the Act Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb* – UWG), supplemented by extensive EU-derived rules and sector-specific legislation.

Consumers entering into distance or off-premises contracts generally have a statutory right of withdrawal unless an exception applies. The standard withdrawal period is 14 days, although commencement and potential extension depend on satisfaction of statutory information requirements.

Since 19 June 2026, businesses concluding distance contracts through an online interface must also provide an electronic withdrawal function under Section 356a of the Civil Code. The function must remain readily accessible during the withdrawal period and allow consumers to submit and confirm their withdrawal electronically.

Consumer standard terms are subject to particularly strict control. Mandatory information duties also apply to many e-commerce transactions, including information about the trader, price, payment, performance and withdrawal rights.

Unfair Practices and Enforcement

Misleading or aggressive commercial practices may be prohibited under the Act Against Unfair Competition. Consumer organisations and competitors may have standing for injunctive proceedings, while consumers retain individual contractual and damages remedies where the relevant conditions are met. Collective redress mechanisms are also available under German implementation of EU law.

Businesses selling online must additionally consider EU digital-services, digital-content and platform rules where applicable. Consumer-law requirements cannot ordinarily be avoided through a choice of law where mandatory EU conflict-of-laws rules preserve the consumer's protection.

8. Foreign Investment

8.1 Competition and Merger Control

German merger control is governed by the Act Against Restraints of Competition and enforced principally by the Federal Cartel Office (*Bundeskartellamt*). Notification is generally required where the parties had combined worldwide revenues exceeding EUR500 million in the preceding financial year, one undertaking had German revenues exceeding EUR50 million and another had German revenues exceeding EUR17.5 million, subject to statutory exceptions and calculation rules. A separate transaction-value test can capture acquisitions involving a target with significant activities in Germany even where the second domestic turnover threshold is not met. The Federal Cartel Office has one month after receipt of a complete filing to decide whether to open an in-depth review. If it does so, the statutory review period is generally five months in total, subject to extensions and suspensions specified by law.

The substantive test examines whether the concentration would significantly impede effective competition, in particular through the creation or strengthening of a dominant position.

Standstill and Competition Infringements

Notifiable transactions are subject to a standstill obligation and should not be implemented before clearance. Failure to notify or gun jumping can lead to fines and measures addressing unlawful implementation. Outside merger control, anti-competitive agreements and abuses of market power are prohibited under German and EU competition law. Consequences can include substantial administrative fines, cease-and-desist measures, invalidity of restrictive arrangements and private damages claims.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Germany operates a national-security foreign-investment regime under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* – AWG) and its implementing Ordinance (*Außenwirtschaftsverordnung* – AWV). The cross-sectoral regime principally addresses acquisitions by non-EU/EFTA investors, while the sector-specific regime for particularly sensitive defence and security businesses has a wider personal scope. The relevant voting thresholds depend on the target's activities. Under the cross-sectoral regime, the principal thresholds are 10% for specified particularly sensitive categories, 20% for further listed activities and 25% for other German businesses. Further acquisitions crossing specified higher thresholds can also trigger review.

Transactions in the sectors specifically listed in Section 55a of the Foreign Trade and Payments Ordinance are subject to mandatory notification in the circumstances prescribed by law. The notification must be made promptly following conclusion of the acquisition agreement, and execution restrictions can apply while review is pending.

The sector-specific regime, which includes specified defence and security activities, generally uses a 10% threshold.

Scope of Review

The competent ministry assesses potential effects on public order or security and may clear the transaction, impose conditions or, in serious cases, prohibit it. Review can therefore materially affect transaction certainty and timing. Germany does not generally prohibit foreign ownership of businesses or real estate merely because an investor is foreign. Greater restrictions and approval requirements arise in regulated sectors such as defence, financial services, telecommunications, media, aviation, energy and critical infrastructure.

Investment Incentives

Germany generally relies on nationality-neutral investment support rather than special foreign-investor tax holidays. Depending on the investment, support may include regional development grants, subsidised financing, research and development support, and EU or federal and Land programmes. Eligibility depends on the project and state-aid framework rather than foreign status itself. The EU foreign-investment screening framework has also been revised. Regulation (EU) 2026/1386 will generally apply from 17 January 2028 and requires all Member States to maintain screening mechanisms meeting common minimum standards. Transactions should therefore continue to be screened against the German rules in force at signing while forthcoming changes to the national framework are monitored.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The EU General Data Protection Regulation (GDPR) is the principal data-protection instrument and applies directly in Germany. It is supplemented by the Federal Data Protection Act (*Bundesdatenschutzgesetz* – BDSG) and sector-specific legislation, including rules relevant to telecommunications, digital services, employment and regulated industries. Processing of personal data requires a lawful basis. Consent is only one such basis and must meet the GDPR requirements where relied upon. Organisations must also observe purpose limitation, data minimisation, transparency, accuracy, storage limitation, security and accountability obligations.

German law requires a data protection officer in additional circumstances specified by the Federal Data Protection Act. A private organisation must generally appoint one where at least 20 persons are continuously engaged in automated processing of personal data, while other statutory triggers can apply irrespective of headcount.

Data Breaches and International Transfers

Personal-data breaches must generally be notified to the competent supervisory authority within 72 hours after awareness unless the breach is unlikely to result in a risk to individuals. Where a breach is likely to result in a high risk, affected individuals may also need to be informed.

Transfers of personal data outside the EEA require a valid Chapter V GDPR mechanism, such as an adequacy decision, standard contractual clauses or binding corporate rules, subject to the applicable conditions. Germany has no general economy-wide requirement that personal data be stored domestically, although sector-specific security, secrecy or localisation requirements can affect particular businesses.

9.2 Anti-Money Laundering, Sanctions and Corruption

The German Money Laundering Act applies to specified obliged entities, including financial institutions and a range of designated non-financial professions and businesses. Obliged entities must conduct customer and beneficial-owner due diligence, maintain records, assess money-laundering and terrorist-financing risks and report suspicious transactions in accordance with the statutory regime.

They must maintain an effective risk-management system appropriate to the nature and scope of their activities. This comprises a documented risk analysis and internal safeguards, including relevant policies, procedures and controls.

Sanctions and Export Controls

EU restrictive measures apply directly in Germany and are supplemented by the Foreign Trade and Payments Act and Ordinance. Businesses must assess counterparties, ownership and control structures, destinations, goods, technology and intended end use. Export controls additionally include the EU Dual-Use Regulation and national control lists.

Depending on the transaction, licences may be administered by the Federal Office for Economic Affairs and Export Control (BAFA). Breaches can result in substantial administrative or criminal consequences.

Anti-Corruption

German criminal law prohibits bribery involving public officials and commercial bribery. Germany does not have a general corporate criminal code equivalent to those in some jurisdictions, but companies may face regulatory fines, confiscation and other measures where offences by relevant individuals are attributable to the organisation. A proportionate compliance framework commonly includes risk assessment, anti-bribery policies, third-party due diligence, approval controls, training, reporting channels and investigation processes. Enforcement can involve prosecutors, BaFin, the Financial Intelligence Unit, customs authorities, BAFA and other competent bodies depending on the subject matter.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

German environmental law is divided among federal statutes, EU law and implementation and enforcement at Land level. Material regimes include environmental and emissions permitting, water protection, waste, soil contamination, nature conservation and environmental-impact assessment. Environmental due diligence is important in asset and real-estate transactions because public-law liability cannot necessarily be eliminated by contractual allocation between buyer and seller. Under the Federal Soil Protection Act (*Bundes-Bodenschutzgesetz* – BBodSchG), remediation obligations can extend to the person responsible for contamination, its universal successor, the property owner and the person exercising actual control, subject to the statutory conditions.

Carbon costs arise principally under the EU Emissions Trading System and Germany's national carbon-pricing framework for covered activities. Their relevance depends on the target's industry and emissions profile.

Climate Litigation

Climate-related disputes increasingly intersect with corporate reporting, environmental permits, advertising and alleged greenwashing, as well as conventional environmental liability. Transaction documents should therefore address not only known contamination but also permits, historic compliance, emissions obligations and material environmental claims.

Health and Safety

Occupational health and safety is principally governed by federal legislation, with enforcement substantially carried out by the Länder and statutory accident-insurance institutions.

Under the Occupational Health and Safety Act (*Arbeitsschutzgesetz* – ArbSchG), employers must take the measures necessary to protect employees' safety and health, review their effectiveness and maintain an appropriate organisation.

Sector Regulation

Licensing and change-of-control requirements can be material in financial services, energy, telecommunications, aviation, pharmaceuticals, healthcare, gambling, cannabis-related activities and other regulated sectors. Regulatory due diligence should determine whether a permit transfers with the entity, requires notification or consent upon a change of control, or is tied to particular persons or assets.

9.4 Artificial Intelligence

The principal AI framework is the EU AI Act, which applies directly in Germany. Its obligations are risk-based and differ according to whether an organisa-

tion acts as provider, deployer, importer, distributor or another regulated actor.

As at 22 September 2026, most of the AI Act's rules have entered into application and enforcement has begun for the applicable provisions. The 2026 EU simplification legislation postponed the principal high-risk AI requirements: the new application dates are 2 December 2027 for stand-alone high-risk systems and 2 August 2028 for high-risk systems embedded in regulated products.

Transparency requirements are particularly relevant for systems interacting with individuals and for artificially generated or manipulated content. The relevant transparency requirements apply to systems placed on the market from 2 August 2026. A specific transitional rule applies to providers of AI systems, including general-purpose AI systems, generating synthetic audio, image, video or text content that were already placed on the market before that date: they must comply with the marking requirements under Article 50 (2) by 2 December 2026.

Wider Legal Framework

AI use must also comply with other applicable law. Personal-data processing remains subject to the GDPR; workplace systems may trigger employment and co-determination requirements; outputs and training data can raise copyright and trade-secret questions; and automated commercial practices can engage consumer and anti-discrimination law. Businesses should therefore maintain an AI inventory, assign responsibility, classify systems under the AI Act, establish human oversight where required and document data, testing and decision processes proportionately to the relevant risk.

9.5 Other Regulatory Compliance Requirements

The applicable compliance perimeter depends heavily on industry and size. Cybersecurity has become particularly significant under Germany's new Act on the Federal Office for Information Security and on Information Technology Security of Entities (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik und über die Sicherheit in der Informationstechnik von Einrichtungen* – BSIG), which has been in force since 6 December 2025 and forms the core of the German NIS2 framework. The regime was further amended in 2026, including by the Critical Infrastructure Umbrella Act (*KRITIS-Dachgesetz* – KRITIS-DachG), which entered into force on 17 March 2026. The Federal Office for Information Security acts as the central supervisory and reporting contact for covered "particularly important" and "important" entities, subject to the allocation of sector-specific responsibilities.

Other cross-sector regimes can include the Supply Chain Due Diligence Act, product-safety and product-liability rules, export controls, competition law, whistle-blowing, tax compliance and sector-specific licensing obligations.

There is consequently no single compliance checklist suitable for every German business. Corporate governance should begin with a documented assessment of the laws triggered by the company's size, sector, products, customers, data use, geographical activity and supply chain and should adapt controls as those factors change.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

German employment law combines individual employment protection with collective labour law. Important statutes include the Civil Code, Protection Against Dismissal Act, Works Constitution Act, Working Time Act, Minimum Wage Act, General Equal Treatment Act and legislation governing maternity, parental leave, part-time work and fixed-term employment. Works councils have extensive information, consultation and co-determination rights where established. Collective bargaining agreements may also regulate employment conditions.

Termination

Termination of an employment relationship or a termination agreement must be in written form; electronic form is expressly excluded. Statutory notice periods depend on circumstances and length of service. The ordinary employee notice period is generally four weeks to the 15th or end of a calendar month, while

the employer's statutory notice period increases with length of service.

Where the Protection Against Dismissal Act applies, an employee who has completed the statutory qualifying period may generally be dismissed only for reasons connected with the person, conduct or urgent operational requirements. The principal regime generally applies to businesses employing more than ten employees, subject to transitional and employee-counting rules.

If a works council exists, it must be heard before any dismissal; failure to conduct the required consultation renders the dismissal ineffective.

German law does not use "constructive dismissal" as a separate doctrine in the common-law sense. Employees may, however, terminate for serious cause, challenge an unlawful dismissal or change dismissal, or assert contractual claims where the employer fundamentally alters employment conditions without legal basis.

10.2 Executive Compensation and Restrictive Covenants

The legal framework differs according to corporate form and status. For an AG, the supervisory board determines management-board remuneration. Listed companies are subject to detailed statutory requirements concerning the remuneration system, including maximum remuneration and an explanation of how remuneration supports the business strategy and long-term development of the company.

Equity and long-term incentive arrangements require co-ordination of corporate approval, securities law, tax, accounting and employment or service-contract considerations. Change-of-control provisions must also be assessed against directors' duties and the applicable remuneration framework rather than treated solely as contractual benefits.

Restrictive Covenants

Post-contractual non-competes for employees are subject to strict statutory requirements. They require compensation amounting to at least half of the contractual benefits most recently received by the employee and may not exceed two years after termination. They must also protect a legitimate business interest and remain proportionate as to subject matter, geography and duration.

Rules for managing directors and other corporate officers differ because they are not necessarily employees for these purposes; enforceability is principally assessed under civil-law proportionality standards. Confidentiality obligations are generally more readily enforceable where they protect genuine confidential information or trade secrets. Clauses drafted so broadly that they effectively prevent lawful future professional activity may nevertheless be restricted.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

German law recognises full ownership of land, co-ownership, condominium and commercial part-ownership under the Condominium Act (*Wohnungseigentumsgesetz* – WEG) and hereditary building rights (*Erbbaurechte*). Ownership and most proprietary encumbrances are recorded in the land register. Transfer of real-property ownership requires a specific conveyance agreement (*Auflassung*) declared before the competent authority, in practice a notary, and registration of the new owner in the land register.

Foreign Purchasers

German law generally does not impose a nationality or residence requirement on individuals or companies acquiring ordinary commercial real estate. Foreign purchasers are therefore generally able to acquire, hold and dispose of German property on the same property-law basis as domestic purchasers.

Separate restrictions may arise from sanctions, anti-money laundering rules, agricultural land legislation or foreign-investment review where real estate forms part of a sensitive operating business. Real-estate transfer tax is generally determined by the location and structure of the transaction rather than by the purchaser's foreign status; Germany does not impose a general additional federal real-estate acquisition tax solely because the buyer is non-resident.

11.2 Commercial Real Estate Transactions

German real-estate transactions are principally governed by the Civil Code and the land-register system. A sale agreement for real property requires notarisation. Legal ownership passes only once the conveyance has been agreed and the purchaser has been registered as owner in the land register.

Due diligence normally covers ownership, registered encumbrances, leases, public-law building requirements, permits, zoning, easements, development obligations, environmental matters and tax. Title insurance is considerably less common than in jurisdictions relying primarily on private title verification because the German land register and notarial transfer process provide a high degree of legal certainty.

Environmental due diligence remains important because statutory remediation exposure can extend beyond the original polluter to specified owners and persons controlling the property. Contractual indemnities can allocate economic risk between the parties but do not necessarily eliminate obligations towards authorities.

Financing

Commercial real-estate financing commonly uses a land charge (*Grundschuld*) rather than an accessory mortgage. The land charge is registered in the land register, and its priority generally follows the registered rank. Financing documentation normally combines the land charge with contractual security arrangements governing the secured obligations and enforcement.

Commercial Leases

Commercial lease terms are substantially negotiable, including rent adjustment, operating costs, use restrictions, maintenance, renewal options, assignment and subletting. Statutory rules supplement the contract and may restrict particular clauses.

An important recent development concerns long-term commercial leases. German law has moved from the former strict written-form regime to a text-form requirement for leases exceeding one year, reducing the risk that formal defects automatically create an ordinary termination right. This change is relevant when drafting amendments, side letters and transaction documentation involving existing lease portfolios.

Real-estate transactions must also account for current real-estate transfer tax rules. In share transactions involving real-estate-owning entities, the statutory 90% thresholds and ten-year periods can cause indirect changes in ownership to trigger tax even where the property itself is not transferred.

GHANA



Law and Practice

Contributed by:
Korieh Duodu, Victoria Derban, Ewurabena Welsing-Jones, Wesley Gomado and Eleanor Mogeri
Egality Law

Contents

1. Business Entities P.334
1.1 Business Organisations p.334
1.2 Incorporation and Ongoing Compliance p.335
1.3 Share Issuances p.335
1.4 Distributions and Return of Capital p.336
1.5 Control Person Reporting p.337

2. Corporate Governance P.337
2.1 Legal Framework p.337
2.2 Directors' Duties and Liabilities p.337
2.3 Board Composition and Independence p.338
2.4 ESG and Disclosure Obligations p.338
2.5 Conflicts of Interest and Related-Party Transactions p.339

3. Shareholder Rights and Agreements P.339
3.1 Shareholder Rights p.339
3.2 Shareholder Agreements p.339

4. Mergers and Acquisitions P.340
4.1 Legal Framework p.340

5. Capital Markets P.341
5.1 Securities Regulation and Public Offerings p.341
5.2 Continuous Disclosure p.341
5.3 Insider Trading p.342
5.4 Shareholder Disclosure p.342
5.5 Internal Controls and Whistle-Blower Regimes p.343

6. Secured Transactions P.344
6.1 Transaction Financing and Security Interests p.344

7. Commercial Contracts P.344
7.1 Contract Formation and Enforceability p.344
7.2 Termination and Remedies p.345
7.3 Intellectual Property in Commercial Transactions p.346
7.4 Consumer Protection p.346

8. Foreign Investment P.347
8.1 Competition and Merger Control p.347
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.347

9. Regulatory Compliance P.348
9.1 Privacy and Data Protection p.348
9.2 Anti-Money Laundering, Sanctions and Corruption p.349
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.350
9.4 Artificial Intelligence p.350
9.5 Other Regulatory Compliance Requirements p.351

10. Employment and Labour P.351
10.1 Employment Standards and Workplace Regulation p.351
10.2 Executive Compensation and Restrictive Covenants p.352

11. Real Property and Commercial Leasing P.352
11.1 Requirements for Land Ownership p.352
11.2 Commercial Real Estate Transactions p.353

Egality Law is a corporate and commercial law firm with offices in Ghana and the UK, recognised for its cross-border capabilities and deep sector expertise. With a team of dual-qualified UK and Ghanaian lawyers, the firm provides commercially attuned legal solutions grounded in both domestic and international legal frameworks. Egality Law advises multinational clients across West Africa and diverse sectors including banking, fintech, energy, manufacturing, and oil and gas. Its corporate and commercial practice provides strategic support on mergers and acquisitions, restructurings, liquidations, licensing, regulatory engagements, and complex cross-border transactions. Across its mandates, Egality Law remains focused on enhancing operational efficiency, maximising commercial value, and supporting clients in navigating complex legal and regulatory requirements.

Authors



Korieh Duodu is the senior partner of Egality Law, with over 25 years' experience in legal practice and extensive expertise in corporate and commercial law, dispute resolution, media and intellectual property. He advises multinational corporations, international media houses and civil society organisations across multiple jurisdictions. He is dual-qualified in the UK and Ghana and has contributed to leading legal publications, including Clerk & Lindsell on Torts. Korieh leads on the firm's corporate acquisition and due diligence work.



Victoria Derban is a partner at Egality Law with extensive experience in corporate and commercial law, intellectual property, data protection and regulatory compliance. She advises domestic and international clients on complex transactions, market entry, corporate structuring and regulatory matters across finance, fintech, oil and gas, renewables and FMCG sectors. Victoria has led the establishment of major multinational businesses in Ghana and advises free zone companies on government relations and financial regulatory matters.



Ewurabena Welsing-Jones is a senior associate at Egality Law who specialises in corporate and commercial law and has deep expertise in real estate acquisitions in Ghana. She has provided guidance to a wide array of foreign entities seeking to navigate the regulatory landscape to set up a presence in Ghana and acquire land. Ewurabena also works regularly with the key agencies to obtain the relevant permits and approvals.



Wesley Gomado is an associate at Egality Law. Wesley specialises in corporate and commercial, intellectual property, dispute resolution and immovable property matters. His seminal article discussing the fintech regulatory landscape in Ghana has been published in the Ghana School of Law Journal.

Eleanor Mogeri is an associate at Egality Law. Her practice focuses on corporate and commercial law, including compliance and commercial agreements. Her work includes reviewing commercial documents, advising on libel risks and assisting with corporate and governance matters.

Egality Law

Mayfair Gardens
East Airport
Accra
Ghana

Tel: +233 020 819 3093
Email: enquries@egality-law.com
Web: www.egality-law.com

1. Business Entities

1.1 Business Organisations

The principal types of business entities available in Ghana are the following.

Unincorporated Entities

Sole proprietorship is a business owned, funded and managed by a single individual and registered under the Registration of Business Names Act, 1962 (Act 151). Registration under Act 151 does not create a separate legal personality for the business which is distinct from the owner, rather, it only provides a business name which is subject to annual renewal.

Incorporated Entities

Incorporated private partnerships under the Incorporated Private Partnerships Act, 1962 (Act 152), may be formed by a group of two to 20 individuals operating for profit.

Companies incorporated under the Companies Act, 2019 (Act 992) can be private or public. These include:

- companies limited by shares – companies in which the liability of each shareholder is limited to the amount, if any, unpaid on the shares held by that shareholder;
- companies limited by guarantee – companies in which the liability of each member is limited to the amount that the member has undertaken to contribute to the assets of the company in the event of it being wound up;
- unlimited companies – companies in which the liability of the members is unlimited; and
- external companies – places of business (branch, management, share, transfer, or registration office, factory, mine or any other fixed place of business excluding an agency) established in Ghana by corporate bodies which are incorporated and resident outside Ghana.

The factors that drive the choice of structure are various and include the following.

- Control: Factors such as full and personal control, the small-scale nature of a business, quick decision-making ability without corporate governance procedures and other corporate compliance requirements may influence the choice of an individual to operate as a sole proprietor.
- Taxation: Choice of structure in Ghana may also be impacted by the various differences between the tax treatment of income earned by each of the various business structures available.
- Regulatory burden: While there are mandatory compliance obligations for all business structures, incorporated companies are typically required to comply with various additional filing obligations with industry-specific regulators and other public agencies which may impose increased regulatory burden.
- Legal personality and limitation of liability: Individuals seeking protection of personal assets may opt for a public or private company limited by shares rather than an unlimited company, partnership or a sole proprietorship in order to limit their personal liability.
- Purpose: The choice of structure may be influenced by its purpose as the business regime

in Ghana maps certain purposes to particular business vehicles together with their respective incentives. For example, charitable or non-profit organisations are required to be set up as companies limited by guarantee with scope to obtain tax exemptions, whereas profit-making entities would be set up as a private or public limited or unlimited companies, partnerships or sole proprietorships.

1.2 Incorporation and Ongoing Compliance

Registration Procedure

In order to incorporate a company, the following steps must be followed.

- The first step in incorporating a company in Ghana is conducting a name search at the Office of the Registrar of Companies (ORC) to confirm that the proposed name for the company is available.
- Following this, an application for registration is made to the Registrar of the ORC, containing information on a wide range of items including details about the proposed company, its initial subscribers, proposed directors, company secretary, auditors, particulars of the beneficial owners of the company and details on the proposed stated capital and authorised shares.
- A certificate of incorporation is issued by the Registrar once they are satisfied that the application for incorporation complies with Act 992.
- Practically, the applicants for the registration will require a National Identification Card (the "Ghana Card") which provides the Taxpayer Identification Number (TIN) for the individual (both citizens and resident foreigners) as part of the application for incorporation.

Fees

The standard fees as at 2026 for typical registrations include:

- registration of business name – GHS130 (approximately USD11);
- company limited by guarantee – GHS490 (approximately USD42);
- company limited by shares – GHS585 (approximately USD50); and
- external company – USD1,400.

The fees charged above are in addition to a 1% stamp duty paid on the stated capital of the company, except for companies limited by guarantee.

Timelines

The standard time for incorporating a company is a minimum of four weeks. However, applicants may opt for the prestige service at the ORC where expedited registration services are provided for the incorporation of a company within 24 to 48 hours at a higher cost.

Ongoing Corporate Compliance: Annual Filings and Registers

A company must file annual returns with the ORC, giving details of its members, directors and stated capital. The first return is due within 18 months of incorporation, and annually after that. Financial statements must be prepared and audited in line with applicable law.

Small and medium enterprises are exempt from the mandatory full external audit under the directives by the ORC and do not need to publish a full auditor's report. Instead, they are permitted to submit a simpler financial review report.

A company that does not fulfil these obligations becomes liable to an administrative fine together with its officers.

1.3 Share Issuances

Share Capital: Creation, Issuance and Alteration

Shares have no par value in Ghana, meaning shares in Ghana are not issued with a fixed value. Rather, their value is contingent on market forces of demand and supply. When a company is incorporated, it must state its proposed stated capital and the number of authorised shares for each class. Those authorised shares can later be increased by a special resolution of the shareholders, and the increase must be filed with the Registrar.

Any proposed reduction of capital, shares or liability requires a special resolution to be passed and confirmed by the court, which enables creditors to have the opportunity to object to the reduction before it takes effect.

Authorised shares may be decreased through the cancellation of shares which have not been taken or agreed to be taken (unissued shares) or the consolidation of existing shares into smaller numbers. The law requires that shares generally be issued for cash, and the company to give notice to the Registrar whenever it issues shares, stating the class, number and consideration received.

Share certificates are evidence of title to shares and are a form of movable property that can be sold and transferred.

Share Classes: Rights, Privileges and Restrictions

Companies are allowed to create different classes of shares in their constitution and to attach different rights, such as voting, dividend or capital rights, to each class. There are two main types of shares:

- preference shares – these shares do not carry a general right to participate beyond a fixed return, and voting rights are generally restricted except where dividends are in arrears or the class rights are being varied; and
- equity shares – these are ordinary shares with full voting rights

Class rights are statutorily protected by the requirement to obtain the written consent of holders of at least three-quarters of the issued shares of that class or a special resolution of the holders of the shares of that class before those rights can be varied.

The key considerations when structuring share classes include:

- priority of dividends;
- priority on liquidation;
- voting restrictions;
- redemption terms; and
- conversion rights.

1.4 Distributions and Return of Capital

Dividends, Distributions and Returns of Capital

A company can only pay dividends when it satisfies the distribution test, meaning it must be able to pay its debts as they fall due immediately after the distribution is made. Dividends are declared by an ordinary resolution of the shareholders, based on a recommendation from the directors, and the amount actually paid cannot exceed the directors' recommendation. Once declared, dividends must be paid within 60 days of the resolution.

For dividends that go unclaimed for three months, the company must move the funds into an interest-bearing account, and if they remain unclaimed after 12 months, the company must hand the funds over to the Registrar with interest.

A company limited by guarantee is prohibited from paying any dividends as it is a non-profit.

Share Repurchase, Redemption and Cancellation: Solvency and Financial Assistance

Companies are generally restricted from acquiring their issued shares as well as providing financial assistance for the subscription or purchase of their shares or those of their holding company. Companies are only allowed to provide financial assistance for the purchase of their shares where:

- commission or brokerage of up to 10% or less of the issue price of the shares is paid in consideration of the subscription by the company;
- lending money is the company's ordinary course of business;
- the company provides money for the purchase of shares to be held for the benefit of persons in the company or an associated company's genuine employment;
- the company provides loans to persons other than directors in the genuine employment of the company or an associated company to purchase and subscribe to shares themselves as beneficial owners;
- the company pays lawful dividend to a shareholder which is used to discharge liability on their shares or repay loans used to subscribe or purchase shares; and
- the payment of commission, fees, costs and expenses by a public company to a person arranging or involved in underwriting, placing or sale of securities in the company or similar transaction where an application for listing has been made or

any other financial assistance is given in good faith in the interests of the public company.

Similarly, a company may only acquire its own shares under Act 992:

- by a voluntary transfer to the company or its nominees;
- by the creation and subsequent redemption of redeemable preference shares;
- pursuant to buy-out provisions; and
- pursuant to provisions under Act 992 for the purchase of the company's own shares.

1.5 Control Person Reporting

In summary, a beneficial owner is a person who ultimately owns or exercises substantial control over a company, either directly or indirectly, or who has a substantial economic interest in it, on whose behalf a transaction is conducted, or who exercises significant control or influence over the entity.

As part of the application process, applicants are required to disclose the beneficial owners (control persons) of the companies and to provide further indication as to whether the beneficial owner is a politically exposed person. Companies are also required to disclose the particulars of their beneficial owners in their annual return filings each year.

2. Corporate Governance

2.1 Legal Framework

The primary statute on corporate governance is the Companies Act 2019, (Act 992), which sets out the types of companies and governs incorporation, directors' duties, shareholders' rights, meetings and other general provisions relating to companies.

Other relevant laws include:

- the Companies Regulations 2023 (LI 2473), which prescribe the detailed procedure, such as the forms and documents required, for specific filings including increases in stated capital or authorised shares;
- the Securities Industry Act 2016 (Act 929), which establishes the SEC as regulator of the capital markets, including listed companies and market intermediaries; and
- the Corporate Insolvency and Restructuring Act 2020 (Act 1015), which governs directors' duties and conduct where a company is or may become insolvent.

There are also sector-specific rules which include:

- the Bank of Ghana's Corporate Governance Directive (2018) which sets governance standards for banks and specialised deposit-taking institutions;
- the SEC's Corporate Governance Code for Listed Companies (2020) which sets out best-practice governance standards for listed companies; and
- the State Interests and Governance Authority Act, 2019 (Act 990) provides legislation to ensure that specified state entities adhere to good corporate governance practices. The primary legislation is supported by the SIGA Code of Corporate Governance for specified Entities and Public Service Organisation in Ghana published in June 2023.

2.2 Directors' Duties and Liabilities

Directors' Fiduciary Duties and Judicial Interpretation

Under corporate law, the fiduciary duties of directors span transparency, accountability, fairness and responsibility and include but are not limited to duties to observe good faith, act in the best interest of the company, exercise independent judgement and avoid conflict of interest situations.

The common law rules on the duties of directors have been codified in Ghana's company law regime and been consistently applied by the superior courts in upholding the directors' duties to companies.

Directors' Standard of Care and Personal Liability

Directors can be held personally liable for breaching the aforementioned fiduciary duties, for continuing to trade when they knew or ought to have known the company was insolvent, as well as for breaching statutory filing obligations under Act 992.

2.3 Board Composition and Independence

Board Composition: Residence, Independence and Diversity Requirements

There is no statutory maximum board size for private companies, nor are there any diversity requirements, although directors are generally required to exercise judgement as part of their duties. The constitution or shareholders usually set the composition of the board. The company must have a minimum of two directors, with at least one director being ordinarily resident in Ghana.

Board Composition: Public Versus Private Companies

For listed companies under the SEC Corporate Governance Code, there is no fixed board size number. However, the company is required to provide justification of the appropriateness of its board size in its annual report if its board of directors is composed of fewer than five or more than 13 members.

Directors and key management personnel of banks and specialised deposit-taking institutions require prior central bank approval and must pass a fit-and-proper person test under the Bank of Ghana's Corporate Governance Directive.

2.4 ESG and Disclosure Obligations

ESG and Sustainability Regulations

There is no consolidated ESG statute in Ghana. The current ESG framework is a combination of various sectoral laws that apply to businesses including:

- the Environmental Protection Act, 2025 (Act 1124), which establishes the new Environmental Protection Authority to oversee environmental permitting, compliance and climate governance across all economic sectors;
- the Minerals and Mining Act 2006 (Act 703), which imposes environmental and community obligations on mining companies;
- the Labour Act 2003 (Act 651), which covers the social component of ESG through employment standards, health and safety, and workers' rights;
- the Ghana Stock Exchange's ESG Disclosures Manual, which provides a framework for reporting on environmental, social and governance matters in line with international sustainability reporting standards and sets out a list of mandatory disclosure topics that listed companies are expected to report against. The mandatory disclosure topics include climate risk impact, greenhouse gas emissions, labour practices and decent work, occupational health and safety, and data privacy and security; and
- the Bank of Ghana's Sustainable Banking Principles also require banks to build ESG and sustainability risk into their lending and internal operations.

ESG and Climate Disclosure Requirements

The Act 992 does not mandate ESG disclosure. For businesses operating in sectors such as infrastructure, mining, energy and manufacturing, environmental reporting obligations are governed by the environmental regulatory framework, including the recently enacted Environmental Protection Act, 2025 (Act 1124). Projects that require environmental permits or environmental impact assessments must comply with applicable requirements. Companies that fail to obtain the required licence may face enforcement action, including fines, suspension of operations, revocation of licence.

The Bank of Ghana (BoG) Climate-Related Financial Risk Directive is also a mandatory regulatory requirement for regulated financial institutions such as banks, specialised deposit-taking institutions and non-bank institutions. It requires these institutions to integrate climate-related financial risks into their governance, risk management and disclosure processes. Under this Directive, banks must include climate-related disclosures in their audited financial statements and submit confidential climate risk reports and metrics to the BoG on a regular basis. Non-compliant banks may be subject to regulatory sanctions.

Directors' Fiduciary ESG Duties

As part of directors' duties to act in the best interest of the company under Act 992, they are generally to have regard to the impact of the company's operations on the community and the environment.

Board Best Practices for ESG Governance

The boards of directors of companies must ensure their oversight structures align with the following practices: assigning responsibility for ESG and climate-

related matters to a board committee, integrating climate risks into the company's risk management framework, and establishing robust processes for sustainability reporting. This sets a best practice precedent for other businesses seeking to achieve ESG governance.

2.5 Conflicts of Interest and Related-Party Transactions

Act 992 prohibits a director from placing themselves in a position where their duty to the company conflicts with a personal interest, unless the company consents. Consent is only valid where there has been full disclosure of material facts, and the concerned transaction has been specifically authorised by an ordinary resolution at a general meeting.

Subject to the company's constitution, a director may enter into a contract with the company provided the procedural safeguards are met. The company is also required to maintain a register recording directors' disclosed interests. A director must also not misuse their position, or information obtained as a result of being a director, for personal gain.

For listed companies, the SEC Corporate Governance Code requires the board to adopt a related-party transaction policy identifying related parties and the procedure for handling transactions with them.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights: Voting, Information and Fundamental Changes

The core statutory rights of shareholders under the current company law regime include the right to:

- be entered into and to inspect the register of members;
- a share certificate, which evidences title of the holder;
- attend, speak and vote at general meetings;
- requisition an extraordinary general meeting, provided the requirements are met;
- receive notices of meetings and audited financial statements, along with director' and auditors' reports;
- appoint and remove directors and auditors; and
- share in dividends when declared.

Statutory Shareholder Remedies

The statutory remedies available to shareholders include relief against oppression, member register rectification, and court orders restraining illegal or ultra vires conduct. They also enable shareholders to enforce director liabilities, reclaim company property and initiate derivative or representative legal proceedings on behalf of the company or affected members.

3.2 Shareholder Agreements

Shareholder Agreements: Share Transfer Restrictions and Enforceability

Shareholder agreements sit alongside the company's registered constitution and are especially common in private companies. Act 992 recognises unanimous shareholder agreements or decisions as valid even where they depart from the provision of the company's authorised constitution.

The typical contents of a shareholders' agreement cover:

- reserved matters and veto rights over major decisions;
- board composition and appointment rights;
- deadlock resolution mechanisms;
- dividend policy;
- pre-emption rights on new share issues and on transfers;
- restrictions on transferring shares, such as rights of first refusal or consent requirements; and
- exit mechanisms.

Act 992 allows the registered constitution to restrict how shares can be transferred and gives the registered constitution the effect of a contract under seal between the company and each member, and between the members themselves.

Shareholder and Partnership Disputes: Remedies and Resolution

A shareholders' agreement is a private contract and therefore ordinary contract principles under common law, and the Contracts Act 1960 (Act 25) apply, meaning it binds only the parties who signed it. A new shareholder who joins the company later is not automatically bound unless they accede to the agreement or its terms are incorporated into the constitution itself.

Where shareholder disputes arise, the legal mechanisms and remedies available include the derivative actions and other statutory remedies described in **3.1 Shareholder Rights**, in addition to winding-up petitions where the relationship between shareholders has broken down irretrievably.

4. Mergers and Acquisitions

4.1 Legal Framework

M&A Laws and Regulations

Public and private M&A are generally governed by the provisions in Act 992, with public company mergers and acquisitions being overseen by the Securities and Exchange Commission (SEC) and governed by the SEC Code on Takeovers and Mergers issued in January 2008 (the "SEC Code"). The SEC Code and the GSE Listing Rules briefly reference tender offers, which are routinely used to buy back securities including in delisting processes. However, there is no specific legislation or regulation dedicated to tender offers.

Industry-specific legislation for sectors such as banking, insurance, natural resources (mining and oil and gas) and telecommunications together with their various requirements and approvals are also applicable to M&A deals depending on the relevant industry.

Transaction Structuring Considerations

Key structuring considerations for public and private M&A often include the following.

- Complexity and speed – a deal structure may be informed by the parties' timelines and willingness to follow complex due diligence, applicable regulatory approvals and potential tax implications. A fast-moving buyer may opt for a speedy asset sale which would involve less stringent requirements and limited due diligence.
- Risk appetite – deal structures may also be informed by the risk and liabilities that parties are willing to assume. Generally, share purchase structures assign the target company's pre-existing and future liabilities, whether known or unknown to the acquirer, therefore increasing the risks associated with this approach. Share purchase structures are of course subject to proper due diligence, carve outs, indemnities, guarantees and allocating liabilities. Risk averse acquirers may prefer to utilise narrow asset purchase deal structures which limit their exposure to the target company's overall liabilities.
- Solvency – deal structuring considerations may also be informed by the solvency of a target company, with insolvent entities often falling under plan or arrangement schemes overseen by the courts or relevant regulatory bodies.

Common Deal Structures

While asset purchase and share purchase structures are both available under Ghanaian law, from our experience, the most commonly used deal structure has been the share purchase structure.

Recent Legislative and Regulatory Updates on M&A

The Ghana Investment Promotion Authority Act 2026 (Act 1173) was recently enacted, removing the previously existing minimum capital requirements for foreign investment, except for trading enterprises. Going forward, M&A transactions involving foreign entities or individuals would therefore no longer be required to meet minimum investment thresholds except for trading enterprises.

Judicial Trends and Case Law Impact Concerning M&A

The Supreme Court, in a recent case which arose out of the sale of shares in a publicly listed company on the Ghana Stock Exchange, gave a ruling that provided finality on the interpretation of the rules regarding the trading of shares, settlement and the conditions under shares may be deemed delivered and paid for, which determines whether a trade has failed or been successful.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Capital Markets Regulatory Framework and Oversight

The regulatory framework for capital markets in Ghana consists of the primary securities industry legislation, the Securities Industry Act, 2016 (Act 929), its amendments and regulations issued by the SEC, and the Foreign Exchange Act 2006 (Act 723). The SEC is the primary regulatory body overseeing the capital markets in Ghana.

Public Offerings: Rules, Timelines and Disclosure Obligations

The conduct of initial public offerings (IPOs) is regulated by Chapter 4 of the Companies Act 2019 (Act 992). Key regulatory approvals required for an IPO include:

- approval of issuer's company constitution by the GSE as compliant with Act 992 and listing requirements of GSE;
- approval of issuer's public offer prospectus by the SEC; and
- registration of prospectus with the Registrar of Companies within the six-month period prior to the IPO.

Timelines for the completion of an IPO vary, depending on several factors including the quality of the submissions to SEC and the promptness in which SEC's queries are addressed.

Continuous Disclosure Obligations

Continuous disclosure obligations for listed companies are provided as part of the GSE's recent Listing Rules for the Equity Market issued in February of 2026. Issuers are required to, among others:

- maintain a functioning website;
- publish quarterly and annual reports;
- publish notices to shareholders and other information submitted to the SEC;
- publish relevant announcements through the SEC;
- ensure immediate disclosure of material information;
- disclose acquisitions and transfers of securities; and
- provide clarification or confirmation of rumours and reports and response to unusual trading activity.

Exemptions

The SEC is authorised to provide an exemption to issuers where compliance with IPO requirements may be burdensome due to the size and other circumstances of the IPO and the SEC may issue a certificate of exemption to the issuer based on their application. The SEC also has general powers to waive or modify any of the statutory requirements regarding invitations to the public and the issuance of a prospectus.

Stock Exchange Listing Requirements and Interaction

Exchange listing requirements are harmonised with securities regulation in Ghana since the GSE Listing Rules are made pursuant to the powers granted to the GSE under the primary securities industry legislation, the Securities Industry Act 2016 (Act 929).

Prospectus Exemptions and Qualifying Standards

External companies may seek exemptions from compliance with the relevant listing rules on the basis that compliance with any listing requirements may result in a breach of the law in the company's country of incorporation. Any such application is required to be backed by a legal opinion from a legal professional explaining why compliance would be contrary to law.

Issuers seeking listing by introduction are required to submit a statement in lieu of prospectus.

Resale Restrictions and Non-Compliance Consequences

There are no resale restrictions or hold periods attached to securities distributed under a prospectus exemption in Ghana.

5.2 Continuous Disclosure

Continuous Disclosure and Market Reporting Requirements

See **5.1 Securities Regulation and Public Offerings**.

Material Event Disclosure Mechanisms

Issuers are required to immediately disclose information about events that are likely to have significant effect on the price of their securities or to be consid-

ered important by a reasonable investor in determining their choice of action. As part of the GSE listing rules, under the disclosure policy, all announcements by issuers to be communicated to the GSE, including disclosure of material information, are required to be communicated to the GSE in writing and duly signed by an authorised officer of the issuer. Public disclosure of material information is required to be made by an announcement to the GSE and the media.

5.3 Insider Trading

Market Abuse and Insider Trading Laws and Regulations

Market abuse is mainly prohibited under the Securities Industries Act 2016 (Act 929), with sanctions put in place against various unlawful conduct including false trading and rigging transactions, stock market manipulation, false/misleading statements, fraudulently inducing persons to deal in securities, and use of manipulative and deceptive devices.

Insider trading is also prohibited under both Act 992 and the Securities Industries Act 2016. The SEC recently issued the draft Securities Industry (Insider Trading) Guidelines in 2026 aimed at operationalising the statutory prohibitions against insider trading, imposing compliance obligations, introducing a trading plan regime, establishing a suspicious transaction and order reports regime, and providing standardised forms for compliance reporting and supervision.

Under Act 992, persons convicted of insider dealing outside or within the jurisdiction of Ghana are prohibited, on an application or by the court's own motion, from being directors or taking part in the management of a company without leave of the court. The length of time for this prohibition is subject to the judge's discretion and is case dependent.

The Securities Industry Act 2016 generally proscribes a broad range of conduct by connected individuals (insiders) and corporate bodies as insider trading. Broadly, persons who are connected to a company or its related company:

- as an officer or;
- shareholder or;
- some other position that allows access to information; and
- possess generally non-public information that might materially affect the prices of securities,

are prohibited from trading in the securities of that company or a related company if they were connected to the company during the six months immediately before dealing in the securities. They are also prohibited from sharing such material information or procuring others to deal in those securities. Similarly, body corporates whose officers possess such information are precluded from dealing in those securities unless the appropriate exceptions apply.

The penalties for contravention under the Securities Industry Act 2016 are summary conviction to a fine (approximately from GHS11,657 (approximately USD1,000) to not more than GHS23,315 (approximately USD2,000)) or a term of imprisonment from four and not more than five years or both. Convicted persons may also be liable to pay compensation to persons who suffer loss as a result of security transactions entered into with the convicted offender.

Regulatory Enforcement Powers

The enforcement powers of the SEC lie in its capacity to apply to the courts for various forms of relief including the prohibition of payment or transfer of money, securities or other property and the making of freezing orders in respect of the assets of a person suspected to have committed an offence under the Securities Industry Act. The SEC may also exact administrative penalties from players for non-compliance with the Act. Where authorised by the Attorney-General, the SEC may prosecute offences under Act 929.

5.4 Shareholder Disclosure

Substantial Shareholding Disclosure Laws and Regulations

The Securities Industry Act 2016 and the GSE Listing Rules govern the disclosure of substantial shareholdings. Notices of substantial shareholdings or changes received by an issuer together with its details are required to be announced immediately by the issuer through the GSE.

Reporting thresholds and Covered Entities

The threshold for substantial shareholding disclosure under the GSE listing rules is when an entity exercises control over 30% or more of the voting power at a general meeting or is in a position to control the composition of a majority of the board of directors of a company. Publicly listed entities are typically subject to these disclosure requirements.

Companies are also expected to disclose ultimate beneficial owners at the Office of Registrar of companies, if the ultimate beneficial owner has an interest of 20% or more. See **5.1 Securities Regulation and Public Offerings**.

Non-Compliance Consequences and Penalties

There are no direct consequences for non-compliance with substantial shareholder disclosure requirements. However, issuers who are consistently and persistently non-compliant with GSE or SEC Rules and directives may be liable to have their securities suspended or compulsorily delisted.

Beneficial Ownership Disclosure

While beneficial owners may not be shareholders or substantial shareholders, they benefit substantially from the operations of the company, directly or indirectly exercise ultimate effective control over a company, possess a substantial economic interest or receive substantial economic benefits from it, or have transactions conducted on their behalf.

All companies registered in Ghana must disclose their beneficial owners to the ORC upon incorporation, reconfirm them in annual returns, and file updates within 28 days of any change. Companies are also required to confirm whether beneficial owners are politically exposed persons.

Under Act 992, failure to disclose the beneficial owner may lead to an administrative penalty.

5.5 Internal Controls and Whistle-Blower Regimes

Corporate Compliance and Internal Control Requirements

There are no key legal requirements for corporate compliance programmes in Ghana in terms of whistleblowing.

Companies may opt for internal controls through the adoption of whistle-blower and investigation policies/mechanisms in order to provide an opportunity to review and address issues raised.

Mandatory Whistle-Blowing and Reporting Mechanisms

The Whistleblower Act, 2006 (Act 720) establishes a framework under which a person may choose to disclose improprieties and receive statutory protection. However, sector-specific legislation and regulatory instruments can impose mandatory reporting duties. For instance, under the current Anti-Money Laundering Act, 2020 (Act 1044), persons/accountable institutions falling within the statutory reporting regime must submit suspicious transaction reports where the statutory conditions are satisfied.

Compliance Risk Governance Frameworks

Companies should generally adopt strong internationally recognised governance risk and compliance frameworks which provide:

- policies and procedures;
- internal controls;
- risk assessment;
- monitoring and reporting; and
- audit and review processes,

together with industry-specific standards which are ultimately aimed at detecting, preventing, and providing immediate and compliant remedies in respect of improprieties which are liable to be subject to the whistle-blower regime.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Secured Transactions Laws and Security Types

Secured transactions are generally governed under the Borrowers and Lenders Act 2020 (Act 1052), Act 992, the Corporate Insolvency and Restructuring Act 2020 (Act 1015), the Home Mortgage Finance Act 2008 (Act 770) and the Mortgages Act 1972 (NRCD 96) with the various types of security interests available including mortgages, charges, pledges and liens.

Security Perfection, Registration and Priority Rules

A party in whose favour a security interest is created is required to register the security interest with the Collateral Registry within 28 days after the date of the creation of the security interest. Securities registered under the Borrowers and Lenders Act 2020 have priority over all other securities registered under other enactments, whereas priority between security interests is determined by the order of registration of the security interest.

The Companies Act 2019 also makes provision for the registration of specific securities such as charges and debentures within 45 days of the creation of the charge, at the risk of the security created being considered void if no registration is effected.

Acquisition Financing and Security Package Structuring

Acquisition financing can be typically structured with either cash payment, security payments or as leverage buyouts/debt or a mixture of these options, whereas security packages can often include a mixture of any of the following:

- contractual protections/terms (guarantees and indemnity provisions);
- pledges;
- assignment of receivables;
- charges;
- liens; and
- mortgages.

Intercreditor agreements are also allowed as part of security packages and can be reached between lenders to subordinate the priority of one lender's interest to another.

If not agreed under the contractual terms of the transaction, priority is typically determined by the provisions of the applicable statute. See the immediately preceding response.

Recent Financing Legislative and Regulatory Updates

The most recent financing update has been the Borrowers and Lenders Act 2020 which revised the law on the use of collateral for secured transactions and also established the Collateral Registry for the registration of securities created in respect of movable and immovable properties used to secure financing.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Contract Formation Requirements

The law of contracts in Ghana is made up mostly of uncodified common law principles, supplemented by the Contracts Act, 1960 (Act 25) and specialised statutes, including the Sale of Goods Act, 1962 (Act 137), the Land Act, 2020 (Act 1036), the Hire Purchase Decree, 1974 (NRCD 292) and the Interpretation Act, 2009 (Act 792). Contracts are enforced by the courts, which include specialised commercial courts. The key principles of contract formation are as follows.

- Offer and acceptance – there must be an offer made by one party and accepted by the other. Acceptance does not need to be express and can also be inferred from conduct.
- Intention to create legal relations – for domestic agreements there is a presumption against an intention to create legal relations, but for commercial agreements the presumption is in favour of creating legal relations.
- Consideration – which has been modified by the Contracts Act to include a promise to keep an offer open for a specified time, a promise to waive a debt or obligation, in part or in whole, performance of a promise to perform an act already owed as a legal duty (whether a public duty, a contractual duty to the promisee, or one owed to a third party)

and that consideration need not move from the promise.
- Capacity – minors cannot contract. The common law age of majority applies, which is fixed at 21 years. Mentally unsound persons also lack capacity to contract, as does someone with a temporary impairment of mental faculties, like in the case of intoxication.
- Illiteracy is an important factor due to the high number of illiterate people in the country. The Illiterates' Protection Ordinance 1912 (Cap 262) provides that there is no presumption that an illiterate signatory to a document has understood its contents, and the literate party owes a duty to explain the contents of the contract in a language the illiterate party understands. Failure to do so renders the contract void.

Grounds for Invalidity

The grounds for considering a contract as invalid include:

- illegality – a contract that is contrary to statute or public policy is void and unenforceable;
- mistake;
- misrepresentation;
- duress;
- undue influence; and
- unconscionable bargains – contracts may be set aside where a party under a special disability, such as old age, illiteracy or poverty, was placed at a serious disadvantage.

Commercial Contract Interpretation and Enforcement

The Contracts Act prescribes various implied terms into sales agreements. There are implied conditions or warranties as to title, description, fitness for purpose and merchantable quality of goods. This ensures that the products match their description, are of merchantable quality and are fit for their intended purpose.

There are no general good faith obligations, but the courts will cancel a contract if it is unconscionable.

7.2 Termination and Remedies

Remedies for Breach of Contract

The key remedies available for breach of contract are:

- damages;
- rectification;
- rescission; and
- equitable remedies such as specific performance and injunction.

Contract Termination and Wrongful Termination

A party may terminate a contract where the other party commits a breach that gives rise to a right of termination, or where the other party clearly indicates that it will not perform its obligations. The innocent party may then accept the repudiation and bring the contract to an end, or, where appropriate, affirm the contract and require performance.

A termination is wrongful where the party purporting to terminate has no contractual or legal right to do so. In such a case, the purported termination may itself amount to a breach of contract. The innocent party may accept the repudiation and claim damages or may claim for specific performance of the contract.

Hardship Doctrines

Force majeure

There is no general statutory doctrine of force majeure. Parties have the ability to specify events that will excuse or suspend the performance of obligations under the contract.

Frustration

Where there is no force majeure clause, the common law doctrine of frustration, as modified by the Contracts Act, 1960 (Act 25), applies where the event in question is a frustrating event. A contract may be frustrated where an unforeseen event makes performance impossible or fundamentally different from what the parties originally agreed. Mere difficulty, inconvenience or increased cost of performance will generally not be sufficient.

Under the Contracts Act 1960, where a contract is frustrated, the parties are discharged from future performance. Money already paid may be recovered and sums that have become due but remain unpaid cease to be payable. The court may however permit a party to retain or recover reasonable expenses incurred before the contract was discharged. The parties may also agree on their own consequences of frustration,

which will generally take precedence over the statutory position.

7.3 Intellectual Property in Commercial Transactions

Intellectual Property in Commercial Transactions

The governing statutes covering intellectual property are the Copyright Act, 2005 (Act 690), the Patents Act, 2003 (Act 657), the Trademarks Act, 2004 (Act 664), the Industrial Designs Act, 2003 (Act 660) and the Geographical Indications Act, 2003 (Act 659).

The Copyright Act requires any assignment or transfer of rights to be in writing and signed by the rights-holder in order for it to be legally valid and enforceable. Copyright protection arises automatically upon creation of an eligible work and registration is not a requirement for the owner to bring an infringement claim against a third party.

Industrial property rights, such as patents and trade marks, are treated differently. Under the Patents Act (Act 657) and the Trademarks Act (Act 664), assignments and licences should be recorded with the relevant IP office to ensure that they are effective against third parties.

Ownership of IP Created in Commercial Relationships

Generally, if a work is a commissioned work, the IP in the work will belong to the person that commissioned it.

In respect of copyright works created by an employee, the general position is that the economic rights in a work created in the course of employment or as part of commission automatically vest in the employer or commissioning party in the absence of any contract to the contrary.

Moral rights are personal to the author and exist in perpetuity, and remain enforceable by the author and their successors after death, even where the economic rights have been assigned or no longer vest in the author.

No current Ghanaian legislation addresses the position on copyright ownership in AI-generated content.

Available Remedies for the Infringement of Intellectual Property Rights in Ghana

Available remedies for infringement of intellectual property rights include interim or perpetual injunctions, damages, delivery-up or destruction of infringing goods, and, in some cases, criminal sanctions such as fines and imprisonment.

7.4 Consumer Protection

Consumer Protection: Unfair Practices, Disclosures and Cooling-Off Rights

There is no single comprehensive consumer protection legislation in Ghana. The key statutes include:

- the Sale of Goods Act, 1962 (Act 137), which provides for implied conditions and warranties and merchantable quality of goods, under Sections 9 to 14;
- the Electronic Transactions Act, 2008 (Act 772), which mandates suppliers in electronic transactions to disclose details of the supplier and characteristics of goods, protecting against scamming;
- the Public Health Act, 2012 (Act 851), which gives the Food and Drugs Authority the mandate to regulate food, drugs, cosmetics and medical devices, among others;
- the Ghana Standards Authority Act, 2022 (Act 1078), which sets national standards, conformity assessment, inspection and enforcement powers, including seizure of goods which do not comply with set standards; and
- the Public Utilities Regulatory Commission Act, 1997 (Act 538), which mandates utility providers to establish consumer complaint procedures and sets service standards.

Cooling-off and cancellation rights are only established for electronic transactions under the Electronic Transactions Act, which provides online shoppers a 14-day window to cancel a transaction for goods and a seven-day window for services after the deal is concluded.

Key Enforcement Mechanisms Available to Regulators and Consumers

Regulators (such as the Food and Drugs Authority (FDA) and the Ghana Standards Authority (GSA)) enforce compliance mainly through administrative

sanctions which could range from fines and seizure of offending goods to revocation of licences. For consumers, grievances can be reported to specific regulators such as the FDA. Alternatively, they can also enforce their rights by instituting actions in court, claiming either a breach of contract under the Sale of Goods Act or suing for damages under the tort of negligence or manufacturer's liability if a product causes physical harm.

Unfair Business Practices, Misleading Advertising and E-Commerce Protection

The most relevant statute is the Protection Against Unfair Competition Act, 2000 (Act 589), which seeks to prevent deceptive, harmful and dishonest commercial practices. The key prohibited practices are:

- acts that cause confusion;
- damaging the goodwill of another business;
- misleading the public with regard to the characteristics or qualities of goods;
- discrediting a business; and
- unauthorised disclosure, acquisition or use of trade secrets.

Under the Protection Against Unfair Competition Act, any enterprise damaged or likely to be damaged as a result of these unfair practices can institute an action to obtain orders of injunction, provisional orders to preserve evidence, and compensation for damages suffered.

8. Foreign Investment

8.1 Competition and Merger Control

Merger Control: Laws, Thresholds, Timelines and Substantive Test

Ghana has no competition statute or general merger-control regime, and therefore no universal notification thresholds or substantive merger test. Instead, mergers are governed by Act 992, in terms of which merging companies must register an approved merger proposal with the ORC. Secured creditors must receive at least 28 days' notice before the merger takes effect.

In telecommunications, the Electronic Communications Act, 2008 (Act 775) requires prior National Communications Authority (NCA) approval for changes of control or acquisition of a significant interest. The NCA considers competition, significant market power, licensing and public-interest concerns. Written notice is required at least 30 days before completion, with certain completed acquisitions reportable within 14 days.

In banking, the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) triggers BoG approval from a 5% equity acquisition threshold. The BoG considers financial resources, fitness and propriety, competition and financial-system stability.

Consequences of Failure to Notify

Under Act 992, a merger is ineffective without registration and a Certificate of Merger. Sector-specific breaches may attract fines, licence suspension or other penalties.

Consequences of Anti-Competitive Conduct or Activities in Ghana

Ghana has no general antitrust statute. The Protection Against Unfair Competition Act, 2000 (Act 589) prohibits conduct such as market confusion, misleading practices and reputational harm, with remedies including injunctions and damages. In addition, the courts have interpreted widely the general principles prohibiting activities which are contrary to honest practices under Act 589 as amounting to anti-competitive acts.

Sector regulators may also impose fines, withdraw rights or require divestiture where regulated firms abuse market power or engage in anti-competitive conduct.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign Investment Review: Laws, Transactions, Thresholds and Approval Process

The primary statute regulating foreign investment in Ghana is the Ghana Investment Promotion Authority Act, 2026 (Act 1173), which established the Ghana Investment Promotion Authority (GIPA) as the central foreign investment regulator.

Act 1173 removed the former general minimum-capital requirements for ordinary joint ventures and

wholly foreign-owned non-trading enterprises. Passive foreign investment in GSE-listed shares or bonds is also exempt. However, foreign trading enterprises must invest at least USD500,000 in cash equity and employ at least 75% skilled Ghanaians.

Technology transfer agreements are generally subject to review, approval and registration with GIPA. Also, enterprises registered with the Authority require approval from the Authority to set up branches.

Review applies to foreign market entry, technology transfer agreements, branch expansion and indirect ownership changes.

Foreign Ownership Restrictions: Sectors, Limits and Enforcement

Act 1173 reserves specified activities for Ghanaians, including market trading and hawking, beauty and barbering services, sachet-water production, small-scale taxi or car-hire operations, certain stationery manufacturing and pharmaceutical retail.

Mining, petroleum, broadcasting and telecommunications are more heavily regulated. Petroleum rules require local participation, including minimum indigenous Ghanaian equity in specified arrangements under the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204), while mining leases involve government participation under the Minerals and Mining Act 2006 (Act 703). Broadcasting and telecommunications are regulated by the NCA under Act 775. Restrictions are enforced through licensing, inspections, audits and possible licence suspension or revocation.

National Security Review of Foreign Investment

Ghana has no general cross-sector national security screening regime. Instead, security concerns are handled through sector-specific licensing in areas such as energy, defence, maritime assets and electronic communications.

Under the Electronic Communications Act, 2008 (Act 775), national security considerations may affect the grant of licences to applicants as well as a licensee's continuing obligations once a licence is obtained.

Incentives available to foreign investors

Subject to the Exemptions Act, 2022 (Act 1083), GIPA provides tax incentives which may be granted for specified industries, programmes or strategic investments. Cabinet may designate priority areas, and GIPA must determine strategic investment applications within 30 days.

Recent developments or policy changes that have affected foreign investment

The most recent key development is the enactment of Act 1173, which removed the minimum capital investment thresholds of USD200,000 and USD500,000 for joint venture and wholly foreign-owned businesses respectively. However, the new legislation retained the USD500,000 minimum capital investment requirement for foreign trading enterprises.

The new legislation also established GIPA, expanded its regulatory role, introduced a statutory strategic investment incentive framework and preserved the existing Technology Transfer Regulations, 1992 (L.I. 1547).

9. Regulatory Compliance

9.1 Privacy and Data Protection

The principal legislation is the Data Protection Act, 2012 (Act 843), administered by the Data Protection Commission. It governs lawful processing, purpose limitation, data quality, security, data-subject rights, controller registration, processors, special personal data and direct marketing. Sector-specific rules also apply in banking, telecoms, insurance and healthcare.

Key Obligations Regarding Consent, Collection, Use, Disclosure and Data Breach Notification

Processing of personal data requires the prior consent of data subjects or a lawful basis for the processing of such data. Personal data must generally be collected directly from data subjects, with the processing of collected data being subject to the purpose limitation principles. Data processors are obligated to ensure that collected data remains accurate and secure through the implementation of security measures. The processing of personal data by a data processor must be governed by a written contract and

data processors are required to comply with the security measures stipulated in Act 843 as well as ensure compliance with Ghanaian laws where they are domiciled outside Ghana. Data breaches must be notified to the Data Protection Commission and affected data subjects as soon as reasonably practicable after the discovery of the unauthorised access.

How Cross-Border Transfer and Data-Localisation Rules Affect Businesses

Cross-border transfers are permitted, but businesses using foreign data processors must ensure compliance with Act 843, including compliance with the statutorily required security measures. Additional localisation or hosting requirements may apply in regulated sectors such as banking, telecommunications and critical infrastructure.

9.2 Anti-Money Laundering, Sanctions and Corruption

AML/CFT Obligations and Regulated Entities

The Anti-Money Laundering Act, 2020 (Act 1044) applies broadly, with key compliance duties imposed on "accountable institutions" including banks and financial firms, real estate companies and agents, precious metals and stones dealers, lawyers, accountants, trusts and company service providers, operators of games of chance, insurance companies, and virtual asset service providers.

The AML/CFT obligations include customer identification/KYC requirements, record-keeping and reporting suspicious transactions to the Financial Intelligence Centre (FIC) within 24 hours.

Sanctions, Trade Restrictions and Export Controls

Generally, under the Customs Act, 2015 (Act 891), imports are classified as either prohibited, restricted or regulated. Restricted goods such as arms, explosives and gambling machines require licences, while regulated products including food, medicines and cosmetics require appropriate Food and Drugs Authority (FDA) approval under the Public Health Act, 2012 (Act 851).

The Financial Intelligence Centre (FIC) implements UN sanctions and domestic watchlists, with suspect assets subject to freezing under Act 1044. Institutions dealing with sanctioned persons may face fines or licence revocations.

Anti-Corruption and Anti-Bribery Obligations

Bribery involving public officials is criminalised under Ghana's general criminal laws and may attract imprisonment of up to 25 years. Specialised institutions such as the Office of the Special Prosecutor have powers to investigate and prosecute corruption and corruption-related offences involving public officers and politically exposed persons.

Companies can mitigate bribery and corruption-related risks by:

- ensuring proper due diligence on potential business contacts and entities;
- adopting and implementing internationally compliant and locally contextualised gift policies aligned with major jurisdictions such as the US' Foreign Corrupt Practices Act and the UK's Bribery Act 2010; and
- adopting appropriate internal whistle-blower mechanisms.

Enforcement Powers of Relevant Regulators

The Ghana Immigration Service and Ghana Revenue Authority (GRA) enforce border controls, while the Ministry of Trade and Industry oversees trade policy and permits. The Bank of Ghana and FIC may monitor and freeze suspicious financial flows, while the Office of the Special Prosecutor may investigate corruption involving public officers and politically exposed persons and seize assets.

The Customs Division of the GRA may search vessels, vehicles, containers and cargo, detain suspicious goods and audit trade documentation through the Integrated Customs Management System (ICUMS), a single electronic window used by the GRA to handle all import, export and transit transactions at Ghana's borders. Regulators may also block restricted goods, freeze related funds and seize or destroy unsafe or unregistered products.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Requirements Affecting Transactions

The principal framework is the Environmental Protection Act, 2025 (Act 1124) and Environmental Protection Regulations, 2025 (L.I. 2504). The Environment Protection Authority's (EPA) functions include environmental assessment and enforcement. Transactional due diligence should cover permits, contamination, waste, remediation, enforcement and decommissioning. The Environmental Protection Act, 2025 also established Ghana's carbon-market regime.

Challenges Related to Corporate Environmental Liability and Climate-Related Litigation

Companies are expected to adhere to the relevant regulatory regimes including permitting, pollution, waste, rehabilitation and carbon-market compliance under The Environmental Protection Act, 2025. A key challenge to corporate environmental liability is the capacity of regulators to monitor and take enforcement action against the informal players in the extractive sector who are causing damage to natural resources such as land and water bodies through either illegal mining or improper mining practices.

Climate-related litigation is rare in Ghana and a likely key challenge would be the absence of local precedents recognising climate-related rights whose enforcement maybe sought from the courts, as well as judicial familiarity with climate-related litigation.

Health and Safety Obligations

Workplace safety is principally governed by the nationwide Factories, Offices and Shops Act, 1970 (Act 328). The key obligations of occupiers/employers include accident reporting, ensuring safe workplace conditions, providing protective equipment, first aid and ensuring fire safety. Businesses are expected to implement HSO policies to ensure compliance with Act 328 and also to ensure the protection of workers in the workplace.

Licensing and Industry-Specific Regulation

Businesses operating in Ghana are required to meet various environment, health and safety (EHS) requirements at the incorporation stage and as continuing compliance obligations over the duration of the business. These may range from obtaining business operating permits from local assemblies to workplace registration certificates, building permits, fire certificates, environmental permits and commercial property insurance.

Depending on the industry, businesses seeking to operate in certain sectors will be required to be licensed by the appropriate regulator. For example:

- foreign investment, telecommunications, banking, finance and mining – where foreign participation is envisaged, registration with GIPA may be relevant, see response in **8.2 Foreign Investment Restrictions and Sector-Specific Rules**. For mining and related sectors, the appropriate licence must be obtained from the Minerals Commission, and for businesses in the petroleum industry, the relevant regulator is the Petroleum Commission (for upstream) and the National Petroleum Authority (downstream);
- pharmacy – the primary regulatory body for the issuing licensing for pharmaceutical products including the licensing, registration, marketing and regulation in Ghana is the Food and Drugs authority; and
- cannabis – controlled cultivation and management of low-THC cannabis strictly for medicinal and industrial purposes only is regulated by the Narcotics Control Commission under the Narcotics Control Commission (Amendment) Act, 2023 (Act 1100) and the Narcotics Control Commission (Cultivation and Management of Cannabis) Regulations, 2023 (L.I. 2475).

9.4 Artificial Intelligence

Transparency, Bias and Accountability

Ghana does not have substantive AI legislation. The National Artificial Intelligence Strategy, launched in April 2026, is a policy framework promoting responsible, human-centred and inclusive AI rather than binding legislation. There have also been proposals from the current government on data protection reforms addressing AI, automated decision-making and cross-border data flows.

Existing AI systems remain subject to the Data Protection Act, 2012 (Act 843), including requirements on accountability and lawful processing, purpose limitation and transparency, data accuracy, security, automated decision-making rights and special personal data.

Accordingly, organisations using AI with personal data should ensure lawful data use, accuracy, bias mitigation, security, transparency, explainability and human accountability pending enactment of dedicated AI legislation.

9.5 Other Regulatory Compliance Requirements

The specific regulatory regime beyond the responses in the above sections will largely depend on the sector. As such, beyond the registration of companies at the ORC, and foreign investment at GIPA, additional licensing requirements may apply in sectors such as banking, insurance, telecommunications, mining, petroleum, pharmaceuticals, food, energy and transport.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment and Labour Laws Applicable to Employers in Ghana

The applicable laws are as follows.

- Labour Act, 2003 (Act 651): This is the principal statute governing employment relations in terms of labour matters including employment contracts, termination of employment, trade unions and collective bargaining. It also established the National Labour Commission (NLC), which is primarily responsible for adjudicating over employment claims and disputes.
- Labour Regulations, 2007 (L.I. 1833): This is subsidiary legislation which provides procedural rules under Act 651.
- National Pensions Act, 2008 (Act 766): This legislation establishes the three-tier pension system in Ghana, including the mandatory tier one, which is operated by the Social Security and National Insurance Trust (SSNIT) and the tier two occupational pension contributions scheme, which is run by approved trustees.
- Income Tax Act, 2015 (Act 896): Governs taxation of employment income and benefits.
- 1992 Constitution: Protects fundamental rights relating employment.

Employment Termination: Notice, Wrongful and Constructive Dismissal

The applicable statutory termination notice periods under Act 651 are:

- one month's notice or one month's pay in lieu of notice for contracts of three years or more;
- two weeks' notice or two weeks' pay in lieu of notice for contracts below three years; and
- seven days' notice for contracts from week to week.

Contracts terminable at will require no notice and may be terminated at the close of any day. All notices are required to be given in writing. Employers and employees are able to agree notice periods beyond the statutory requirements.

Summary dismissal is permitted for serious misconduct, but employers must follow a fair disciplinary process, including investigation and an opportunity for the employee to respond.

Termination is considered fair where based on incompetence, lack of qualification, proven misconduct or a legal restriction preventing performance of the employee's duties. Termination is considered unfair if it is attributable to the grounds listed below, among others:

- an employee's involvement or proposed involvement in union activity;
- an employee's involvement in proceedings or filing a complaint against the employer's violation of labour laws;
- discrimination against an employee;
- a female employee's pregnancy; and
- an employee's temporary illness or injury certified by a recognised medical practitioner.

Constructive dismissal may arise where an employer fundamentally breaches the employment relationship by conduct which induces the employee to resign, such as non-payment of wages and workplace harassment.

Carrying out a redundancy exercise requires three months' prior notification in writing to the Chief Labour Officer. Consultation with the recognised trade union representing the employees is required. Employees terminated under redundancy exercises are entitled to redundancy pay which is subject to negotiation between the employer and the employee or their union.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation: Equity Incentives, Change of Control and Tax

Ghanaian businesses recognise executive level compensation based on the role. It is common to see senior personnel with enhanced compensation packages which may include equity incentive plans, enhanced severance and redundancy control benefits. These are largely contractual between the employer and employee.

Salary, bonuses, gratuities and benefits-in-kind are generally taxable as employment income, subject to PAYE withholding and applicable valuation rules.

Enforceability of Non-Compete, Non-Solicitation and Confidentiality Covenants

The key test is that the non-competition clause must protect a legitimate interest (trade secrets, genuine client/staff relationships) rather than simply suppress competition, and must be reasonable in scope, duration and geography, both between the parties and as a matter of public interest.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership in Ghana

The Land Act, 2020 (Act 1036) recognises the following interests in land.

- Allodial title – the highest interest, held by stools, skins, clans, families or the state, and acquired through recognised means such as purchase, compulsory acquisition, gift or conquest.
- Common law freehold – a perpetual interest created under common law. Its acquisition in stool and skin lands has been prohibited since 22 August 1969.
- Customary freehold – a perpetual interest acquired under customary law by subjects of a stool or members of a family.
- Usufructuary interest – an inherent interest enjoyed by members or subjects of a stool, skin, family or clan holding the allodial title.
- Leasehold – a land interest granted for a specified term by a holder of an allodial, freehold or usufructuary interest, subject to agreed conditions.
- Customary tenancy – an interest granted under customary arrangements, often involving consideration or sharing farm produce.

Foreign Ownership of Property: Requirements, Restrictions and Taxation

The Constitution of Ghana prohibits freehold ownership of land by non-Ghanaians. Foreign individuals and companies may hold leasehold interests for up to 50 years, renewable only through fresh negotiation.

A company is treated as non-Ghanaian where more than 40% of its ownership is held by non-citizens and is therefore subject to the same 50-year leasehold limit. Foreign investors may also need to comply with the Ghana Investment Promotion Authority Act, 2026 (Act 1173), separately from landholding restrictions.

There is no tax penalty on foreign buyers of Ghanaian real estate. Like resident buyers, they would face a 20% levy on new estates under the Value Added Tax Act, 2025 (Act 1151), together with stamp duty of up to 1% under the Stamp Duty Act, 2005 (Act 689).

However, non-residents earning rental income are subject to 25% withholding tax under the Income Tax Act, 2015 (Act 896), as compared to 15% for residents, alongside local annual property rates.

Buyers are also required to withhold 10% of the gross consideration paid to non-resident sellers, which is

credited toward the applicable capital gains tax. Repatriation of sale or liquidation proceeds are also subject to tax-compliance requirements under the Foreign Exchange Act, 2006 (Act 723).

11.2 Commercial Real Estate Transactions

Commercial Real Estate: Legal Framework and Land Registration

The Land Act, 2020 (Act 1036) is the primary statute governing commercial real estate transactions in Ghana, with the Lands Commission as the central administrative body.

Land-secured mortgages are registered at the Lands Commission; priority generally follows order of registration, so a timely search and prompt registration are essential to protect a lender's position.

The Borrowers and Lenders Act, 2020 (Act 1052) modernised secured lending generally (including a Collateral Registry primarily for movable/personal property security), and also affects enforcement mechanics for credit facilities secured by real property.

The Home Mortgage Finance Act, 2008 (Act 770) provides a specific framework for residential mortgage lending.

Commercial Property Acquisitions and Disposals: Due Diligence, Title and Environmental Liability

Due diligence: the typical due diligence process for commercial property acquisitions includes searches at the Lands Commission, courts and Collateral Registry; verification of vendor's root of title and capacity to sell; confirmation of any competing interests, encumbrances, or unregistered customary claims; physical site inspection to ascertain the existence of the property and check for encroachment; and confirmation of planning/building permits with the local Metropolitan/Municipal/District Assembly.

Title insurance is not a mature product in the Ghanaian market; practitioners instead rely on thorough due diligence.

Environmental liability generally follows contractual allocation; indemnities are commonly negotiated for pre-existing contamination or non-compliance, since statutory liability under the EPA Act can attach to the current occupier regardless of the change in ownership.

Commercial Mortgage Financing: Registration, Priority and Enforcement

Commercial mortgage financing in Ghana

The main issues are the borrower's title, valid creation and perfection of the mortgage, priority over competing interests, and enforcement after default. The principal statutes are the Land Act, 2020 (Act 1036) and Borrowers and Lenders Act, 2020 (Act 1052).

Registration

Verify the mortgagor's interest and existing encumbrances at the Lands Commission. The mortgage should be properly executed and registered.

Priority

Competing mortgages or security interests should be identified early. Proper and timely registration is critical to priority.

Enforcement

On default, the Borrowers and Lenders Act, 2020 permits enforcement without prior court proceedings, subject to statutory notice and other requirements. Realisation may include sale or other permitted methods.

Other considerations

For corporate borrowers, it would be important to confirm corporate authority and registration of company charges, and address consent requirements, leases, valuation, insurance, taxes and application of sale proceeds.

Commercial Leases: Renewal, Assignment, Subletting and Default Remedies

Renewal rights available to tenants as a matter of contract must be drafted expressly in agreement.

Assignment and subletting carried out without the consent of the landlords may be invalid.

Recent Developments in Commercial Real Estate Regulation

Developments include:

- growth of Real Estate Investment Trusts and collective real estate investment vehicles regulated by the SEC under Ghana's collective investment schemes regime;
- increased EPA scrutiny and permitting requirements for larger commercial and mixed-use developments; and
- expanding commercial mortgage activity following the Borrowers and Lenders Act, 2020, and continued reform discussion around modernising the collateral/security framework for real property.

GREECE



Law and Practice

Contributed by:
George Kounoupis, Andreas Stergiadis and Olympia-Anastasia Koukouseli
Hahalis & Kounoupis P.C.

Contents

1. Business Entities P.357
1.1 Business Organisations p.357
1.2 Incorporation and Ongoing Compliance p.357
1.3 Share Issuances p.358
1.4 Distributions and Return of Capital p.359
1.5 Control Person Reporting p.359

2. Corporate Governance P.360
2.1 Legal Framework p.360
2.2 Directors' Duties and Liabilities p.360
2.3 Board Composition and Independence p.360
2.4 ESG and Disclosure Obligations p.361
2.5 Conflicts of Interest and Related-Party Transactions p.361

3. Shareholder Rights and Agreements P.361
3.1 Shareholder Rights p.361
3.2 Shareholder Agreements p.362

4. Mergers and Acquisitions P.362
4.1 Legal Framework p.362

5. Capital Markets P.363
5.1 Securities Regulation and Public Offerings p.363
5.2 Continuous Disclosure p.363
5.3 Insider Trading p.364
5.4 Shareholder Disclosure p.364
5.5 Internal Controls and Whistle-Blower Regimes p.364

6. Secured Transactions P.364
6.1 Transaction Financing and Security Interests p.364

7. Commercial Contracts P.365
7.1 Contract Formation and Enforceability p.365
7.2 Termination and Remedies p.365
7.3 Intellectual Property in Commercial Transactions p.365
7.4 Consumer Protection p.366

8. Foreign Investment P.366
8.1 Competition and Merger Control p.366
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.367

9. Regulatory Compliance P.367
9.1 Privacy and Data Protection p.367
9.2 Anti-Money Laundering, Sanctions and Corruption p.367
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.368
9.4 Artificial Intelligence p.368
9.5 Other Regulatory Compliance Requirements p.368

10. Employment and Labour P.368
10.1 Employment Standards and Workplace Regulation p.368
10.2 Executive Compensation and Restrictive Covenants p.369

11. Real Property and Commercial Leasing P.369
11.1 Requirements for Land Ownership p.369
11.2 Commercial Real Estate Transactions p.369

Hahalis & Kounoupis P.C. is based in Bethlehem, Pennsylvania, and has additional locations in Edison, New Jersey, and in Athens and Thessaloniki in Greece. The firm also has an affiliated office in New York City. Legal matters in Greece are accepted from all states in the United States.

Authors



George Kounoupis is the founder and principal international lawyer of Hahalis & Kounoupis, P.C. Qualified in the United States and Greece, he began his career practising corporate, securities and M&A law with a major Philadelphia law firm before establishing a practice focusing on matters spanning the US and Greek legal systems. His corporate and commercial practice encompasses cross-border transactions, corporate structuring, foreign investment, commercial agreements, employment and labour law, taxation, securities matters and international disputes. He has served as general counsel to a NASDAQ-listed corporation and as legal adviser to Greek-American business and institutional organisations.

Olympia-Anastasia Koukouseli is an attorney in the Thessaloniki office of Hahalis & Kounoupis, P.C., and is a member of the Thessaloniki Bar Association. She specialises in public and fiscal law disputes. In the field of tax law, she has extensive experience with tax audits, from the initial stage before the tax authorities through to judicial resolution in the Supreme Courts, in cases of enforcement proceedings initiated by the Administration, and in matters of international tax law.



Andreas Stergiadis is an attorney in the Thessaloniki office of Hahalis & Kounoupis, P.C. He has extensive experience in matters relating to the day-to-day operations of companies (corporate management, regulatory compliance, development of new business activities) and in specialised areas involving complex commercial agreements and business transactions. Andreas specialises in legal issues arising from a company's operations, considering "business concerns" and the requirements and objectives of the company's management.

Hahalis & Kounoupis Greek Law Group

20 E. Broad Street
Bethlehem, PA 18018
USA

Tel: (610) 865 2608
Fax: (610) 691 8418
Email: George.kounoupis@employmentlaw-lv.com
Web: www.GreekLawGroup.com

1. Business Entities

1.1 Business Organisations

Main Types of Business Entities

Greek company law offers a wide range of corporate forms, which are divided into capital companies, comparable to corporation forms, and partnerships. The most common capital companies are the *Société Anonyme* (S.A.), the Limited Liability Company (E.P.E.) and the Private Company (I.K.E.). The main types of partnerships are the General Partnership (O.E.) and the Limited Partnership (E.E.).

Special corporate forms are also recognised, such as the European Company (SE) and the European Cooperative Society, as well as forms of branches of foreign companies established in Greece. Trusts are not a standalone institution of Greek civil law, but the Greek legal order recognises foreign trusts for tax purposes and asset management, while a similar function is performed by the recognition of the in rem trust (real security trust) or the foundation form.

The S.A. is governed by Law 4548/2018 and is often the form of choice for medium and large businesses. The E.P.E. is governed by Law 3190/1955 (as in force) and displays strong hybrid characteristics, combining features of both capital companies and partnerships. The I.K.E., introduced by Law 4072/2012, is the most flexible and popular corporate form in Greece, especially for small and medium-sized and start-up businesses.

Partnerships (O.E. and E.E.) are also governed by Law 4072/2012. In an O.E., all members are liable without limit, and jointly and severally. In an E.E., two categories of partners are distinguished:

- general partners, who are liable without limit; and
- limited partners, who are liable only up to the amount of their contribution to the partnership capital.

Factors in Choosing the Corporate Structure

The choice of the appropriate corporate form depends on a series of substantive factors related to business strategy, management of business risk and financing needs. The degree of partners' liability is the primary factor. In capital companies (S.A., E.P.E., I.K.E.), the liability of participants is limited to the amount of their contribution, protecting the personal assets of shareholders or partners from company debts.

By contrast, in partnerships (O.E. and general partners of an E.E.), the partners are liable, alongside the legal entity, with their personal assets for the company's obligations. This difference makes capital companies more attractive for business ventures with increased risk or high borrowing requirements.

Tax obligations, minimum capital requirements, flexibility in decision-making and regulatory treatment also decisively affect the decision. The I.K.E. is often preferred due to its minimal minimum capital requirement (only EUR1 is required) and the freedom it provides in drafting the articles of association. By contrast, the S.A. is the only option for large businesses that may seek a listing on the stock exchange, or that operate in regulated sectors such as banking, insurance and investment.

The capital structure also differs significantly between corporate types. The I.K.E. introduced an innovation into Greek law by allowing three categories of contributions:

- capital contributions;
- non-capital contributions (such as the provision of labour or services); and
- guarantee contributions (the assumption of liability towards third parties up to a certain amount).

By contrast, only capital contributions valued in money are permitted in the S.A. and the E.P.E.

The regulatory burden and cost of administrative compliance also differ noticeably. The S.A. is subject to stricter disclosure requirements, accounting audits and complex corporate procedures, while the I.K.E. and partnerships are characterised by a simpler administrative structure and lower operating costs.

1.2 Incorporation and Ongoing Compliance

Formation Process and Requirements

The company formation process in Greece has been radically modernised through the introduction of the

One-Stop Shop Service (YMS) and the electronic platform e-UMS (e-One-Stop Shop Service). Formation is generally carried out using a standard form of model articles of association, without the need for a notarial other document, unless the law so requires (as in the case of an S.A. under specific circumstances) or when real estate assets are contributed.

The main stages of the formation process include:

- checking the availability of and reserving the company name and trade name in the General Commercial Registry (GEMI);
- drafting and signing the articles of association by the founders electronically or through the YMS;
- the automatic issuance by the Independent Authority for Public Revenue (AADE) of a Tax Registration Number (AFM) for the company being formed;
- registration of the company with the competent Chamber of Commerce and the social security fund (EFKA); and
- payment of the statutory formation fees, the GEMI fee and the registration duty.

The process through the e-UMS platform is usually completed within a few hours or a minimal number of business days, making the start of business activity immediate. If a notarial deed is required (eg, due to a contribution of real estate), formation takes place before a notary public, who acts as the YMS.

Ongoing Compliance Obligations

After its formation, a company must continuously comply with a series of regulatory, commercial and tax obligations. The main ongoing compliance obligations include:

- publication in GEMI of the annual financial statements within the statutory deadlines;
- publication of the resolutions of the general meetings and of changes in the composition of the board of directors or management;
- keeping accounting books and records in accordance with the Greek Accounting Standards (ELP) or the International Financial Reporting Standards (IFRS);
- regularly updating the Central Register of Ultimate Beneficial Owners with any change in the ownership or control of the company; and
- filing periodic and annual tax returns (VAT, income tax, payroll tax) through the myDATA platform of the AADE.

Failure to comply with the disclosure obligations to GEMI can lead to administrative fines, the suspension of registration of changes in the register, or even the compulsory dissolution of the company under specific conditions.

1.3 Share Issuances

Rules on Formation, Issuance and Modification of Capital

The legal framework governing the share capital of S.A.s is set out in Law 4548/2018. The minimum share capital for the formation of an S.A. is set at EUR25,000 and must be paid up in full at formation, or its payment must be certified within two months of formation. Shares must be issued as registered shares, since the institution of bearer shares has been completely abolished under Greek law.

Shares must carry a nominal value, which may not be set lower than EUR0.04 nor higher than EUR100 per share. The issuance of no par value shares is not permitted under Greek company law.

An increase in share capital is carried out by amending the articles of association following a resolution of the general meeting of shareholders adopted with a specified higher quorum and majority vote. The articles of association may also grant the board of directors the power to decide on an extraordinary increase of capital up to a certain limit (authorised capital increase). A reduction of share capital likewise requires a resolution of the general meeting and is subject to creditor protection rules, including the provision of guarantees to creditors who raise objections.

Multiple Share Classes and Rights

Greek law provides flexibility in structuring different classes of shares, allowing rights to be tailored to the needs of investors and the company. Companies may issue ordinary shares, preference shares with or without voting rights, and redeemable shares.

When structuring multiple share classes, the following elements may be considered:

- preferences in the payment of dividends (eg, a preferential or protected dividend payment ahead of ordinary shares);
- preferential rights in the distribution of liquidation proceeds in the event of the company's dissolution;
- the possibility of converting preference shares into ordinary shares, or vice versa, under specific conditions and time limits;
- restrictions on voting rights (eg, non-voting preference shares that provide enhanced financial rights); and
- ensuring the principle of equal treatment of shareholders belonging to the same class of shares.

1.4 Distributions and Return of Capital

Legal Requirements for Distributions and Dividends

The distribution of profits and the payment of dividends to shareholders are governed by strict rules aimed at protecting the company's capital base. For a lawful distribution to take place, the net results of the financial year must allow for the coverage of accumulated losses from previous years and the retention of mandatory reserves. In particular, the law requires the deduction of at least 5% of net annual profits for the formation of the statutory reserve, until it reaches at least one third of the share capital.

The maximum amount that may be distributed to shareholders is calculated as follows:

- the net results of the financial year;
- plus profits from previous financial years and available reserves or retained earnings;
- minus the amount of losses from previous financial years; and
- minus amounts that must be retained for the formation of reserves required by law or the articles of association.

An interim dividend may be distributed within the financial year by decision of the board of directors, provided that interim financial statements are published at least three months before the end of the financial year.

Share Buybacks and Financial Assistance

The repurchase and holding of treasury shares by the company is permitted under specific conditions. The decision is made at the general meeting, which sets the terms, the duration (which may not exceed 24 months), the maximum number of shares that may be acquired, and the price limits for the purchase. The total nominal value of treasury shares acquired may not exceed 10% of the paid-up share capital.

As per relevant financial regulation, the law prohibits the company from advancing funds, granting loans or providing guarantees for the purpose of the acquisition of its own shares by third parties. Exceptions are provided for only under strict conditions, such as prior approval at the general meeting with increased quorum and majority, the submission of a report by the board of directors justifying the transaction, and ensuring that the transaction is carried out at arm's length terms.

1.5 Control Person Reporting

Obligations to Disclose Beneficial Owners

Within the framework of preventing and combating money laundering, all corporate and legal entities based in Greece are required to register the details of their ultimate beneficial owners (UBOs) in the Central Register of Beneficial Owners maintained by AADE.

A beneficial owner is considered to be any natural person who directly or indirectly holds a percentage of shares or voting rights exceeding 25%, or who otherwise exercises effective control over the company. If it is not possible to identify any natural person on the basis of the above criteria, the natural person holding a senior management position (eg, managing director or manager) is registered as the beneficial owner.

Registration includes full identification details, and the type and extent of the rights held. Any change in the details of beneficial owners must be declared to the Register within 60 days of its occurrence. Non-compliance entails the imposition of serious administrative fines and the withholding of tax compliance certificates.

2. Corporate Governance

2.1 Legal Framework

Main Corporate Governance Laws and Regulations

The institutional framework of corporate governance in Greece consists of a combination of mandatory law and "softer" best practice standards and law rules. For non-listed S.A.s, the core body of rules is contained in Law 4548/2018, which reformed the law on S.A.s.

For companies listed on a regulated market, the special framework of Law 4706/2020 applies. This law introduces mandatory requirements regarding the composition of the board of directors, the operation of committees, risk management, the internal control system, and transparency.

At the same time, listed companies are required to adopt and apply a Corporate Governance Code, such as the Hellenic Corporate Governance Code drafted by the Hellenic Corporate Governance Council (ESED) and recognised by the Hellenic Capital Market Commission.

2.2 Directors' Duties and Liabilities

Standard of Care and Personal Liability

The standard of care required of board members is that of a prudent businessperson acting under similar circumstances. Members' liability towards the company for damage caused by their acts or omissions is civil and joint and several.

Beyond civil liability towards the legal entity, board members and managers may face personal, joint and several, and individual liability towards the State and social security institutions. In particular, they are personally liable for the company's overdue tax debts (VAT, income tax) and social security contributions accrued during their term of office.

Furthermore, criminal liability may arise in cases of tax evasion, non-payment of accrued wages to staff, the issuance of bounced checks, or serious violations of environmental legislation.

2.3 Board Composition and Independence

Legal Requirements and Independence Standards

The composition of the board of directors varies depending on the type of company. In private S.A.s, the board may consist of at least three members, or may even be a single-member body (sole director-manager) if this is envisaged in the articles of association. There are no general nationality or residency restrictions for members, although they must obtain a Greek Tax Registration Number.

By contrast, in listed companies, Law 4706/2020 imposes strict rules on the composition of the board of directors, including the participation of executive, non-executive and independent non-executive members. Independent members must constitute at least one third of the total number of members, and there must not be fewer than two.

Independent members must meet specific independence criteria, such as:

- not holding a percentage of voting rights exceeding 0.5% of the share capital;
- not maintaining a business, financial or professional relationship with the company or affiliated companies;
- not having served as a member of the company's board of directors for more than nine years in total; and
- not having a family relationship with members of management or major shareholders.

Diversity Requirements and Differentiation for Listed Companies

Listed companies are required to adopt and apply a Suitability Policy for board members, incorporating diversity criteria. Adequate gender representation is required, with a minimum quota of 25% for each gender among the total number of board members. For large listed companies (with more than 250 employees and a turnover of at least EUR50 million), the recent Law 5178/2025 – transposing Directive (EU) 2022/2381 – raises the minimum quota to 33% of the total number of members (or 40% of non-executive members).

The differences between listed and private companies are substantial. For example, listed companies:

- are required to maintain an Audit Committee composed mainly of non-executive and independent members;
- are required to maintain a Remuneration Committee and a Nomination Committee;
- must apply mandatory internal operating regulations and maintain an independent Internal Audit Unit; and
- are subject to the ongoing supervision of the Hellenic Capital Market Commission regarding their compliance with governance rules.

2.4 ESG and Disclosure Obligations

Regulatory Framework for ESG and Sustainability

The institutional framework on ESG matters in Greece is shaped directly by European legislation and national implementing laws. The National Climate Law (Law 4936/2022) sets specific obligations for businesses regarding the reduction of their carbon footprint, the calculation of greenhouse gas emissions, and the disclosure of related data.

At the same time, large companies and public interest entities are required to prepare and publish non-financial statements, incorporating the requirements of the European Corporate Sustainability Reporting Directive (CSRD). These disclosures cover the impact of the company's activities on the environment, labour rights, anti-corruption, gender equality, and respect for human rights.

Board Duties and Oversight of ESG Risks

The duties of board members have gradually expanded to include required consideration of sustainability factors when making strategic decisions. Management must assess not only short-term financial performance but also the company's long-term sustainable value and its effects on stakeholders (employees, local communities, suppliers, the environment).

Best practices for boards of directors include:

- integrating ESG risks and opportunities into overall corporate strategy and the risk management system;
- setting measurable sustainability targets and regularly monitoring progress;
- linking part of executives' variable remuneration to the achievement of ESG targets; and
- training board members on climate change and sustainable development issues.

2.5 Conflicts of Interest and Related-Party Transactions

Framework for Approval and Disclosure of Transactions

Law 4548/2018 introduces a strict and transparent regime for preventing conflicts of interest and regulating related-party transactions. Related parties include members of the board of directors, shareholders exercising control over the company, and persons closely associated with them (spouses, relatives, affiliated companies).

For the conclusion of any transaction between the company and a related party, prior authorisation from the board of directors or the general meeting is required. The relevant resolution is published in GEMI together with an assessment by an independent certified auditor or audit firm, certifying that the transaction is fair and reasonable for the company and for shareholders who are not related parties.

Shareholders representing 5% of the share capital have the right to request the convening of a general meeting to decide on the granting of the authorisation. Exceptions are provided for current transactions concluded on ordinary arm's length market terms.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Statutory Rights and Access to Information

Company law protects shareholders' rights, distinguishing between individual rights and minority rights. The fundamental individual rights of every shareholder include participation and voting at the general meeting, the right to receive dividends, and the right to share in the proceeds of liquidation in the event of the company's dissolution.

Regarding access to information, every shareholder is entitled to request specific information about the company's affairs to the extent it is useful for a genuine assessment of the items on the agenda of the general meeting. In addition, shareholders representing 5% of the capital may request information on amounts paid to management members and executives over the last two years.

Minority Rights and Remedies

The law provides the minority with strong tools for protection against abusive decisions of the majority. In particular, shareholders holding certain percentages of the capital have right to:

- request the convening of an extraordinary general meeting (5% of the capital);
- add items to the agenda (5% of the capital);
- request the postponement of decision-making by the general meeting, on a single occasion (5% of the capital); and
- apply for a special investigation of the company before the competent court, where a violation of the law or the articles of association is shown to be plausible (5% of the capital), or mismanagement (10% of the capital).

In addition, shareholders may bring an action for annulment or a declaration of nullity of resolutions of the general meeting taken in violation of the law or the articles of association, within a period of four months from the adoption of the resolution.

3.2 Shareholder Agreements

Use and Enforceability of Extra-Statutory Agreements

Shareholder agreements are widely used in commercial practice to supplement the provisions of the articles of association and to regulate relations between partners. Such agreements typically cover:

- matters of governance;
- the composition of the board of directors;
- pre-emption rights; and
- restrictions on the transfer of shares (such as drag-along rights, tag-along rights and rights of first refusal).

From a legal standpoint, shareholder agreements produce binding effects only between the contracting parties (inter partes) and do not bind the company itself, unless the company is expressly designated as a party to the agreement or such relevant provisions have been incorporated into the articles of association. Breach of an extra-statutory agreement gives rise to a claim for damages or a contractual penalty between the parties but does not affect the validity of corporate resolutions adopted in violation of its vis-à-vis third parties.

Dispute Resolution Mechanisms and Derivative Actions

To address corporate deadlocks and disputes among shareholders, shareholders' agreements often include dispute resolution clauses, such as buyout clauses (Russian roulette, Texas shoot-out), a put option or recourse to arbitration.

At the level of substantive law, shareholder protection is reinforced by the possibility of bringing a corporate (derivative) action. By decision of the board of directors, or at the request of shareholders representing 5% of the capital, the company is required to bring a damages action against members of the board of directors for breach of their duties. If the company remains inactive, a special representative is appointed by the court to conduct the litigation.

4. Mergers and Acquisitions

4.1 Legal Framework

Main Laws and Transaction Structures

The institutional framework for corporate transformations in Greece was radically modernised by Law 4601/2019, which unified and systematised the rules on mergers, demergers, spin-offs and other conversions of companies. Law 3461/2006, which transposed the corresponding European directives into Greek law, applies to public takeover offers for listed companies.

The most common transaction structures in the Greek jurisdiction include:

- merger by absorption or by formation of a new company;
- the acquisition of shares (share deal) or the acquisition of assets and liabilities (asset deal); and
- the demerger (full or partial) or spin-off of a business division.

In public transactions, the voluntary or mandatory public offer is the main mechanism for acquiring control. A mandatory public offer is triggered when a person directly or indirectly acquires a percentage exceeding one third of the voting rights of the listed company.

Recent Developments and Case Law

The recent transposition of European Directive 2019/2121 on cross-border mergers, demergers and conversions has strengthened the possibility of corporate restructuring at cross-border level, while at the same time introducing stricter safeguards for minority shareholders, creditors and employees.

Greek courts are shaping the landscape of mergers by requiring strict compliance with valuation procedures and the protection of creditors' rights. Particular emphasis is placed on protecting the guarantees provided to creditors, who retain the right to object to the legal transformation, provided they demonstrate that satisfaction of their claims is thus placed at risk.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework and Supervisory Authorities

The organisation and operation of the capital markets in Greece are supervised by the Hellenic Capital Market Commission, which is the independent regulatory authority, in co-operation with the Bank of Greece on matters of systemic stability. The main organised trading market is the Athens Stock Exchange (ASE).

The regulatory framework is based on European regulations, including the EU Prospectus Regulation and the MiFID II rules.

Public Offerings and Prospectus Exemptions

Carrying out a public offering of securities, or admitting them to allow trading on a regulated market, requires the prior drafting, approval and publication of a prospectus by the Hellenic Capital Market Commission. The approval process usually takes between four and eight weeks, depending on the complexity of the issuance.

The law provides for specific exemptions from the obligation to publish a prospectus, such as:

- offers of securities addressed exclusively to defined professional/qualified investors;
- offers addressed to fewer than 150 natural or legal persons per member state, excluding professional investors; and
- offers whose total value within the European Union is below certain monetary thresholds (such as the threshold of EUR8 million over a 12-month period, as set by national legislation).

Securities allocated through exempt offerings are not subject to general resale time restrictions; however, any subsequent transfer to the general public may be regarded as a separate public offering requiring a prospectus, unless a new exemption applies.

5.2 Continuous Disclosure

Obligations of Listed Entities

Companies whose securities are listed on a regulated market are subject to strict ongoing and periodic reporting obligations. Periodic obligations include the publication of annual financial reports within four months of the end of the financial year, and half-yearly financial reports within three months of the end of the period.

At the same time, listed entities must promptly disclose any privileged/material information directly concerning them, in accordance with the Market Abuse Regulation (MAR). Disclosure is made through the website of the Athens Stock Exchange and the company's own website, ensuring simultaneous and equal access for investors.

5.3 Insider Trading

Market Abuse and Enforcement Powers

Trading on the basis of confidential (privileged) information (insider trading), the unlawful disclosure of privileged information, and market manipulation are strictly prohibited under European Regulation 596/2014 (MAR) and Law 4443/2016.

The Hellenic Capital Market Commission has very broad investigative and enforcement powers. It may:

- conduct inspections;
- request the freezing of bank accounts;
- impose particularly high administrative fines; and
- suspend trading in financial instruments.

In addition, violations of market abuse legislation carry serious criminal penalties, including custodial sentences.

5.4 Shareholder Disclosure

Thresholds and Obligations for Significant Holdings

Under Law 3556/2007, every shareholder who acquires or disposes of shares of a listed company carrying voting rights is required to notify the company and the Hellenic Capital Market Commission when the percentage of voting rights they hold reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 33.3%, 50% and 66.6%.

Notification must be made no later than three business days from the date of the change. Non-compliance results in the automatic suspension of the voting rights attached to the relevant shares for as long as the violation continues, as well as the imposition of administrative fines.

5.5 Internal Controls and Whistle-Blower Regimes

Compliance Frameworks and Whistle-Blowing

Listed companies are required to maintain an effective Internal Control System, which is periodically assessed by independent evaluators. This system includes risk management, internal audit and regulatory compliance.

With the transposition of European Directive 2019/1937 through Law 4990/2022, a mandatory framework was introduced for the protection of persons who report breaches of EU law (whistle-blowing). Companies employing 50 or more employees are required to establish internal reporting channels, appoint a person responsible for receiving and following up on reports, and ensure full confidentiality and protection of whistle-blowers from retaliation.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Types of Security Interests and Registration Systems

Greek law provides various mechanisms for granting security interests in rem over movable and immovable property, as well as over claims. For real estate, the main forms of security are the mortgage and the pre-notation of mortgage, with the pre-notation being the most common method due to its lower judicial and administrative cost.

For movable property and claims, security interests include:

- the traditional pledge with delivery of possession;
- the non-possessory (constructive) pledge over business equipment and goods, under Law 2844/2000;
- the assignment of claims (such as trade receivables or bank accounts) for security purposes; and
- the financial collateral over financial instruments and cash, under Law 3301/2004.

Perfection of security interests requires their registration in the relevant public registers (Mortgage/Land Registries for real estate, the Register of Law 2844/2000 for movables) or notification to the debtor in the case of assignment of claims. Priority among creditors is determined strictly by the time priority of the registration or notification.

Acquisition Finance Structure

In more complex corporate transactions and in acquisition finance, the security package is structured

through a combination of pledges over the target company's shares, assignments of claims arising from commercial contracts, and pledges over bank accounts.

The interaction between different classes of creditors (senior and junior creditors) is governed through intercreditor agreements, which set out the order of repayment, restrictions on the exercise of enforcement rights (standstill periods), and the management of the security package through a security agent.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Basic Principles and Conditions of Validity

The formation of contracts in Greece is governed by the fundamental principles of freedom of contract and private autonomy, as set out in the Civil Code. For the valid formation of a contract, a meeting of the minds of the parties is required, alongside offer and acceptance, and the contractual capacity of the parties.

The common law concept of "consideration" does not exist in Greek law. As a general rule, the principle of informality of contracts prevails, meaning that contracts are validly concluded without any requirement of written form, unless the law expressly provides otherwise (such as transfers of real estate, which require a notarial deed) or the parties agree in writing to observe a particular form.

Grounds for Invalidity and Interpretive Rules

A contract may be void or voidable for reasons relating to:

- offence to good morals or being contrary to prohibitive provisions of law;
- mistake, fraud or duress in the declaration of intent; or
- simulation of the legal transaction.

In interpreting commercial contracts, the courts seek the true intention of the parties without adhering rigidly to the wording, taking into account good faith and business usage. Contractual clauses that limit or exclude liability for intent or gross negligence are void; unfair standard terms and conditions that create a significant imbalance in the parties' rights and obligations are also considered void.

7.2 Termination and Remedies

Breach of Contract and Rights of Termination

In the event of non-performance or defective performance of a contract, the non-defaulting party has a series of remedies available, including a claim for performance, a claim for damages for both actual loss and lost profit, and the right to withdraw from the contract.

Termination of a continuing contract is possible either upon the expiry of the agreed term or, extraordinarily, for good cause. Good cause exists when, based on good faith and the circumstances, the contracting party cannot reasonably be required to maintain the contractual relationship. Unjustified termination constitutes a breach of contract and obliges the terminating party to compensate the other party.

Force Majeure and Unforeseen Change of Circumstances

Greek law recognises the principle of force majeure as a ground releasing the debtor from liability for non-performance when performance becomes impossible due to events outside its sphere of influence, which could not have been foreseen or prevented through measures of the utmost diligence.

In addition, Article 388 of the Civil Code introduces the principle of unforeseen change of circumstances (hardship). If, after the conclusion of the contract, the circumstances on which both parties relied change due to extraordinary and unforeseeable reasons, such that the debtor's performance becomes excessively onerous, the court may adjust the performance to the appropriate extent or terminate the contract.

7.3 Intellectual Property in Commercial Transactions

Assignment, Licensing and Rights Over Creative Works

Industrial property rights (patents, trade marks, industrial designs) and copyright constitute significant assets in commercial transactions. The transfer (assignment) and licensing of such rights requires writ-

ten form and, in the case of trade marks and patents, registration in the relevant registers of the Industrial Property Organisation (OBI) in order to be effective against third parties.

Regarding works created within the framework of an employment relationship, the economic right over the work is transferred by operation of law to the employer, unless otherwise agreed. In the case of software created by an employee in the performance of their duties, the economic right belongs entirely to the employer.

For AI-generated content, Greek and European legislation provides that copyright protection is granted only to creations that constitute original works of human intellectual conception.

Remedies for Infringement of Rights

In the event of infringement of intellectual or industrial property rights, the rights-holder may bring legal proceedings seeking:

- cessation of the infringement and its discontinuance in the future;
- payment of damages and monetary compensation for moral harm;
- the surrender of benefits derived from the unlawful exploitation; and
- interim measures, including the precautionary seizure of goods.

7.4 Consumer Protection

Regulatory Framework and Consumer Rights

Consumer protection in Greece is governed by Law 2251/1994, as extensively amended to comply with European directives. The law applies to every contract between a supplier and a consumer, introducing strict rules on pre-contractual information, unfair commercial practices and unfair contract terms.

In distance contracts (ie, remote, including e-commerce), the consumer has an unconditional right of withdrawal within 14 calendar days of receipt of the product, with a full refund of the amounts paid.

Enforcement Mechanisms and E-Commerce

The enforcement of consumer protection legislation is carried out by the Ministry of Development and the General Secretariat of Commerce, which have the power to impose administrative fines. At the same time, the Consumer Ombudsman operates as an independent authority for the out-of-court settlement of consumer disputes.

In the field of e-commerce, businesses are required to observe strict transparency standards regarding prices, offers, product reviews and return policies, and misleading advertising practices and deceptive tactics through user interfaces (dark patterns) are prohibited.

8. Foreign Investment

8.1 Competition and Merger Control

Notification Thresholds and the Substantive Test

Control of business concentrations in Greece is governed by Law 3959/2011 on the protection of free competition, with the Hellenic Competition Commission as the competent authority. Prior notification of a concentration is required when:

- the aggregate worldwide turnover of all participating undertakings is at least EUR150 million; or
- at least two of the participating undertakings each individually achieve a total turnover in Greece exceeding EUR15 million.

The transaction may not be completed before clearance is obtained from the Hellenic Competition Commission (standstill obligation). The substantive test for assessment is whether the concentration is likely to significantly impede competition in the Greek market, in particular through the creation or strengthening of a dominant position.

Consequences of Non-Compliance

Completion of a concentration in violation of the prior notification obligation, or before the issuance of the clearance decision, carries heavy administrative sanctions. The Hellenic Competition Commission may impose fines of up to 10% of the total turnover of the undertakings involved, and may also order the concentration to be unwound or participation to cease.

At the same time, anti-competitive agreements (cartels) and abuses of a dominant position carry strict fines, and the individuals involved may also face criminal sanctions.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign Investment Regime and Sectoral Restrictions

Greece maintains a generally open and welcoming environment for foreign direct investment, applying the principle of equal treatment between domestic and foreign investors. There are no general restrictions on capital inflows or the repatriation of profits.

However, specific rules and licensing requirements apply in certain regulated sectors.

- In the media sector (broadcasting), there are restrictions relating to the transparency of ownership and the avoidance of concentration.
- In financial services and energy, the acquisition of significant holdings is subject to prior approval by the competent regulatory authorities (the Bank of Greece, RAAEY).
- For the acquisition of real estate in border areas, a special permit is required for natural or legal persons from outside the European Union or the European Economic Area (EEA).

National Security Screening and Investment Incentives

Within the framework of European Regulation 2019/452, Greece is developing mechanisms for screening foreign direct investment on grounds of security and public order. Screening focuses on investments involving critical infrastructure (energy, transport, telecommunications), critical technologies and sensitive data.

To attract strategic investments, Greek legislation provides significant incentives through the Development Law and the framework for Strategic Investments. These incentives include tax exemptions, subsidies for job creation costs, fast-track licensing procedures, and stabilisation of the tax rate.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Data Protection Framework and Obligations

The legal framework for the protection of personal data in Greece is set out in the EU General Data Protection Regulation (GDPR) and the national implementing Law 4624/2019. The competent supervisory authority is the Hellenic Data Protection Authority (HDPA).

Organisations that process personal data are required to observe the core principles of lawfulness, fairness, transparency, purpose limitation and data minimisation. Collection and processing require a lawful basis (such as consent, performance of a contract or legitimate interest). In the event of a personal data breach, the controller must report the incident to the HDPA within 72 hours and, where there is a high risk, inform the data subjects.

Cross-Border Data Transfers

The transfer of personal data to countries outside the EEA is permitted only where an adequate level of protection is ensured. This is achieved through adequacy decisions of the European Commission, the use of Standard Contractual Clauses (SCCs) or approved Binding Corporate Rules.

9.2 Anti-Money Laundering, Sanctions and Corruption

AML Obligations and Economic Sanctions

Legislation on combating money laundering and terrorist financing (AML) is incorporated into Law 4557/2018. Obliged entities include credit and financial institutions, statutory auditors, lawyers, notaries, real estate agents and corporate service providers, which must apply customer due diligence measures, verify the identity of the beneficial owner, monitor transactional behaviour, and promptly report suspicious transactions to the Anti-Money Laundering Authority.

Regarding international economic sanctions, Greek companies are required to fully comply with sanctions imposed by the United Nations and the European Union. Violation of sanctions entails criminal prosecution and strict administrative fines.

Combating Corruption and Bribery

The bribery of political figures and public officials (both passive and active bribery), and private sector bribery, are strictly criminalised under the Penal Code. In order to limit corporate risk, companies develop compliance programmes that include anti-bribery policies, staff training, controls on hospitality expenses, and reporting channels for violations.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Obligations and Liability

Environmental permitting of projects and activities is governed by Law 4014/2011, which classifies projects into categories according to their environmental impact and requires the preparation of an Environmental Impact Study for the issuance of Environmental Terms Approval Decisions (AEPO).

Environmental liability is based on the "polluter pays" principle (Law 3882/2010). Businesses are liable for the prevention and remediation of environmental damage caused by their activities, and company management may face personal civil and criminal liability.

Occupational Health and Safety

The Code of Laws on Employee Health and Safety (Law 3850/2010) requires employers to ensure the health and safety of employees in all aspects of their work. Employers are required to use the services of a Safety Technician and an Occupational Physician, and to prepare a written Occupational Risk Assessment.

The Labour Inspectorate (SEPE) carries out regular inspections, and imposes administrative and criminal sanctions in cases of non-compliance or workplace accidents.

9.4 Artificial Intelligence

Regulatory Framework and AI Governance

The regulatory framework for artificial intelligence (AI) is primarily set by the European Artificial Intelligence Act (EU AI Act), which applies a risk-based approach. At the national level, Law 4961/2022 introduced regulations mainly for the use of AI systems by public sector bodies (algorithmic impact assessment, a register of systems, transparency obligations), together with a targeted employee-information obligation that also extends to the private sector.

Organisations that develop or use high-risk AI systems are required to apply governance mechanisms that ensure:

- transparency and adequate information for users;
- the conduct of fundamental rights impact assessments;
- the prevention of bias and discrimination in algorithms; and
- the maintenance of human oversight in decision-making.

9.5 Other Regulatory Compliance Requirements

Businesses operating in Greece must also comply with provisions on economic crime, the protection of free competition in supply chains, and specific obligations for the electronic cross-checking of tax data through the myDATA platform of the AADE.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Key Labour Laws

Greek labour law is characterised by a high degree of employee protection and was recently codified through Law 4808/2021 and Law 5053/2023. These laws regulate:

- working-time limits (40 hours per week, with the possibility of flexible arrangement);
- remuneration;
- leave; and
- the introduction of the Digital Work Card for the accurate recording of working hours.

Termination of Employment Contracts and Dismissals

Termination of an indefinite-term employment contract by the employer is a legal act not requiring cause but is governed by strict formal and substantive requirements. The employer may choose between termina-

tion with notice (in which case the severance payment is reduced by half) or termination without notice.

For a dismissal to be valid, the following are required:

- a valid written notice of termination;
- payment of the statutory severance payment; and
- registration of the change in the ERGANI information system.

A dismissal is void if it is due to discrimination, retaliation or trade union activity, or if it takes place during protected periods (such as pregnancy and maternity). In the event of invalidity, the employee is entitled to back pay and reinstatement.

10.2 Executive Compensation and Restrictive Covenants

Structure of Remuneration and Taxation

The structuring of senior executives' remuneration packages often includes fixed pay, variable pay (bonuses) and stock option plans. In listed companies, remuneration is governed by the Remuneration Policy approved by the general meeting and disclosed in the annual Remuneration Report.

Stock option plans enjoy favourable tax treatment, as the rights are taxed at the time of exercise as capital gains at a rate of 15% (or 5% for start-up companies), provided they are held for a certain period of time.

Enforceability of Restrictive Covenants

Non-compete clauses and non-solicitation clauses (of customers/staff) following termination of an employment contract are enforceable by Greek courts, provided they satisfy specific proportionality criteria:

- they are reasonably limited in duration (usually up to one to two years);
- they have a clear geographic and subject matter scope; and
- they provide for the payment of reasonable monetary compensation to the employee for the period during which the restriction applies.

If no compensation is provided, the non-compete clause risks being considered void as an excessive restriction on the freedom to work.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Ownership and Restrictions on Foreigners

Greek property law recognises full ownership, co-ownership, bare ownership and usufruct. The transfer of ownership of real estate requires the mandatory execution of a notarial deed and its registration with the competent Mortgage Registry or Land Registry.

Natural and legal persons from EU/EEA member states may acquire real estate in Greece without any restriction. By contrast, for natural or legal persons from outside the EU/EEA, restrictions apply to the acquisition of real estate in designated border areas, where prior authorisation from a special administrative committee is required.

11.2 Commercial Real Estate Transactions

Legal Framework, the Land Registry and Due Diligence

Greece is completing its transition from the traditional system of transcriptions and mortgages to the National Land Registry-Ktimatologio (Cadastre), which provides increased legal certainty by defining properties on the basis of cadastral diagrams and unique identification numbers (KAEK).

The due diligence process for the acquisition of commercial real estate includes:

- legal review of title deeds and encumbrances for a period of at least 20 years;
- technical and town-planning review to verify the legality of construction;
- environmental review for any soil contamination; and
- the issuance of tax and social security compliance certificates from the seller.

Commercial Leases

Commercial leases are regulated by Presidential Decree 34/1995, as amended by Law 4242/2014. For new leases, the minimum statutory duration is set at three years, even if a shorter term is agreed.

The parties retain significant freedom in setting the rent, its gradual adjustment, and the terms of subletting or assignment of the lease. In the event of breach of obligations (such as delay in paying rent), the landlord may resort to expedited proceedings for obtaining an order for the recovery of possession of the leased premises and payment of rent arrears.

HONG KONG SAR, CHINA

Law and Practice

Contributed by:
Martyn Huckerby, Felix Chan, Matthew Lo and Natalie Ng
Hill Dickinson LLP

Contents

1. Business Entities P.373
1.1 Business Organisations p.373
1.2 Incorporation and Ongoing Compliance p.374
1.3 Share Issuances p.375
1.4 Distributions and Return of Capital p.376
1.5 Control Person Reporting p.377

2. Corporate Governance P.377
2.1 Legal Framework p.377
2.2 Directors' Duties and Liabilities p.378
2.3 Board Composition and Independence p.378
2.4 ESG and Disclosure Obligations p.378
2.5 Conflicts of Interest and Related-Party Transactions p.379

3. Shareholder Rights and Agreements P.379
3.1 Shareholder Rights p.379
3.2 Shareholder Agreements p.380

4. Mergers and Acquisitions P.380
4.1 Legal Framework p.380

5. Capital Markets P.381
5.1 Securities Regulation and Public Offerings p.381
5.2 Continuous Disclosure p.382
5.3 Insider Trading p.382
5.4 Shareholder Disclosure p.382
5.5 Internal Controls and Whistle-Blower Regimes p.383

6. Secured Transactions P.383
6.1 Transaction Financing and Security Interests p.383

7. Commercial Contracts P.384
7.1 Contract Formation and Enforceability p.384
7.2 Termination and Remedies p.384
7.3 Intellectual Property in Commercial Transactions p.385
7.4 Consumer Protection p.385

8. Foreign Investment P.386
8.1 Competition and Merger Control p.386
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.386

9. Regulatory Compliance P.387
9.1 Privacy and Data Protection p.387
9.2 Anti-Money Laundering, Sanctions and Corruption p.387
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.388
9.4 Artificial Intelligence p.388
9.5 Other Regulatory Compliance Requirements p.389

10. Employment and Labour P.389
10.1 Employment Standards and Workplace Regulation p.389
10.2 Executive Compensation and Restrictive Covenants p.391

11. Real Property and Commercial Leasing P.392
11.1 Requirements for Land Ownership p.392
11.2 Commercial Real Estate Transactions p.392

Hill Dickinson LLP is a leading and award-winning international commercial law firm employing over 1,100 people, including more than 200 partners and legal directors. The firm operates across the UK, Europe and Asia, with offices in Birmingham, Hong Kong, Leeds, Limassol, Liverpool, London, Manchester, Monaco, Newcastle, Piraeus and Singapore. Hill Dickinson Hong Kong has further bolstered its Business Services Group with a team of experienced regulatory and corporate lawyers, enhancing the firm's corporate M&A, international business reorganisations and corporate advisory capabilities in the region. Working across a broad range of sectors, the firm specialises in helping businesses and individuals to resolve disputes, enable transactions, navigate regulation and optimise their legal strategies.

Authors



Martyn Huckerby is head of competition and regulatory, Asia at Hill Dickinson Hong Kong. He specialises in corporate, regulatory and competition/antitrust law, splitting his time between Hong Kong and Shanghai. Martyn regularly advises clients on multi-jurisdictional merger filings, dawn raids and regulatory compliance. He has extensive experience advising clients on the establishment, expansion and restructuring of businesses (including joint ventures) in China and across Asia, and his practice includes handling cross-border commercial disputes and contractual matters. Martyn is admitted as a solicitor in New South Wales, Australia.



Felix Chan is the international business reorganisations leader at Hill Dickinson Hong Kong. His practice focuses on M&A, joint ventures, business reorganisations and corporate advisory matters. Felix advises private and public companies on complex cross-border transactions, Listing Rules and regulatory compliance, corporate governance and strategic global restructurings. As an international business reorganisations expert, he helps multinational businesses reshape their operations to respond to changing commercial priorities, economic conditions and regulatory developments. Felix is admitted as a solicitor in Hong Kong and New South Wales, Australia.



Matthew Lo is an of counsel of Hill Dickinson Hong Kong with substantial corporate private practice experience across a wide range of corporate legal matters, advising listed and private companies in cross-border M&A, joint ventures, international business reorganisations, regulatory compliance and general corporate and commercial matters. He is dual-qualified in Hong Kong (2018) and England and Wales (2023). Matthew possesses solid knowledge in corporate law and in the M&A sector and has represented clients across different industries including financial services, energy, automotive and technology.



Natalie Ng is an associate at Hill Dickinson Hong Kong. Her practice focuses on corporate legal matters, including advising private and public companies in cross-border mergers and acquisitions, disposals, international business reorganisations, series financing, regulatory and employment matters and other corporate needs. Natalie is admitted as a solicitor in Hong Kong.

Hill Dickinson LLP

No. 1 St Paul's Square
Liverpool
L3 9SJ
UK

Tel: 0151 600 8000
Web: www.hilldickinson.com

1. Business Entities

1.1 Business Organisations

Principal Business Vehicles in Hong Kong

Hong Kong offers a diverse range of structures designed to accommodate different needs of multinational corporations, small and medium-sized enterprises and entrepreneurs, etc. Set out below are the common structures and their characteristics, together with brief commentary on the key factors driving the choice of structure.

Sole proprietorship

Sole proprietorship is an unincorporated business owned and operated by a single individual under the registration regime of the Business Registration Ordinance (Cap 310).

Partnership

Similar to sole proprietorships, partnership is a type of business vehicle but is not a separate legal entity. At a high level, a partnership is formed pursuant to an agreement of the partners to carry on business in common with a view of profit. A partnership is usually referred to as a "firm".

- *General partnership* – General partners are agents of the firm and can bind the firm and other partners for acts done for the business of the firm. Each general partner is jointly liable for third party contractual obligations and jointly and severally liable for torts of the firm.
- *Limited partnership* – Limited partnership is a statutory creation. Limited partners are only liable for amounts contributed to the partnership. At the same time, they are subject to certain restrictions: eg, they are not permitted to take part in the management of the firm and do not have power to bind other partners. There must be at least one general partner in a limited partnership.
- *Limited liability partnership* – A specialised business structure distinct from limited liability partnerships typically found in jurisdictions such as the UK and Singapore, available exclusively to law firms in Hong Kong.

Company

A Hong Kong "company" is a legal entity incorporated under the Companies Ordinance (Cap 622) (the "Companies Ordinance") which can sue and can be sued. Companies are generally categorised as private or public and limited or unlimited. Note that public companies are not necessarily "listed companies", which must be listed on a recognised stock exchange.

- *Private companies limited by shares* – A private company is a company which by its articles restricts the right to transfer its shares, limits the number of members to 50 (except for members who are employees of the company) and prohibits invitation to the public to subscribe for shares or debentures of the company. The liability of members is limited to the amount paid up (or if unpaid, payable) on the shares held by them. In practice, most commercial businesses use private companies limited by shares.
- *Private unlimited companies with a share capital* – A private company, but there is no limit on the liability of members.
- *Public companies limited by shares* – Public companies are defined under the Companies Ordinance to mean a company that is not a private company and not a company limited by guarantee. Public companies typically have more shareholders

and are subject to stricter regulations compared to private companies. The liability of members is limited to the amount paid up (or if unpaid, payable) on the shares held by them.
- *Public unlimited companies with a share capital* – A public company, but there is no limit on the liability of members.
- *Companies limited by guarantee* – A company limited by guarantee does not have share capital or shareholders. Instead, its members act as guarantors and give an undertaking to contribute an amount in the event of winding up. This structure is primarily used by non-profit organisations.
- *Registered non-Hong Kong company and representative offices* – A non-Hong Kong company registered under Part 16 of the Companies Ordinance and representative offices are not separate legal entities established under Hong Kong company law. They are useful for foreign corporations looking to maintain a direct legal connection to (or simply operate through) the foreign corporation and/or analyse the local market prior to formal market entry.

Choice of Business Vehicle

Key factors driving the choice of structure are as follows.

- *Liability ring-fencing* – A private company limited by shares can cap shareholder exposure to unpaid share capital and separate business risk from personal assets and is therefore ordinarily preferred for operating businesses, joint ventures and investment holding. Conversely, general partnerships and sole proprietorships can leave owners exposed to business liabilities.
- *Investment and exit objectives* – A sole proprietorship can make it difficult to raise additional capital from outside sources to expand the business. It is also easier for an owner to sell their business where the business is structured as a company by effecting a transfer of shares (without interfering with the assets and liabilities of the business).
- *Size of undertaking and control* – Where only one person would be involved in the business, a sole proprietorship would offer full managerial control over the business.
- *Regulatory limitations* – Certain businesses are required to be established under statute in a specific form. For example, a company business structure is required to carry on regulated activities in Hong Kong under the Securities and Futures Ordinance (Cap 571) (SFO). Law firms in Hong Kong can only be established as sole proprietorship or partnership but not as a company.

Cost and tax considerations

Companies have higher set-up and maintenance costs compared to other unincorporated entities, along with record keeping, annual filing and accounting requirements. Companies are also generally subject to higher tax rates (ie, currently being 8.25% on the first HKD2 million, followed by 16.5% on remainder of assessable profits) on their profits compared to sole proprietorships and partnerships (ie, 7.5% on the first HKD2 million, followed by 15% on remainder of assessable profits).

1.2 Incorporation and Ongoing Compliance

Main Requirements for Incorporation

As alluded to in **1.1 Business Organisations**, Hong Kong private companies limited by shares are incorporated under the Companies Ordinance, which provides the statutory framework for formation, corporate governance, filings and registers, etc. Below is a list of the basic components of a company and high-level overview of the requirements.

- *Members* – The minimum number of members is one and maximum number of members is 50 (see **1.1 Business Organisations**). There are generally no foreign ownership or residency requirements/restrictions.
- *Share capital* – There is no statutory minimum or maximum share capital requirement under Hong Kong law. A company looking to keep its capital commitment as low as possible will typically be incorporated with a nominal issued share capital, often HKD1 or USD1.
- *Director* – Corporate directorships are allowed, but a company must have at least one director who is a natural person. See further **2.3 Board Composition and Independence** on board composition.
- *Company secretary* – The company secretary of a Hong Kong company can be an individual or body

corporate. A Hong Kong company must have a company secretary who is resident in Hong Kong (in the case of individuals) or a Hong Kong incorporated body corporate holding a valid Trust or Company Service Provider (TCSP) licence under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) (in the case of body corporates). A sole director cannot also be the company secretary.
- *Registered office* – Every company must have a registered office in Hong Kong, which is used for service of process and other documents. Note that the registered office can be different from the place of business, which is the location where day-to-day business operations are conducted. It is rather common for a registered office to be provided by the professional corporate services provider.
- *Articles* – Schedule 2 to the Companies (Model Articles) Notice (Cap 622H) contains the Model Articles for a private company limited by shares. It is possible for companies to directly adopt the Model Articles, adopt the Model Articles with amendments or adopt own articles tailored to specific business needs (provided that the articles comply with requirements of the Companies Ordinance).
- *Name* – A Hong Kong company can register an English name, a Chinese name, or both. The name cannot be the same as an existing company or otherwise objectionable under the Companies Ordinance or public interest criteria.

Procedure for Incorporation

Incorporation is lodged with the Companies Registry and with the Inland Revenue Department for business registration via a one-stop registration arrangement. The submission pack should include:

- a copy of the company's articles;
- Incorporation Form (Form NNC1 in the case of a company limited by shares);
- Notice to Business Registration Office (Form IRBR1); and
- requisite registration fees.

Paper incorporation would take approximately four working days, while electronic incorporation can be completed within 24 hours of filing.

Acquiring a Shelf Company

Alternatively, to avoid registration formalities and effect a marginally faster set-up, one may choose to acquire and activate a company from a secretarial agent which has already been incorporated. The incorporation particulars (eg, company name, shareholder, directors, articles) can be changed to suit business needs.

Ongoing Compliance

Ongoing compliance obligations are as follows.

- *Statutory registers and books and records* – Companies must keep statutory registers and records. These include:
  (a) register of members;
  (b) register of directors;
  (c) significant controllers register;
  (d) register of company secretaries; and
  (e) minute books.
- *Annual filing requirements* – Companies must deliver an annual return (Form NAR1) each year. The business registration certificate must also be maintained on a one- or three-year basis.
- *Notifiable changes* – Changes to registered details, notably articles, officers, registered office, share allotments/other capital changes, creation and discharge of registrable charges, etc are all subject to statutory notification timelines.
- *Financial statements and accounting records* – While private companies do not have to file audited accounts with the Companies Registry, they must maintain proper accounting records and prepare annual financial statements.
- *AGMs* – A company must hold an annual general meeting unless legally dispensed with, most commonly by unanimous resolution of members.

1.3 Share Issuances

Share Capital

Since the commencement of the new Companies Ordinance in March 2014, Hong Kong has adopted a no-par value share regime.

Classes of Shares

It is possible to issue multiple classes of shares with different voting, dividend, conversion, redemption, liquidation and other rights. When designing multiple

classes, one should ensure that the rights to each class are defined clearly in the articles (as well as any other relevant documents, eg, shareholders' agreement), anticipate variation mechanics and consider whether bespoke procedures different from the statutory default are preferable.

Issuance of Shares

Share capital injected by founder members can act as the seed capital of the company. Upon incorporation, founder members are deemed to have been issued the shares stated to be taken by them in the company's articles. After incorporation, further shares can be issued to existing members or new investors in accordance with the provisions of the Companies Ordinance, the company's articles and contract (eg, shareholders' agreements with pre-emption rights).

Generally, the subscriber of the new shares will enter into a contract (eg, subscription agreement) with the company to subscribe for the shares. Where the issuance is to existing members in proportion to their existing shareholdings (ie, a pro-rata allotment), the board of directors are conferred power under the Companies Ordinance to approve the issuance. Members' approval in a general meeting or by written resolution is generally required in situations where, for example, the issuance is a non-pro rata offer or to new third party investors. Once resolved, consideration for the shares should be settled (eg, for partly or fully paid shares) on or before allotment, and the new subscriber will be registered into the register of members of the company, upon which the legal title of the shares is conferred.

Alteration of Share Capital

A company can alter its share capital in accordance with the capital maintenance doctrine and the Companies Ordinance, subject to any additional restrictions in the company's articles.

- *Increase of capital* – A company can increase its share capital by a fresh injection of capital with or without the issuance of shares or by capitalising its profits with (bonus shares) or without issuance of shares.
- *Reduction of capital* – The capital of a company may be reduced in accordance with the procedures set out in the Companies Ordinance, either through a court-free solvency statement procedure or through a court confirmation procedure in accordance with Part 5 of Division 3 of the Companies Ordinance. Reduction of capital in contravention of the Companies Ordinance may subject the company and its directors to criminal liability and may be void under common law. Examples of ways to reduce capital are:
  (a) extinguishing or reducing liability on unpaid shares;
  (b) cancelling paid-up share capital that is lost or unrepresented by available assets; and
  (c) repaying any paid-up share capital in excess of the company's wants.
- *Consolidation of shares* – A company may convert its shares into a smaller number by ordinary resolution. This is usually done to increase the value of the shares or as part of a business reorganisation.
- *Subdivision of shares* – A company may divide its shares into a larger number by ordinary resolution. In contrast to consolidation, this is usually done to reduce the value of each share, improving their accessibility and marketability.

1.4 Distributions and Return of Capital

Buyback and Redemption

Subject to its articles, a company may buy back or redeem its own shares in accordance with statutory requirements, including restrictions concerning the source of funds, authorisation and procedure. In particular, the source of funds is limited to:

- distributable profits;
- proceeds out of a fresh issuance of shares; and
- subject to the requisite solvency procedure, capital.

Note also that a private company can only buy back its shares or redeem its redeemable shares if they are fully paid.

Distributions

Distributions, or dividends, are returns to shareholders for their investment in the company. Distributions can only be made if the company has sufficient profits available for distribution (or distributable profits), being its accumulated realised profits (so far as not

previously utilised or capitalised) less its accumulated realised losses (so far as not previously written off in a reduction or reorganisation of capital), and must be on the basis of the company's financial statements. Experience has shown that clients can sometimes make distributions beyond their distributable profits, ie, resulting in a distribution made out of capital, which may constitute an unlawful distribution and can potentially expose members, directors and auditors to liability to compensate and repay the company. It is therefore imperative that companies comply with the requirements under the Companies Ordinance to mitigate any such non-compliance risks.

Financial Assistance

Financial assistance can be given in the form of a gift, guarantee, security, indemnity, release or waiver, loan, etc. As a general rule, a company or its subsidiary is prohibited from giving financial assistance, whether directly or indirectly, to any person for the purpose of acquiring shares in the company.

The Companies Ordinance provides certain statutory exceptions through which a company may give financial assistance, namely, the board must pass the requisite resolutions and make a solvency statement on the same day and (i) where assistance does not exceed 5% of the paid-up capital and reserves of the company, can be approved by the board of directors, (ii) assistance is approved by written resolution of all members, or (iii) assistance is approved by ordinary resolution.

1.5 Control Person Reporting

For private companies, the principal control person obligation is to identify significant controllers and keep a Significant Controllers Register. The register is not generally open to public inspection, but it must be kept in Hong Kong and made available for inspection by law enforcement officers on demand for AML/CFT transparency objectives.

A person (including natural persons and registrable legal entities, eg, companies) has "significant control" if the person:

- holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have any share capital, the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company;
- holds, directly or indirectly, more than 25% of the voting rights of the company;
- holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- has the right to exercise, or actually exercises, significant influence or control over the company; or
- has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm whose trustees or members satisfy any of the above conditions in relation to the company.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Hong Kong is shaped by the Companies Ordinance and supplemented by the SFO and common law. In the case of listed companies, this is also supplemented by the Codes on Takeovers and Mergers and Share Buy-Backs (the "Takeovers Code") and the Rules Governing the Listing of Securities on the Main Board of The Stock Exchange of Hong Kong Limited (the "Listing Rules") for Main Board listed issuers (and the corresponding GEM Board Listing Rules).

Governance is board-led. The Companies Ordinance addresses:

- directors;
- accounts;
- audits;
- shareholders' meetings;
- capital maintenance;
- company records; and
- statutory remedies.

Meanwhile, Listing Rules impose additional requirements on:

- listed company board committees (eg, audit, risk, nomination and remuneration committees);
- independent non-executive directors (INEDs);
- connected transactions;

- disclosure;
- risk management;
- internal controls;
- diversity; and
- corporate governance reporting.

Financial institutions, insurers, licensed corporations and other regulated entities are subject to additional governance standards issued by the Hong Kong Monetary Authority (HKMA), Insurance Authority, Securities and Futures Commission (SFC) or other relevant regulators.

2.2 Directors' Duties and Liabilities

Directors owe fiduciary and statutory duties to the company. Principal duties include:

- acting in good faith in the interests of the company as a whole;
- exercising powers for proper purposes;
- avoiding conflicts and secret profits;
- not misusing corporate information or opportunities; and
- exercising independent judgement.

Directors must also comply with statutory duties concerning disclosure of interests, accounting records, financial statements, insolvent trading-related conduct (eg, fraudulent trading, misfeasance, etc) and other statutory obligations.

The standard of care is reflected in the Companies Ordinance and common law and generally combines an objective standard with consideration of the director's actual knowledge, experience and functions. Directors may be personally liable for the following:

- breach of duty;
- negligence;
- fraud;
- unlawful distributions;
- misuse of company assets;
- misleading filings;
- certain insolvency misconduct; and
- statutory offences.

Courts apply an objective and contextual approach to the company's interests, while recognising that directors may consider long-term consequences, employees, creditors and other stakeholders where relevant to the company's interests. The business judgement rule is not a complete statutory immunity. A director may be protected by indemnity or insurance to the extent permitted by law, but indemnities generally cannot protect fraud, dishonesty or other prohibited conduct.

2.3 Board Composition and Independence

Private Companies

Board composition is flexible, and there is no statutory independence requirement. A company must have at least one natural person director, although there is no general Hong Kong residence requirement for directors. Private companies are not generally required to appoint independent directors or board committees.

Listed Companies

Listed companies are subject to more stringent requirements. Based on Listing Rules requirements, a listed issuer must have at least three INEDs, and INEDs must comprise at least one third of the board. Audit, remuneration and nomination committees are required, with prescribed independent participation. At least one audit committee independent director must have appropriate professional qualifications or accounting or related financial management expertise. The Listing Rules contain independence tests, restrictions on long tenure and requirements relating to board diversity, including restrictions on single-gender boards and requirements for a diversity policy and measurable objectives. From the first AGM held on or after 1 July 2028, the majority of the board of listed issuers must be composed of INEDs who have served on the board for less than nine years. From 1 July 2031 onwards, listed issuers must not have any INED who has served on the board for nine years or more.

2.4 ESG and Disclosure Obligations

Hong Kong does not have a single corporate Environmental, Social and Governance (ESG) statute. Listed issuers follow the Stock Exchange of Hong Kong Limited (HKEX) Corporate Governance Code and ESG Reporting requirements under the corresponding HKEX listing rules, alongside environmental, employment, health and safety, anti-discrimination and data protection laws. The regime requires:

- board oversight;
- materiality assessment;
- KPIs; and
- narrative reporting on environmental and social matters.

The Hong Kong Exchanges and Clearing Limited has also introduced phased implementation of enhanced climate-related disclosure requirements in 2025 aligned substantially with the International Sustainability Standards Board framework (in full force for the financial year 2026 for ESG reports published in 2027). Best practice is for boards to:

- allocate ESG responsibility;
- identify material risks;
- establish controls and targets;
- monitor climate scenarios;
- verify data;
- manage greenwashing risk; and
- integrate ESG matters into strategy, remuneration and disclosure.

Climate-related financial disclosures increasingly require reporting on governance, strategy, risk management, metrics and targets. Financial institutions may additionally be subject to supervisory expectations and climate-risk management requirements issued by the HKMA. Refer to **9.3 Environmental, Health and Safety, and Industry-Specific Regulation** for further discussion on climate policies and regulations.

2.5 Conflicts of Interest and Related-Party Transactions

Private Companies

Directors must disclose interests in contracts or proposed contracts with the company and must comply with fiduciary rules against conflicts and secret profits. The Companies Ordinance and the company's articles determine when (or whether) an interested director may vote or be counted in the quorum. Transactions involving directors may also require shareholder approval or disclosure depending on their nature.

Listed Companies

Connected transactions are governed principally by Chapter 14A of the Main Board Listing Rules. Depending on the transaction, the listed issuer may need to announce the transaction, obtain independent shareholder approval, appoint an independent financial adviser and comply with annual reporting requirements. Related-party transactions may also raise disclosure obligations under accounting standards, the SFO and general prohibitions against false or misleading market disclosure.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Under Hong Kong law, shareholders' rights are principally derived from the Companies Ordinance, the Articles of Association and, to the extent applicable, shareholders' agreements.

Shareholders of Hong Kong private limited companies generally have the following rights:

- to receive notices and to attend and vote at general meetings/on resolutions;
- to receive declared dividends and distributions;
- to transfer their shares;
- to inspect company statutory records; and
- to receive financial statements of the company.

The approval of certain fundamental corporate matters of the company, such as the alteration to the articles of association of the company, capital reductions, amalgamations and winding-up matters, generally requires special resolutions to be passed. It may be possible to limit some of these shareholders' rights under the articles of association and/or shareholders' agreement (if applicable), but only to the extent permitted under Hong Kong law.

Shareholders of Hong Kong publicly listed companies would generally have similar rights, although they would have additional voting and disclosure protections for certain major or connected transactions.

Certain statutory remedies are available to shareholders under the Hong Kong statutory framework. Shareholders may:

- seek relief for unfair prejudice, whereby a shareholder may petition to the court in the situation where the company's affairs have been conducted in a manner unfairly prejudicial to the interests of certain or all members;
- bring a statutory derivative action on behalf of the company, where the company has suffered a wrong but has not itself brought proceedings;
- petition for winding up of the company on just and equitable grounds;
- seek injunctions or declarations for governance breaches; and/or
- pursue contractual remedies under the articles of association of the company or shareholders' agreement (if applicable).

Hong Kong's corporate law framework provides shareholders with substantial flexibility and a comprehensive range of statutory remedies. Ultimately, the statutory remedies available to shareholders will vary depending on the facts of each case.

3.2 Shareholder Agreements

In Hong Kong, shareholders' agreements are commonly used to supplement the corporate law framework under the Companies Ordinance by regulating the relationship between shareholders and addressing matters that are not comprehensively dealt with under the Companies Ordinance or the articles of association.

Shareholders' agreements will frequently contain provisions dealing with:

- board appointment rights;
- reserved matters and veto rights;
- funding obligations;
- dividend policy;
- share transfer restrictions and pre-emption rights;
- deadlock procedures;
- confidentiality; and
- exit arrangements.

These agreements can therefore be complicated and there is generally no "one-size-fits-all" approach. It is recommended that legal professionals be instructed to prepare and negotiate such documents.

While the Hong Kong corporate law framework provides shareholders with basic statutory protection and remedies, shareholders' agreements set out contractual rights which provide additional certainty and protection to shareholders. Conversely, provisions in a shareholders' agreement (in particular share transfer restrictions and governance arrangements) should be duplicated in the company's articles of association to ensure that (i) there is no inconsistency between the shareholders' agreement and articles of association and (ii) such rights are entrenched in the articles of association and provide broader enforceability desirable to shareholders.

Hong Kong's corporate law framework provides for a number of statutory remedies in resolving shareholder disputes; these are principally set out in Part 14 of the Companies Ordinance (ie, such statutory remedies, which remain with the jurisdiction of the Hong Kong courts, include the unfair prejudice relief and statutory derivative action remedy as discussed in **3.1 Shareholder Rights**).

Shareholders' agreements would often contain dispute resolution clauses which would set the rules and steps parties must adhere to in the event of a contractual dispute. Such steps will usually include one (or more) of the following:

- negotiation;
- mediation;
- expert determination;
- arbitration; or
- litigation before Hong Kong courts.

4. Mergers and Acquisitions

4.1 Legal Framework

Hong Kong's legal and regulatory framework for mergers and acquisitions (M&A) comprises a number of statutes and regimes which apply under different circumstances depending on whether the target company is private or public.

- *Private M&A* – For private M&A deals, the principal legal framework comprises the Companies Ordinance (amongst other applicable Hong Kong

laws), general contract and common law principles, sector-specific legislation (to the extent applicable) and competition law considerations (to the extent applicable). Such deals are typically structured as share purchases, subscription transactions, business transfers or asset acquisitions with tailored warranties, indemnities and increasingly, warranty and indemnity (W&I) insurance.
- *Public M&A* – Public M&A transactions are principally regulated by the Securities and Futures Commission under the Takeovers Code, the SFO, the Listing Rules and the Companies Ordinance. The Takeovers Code applies to Hong Kong public companies and, in appropriate cases, companies with a significant Hong Kong nexus. General offers and court-sanctioned schemes of arrangement are the key routes for acquiring control in a listed-company in Hong Kong (being subject to the Takeovers Code).
- *Choice of deal structure* – The choice of structure in an M&A transaction will be driven by various factors and considerations such as tax and stamp duty, regulatory approval and consent requirements (which may be sector-specific or related to foreign investment), financing, warranties and indemnities, employees, data protection and change-of-control considerations. Professional advice should be obtained to identify material issues and key risks and concerns as part of the due diligence process.

Recent Developments

Recent developments in this area include the following.

- *Listing Rules and disclosure amendments* – Ongoing public consultation relating to the Listing Rules focusing on tighter disclosure and reporting obligations and revamped notifiable and connected transaction tests.
- *Introduction of a new inward redomiciliation regime* – The introduction of a new statutory framework in Hong Kong in May 2025 allowing a direct path for qualified non-Hong Kong companies to transfer their domicile to Hong Kong without court procedures or winding up their existing business.
- *Implementation of the treasury share scheme in Hong Kong* (in April 2025) – The scheme permits companies publicly listed in Hong Kong (whether incorporated in Hong Kong or otherwise) to hold, sell, transfer or cancel shares bought back rather than automatically cancelling them.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The principal regulators overseeing capital markets in Hong Kong are the SFC, the HKEX and the Companies Registry. The main legislation includes the following (along with other applicable regimes):

- SFO;
- Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32);
- Companies Ordinance;
- Listing Rules;
- Takeovers Code; and
- Code on Real Estate Investment Trusts.

Hong Kong has a dual filing regime involving the filing of draft listing documents with the SFC and HKEX. The SFC regulates intermediaries, market conduct, prospectus-related matters and offers of securities, while the HKEX administers listings and continuing obligations.

A public offer of shares or debentures in Hong Kong generally requires a prospectus complying with the Companies (Winding Up and Miscellaneous Provisions) Ordinance, unless an exemption applies. A Main Board IPO ordinarily requires sponsor engagement, due diligence, prospectus preparation, SFC prospectus clearance and HKEX listing approval. Follow-on offerings remain subject to the Listing Rules, shareholder approvals, prospectus requirements or exemptions, underwriting and disclosure obligations.

Common prospectus exemptions include:

- offers to professional investors;
- offers to not more than 50 persons in Hong Kong;
- offers with a minimum consideration or denomination of at least HKD500,000 (or its foreign currency equivalent) per investor; and

- offers where the total consideration does not exceed the statutory small-offer threshold, subject to detailed conditions.

Hong Kong does not generally impose a universal statutory resale holding period for securities issued under an exemption, but contractual, Listing Rules, prospectus, market conduct and private-placement restrictions may apply. Non-compliance can result in civil liability, criminal offences, regulatory sanctions and rescission or compensation claims.

5.2 Continuous Disclosure

Listed issuers in Hong Kong must disclose inside information as soon as reasonably practicable under Part XIVA of the SFO, subject to limited statutory safe harbour exceptions. They must also comply with the Listing Rules concerning:

- financial results;
- material transactions;
- connected transactions;
- changes in directors or substantial shareholders;
- profit warnings;
- debt defaults;
- corporate actions; and
- other information likely to impact on the company's share price.

Material events are ordinarily disclosed through an announcement published by the listed issuer on the HKEX's website and its own website. Depending on the materiality of the event (eg, a transaction of significant size), this may also result in the need to publish a circular and arrange for shareholders' approval, amongst other things. Where a material event has occurred and there is misalignment of information in the market, listed issuers may be required to publish a clarification announcement and, in exceptional circumstances, apply for a trading halt.

5.3 Insider Trading

Market misconduct under the SFO includes insider dealing, false trading, price rigging, stock market manipulation, disclosure of false or misleading information and related misconduct. Insider dealing may arise where a person possesses inside information and deals, counsels or procures another to deal, or communicates the information improperly. The regime applies to listed securities and certain related instruments and transactions.

The SFC may do the following:

- investigate;
- compel production of information;
- search premises under warrant;
- commence market misconduct proceedings before the Market Misconduct Tribunal;
- impose disciplinary sanctions on licensed persons; and
- refer criminal matters for prosecution.

Criminal penalties can include imprisonment and substantial fines, while civil or tribunal consequences may include disgorgement, disqualification and cold shoulder orders. The HKEX may also impose Listing Rules sanctions.

5.4 Shareholder Disclosure

Part XV of the SFO requires disclosure of substantial interests in listed issuers and interests of directors and chief executives. The regime applies to prescribed interests, including relevant derivatives and short positions.

A person generally becomes a substantial shareholder and triggers filing obligations when they first become interested in 5% or more of the shares of a listed issuer and must report subsequent changes resulting in the interest crossing over a whole percentage number which is above 5% (eg, from 5.5% to 6.1%, or from 8.2% to 7.9%), as well as when the person's interests drop below 5%. There are also other circumstances which may be applicable, such as when the nature of the person's interest in the shares changes (eg, when a person grants or exercises rights under equity derivatives) or similar requirements in relation to short positions.

The listed issuer, its directors, chief executive officer and their connected interests carry separate obligations. Notices must be filed within statutory time limits (generally three or ten business days depending on the circumstance giving rise to the notification obligation) and in the prescribed form.

Late or inaccurate filings may prompt SFC or HKEX action, public sanctions, prosecution and, in serious cases, disqualification orders. It is therefore important for listed issuers to have in place established monitoring, responsibility matrices and procedure for relevant parties (eg, directors) to promptly notify it of any changes in shareholding or short positions in order to make timely notice filings.

5.5 Internal Controls and Whistle-Blower Regimes

Listed Companies

Listed issuers must maintain effective risk management and internal control systems and disclose their governance arrangements. The HKEX Corporate Governance Code expects sound risk management and internal control systems, annual effectiveness review and an internal audit function, whether in-house or outsourced. Listed issuers should maintain compliance policies, delegation controls, financial reporting controls and incident escalation. Regulated firms are subject to detailed internal control and risk management guidance imposed by the SFC, HKMA, Insurance Authority and other regulators. They should maintain surveillance, compliance testing, training, record-keeping and escalation for breaches, suspicious activity and conflicts. Boards should receive timely reporting and test remediation.

Private Companies

Hong Kong has no universal private-sector whistle-blowing statute. The Personal Data (Privacy) Ordinance (Cap 486) (PDPO), Prevention of Bribery Ordinance (Cap 201) (POBO), AMLO, Competition Ordinance (Cap 619) and sector-specific laws create operational compliance obligations. The Employment Ordinance (Cap 57) (EO) provides certain protections for employees who make statutory complaints. Best practice is to establish the following:

- confidential reporting channels;
- investigation protocols;
- non-retaliation protections;
- compliance ownership;
- training;
- risk assessments;
- audit testing; and
- board-level reporting.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Hong Kong does not have a single comprehensive statute governing secured transactions. Instead, security interests are governed through a combination of common law, equitable principles and asset-specific legislation.

The main sources of legislation include:

- the Companies Ordinance, which deals with the registration of charges;
- the Conveyancing and Property Ordinance (Cap 219) (CPO), which deals with real property;
- the Land Registration Ordinance (Cap 128) (LRO), which provides for registration of interests in land; and
- insolvency-related legislation such as the Companies (Winding-Up and Miscellaneous Provisions) Ordinance, which deals with enforcement and priority, and sector-specific rules.

Hong Kong law recognises security in the following forms:

- liens;
- pledges;
- fixed and floating charges;
- legal and equitable mortgages; and
- assignments by way of security over shares, receivables, bank accounts and other assets (including intellectual property and real property).

Registrable charges created by a Hong Kong company must be filed with the Hong Kong Companies Registry within the statutory timeline (one month). Absence of proper filing will generally render a charge void against a liquidator and creditors. Additional steps may need to be taken depending on specific assets in question: for example, registration at the relevant government registries or notice to debtors may be required.

A Hong Kong company must also keep a register of charges. Priority generally depends on the nature of the security, timing of creation and registration, notice, contractual subordination and insolvency principles.

Creditors or lenders generally exercise rights upon the default in the following ways:

- appointing receivers;
- enforcing the security;
- selling the secured assets;
- foreclosure (in limited circumstances); and
- raising court proceedings.

Acquisition financings are usually structured in various forms, including bilateral bank facilities, syndicated loans, private credit financings, shareholders loans and hybrid debt structure.

In syndicated or multi-creditor situations, intercreditor agreements would typically be executed to detail how payment waterfalls and application of enforcement proceeds will occur, amongst other matters.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Hong Kong contract law is based principally on common law and equity, supplemented by statute. A commercial contract generally requires:

- offer and acceptance;
- consideration;
- intention to create legal relations;
- certainty; and
- capacity.

Written form is required for some transactions, but many contracts may be oral. The Electronic Transactions Ordinance (Cap 553) recognises electronic records and signatures, although land transactions, guarantees and other arrangements may require certain formalities.

Invalidity risks include:

- lack of capacity;
- mistake;
- misrepresentation;
- duress;
- undue influence;
- illegality;
- uncertainty; and
- absence of consideration where no recognised exception applies.

Corporate authority and execution formalities should be checked.

Courts take an objective approach, reading the contract in context and giving effect to its commercial purpose without rewriting the bargain. Exclusion and limitation clauses are subject to the Control of Exemption Clauses Ordinance (Cap 71) reasonableness rules where applicable. The Unconscionable Contracts Ordinance (Cap 458) protects consumers in limited cases.

The Limitation Ordinance (Cap 347) generally provides a six-year period for claims on simple contracts, subject to exceptions and different rules for specialty contracts, fraud and latent damage. Parties should preserve records and address notice, governing law, dispute forum and force majeure wording expressly.

7.2 Termination and Remedies

Termination is available for the following:

- breach of an express termination clause;
- repudiatory breach;
- breach of a condition; or
- sufficiently serious breach of an innominate term.

Wrongful termination is itself a repudiatory breach and may entitle the innocent party to damages, acceptance of the repudiation or, where appropriate, specific performance or other relief.

Force majeure is principally contractual; there is no general implied force majeure doctrine. Frustration may discharge a contract where a supervening event makes performance impossible, illegal or radically different, but hardship or increased expense alone ordinarily does not suffice.

Remedies for a breach of contract include:

- damages;
- debt claims;
- injunctions;

- specific performance;
- declarations;
- rescission; and
- restitution.

Damages aim principally to compensate loss caused by breach, subject to causation, remoteness, mitigation and proof. Liquidated damages may be enforceable if they protect a legitimate interest, but an extravagant or unconscionable sum that is in substance a penalty may not be.

7.3 Intellectual Property in Commercial Transactions

The assignment and licensing of patents, trade marks, designs and copyright must generally be in writing (eg, non-exclusive licence of copyright does not need to be in writing) and, where relevant, recorded with the Intellectual Property Department of Hong Kong to protect priority and opposability. Trade secrets are protected principally through contract and equitable obligations of confidence. The principal statutes are as follows:

- Patents Ordinance (Cap 514);
- Trade Marks Ordinance (Cap 559);
- Copyright Ordinance (Cap 528);
- Registered Designs Ordinance (Cap 522); and
- Trade Descriptions Ordinance (Cap 362).

Employee-created IP is generally allocated by statute and contract, with ownership depending on the type of right, terms of employment contract and the circumstances of creation. Commissioned works do not automatically belong to the commissioning party in every case, so express contractual provisions are important. Joint-development arrangements should specify ownership, prosecution, licensing and exploitation rights.

AI-generated content raises unresolved questions concerning the following:

- human authorship;
- originality;
- data training;
- infringement; and
- contractual allocation.

As a result, businesses should not assume that AI output is protectable or free from third-party rights.

Courts may grant injunctions, damages or an account of profits, delivery-up or destruction and other relief available under the relevant IP statute. Early evidence preservation and confidentiality protections are important in disputes.

7.4 Consumer Protection

Principal consumer protection laws in Hong Kong include:

- Trade Descriptions Ordinance;
- Control of Exemption Clauses Ordinance (Cap 71);
- Sale of Goods Ordinance (Cap 26);
- Supply of Services (Implied Terms) Ordinance (Cap 457);
- Unconscionable Contracts Ordinance (Cap 458); and
- PDPO.

Sector-specific regimes apply to financial services, telecommunications, residential property, travel, insurance and other industries. Hong Kong does not have a universal statutory cooling-off period for ordinary commercial purchases, although cooling-off rights exist in particular sectors and contracts.

The Hong Kong Customs and Excise Department enforces the Trade Descriptions Ordinance and may investigate, prosecute, search and seize goods. Consumers may bring civil claims, seek rescission or damages and use sectoral complaint and mediation mechanisms. The Consumer Council provides advice and mediation but is not generally a coercive regulator.

The following may be challenged under statute or common law:

- misleading advertising;
- false trade descriptions;
- bait advertising;
- aggressive sales practices; and
- unfair exemption clauses.

E-commerce businesses must comply with the same consumer, privacy, contract and advertising rules as

offline businesses, with additional practical issues concerning disclosure of terms, electronic consent, payment security and cross-border enforcement.

8. Foreign Investment

8.1 Competition and Merger Control

The Competition Ordinance (Cap 619) governs merger control in Hong Kong. It establishes the first conduct rule which addresses and prohibits anti-competitive agreements and concerted practices, as well as the second conduct rule which addresses and prohibits abuse of market power. The merger rule applies principally to mergers involving carrier licence holders in the telecommunications sector.

Hong Kong therefore does not have a general economy-wide mandatory merger notification regime or system. Additionally, given the narrow nature of Hong Kong's merger control regime, most M&A transactions in Hong Kong do not fall within the scope of the regime.

Notification under the merger rule is voluntary, although the Competition Commission or Communications Authority may investigate and take enforcement action. The substantive test is whether a merger has, or is likely to have, the effect of substantially lessening competition. There are no general monetary notification thresholds comparable to those in many other jurisdictions that would automatically trigger a filing obligation, although turnover and sectoral factors may be relevant under the statutory regime. Given the voluntary nature of the notification, there is no particular statutory deadline on the notification and no mandatory waiting period, therefore transactions may generally complete without any prior clearance being obtained.

If a merger falls within the scope of the regime, the Competition Commission and Communications Authority may investigate, require information, apply for enforcement orders and seek penalties. The Competition Tribunal may impose fines of up to 10% of Hong Kong turnover for each year of infringement, subject to the statutory maximum period, and may make disqualification, damages and other orders. Individuals and businesses may also face civil liability and reputational harm.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Hong Kong does not have an overarching regime to regulate foreign investments into Hong Kong. As such, foreign companies and individuals are generally free to acquire shares, businesses, assets and real property in Hong Kong without prior governmental approval, with the exception of certain regulated industries such as financial services, telecommunications and airlines where specific approvals would be required. These are often enforced through the following:

- specific conditions attached to the licences;
- change-of-control approval requirements;
- regulator consent requirements; and
- potential suspension or revocation of licences for misconduct or breach of licensing conditions.

Unlike the US, UK, Australia and Canada, amongst others, Hong Kong does not currently have a national security screening regime with respect to foreign investment. However, national security considerations have become more prominent following (i) the implementation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region in 2020, and (ii) the enactment of the Instrument A305 Safeguarding National Security Ordinance in 2024. Notwithstanding this, these regimes do not establish a conventional merger-clearance or foreign investment approval mechanism in Hong Kong.

Hong Kong offers a low-tax, business-friendly environment which applies equally to foreign and domestic investors. Certain initiatives through government agencies such as Invest Hong Kong provide support to foreign businesses looking to set up and expand into Hong Kong. Additionally, certain sector-specific incentives have been introduced by the Hong Kong government in recent years to target and attract investments into Hong Kong. These sectors include asset and wealth management, family offices and fintech, amongst others.

Some additional recent developments or policy changes that have affected foreign investment in Hong Kong include the introduction of an inward redomiciliation regime, allowing eligible overseas companies to migrate their place of incorporation to Hong Kong without undertaking a full corporate restructuring and ongoing initiatives to integrate the Guangdong–Hong Kong–Macao Greater Bay Area and create opportunities for foreign investors to access Mainland Chinese markets through Hong Kong.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Data Privacy: Protection of Personal Data

Hong Kong's data privacy regime is anchored in the PDPO, which covers both the private and public sectors. The PDPO intends to protect the privacy of individuals in relation to personal data, defined to mean data relating directly or indirectly to a living individual from which it is practicable for the identity of the individual to be directly or indirectly ascertained and in a form in which access to or processing of the data is practicable.

Data Protection Principles

The PDPO sets out six generally worded Data Protection Principles (DPPs) in Schedule 1. Serving as a broad base framework, the DPPs cover collection, accuracy, purpose and use, security, openness, access and correction of personal data. The DPPs are supplemented by guidance notes issued by Office of the Privacy Commissioner for Personal Data (PCPD) as to how the DPPs should be implemented.

Breach of DPPs will not automatically lead to criminal liability, but an issuance of an enforcement notice by the PCPD as against the data user. Contravention of the enforcement notice is an offence punishable by a fine and/or imprisonment.

Cross-border transfer

While the PDPO has a section (Section 33) addressing cross-border transfer of personal data, that section has not yet been brought into effect. Nonetheless, in cross-border transfers, data users must at least comply with the other provisions of the PDPO and the DPPs. Data users are recommended to implement contractual safeguards with overseas data users and data processors to ensure continued compliance with the requirements of the PDPO following the transfer of personal data to the overseas recipient. In particular, the PCPD has issued guidance materials, model clauses and standard contracts for data users' reference, adoption and/or incorporation.

Direct marketing

Where a business intends to use (self-use) or provide (third-party use) personal data collected for direct marketing, it must be mindful of the requirements under Part 6A of the PDPO. Hong Kong adopts an "opt-in" scheme. Compliance generally requires the provision of prescribed notices and the obtaining of the data subject's consent before such use or provision occurs, as well as further obligations upon receiving an opt-out request from the data subject.

Cybersecurity: Critical Infrastructure Cybersecurity Regime

On 1 January 2026, the Protection of Critical Infrastructures (Computer Systems) Ordinance (Cap 653) (PCI(CS)O) came into force. Under the PCI(CS)O, authorities can identify critical infrastructures and designate critical infrastructure operators (the "CI Operator") and critical computer systems by written notice. The designated CI Operator will be subject to obligations relating to organisation, prevention of threats and incidents, as well as incident reporting and response.

Codes of Practice, including both generic and sector-specific codes, have been published to provide practical guidance on compliance obligations for designated CI Operators. Most recently, in October 2026, the HKMA published a code of practice (pursuant to the PCI(CS)O) for Retail Payment System Infrastructure Operators designated by the Monetary Authority as Critical Infrastructure Operators.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering and Counter-Terrorist Financing

Hong Kong's core anti-money laundering (AML) and counter-terrorist financing (CTF) framework compris-

es the AMLO, alongside case law and other criminal and industry-specific statutes. The AMLO applies principally to financial institutions and designated non-financial businesses and professions, including authorised institutions, SFC licensed corporations, insurers, financial service providers (including money service operators and stored value facility licensees), accountants, lawyers, trust and company service providers, and certain precious-metals businesses. Obligations include:

- customer identification and verification;
- ongoing monitoring;
- record keeping;
- suspicious-transaction reporting; and
- risk-based internal controls.

Anti-Bribery and Corruption

Hong Kong's private and public sector bribery offences sit primarily under the POBO and ancillary legislations. In the business context, Section 9 of the POBO renders it an offence for a person to offer an agent (including an employee) or for an agent to solicit or accept an advantage in return for them doing or forbearing to do an act in relation to their principal's affairs or business without permission, lawful authority or reasonable excuse. To prevent bribery and corruption, businesses should implement and maintain policies covering:

- gifts and hospitality;
- approval procedures;
- conflict of interests;
- reporting;
- whistle-blowing and investigations; and
- robust internal controls, eg, regular employee training and periodic compliance reviews.

Sanctions

UN sanctions (except sanctions against the PRC) are implemented in Hong Kong under the United Nations Sanctions Ordinance (Cap 537), with subsidiary regulations targeting specific jurisdictions. Businesses can ensure compliance in transactions and supply chains through proportionate due diligence, eg, screening customers, counterparties, beneficial owners, payments and shipments, and contractual safeguards.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulations

While Hong Kong has a number of environmental laws and regulations (eg, Air Pollution Control Ordinance (Cap 311), Waste Disposal Ordinance (Cap 354), Hazardous Chemicals Control Ordinance (Cap 595), etc), there is no universal economy-wide carbon tax or mandatory emissions-trading scheme and carbon offsetting remains largely voluntary, although sectoral schemes, energy-efficiency requirements and government climate policies may apply. As a result, private businesses operating in Hong Kong generally have less to consider when it comes to environmental and climate considerations, particularly where the business does not operate in a sector with significant environmental impacts or regulatory exposure.

Health and Safety Regulations

Hong Kong's health and safety regime is principally governed by common law (duty of reasonable care to provide competent co-workers, a safe workplace, safe plant, tools and appliances, and safe system of work), the Occupational Safety and Health Ordinance (Cap 509), Factories and Industrial Undertakings Ordinance (Cap 59) and subsidiary regulations.

9.4 Artificial Intelligence

Hong Kong does not currently have a statute dedicated specifically to the regulation of artificial intelligence (AI). Similarly, there is no single designated authority providing regulatory oversight on AI. Use of AI is governed by existing laws and regulations. Relevant regimes include the PDPO, intellectual property laws, cybersecurity laws, contract and sectoral guidance.

While a dedicated comprehensive AI law remains absent in Hong Kong, sectoral guidance continues to grow. Below is a sample list of sectoral guidance (non-exhaustive):

- HKMA – Circular on Consumer Protection in respect of Use of Generative Artificial Intelligence, containing guiding principles for authorised institutions in respect of use of generative AI (GenAI) in customer-facing applications from a consumer protection perspective;

- SFC – Circular to Licensed Corporations – Use of Generative AI Language Models, setting out mandatory guidance for licensed corporations engaging in regulated activities to critically review their existing policies, procedures and internal controls to ensure proper implementation of, and full compliance with, the requirements of the circular;
- Insurance Authority – the Insurance Authority published a white paper on AI and the insurance sector in November 2025, and has signalled that further dedicated AI governance framework will be introduced in late 2026, shortly after the publication of this Practice Guide; and
- Department of Health Medical Device Division – Artificial Intelligence Medical Devices (AI-MD) Technical Reference: TR-008 establishes regulatory, technical, risk management and labelling standards for medical devices integrated with artificial intelligence.

For more generalised best practices, businesses can refer to the following developed by the Digital Policy Office (being the key body leading AI strategy and AI integration into government services in Hong Kong):

- Ethical Artificial Intelligence Framework for developing, maintaining or using AI applications; and
- Generative Artificial Intelligence Technical and Application Guideline for developing, providing or using GenAI.

Where such development or use involves personal data, businesses can also refer to the various guidance published by the PCPD. Businesses should also verify whether any industry-specific guidance, recommendations or regulatory requirements concerning the use of AI have been issued by their relevant supervisory authority and consider the implications of such guidance on their operations.

9.5 Other Regulatory Compliance Requirements

Businesses engaging or looking to engage in specific regulated sectors in Hong Kong – eg, financial services, virtual assets, insurance, real estate, healthcare, telecommunications, education – should identify and assess whether additional sector-specific laws and regulatory requirements apply, and obtain appropriate legal advice to ensure compliance with requirements applicable at the time.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment and Labour Laws

Sources of employment law in Hong Kong are derived from a number of different legal and regulatory frameworks. These include constitutional law (Basic Law), common law (case law), statute and, as more of an "informal" source, contract (including collective agreements), codes of practice and employee handbooks.

- *Constitutional law* – Basic Law guarantees Hong Kong residents their fundamental rights, such as freedom of association and freedom to join trade unions (Article 27) and freedom of choice of occupation (Article 33).
- *Common law* – Common law principles of contract and tort (eg, negligence, vicarious liability) form a key part of the legal framework governing employment relationships and impose duties beyond statutory protections, such as employer's duty to provide safe conditions at work and employee's duty of fidelity, loyalty and confidence.
- *Statute/subsidiary legislation* – The most important enactment dealing with employment and labour relations is the EO. Other major labour ordinances include the Factories and Industrial Undertakings Ordinance, the Occupational Safety and Health Ordinance, the Employees' Compensation Ordinance (Cap 282), and the Minimum Wage Ordinance (Cap 608). Beyond the major labour legislation referred to above, the items of legislation particularly relevant to most employers and employees are the Mandatory Provident Fund Schemes Ordinance (Cap 485), the PDPO and the four anti-discrimination ordinances. A comprehensive list of labour-related legislation can be found on the website of the Labour Department.
- *Contracts*, *codes of practice*, *employee handbooks* – While there is no collective bargaining legislation in Hong Kong (and collective bargaining is not a prevalent practice either), in the rare instance that a trade union enters into a collective bargain-

ing agreement with an employer, terms of that agreement can be expressly incorporated into the employment contract, becoming legally enforceable. Codes of practice and guidelines are industry standards issued by industry watchdogs such as the Labour Department with 'special status'. While failure to observe the codes is not an offence per se, such failures may be taken into account by Hong Kong courts in determining whether any of the provisions of the relevant laws and regulations has been breached.

The Employment Ordinance

The EO sets minimum standards for an employment relationship and applies to all Hong Kong employees and their employers.

- All employees, whether full-time, part-time or temporary, with employment of sufficient nexus to Hong Kong are entitled to basic protections under the EO. These protections are mostly in respect of:
  (a) contract;
  (b) payment and restriction on deduction of wages;
  (c) granting of statutory holidays; and
  (d) unreasonable and unlawful dismissal.
- Employees employed under a "continuous contract" (the definition of which has been relaxed in January 2026 to cover where the employee has been employed continuously by the same employer for four weeks or more and either (i) the employee has worked for at least 17 hours in each week or (ii) the employee has worked for 68 hours or more in a consecutive four-week period) are entitled to the following additional benefits:
  (a) rest days;
  (b) paid statutory holidays;
  (c) annual leave;
  (d) sickness allowance; and
  (e) severance and long service payments.

Note that employees employed under employment specifically excluded from the EO pursuant to Section 4 (2) and (2A) and independent contractors or self-employed persons are not entitled to the benefits and protections under the EO.

The Employment Contract

The mandatory terms in an employment contract as prescribed by the EO are:

- wages and wage period;
- where applicable, end-of-year payment and payment period; and
- notice period for termination.

Other common terms in an employment contract include:

- location and hours of work;
- duties;
- annual leave;
- bonus;
- probationary period;
- confidential information;
- restrictive covenants; and
- garden leave.

Termination of Employment

Termination of the employment relationship is often done through one of the following means:

- notice or payment in lieu of notice by either party;
- mutual agreement;
- expiration of fixed term; or
- summary dismissal.

Notice or payment in lieu of notice

Section 6 of the EO prescribes the minimum length of notice required to terminate an employment contract. Under Section 6, the notice period can be agreed by the parties in the employment contract (which should be not less than seven days). Absent such agreement, the minimum length is one month. Special rules apply when an employee is on probation, being that either party can terminate the employment contract without notice in the first month, and, following that, on seven days' notice or such longer period as agreed by the parties in the employment contract. It is also possible for parties to make a payment in lieu of notice equivalent to the wages for the notice period under Section 7 of the EO.

Mutual agreement

Employer and employee can agree to terminate the employment and release each other from further obligations. Even when parties have reached an agreement to settle, employers may wish to err on the side of caution and include the statutory entitlements (eg, severance payments) that an employee would be entitled to as if the employee is being dismissed by the employer.

Expiration of fixed term

Where an employment contract contains a term specifying the date on which the contract will come to an end, the contract terminates automatically on that date. No further notice is required to be given.

Summary dismissal

Where an employee's employment contract is terminated by the employer without notice (or payment in lieu of such notice) and with immediate effect, this amounts to summary dismissal. Section 9 of the EO specifies five grounds on which an employer may summarily dismiss an employee, namely, if an employee, in relation to their employment:

- wilfully disobeys a lawful and unreasonable order;
- misconducts themself, such conduct being inconsistent with the due and faithful discharge of their duties;
- is guilty of fraud or dishonesty;
- is habitually neglectful in his duties; or
- behaves in a manner covered by grounds under common law, eg, gross misconduct, serious dishonesty, fundamental breach of contract, etc.

The act(s) complained of must be of sufficient gravity to justify summary dismissal, or else the termination would be wrongful, entitling the employee to common law damages and/or statutory right to compensation. Employers should be careful to document the factual basis and ensure proportionality before invoking summary dismissal.

Unlawful Dismissal

There are also circumstances under the EO in which an employer cannot terminate the employment, including, for example, where the employee:

- is pregnant or on statutory maternity leave or on statutory sick leave (other than where summary dismissal is justified);
- is entitled to compensation under the Employees' Compensation Ordinance (Cap 282); or
- is participating in trade union activities.

To terminate a protected employee may subject the employer to civil and/or criminal liability. Employers considering doing so should seek legal advice beforehand to reduce any such related risks.

10.2 Executive Compensation and Restrictive Covenants

Post-Termination Restraints

Upon cessation of the employment relationship, contractual obligations will generally come to an end unless the parties have expressly agreed in writing that certain obligations will survive termination, or such obligations continue to apply as a matter of law, including under the common law duty of confidentiality.

Common law duty of confidentiality

Following termination, trade secrets (or highly confidential information) of an employer are protected by common law's implied continuing duty of confidentiality.

Express restrictive covenants

Two of the most common forms of post-termination restrictive covenants found in Hong Kong employment contracts are non-competition (employee not to compete with employer) and non-solicitation (employee not to solicit customers and suppliers as well as co-workers) clauses.

In Hong Kong, a restrictive covenant is generally unenforceable unless the employer can prove that it is reasonable and in the public interest. The restrictive covenant must seek to protect legitimate business interests (eg, trade secrets and confidential information, workforce stability and trade connections) of the employer and only to the extent that it is reasonable in scope, duration and geography at the time made.

Hong Kong courts generally will not rewrite an unreasonable restrictive covenant (although they can pencil

out offending parts of a clause). Factors affecting reasonableness include the following:

- duration and geographical extent of the restraint;
- nature of the employer's business;
- the market; and
- seniority and relationship of the relevant employee with clients.

Therefore, when negotiating restrictive covenants, employers should tailor the ambit of the restriction and distinguish between senior and junior employees.

Retaining Talent: Employee Incentive Schemes

Employee share incentive schemes (eg, options and awards) are common tools for employers to align employees' interests with the long-term growth and performance of the company. For Hong Kong private companies, the rules around employee incentive schemes are generally flexible – offers may be made to current or former directors, employees, officers and consultants of the company, as well as their dependants (together, the "qualifying persons"), provided that the terms of the scheme restrict the acquisition of the shares or debentures to such qualifying persons and contain the prescribed warning statement under Part 3 of the Eighteenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance. For Hong Kong listed companies, Chapter 17 of the Listing Rules imposes strict structural limitations and disclosure requirements.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Almost all land in Hong Kong is held under government leases rather than freehold title. Land holding may be categorised as sole ownership, joint tenancy or tenancy in common. The Land Registry records interests under Hong Kong's deeds registration system. Registration does not itself confer title but can establish priority as between competing registered interests.

There are generally no restrictions on real property ownership based on nationality, residency or place of incorporation that prevent foreign individuals or corporations from acquiring, holding or disposing of Hong Kong real property. Accordingly, foreign individuals and corporations may generally acquire, hold and dispose of Hong Kong real property without governmental approval, licensing or residency requirements.

Transactions involving the transfer of Hong Kong real property are in general subject to ad valorem stamp duty. For over a decade, Hong Kong implemented demand-side management measures for residential properties involving additional stamp duty obligations. The Hong Kong government abolished all residential property demand-side management measures with effect from 28 February 2024, including special stamp duty, buyer's stamp duty and the enhanced residential stamp duty regime applicable to residential property acquiring an interest. Standard ad valorem rates still apply.

Purchasers should engage legal professionals to review the following before acquisition:

- applicable government lease conditions;
- planning restrictions;
- user restrictions;
- deed of mutual covenants; and
- any encumbrances affecting the relevant property.

11.2 Commercial Real Estate Transactions

The principal legal framework governing commercial real estate transactions in Hong Kong includes the CPO, the LRO, the Stamp Duty Ordinance (Cap 117), relevant government leases and conditions of grant, the Buildings Ordinance (Cap 123), the Town Planning Ordinance (Cap 131), and related legislation.

Commercial Sale and Purchase

Acquisition and disposal of commercial real property will typically involve due diligence covering the following key areas:

- title;
- government lease conditions;
- encumbrances;
- occupation permits;
- existing tenancies;
- rates; and

• government rent.

Sale and purchase agreements allocate risk through warranties, conditions precedent, completion mechanics and indemnities.

Commercial financing may be secured by legal mortgages, equitable mortgages or fixed charges over real property, with the relevant security interests registered in the Land Registry and, where applicable, corporate charges at the Companies Registry. Priority depends mainly on registration. Enforcement may involve possession, sale, appointment of a receiver or foreclosure, subject to court procedure and mortgage terms.

Commercial Leases

Commercial leases are principally contractual. Key issues include:

• rent and review mechanisms;
• term and renewal rights;
• options;
• repair and reinstatement;
• use;
• alterations;
• compliance with laws;
• insurance;
• assignment;
• subletting;
• change of control;
• redevelopment;
• casualty;
• rent suspension;
• default; and
• forfeiture.

Landlords may seek possession, forfeiture, arrears, damages or injunctions, while tenants may seek relief from forfeiture or damages for breach. Security deposits, guarantees and other credit support arrangements may also be incorporated into commercial leasing arrangements on a case-by-case basis.

JAPAN



Law and Practice

Contributed by:
Masahiro Nakatsukasa, Yusaku Akasaki, Katsuya Hongyo and Takashi Sasaki
Chuo Sogo LPC

Contents

1. Business Entities P.396
1.1 Business Organisations p.396
1.2 Incorporation and Ongoing Compliance p.396
1.3 Share Issuances p.397
1.4 Distributions and Return of Capital p.397
1.5 Control Person Reporting p.398

2. Corporate Governance P.398
2.1 Legal Framework p.398
2.2 Directors' Duties and Liabilities p.399
2.3 Board Composition and Independence p.399
2.4 ESG and Disclosure Obligations p.399
2.5 Conflicts of Interest and Related-Party Transactions p.400

3. Shareholder Rights and Agreements P.400
3.1 Shareholder Rights p.400
3.2 Shareholder Agreements p.401

4. Mergers and Acquisitions P.402
4.1 Legal Framework p.402

5. Capital Markets P.404
5.1 Securities Regulation and Public Offerings p.404
5.2 Continuous Disclosure p.405
5.3 Insider Trading p.405
5.4 Shareholder Disclosure p.405
5.5 Internal Controls and Whistle-Blower Regimes p.406

6. Secured Transactions P.406
6.1 Transaction Financing and Security Interests p.406

7. Commercial Contracts P.407
7.1 Contract Formation and Enforceability p.407
7.2 Termination and Remedies p.407
7.3 Intellectual Property in Commercial Transactions p.408
7.4 Consumer Protection p.409

8. Foreign Investment P.409
8.1 Competition and Merger Control p.409
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.410

9. Regulatory Compliance P.411
9.1 Privacy and Data Protection p.411
9.2 Anti-Money Laundering, Sanctions and Corruption p.411
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.412
9.4 Artificial Intelligence p.413
9.5 Other Regulatory Compliance Requirements p.413

10. Employment and Labour P.413
10.1 Employment Standards and Workplace Regulation p.413
10.2 Executive Compensation and Restrictive Covenants p.414

11. Real Property and Commercial Leasing P.415
11.1 Requirements for Land Ownership p.415
11.2 Commercial Real Estate Transactions p.415

Chuo Sogo LPC is a leading full-service firm with over 70 lawyers in Tokyo, Osaka and Kyoto. For more than 50 years, it has provided efficient and cost-effective legal services to domestic and international clients. As a member of the Global Legal Alliance, the firm offers worldwide reach and expertise across diverse fields including commercial law, finance, M&A, corporate reorganisation, compliance, labour, IP, real estate and dispute resolution. Many of its attorneys have been seconded to key divisions of the Financial Services Agency (JFSA), enabling Chuo Sogo to deliver practical advice grounded in deep regulatory insight. With 11 specialised practice groups – such as finance, corporate start-ups, IP, and labour – the firm combines sectoral expertise to meet complex client needs. Its fintech-focused teams actively study cutting-edge regulatory systems, including Japan's grey-zone elimination and sandbox frameworks, ensuring clients receive innovative and business-oriented legal solutions.

Authors



Masahiro Nakatsukasa is the managing partner of Chuo Sogo LPC. Admitted in Japan in 1994 and in New York in 2006, he holds an LLM from Northwestern University School of Law and practised at Kirkland & Ellis in Chicago before rejoining the firm. His practice focuses on M&A, corporate governance, finance and cross-border dispute resolution, and he advises listed and privately held companies on acquisitions, joint ventures, shareholder matters and board-level issues. Masahiro serves as an outside director of several listed companies, has lectured at Kyoto University Graduate School of Law and is a former vice-president of the Osaka Bar Association.



Yusaku Akasaki handles a wide range of consultations for corporate clients at Chuo Sogo LPC and has extensive foreign and domestic experience, particularly in corporate law, corporate governance, M&A, labour and employment matters, competition law and data protection law. Leveraging his study abroad experiences in the United States and the Middle East, Yusaku frequently provides support and advice to clients on cross-border commercial transactions, corporate governance-related matters and M&A.



Katsuya Hongyo advises both Japanese and international clients, including banks, insurance companies, asset management firms and fintech start-ups. His practice at Chuo Sogo centres on financial regulation – covering areas such as the Banking Act, Financial Instruments and Exchange Act, Payment Services Act and Money Lending Act – as well as finance, M&A, compliance and risk management and litigation. Katsuya draws extensively on his experience as a seconded attorney at the JFSA. He has supported foreign financial institutions in obtaining licences to operate in Japan and regularly provides legal counsel on a wide range of financial regulatory issues.



Takashi Sasaki advises domestic and international clients on a broad range of corporate matters, with particular experience in intellectual property, labour and employment, and cross-border legal issues. His IP practice at Chuo Sogo includes patent litigation at the Intellectual Property High Court, copyright and trade mark disputes, entertainment matters involving video games and films, and emerging technologies such as generative AI. Takashi also advises employers on disciplinary actions, terminations, wages, working hours and harassment, and represents companies in related disputes. His international practice covers English-language contracts, M&A due diligence, distributor disputes and cross-border IP matters, together with general corporate governance and compliance advice.

Chuo Sogo LPC

Osaka Dojimahama Tower, 15th Floor
1-1-27 Dojimahama
Kita-ku
Osaka
530-0004
Japan

Tel: +81 6 6676 8834
Fax: +81 6 6676 8839
Web: www.clo.jp/english/

1. Business Entities

1.1 Business Organisations

Business Entities

The main business entities used in Japan are, first, companies as a juridical person:

- stock companies;
- limited liability companies;
- general partnerships; and
- limited partnerships.

Of these, stock companies and limited liability companies are the most common.

In addition to raising funds through shares and stock options, a stock company can differentiate the rights attached to its shares by issuing different classes of shares. It is therefore highly compatible with IPOs and venture capital (VC)/private equity (PE) investment and is the preferred vehicle for businesses that anticipate outside investors. A general partnership is characterised by the limited liability of all its members and the ability to design its governance flexibly without a board of directors or similar bodies; it is widely used for Japanese subsidiaries of foreign companies, joint ventures and special purpose vehicles (SPVs).

Second, there are partnerships without separate legal personality: the limited liability partnership (LLP) and the investment limited partnership (LPS). An LLP is characterised by pass-through taxation and flexible governance, making it suitable for joint research and joint ventures among professionals. An LPS consists of general partners with unlimited liability and limited partners, whose liability is limited. LPSs are used mainly for PE and VC funds.

In addition, although not used as business entities as such, trusts are often used for asset securitisation and asset management.

Factors of Structure

The choice of business entity in Japan therefore involves weighing factors such as:

- whether liability is limited or unlimited;
- whether entity-level or pass-through taxation;
- plans for external fundraising or an IPO;
- degree of flexibility of governance;
- tax classification on the investor side;
- capital and organisational requirements under sector-specific regulation; and
- for foreign investors, notification requirements under the Foreign Exchange and Foreign Trade Act.

1.2 Incorporation and Ongoing Compliance

Incorporation Procedure

For a stock company, the incorporation procedure is broadly as follows:

- preparation of the articles of incorporation (Companies Act (CA), Article 26 (1));
- payment of capital contributions (Article 34 (1));
- appointment of directors and other officers (Articles 38 and 47); and
- registration of incorporation (Article 49).

For a stock company, the costs of incorporating include:

- a notarial fee of JPY30,000 to 50,000 for certifying the articles of incorporation, depending on the amount of capital (JPY15,000 for small companies with no more than three incorporators);
- registration and licence tax of 0.7% of the capital (minimum JPY150,000); and
- stamp duty of JPY40,000 on the articles (not required for electronic articles).

There is no minimum capital requirement, so a company may be incorporated with capital of as little as JPY1.

Incorporation generally takes two to three weeks, provided that the necessary documents, seal certificates and so on are in place.

Ongoing Obligations

Ongoing obligations include:

- maintenance of a shareholder register (CA, Article 121);
- financial statements for each business year (Article 435 (2));
- public notice of the balance sheet after the annual general meeting (Article 440 (1));
- registration of changed registered matters such as officers, head office or trade name (Article 915 (1));
- filing tax returns; and
- completing social insurance procedures.

Failure to maintain the shareholder register, make required corporation registrations, publish the balance sheet and so on may render officers liable to a non-penal fine of up to JPY1 million (Article 976).

1.3 Share Issuances

Share Issuances

Japan has abolished par value shares, and all shares are now no-par shares. The equivalent of "authorised capital" is the total number of authorised shares set out in the articles of incorporation. In a public company, it cannot exceed four times the number of issued shares (Companies Act (CA), Article 37 (1) and (3)).

The company determines the number of shares, the amount to be paid and the payment date for shares. The issuance is approved by special resolution of the shareholders' meeting in a non-public company (Articles 199 (2) and 309 (2)(v)) or by board resolution in a public company (Article 201 (1)).

However, even in a public company, an issuance of shares at a "particularly favourable price" requires the directors to explain the reasons and obtain a special shareholders' resolution (Article 199 (3)). For listed companies, the Japan Securities Dealers Association generally requires a price of at least 90% of the share price on the day before the board resolution. In unlisted companies, directors' discretion is respected where the price is calculated by a reasonable method (Supreme Court, 19 February 2015), commonly the discounted cash flow (DCF) method.

Shareholders may seek an injunction against an issuance if the issuance violates applicable laws or the articles or uses a grossly unfair method (Article 210). Under the "primary purpose" test, unfairness depends on whether the primary purpose is to raise capital or to maintain control (Tokyo High Court, 4 August 2004).

Class of Shares

Classes of shares may be issued with rights differentiated in respect of nine statutory matters, which may be freely combined (CA, Article 108 (1)). VC investments, for example, use preferred shares with preferential dividends, liquidation preferences, conversion and call provisions and veto rights, although the actual investment terms are often set out in a shareholders' agreement instead.

Certain acts that may prejudice a class of shareholders require a resolution of a meeting of that class of shareholders (Article 322 (1)).

1.4 Distributions and Return of Capital

Dividends

Dividends are, in principle, declared by resolution of the shareholders' meeting (Companies Act (CA), Article 454 (1)). If the articles so provide, an interim dividend may be paid by board resolution (Article 454 (5)).

The total book value of assets distributed may not exceed the "distributable amount" on the effective date of distribution (Articles 461). This amount is calculated on the basis of the surplus shown in the balance sheet. Unlike some common law countries, Japan does not apply a "solvency test" to dividend distributions.

Where a dividend breaches this restriction, the recipient shareholders and the responsible directors are jointly liable to return it, and release from this liability is strictly limited (Articles 462); if a deficit arises at the year end, the responsible directors must make it good (Articles 465 (1)).

Acquisition of Own Shares

Acquisitions of a company's own shares for consideration also, in principle, require a shareholders' resolution (CA, Article 156 (1)) and are subject to the distributable amount restriction (Article 461). An acquisition from a specific shareholder requires a special resolution and entitles other shareholders to request to be added as sellers (Article 160). Treasury shares may be cancelled by board resolution (Article 178).

Unlike UK law, Japanese law has no provision directly prohibiting financial assistance for the acquisition of shares. Raising capital by a target company in a leveraged buyout (LBO) is therefore not unlawful per se, but it is constrained by the following:

- prohibition on subsidiaries acquiring parent company shares (Article 135 (1));
- prohibition on conferring benefits in connection with the exercise of shareholder rights (Article 120 (1));
- directors' duty of care (Article 330; Civil Code, Article 644); and
- offence of aggravated breach of trust (CA, Article 960).

1.5 Control Person Reporting

Japan has no regime for the public disclosure of a company's beneficial owners, such as the UK's PSC register. The commercial register records the representative directors and other officers, but not shareholders or beneficial owners, and only shareholders and creditors have the right to inspect the shareholder register. That said, beneficial ownership information can be obtained to some extent through individual regimes.

First, "specified business operators" such as financial institutions must verify the identity of the beneficial owners of corporate customers (such as persons directly or indirectly holding more than 25% of the total voting rights) (Act on Prevention of Transfer of Criminal Proceeds, Article 4 (1)(iv)). In practice, this is the most effective means of obtaining beneficial ownership information.

Secondly, for stock companies, a beneficial owner list system was introduced in 2022. The company prepares a list of its beneficial owners and submits it to the registrar, who checks and retains it and issues certified copies. However, use of this system is entirely voluntary.

Other relevant regimes include prior notification and post-investment reporting obligations for foreign investors (see **8.2 Foreign Investment Restrictions and Sector-Specific Rules**), and the major shareholder rules and the large shareholding reporting regime for listed companies (see **5.4 Shareholder Disclosure**).

Finally, the interim draft proposals compiled in March 2026 include a "beneficial shareholder identification system", which would make it easier to identify persons holding de facto voting rights behind the shareholders of record.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Japan is regulated by a combination of laws and regulations, including:

- the Companies Act and the Financial Instruments and Exchange Act;
- stock exchange listing rules; and
- the Corporate Governance Code (the "Code"), most recently revised on 21 July 2026.

The Companies Act prescribes the basic governance structure of stock companies, directors' duties,

internal controls and other matters. Under the stock exchange rules, listed companies are required either to implement the principles of the Code, or, where they do not implement them, to explain the reasons under a "comply or explain" approach. Although the Code itself is not a law or regulation, it functions as an important set of standards for listed companies.

2.2 Directors' Duties and Liabilities

The relationship between a director and the company is one of mandate, and the director owes the company a duty of due care as a prudent manager. Article 355 of the Companies Act requires directors to comply with laws and regulations, the articles of incorporation and resolutions of shareholders' meetings, and to perform their duties faithfully for the stock company (the "duty of loyalty").

Judicial precedent has indicated that directors' duties of due care as a prudent manager and duties of loyalty include duties to establish risk management and internal control systems and to monitor their effective operation, as well as duties to direct and supervise employees so as to detect and prevent unlawful or improper conduct.

The specific standard of care is determined by taking into account such factors as the size of the company and the nature of its business.

Where a director neglects their duties and causes loss to the company, the director is liable to the company for damages under Article 423 (1) of the Companies Act. In relation to conflict-of-interest transactions and similar matters, that Article contains provisions under which the amount of loss or a breach of duty is presumed.

2.3 Board Composition and Independence

Under the Companies Act, an outside director must not be an executive director or similar officer of the company or its subsidiary, must not have held such a position during a prescribed period, and must satisfy prescribed requirements concerning relationships with the parent company and similar entities, family relationships and other matters. In addition, certain companies with a board of company auditors that are required to file annual securities reports must appoint at least one outside director.

Under the Corporate Governance Code, a company listed on the Prime Market should appoint independent outside directors with sufficient qualifications comprising at least one third of the board (for companies listed on other markets, at least two independent outside directors). A Prime Market-listed company that considers it necessary, taking comprehensive account of its industry, size, business characteristics, governance structure, the environment surrounding the company and other factors, to appoint a majority of independent outside directors (or, for a company listed on another market, at least one third of the board) should appoint a sufficient number of independent outside directors.

In addition, the board of directors should be composed so as to achieve both an appropriate size and diversity, including in terms of gender, international experience, career background, age and cultural background, while collectively possessing a well-balanced mix of the knowledge, experience and capabilities necessary to perform its roles and responsibilities effectively.

2.4 ESG and Disclosure Obligations

Japan does not have a single law that imposes comprehensive ESG obligations on corporations generally. Rather, ESG matters are regulated through a combination of disclosure requirements under the following:

- the Financial Instruments and Exchange Act;
- environmental and labour-related laws and regulations;
- the Corporate Governance Code; and
- other relevant rules.

Companies required to file annual securities reports must disclose governance, risk management and other matters under the section titled "Approach and Initiatives Regarding Sustainability", and must also disclose material climate-related information. In addition, among companies listed on the Prime Market, those with a market capitalisation above certain thresholds will, in phases from the fiscal year ending March 2027 onwards, be required to disclose sustain-

ability and climate-related information in accordance with the SSBJ Standards, which are uniform rules for corporate ESG disclosure developed by the Sustainability Standards Board of Japan (SSBJ).

However, there is no general statutory duty requiring directors to independently prioritise environmental, social or stakeholder interests. Nonetheless, under the Corporate Governance Code, listed companies are expected to appropriately co-operate with stakeholders, including employees, customers, business partners and local communities, from the perspective of sustainable growth and the enhancement of corporate value over the medium to long term.

Boards of directors are expected to do the following:

- identify ESG-related risks and opportunities that are material to their companies;
- integrate the risks and opportunities into management strategy and risk management;
- establish appropriate responsibility structures, targets and KPIs; and
- regularly monitor progress.

2.5 Conflicts of Interest and Related-Party Transactions

Where a director engages in a transaction that falls within the scope of business carried on by the company, enters into a transaction with the company for the director's own account or for the account of a third party, or enters into a transaction in which the interests of the company and the director conflict, the director must disclose the material facts at a shareholders' meeting – or for companies with a board of directors, a board of directors' meeting – and obtain approval of the respective meeting. Where the company suffers loss as a result of a conflict-of-interest transaction by a director, there are provisions under which the said director is presumed to have neglected their duties.

For transactions with related parties, the Ordinance on Company Accounting requires disclosure by way of notes of material matters concerning, among other things:

- relationship with the related party;
- nature of the transaction;
- amount of the transaction;
- transaction terms and the policy for determining those terms; and
- year-end balance.

Related parties include:

- parent companies;
- subsidiaries;
- affiliates;
- major shareholders; and
- officers and their close relatives.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights

Shareholder rights in a Japanese stock company (*kabushiki kaisha*) are set out in the Companies Act. A "public company" under the Act is a company that has at least one class of shares that may be transferred without the company's approval. Listed companies are public companies, but a public company is not necessarily listed. A "non-public company" is a company that requires the company's approval for the transfer of its shares. Listed companies are also subject to the Financial Instruments and Exchange Act (FIEA) and the Tokyo Stock Exchange (TSE) rules (see **5. Capital Markets**).

Shareholders participate in dividends and distributions of residual assets according to their share rights.

Voting and Fundamental Changes

Voting generally follows the principle of one vote per share or share unit. Directors are generally elected and removed by ordinary resolution, requiring a majority of the votes present at a meeting satisfying the applicable quorum. In a company with a board, shareholders decide matters reserved to them by legislation or the articles, rather than directing day-to-day management.

Fundamental changes generally require a special resolution:

- amendments to the articles;

- mergers, company splits, share exchanges and other statutory reorganisations;
- significant business transfers;
- share issuances on particularly favourable terms and share issuances by non-public companies;
- share consolidations;
- dissolution; and
- removal of a statutory auditor.

The standard requirement is at least two-thirds majority of the votes present, with a quorum of a majority of eligible voting rights; the articles may reduce the quorum to one third. Statutory exemptions can simplify reorganisation approvals (see **4.1 Legal Framework**).

Minority Rights and Information

In a company with a board, shareholders holding at least 1% of the voting rights or at least 300 votes may require proposals to be circulated to shareholders, usually by making this request eight weeks before the meeting. Holders of at least 3% of the voting rights may require a general meeting to be convened; in a public company these rights must have been held for six months continuously.

Every shareholder may inspect the shareholder register, the articles, the financial statements and the minutes of general meetings. Shareholders holding at least 3% of the voting rights or issued shares may inspect the accounting books by stating their reasons. However, the company may refuse on specified statutory grounds such as an improper purpose or a competing business.

Statutory Remedies

Shareholders may sue within three months of the date of a resolution to rescind a general meeting resolution for statutory defects, including serious procedural unfairness, and may seek injunctions against unlawful acts of directors and against unlawful or grossly unfair share issuances.

A shareholder who has held shares for at least six months in a public company may bring a derivative action against directors if the company fails to sue within 60 days of a demand; any recovery goes to the company. Directors may also be directly liable to shareholders and creditors for losses caused by bad faith or gross negligence in performing their duties.

Shareholders who dissent from a merger or other statutory reorganisation, and those being squeezed out, may seek fair-price protection through share purchase demands or judicial price determination, depending on the transaction.

Shareholders holding at least 10% of the voting rights or issued shares may seek judicial dissolution in exceptional cases, such as extreme operational difficulty causing irreparable harm or seriously improper management endangering the company's existence. Ordinary disagreement with the majority does not suffice.

3.2 Shareholder Agreements

Role and Typical Terms

Shareholder agreements are used in in the following:

- joint ventures;
- private equity and venture investments;
- family companies; and
- strategic minority investments in listed companies.

They supplement the articles of incorporation: detailed commercial arrangements are placed in the contract, while essential corporate rights, such as class rights and transfer-approval requirements, are reflected in the articles.

Typical terms cover:

- board nomination rights;
- reserved matters requiring the minority investor's consent;
- information rights beyond the statutory minimum;
- dividend policy;
- funding obligations;
- non-compete covenants; and
- exit mechanics.

Clear triggers, valuation methods and payment arrangements matter as much as the label attached to the right.

Restricting Share Transfers

Many unlisted companies provide in their articles that share transfers require the company's approval, normally by the board if there is one. A transfer made without approval is valid between the parties but cannot be asserted against the company. If approval is refused and the applicant requests the statutory purchase procedure, the company must buy the shares itself or designate a purchaser; the price is agreed or determined by the court.

Contractual provisions include lock-ups, rights of first refusal, tag-along rights allowing an investor to join a sale, and drag-along rights requiring other shareholders to join an agreed sale. They bind their parties, including the company if it joins the agreement, but do not automatically bind non-parties. The articles' approval regime and the contractual transfer procedures should be co-ordinated.

Enforceability

First, shareholder agreements are binding between the parties but cannot override mandatory corporate law. In particular, a put requiring the company to repurchase shares must comply with statutory distribution limits. Breach of the agreement does not by itself invalidate a corporate resolution, so key protections should be reflected in the articles where legally available.

Second, a nominee director owes duties to the company and cannot be required to vote in breach of them. Investor consent rights should therefore be structured as contractual shareholder rights, without dispensing with necessary corporate approvals.

Third, damages are available for breach, but timely court orders compelling a particular vote or share sale cannot be assumed. Parties may also consider statutory squeeze-out methods, including acquisition of an entire class of shares under an all-acquisition clause, where the required conditions can be met (see **4.1 Legal Framework**). Parties may choose foreign law to govern the agreement and arbitration for contractual disputes, but the validity of Japanese corporate acts is governed by Japanese law.

Resolving Shareholder Disputes

Japan has no general oppression or unfair prejudice remedy that allows a dissatisfied minority shareholder to force a buy-out. Investors therefore rely on the statutory tools described in **3.1 Shareholder Rights** and on negotiated contractual rights.

Appraisal proceedings protect the price in a reorganisation or squeeze-out. They do not give a minority shareholder a general right to initiate an exit. By contrast, a limited liability company (*godo kaisha*) or partnership has statutory withdrawal and repayment mechanisms, whose use depends on the legislation and the articles or partnership agreement.

Well-drafted agreements therefore provide their own internal structure: escalation to senior management, put and call options with a pre-agreed valuation method and deadlock buy-out mechanisms in 50:50 ventures.

Arbitration administered by the Japan Commercial Arbitration Association or an institution in Singapore or Hong Kong is used in cross-border ventures.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Laws

The Companies Act provides the transaction structure and the related approval, creditor protection and appraisal rules. The Civil Code governs acquisition contracts. The FIEA regulates listed-share acquisitions through tender offer rules, the 5% large shareholding reporting rules and insider trading regulation.

Since 1 May 2026, the principal mandatory tender offer threshold has been a statutory ownership ratio more than 30%, reduced from more than one third, and ordinary on-exchange purchases are covered. The calculation includes relevant specially related parties, and exemptions apply. Offers ordinarily run for 20 to 60 business days on equal terms. A bidder whose post-offer ratio reaches two thirds generally must offer for all relevant securities and purchase all securities tendered.

The TSE rules require timely disclosure. Since July 2025, an independent special committee's opinion on fairness to general shareholders for management buy-outs has been required and for specified take-private transactions involving controlling shareholders or other affiliated companies. The opinion must be obtained and disclosed. The Ministry of Economy, Trade and Industry (METI)'s Fair M&A Guidelines (2019) and Guidelines for Corporate Takeovers (2023) are not binding laws but are important benchmarks for transaction conduct.

Structuring Considerations

Ordinary solvent acquisitions in Japan proceed through corporate approvals rather than a court-sanctioned scheme of arrangement. Courts handle disputes and ancillary procedures, such as approving sales of fractional shares. Distressed businesses have separate court-supervised restructuring procedures.

Statutory reorganisations generally require special resolutions. Simplified procedures for small transactions and short-form procedures for certain 90%-owned relationships can dispense with a vote at the relevant company. A typical simplified transaction involves consideration not exceeding 20% of the acquirer's net assets. Approval exemptions and dissenters' appraisal rights must be considered separately. Mergers and company splits normally require a creditor objection period of at least one month. Foreign-incorporated companies cannot be direct parties to mergers or share exchanges under the Japanese Companies Act. Overseas buyers instead use a Japanese subsidiary. The foreign parent's shares may be used as consideration in a triangular merger or share exchange.

The two-thirds threshold is central to public M&A. A holder of at least 90% of the voting rights can generally acquire the remaining shares through the special controlling shareholder cash-out procedure, with the target board's approval but without a shareholder vote. Below 90%, a share consolidation approved by special resolution is commonly used: minority shareholdings are reduced to fractional shares, which are then converted into cash. Bidders seeking full ownership therefore often target two thirds of all voting rights, which is sufficient to secure the approval of the required special resolution, and plan the tender offer and squeeze-out together.

Common Deal Structures

For unlisted targets, a negotiated share purchase is a common structure. The target remains the owner of its assets and a party to its contracts, but change-of-control provisions still require review. Carve-outs use a company split or business transfer, often followed by a sale of the subsidiary holding the business. A business transfer generally needs individual contract-transfer consents, including employees' consent to transfer their employment contracts; a company split uses statutory succession with creditor and employee protections, while licences must be reviewed separately.

For listed targets, a cash tender offer followed by a squeeze-out is the standard route to full ownership. Parent companies may use tender offers or share exchanges, and a joint share transfer to a new holding company is an option for combinations of equals. In conflicted take-privates, the central safeguards are an independent special committee, effective independent advice, genuine negotiation and adequate disclosure.

Recent Legislative and Regulatory Changes

METI also published Key Points and a Q&A supplementing its takeover guidelines in July 2026.

Companies Act reform remains under consideration. The 2026 interim proposal includes extending share deliveries to acquisitions of foreign companies and an option to permit the special controlling shareholder cash-out at two thirds of voting rights, rather than 90%, following a tender offer meeting fairness condition.

Recent Court Decisions

In *Jupiter Telecom* (Supreme Court, 1 July 2016), the acquisition price was challenged in a two-step take-private comprising a tender offer followed by compulsory acquisition of an entire class of shares under an all-acquisition clause. Before the offer, the two acquiring companies together held, directly or indirectly, at least 70% of the target's voting rights, which created structural conflicts of interest. The Supreme Court

held that, even in such a transaction, the tender offer price should be respected where generally accepted fair procedures had been followed, including independent review and disclosure that the subsequent acquisition would be at the same price, absent special circumstances such as an unexpected change in the underlying circumstances.

By contrast, in the *FamilyMart* case (Tokyo District Court, 23 March 2023; Tokyo High Court, 31 October 2024), the procedure was not considered to be fair and the courts set a fair price of JPY2,600 per share, which was higher than the JPY2,300 tender offer price. According to the petitioning investor, Oasis, in *SHiDAX* (Tokyo District Court, 23 July 2026), the court likewise fixed JPY950 against an offer price of JPY800.

Japanese courts assess takeover defences by asking whether the measure was approved by shareholders in a properly constituted vote and whether it is necessary and proportionate to the threat. In *Tokyo Kikai Seisakusho* (2021), the Supreme Court upheld a defensive allotment of share options without consideration that had been approved by a "majority-of-minority" vote excluding an acquirer which had rapidly built a 40% stake through market purchases. In *Mitsuboshi* (2022), by contrast, a similar allotment was enjoined despite shareholder approval. Majority-of-minority votes excluding the acquirer have since become standard practice, but these decisions make clear that shareholder approval alone does not establish the validity of a defence. How courts will treat measures directed at investors that do not seek control remains an open question.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework and Offering Process

The Financial Instruments and Exchange Act (FIEA), its implementing regulations and the Companies Act govern securities offerings in Japan. The Financial Services Agency (FSA) and Local Finance Bureaus administer disclosure and supervise intermediaries and the Securities and Exchange Surveillance Commission (SESC) investigates market misconduct.

An IPO or follow-on public offering generally requires the issuer to file a securities registration statement through EDINET before solicitation begins and deliver a prospectus before or when investors acquire securities, subject to statutory exceptions. The statement describes:

- the issuer;
- audited financial information;
- risks;
- use of proceeds; and
- offering terms.

Securities cannot be acquired under the offering before registration becomes effective. The statutory waiting period is normally 15 days after filing, although shortening and extensions apply; amendments, pricing and underwriting affect the actual timetable.

An IPO separately requires exchange approval. TSE's Prime, Standard and Growth markets have different requirements concerning shareholder distribution, tradeable shares, financial condition and business prospects. Governance, internal management and reliable disclosure are also examined. Formal listing examination generally takes approximately two to three months, depending on the market, following substantial preparatory work and underwriting due diligence. Follow-on offerings by established issuers can proceed more quickly, but corporate approvals, disclosure and exchange procedures remain necessary.

Exempt Offerings and Transfer Restrictions

For ordinary shares and corporate bonds, solicitation of 50 or more persons generally constitutes a public offering; statutory aggregation rules prevent artificial splitting. Different rules apply to certain fund interests. The main private-placement routes are:

- small-number placements, generally involving fewer than 50 offerees, subject to aggregation and the applicable securities-specific conditions;
- placements exclusively to qualified institutional investors, with restrictions designed to keep the securities within that investor category; and
- placements to specified investors under the professional-investor regime, requiring applicable

investor eligibility, information provision and transfer restrictions.

Depending on the route and securities, issuers must notify investors that registration has not occurred and explain restrictions; professional placements also require specified securities information and subsequent issuer information where applicable.

Japan has no universal holding period for exempt securities. Restrictions depend on the exemption and may require transfers only to eligible investors or transfers of an entire holding. Issuers and distributors must assess subsequent resales separately. Non-compliance can trigger filing violations, administrative or criminal sanctions and civil liability.

5.2 Continuous Disclosure

Statutory and Exchange Disclosure

Domestic listed companies generally file annual securities reports within three months of year-end and half-yearly reports within 45 days of the half-year end, with special rules for certain financial institutions. Annual financial statements require an audit and half-yearly financial statements require an interim review. Reports include:

- financial and business information;
- risks;
- governance; and
- applicable sustainability disclosures.

Since April 2024, the FIEA quarterly-report system has been replaced by half-yearly reporting, but exchange quarterly earnings disclosures continue. TSE requires financial results promptly once finalised and timely disclosure of prescribed decisions, events and significant changes in forecasts through TDnet. Material financing, acquisitions, losses and changes affecting subsidiaries may require disclosure.

An extraordinary report must be filed through EDINET without delay when a prescribed event occurs; TDnet disclosure does not replace this obligation. The FIEA fair-disclosure rule generally requires simultaneous public disclosure when material information is intentionally provided to specified market professionals, and prompt disclosure following an inadvertent communication, subject to exceptions.

5.3 Insider Trading

Prohibitions and Enforcement

The FIEA prohibits specified corporate insiders and recipients of information from trading relevant listed securities while aware of undisclosed material facts learned through the prescribed relationship. Officers, employees, certain shareholders, advisers and contractual counterparties may be covered. Separate rules address undisclosed tender-offer information. Amendments to the FIEA enacted in July 2026, expected to take effect by July 2027, extend the tender-offer insider rules to advisers and other persons contracting or negotiating with the target company and increase the administrative monetary penalties for such violations.

Passing inside information or recommending trades to enable another person to profit or avoid loss is also regulated. Exceptions, including qualifying pre-existing trading plans, must satisfy their specific conditions. The FIEA also prohibits fraudulent trading, spreading rumours and market manipulation, including wash trades and transactions designed to create misleading trading activity. The SESC can investigate, inspect and seek information, recommend administrative monetary penalties, and investigate suspected criminal offences, including through judicially authorised searches. The FSA issues administrative orders, while prosecutors pursue criminal cases. Consequences include monetary penalties, criminal fines or imprisonment and confiscation or recovery of illicit gains; corporate liability may also arise.

5.4 Shareholder Disclosure

Large Shareholding Reports

A holder whose statutory holding ratio in listed share certificates and equivalent securities exceeds 5% must generally file a large shareholding report through EDINET within five business days. The regime covers domestic and foreign holders, including individuals and institutions, and relevant listed equity-related securities, including investment securities. Holdings of joint holders are aggregated; contractual rights and prescribed derivative positions can also count.

A change report is generally required within five business days when the holding ratio changes by at least one percentage point or another reportable material matter changes. Reports disclose matters such as:

- investment purpose;
- financing;
- recent transactions; and
- material agreements.

Qualifying financial institutions may use special reporting arrangements, subject to holding limits and restrictions on important proposals to management.

Amendments effective from 1 May 2026 clarify what constitutes an important proposal and the scope of joint holders, and bring certain cash-settled equity derivatives into the holding calculation where they are held to influence the issuer's management or the exercise of voting rights. A limited exception facilitates qualifying institutional investors' joint exercise of individual shareholder rights; it is not a general exemption for co-ordinated activism.

Failures or false statements can lead to correction orders, administrative monetary penalties and criminal sanctions. Amendments enacted in July 2026, expected to take effect by July 2027, raise the administrative monetary penalty for non-filing or false filing to 70 times the current level, which is based on the issuer's market capitalisation.

5.5 Internal Controls and Whistle-Blower Regimes

Internal Control Systems

The Companies Act requires specified companies, including large companies with boards of directors, to determine systems ensuring lawful and appropriate operations. Directors must oversee implementation; merely adopting a policy is insufficient. Listed companies also assess financial-reporting controls and file annual internal control reports under the FIEA, normally with an external auditor's attestation.

Whistle-Blower Regimes

Under the Whistleblower Protection Act, businesses regularly employing more than 300 workers must establish internal reporting arrangements and designate personnel handling protected reports. Businesses with 300 or fewer workers have an endeavour obligation. Designated personnel owe confidentiality duties concerning information identifying whistle-blowers. Qualifying workers, certain former workers and officers are protected against dismissal or other disadvantageous treatment, subject to the statutory conditions for internal and external reporting.

Amendments taking effect on 1 December 2026 expand protection to qualifying freelancers, strengthen enforcement and introduce criminal penalties for specified retaliatory dismissals and disciplinary action. Dismissal or disciplinary action taken within one year after a protected report will also be presumed to have been made because of the report, placing the burden on the employer to establish another reason. They also prohibit unjustified obstruction of reporting and attempts to identify whistle-blowers.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

In secured transactions in Japan, in addition to mortgages and pledges under the Civil Code, security by assignment, provisional registration security, and security interests under various special statutes are used. In recent years, new legislation has increasingly codified areas that had previously depended on judicial precedent and practice. The Act on the Promotion of Business-Based Lending, etc, enacted in 2024, introduced the enterprise value security interest, under which the company's assets as a whole are taken as security. In 2025, legislation concerning security assignment agreements and retention-of-title agreements was enacted.

Mortgages and pledges are standard forms of security under the Civil Code. Mortgages generally cover real property, while pledges may cover movables, real property, receivables and other assets; in the case of a pledge over movables, continued possession by the pledgee is required. For security involving real property, perfection against third parties is achieved by registering the mortgage. For a pledge over movables, delivery under the Civil Code is the basic requirement.

Where a corporation transfers movables, registration of the transfer of movables may also be used.

Security by assignment is a form of security under which ownership of, or another right in, the secured asset is transferred to the creditor for security purposes. It is characterised by allowing the grantor to retain actual possession, permitting private enforcement without a court-administered auction, and being available over movables, receivables, shares, intellectual property rights and other assets. As a general rule, notice to the debtor by an instrument bearing a certified date, or the debtor's consent, is required.

As regards priority, as a general rule, priority between security interests over the same property is determined by the order in which the relevant requirements for perfection against third parties – such as registration, recording, delivery, notice or consent – are satisfied. Where an enterprise value security interest competes with a pledge, mortgage or other security interest, priority is also generally determined by the order in which the requirements for perfection of the respective security interests are satisfied or the enterprise value security interest is registered.

Where multiple lending financial institutions or other parties form a syndicate of lenders, an intercreditor agreement is used to establish the decision-making process for exercising rights, the method of enforcing security interests and other fundamental rights and obligations.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation and Interpretation

Parties may freely determine the content of a contract within the limits of the law (Civil Code, Article 521; "Freedom of Contract"). A contract is formed simply by matching offer and acceptance; "consideration" is not required. As an exception, the written form is required for, among others, guarantees (Article 446 (2)), statements of working conditions (Labour Standards Act, Article 15 (1)) and statements of transaction terms to freelancers (Freelance Act, Article 3).

No statute governs interpretation, which starts from the wording and considers the following:

- the contract's structure and purpose;
- the course of dealings;
- the parties' reasonable intentions; and
- trade practice.

Limits on Freedom of Contract

In B2B contracts, limitation of liability clauses are largely accepted, but clauses excluding liability even for wilful misconduct or gross negligence may be void as contrary to public policy. The principles of good faith and the prohibition of abuse of rights may also constrain performance, termination and the exercise of rights.

Clauses in standard terms that unilaterally harm the other party's interests are restricted (Civil Code, Article 548-2 (2)), exclusion clauses in consumer contracts are restricted much further (Consumer Contract Act, Articles 8 to 10), and continuous transactions are subject to the Antimonopoly Act and the Proper Transactions Act (formerly the Subcontract Act).

Invalidity and Rescission

Grounds for invalidity or rescission include:

- incapacity;
- sham declarations;
- mistake;
- fraud;
- duress;
- violation of public policy or mandatory provisions; and
- unauthorised agency.

For companies, the representative director's authority (Companies Act, Article 349) and apparent representative directors (Article 354) may be at issue, so it is important to confirm whether the necessary authority and procedures for a transaction have been met.

7.2 Termination and Remedies

Remedies for Breach of Contract

The main remedies for breach of contract are claims for:

- performance (specific performance);
- damages (Civil Code, Article 415);
- termination (Articles 541 and 542); and
- in sales contracts, cure and price reduction (Articles 562 and 563).

Under Japanese law, performance is the primary remedy, a major difference from common law systems, where it is an exceptional remedy. In practice, however, disputes are more often resolved through damages.

Damages are limited to ordinary losses and foreseeable special losses (Article 416), and punitive damages are not recognised (Supreme Court, 11 July 1997). An agreed penalty is presumed to be liquidated damages (Article 420 (3)) and cannot, in principle, be reduced, although consumer contracts are subject to restrictions (Consumer Contract Act, Article 9).

Termination

Termination is divided into termination after notice (Civil Code, Article 541) and termination without notice (Article 542), and, since the 2020 reform, fault on the part of the obligor is no longer a requirement. Termination gives rise to obligations to restore the original position and does not preclude a claim for damages (Article 545 (1) and (4)).

Wrongful termination is not only invalid but may also make the terminating party liable for performance or damages. In long-term continuous contracts in particular, courts tend to require unavoidable reasons or reasonable notice or compensation, regardless of the termination clause; this can be an issue, for example, when a foreign company terminates a Japanese distribution agreement.

Force Majeure

No Japanese statute defines "force majeure" as used in common law contracts, and the doctrine of changed circumstances, based on good faith, has extremely strict requirements and has almost never been applied (Supreme Court, 1 July 1997).

It is therefore important to include contractual provisions addressing force majeure, price surges and market or economic fluctuations.

7.3 Intellectual Property in Commercial Transactions

Assignment and Licence

Requirements for assigning and licensing IP differ by the type of right, which should be reflected in the contract.

For patents and trade marks, transfers and exclusive licences must be registered with the Japan Patent Office (Patent Act, Article 98 (1)(i); Trademark Act, Article 35).

An assignment of copyright covers the rights of adaptation and in derivative works (Copyright Act, Articles 27 and 28) only if the contract says so expressly (Article 61 (2)). Moral rights cannot be assigned, so contracts provide that they will not be exercised.

Trade secrets cannot be registered and must satisfy secrecy management, usefulness and non-public nature (Unfair Competition Prevention Act, Article 2 (6)), so they are usually protected through confidentiality clauses.

Ownership

The right to obtain a patent for an employee invention may be vested in the employer by employment rules or the like, but the inventor must receive "reasonable benefits" (Patent Act, Article 35).

Authorship of works made for hire vests in the employer itself (Copyright Act, Article 15), but this does not extend to independent contractors, so contracts with them must include a copyright assignment and a covenant not to exercise moral rights.

In joint development, each co-owner may freely work a jointly owned patent, but assigning a share or granting a licence requires the other co-owners' consent (Patent Act, Article 73).

The Agency for Cultural Affairs considers that AI cannot be an author, and the courts have held that AI cannot be an inventor (IP High Court, 30 January 2025; appeal not accepted by the Supreme Court, 4 March 2026).

Remedies for Infringement

The main remedies are injunctions and statutory presumptions of the amount of damages. Certain IP disputes fall within the exclusive jurisdiction of the Tokyo and Osaka District Courts and the IP High Court, thereby ensuring expert handling.

7.4 Consumer Protection

Japanese consumer protection law focuses on the Consumer Contract Act, the Act on Specified Commercial Transactions and the Act against Unjustifiable Premiums and Misleading Representations, supplemented by the Instalment Sales Act, the Product Liability Act, the Consumer Safety Act and others, and includes rules that affect the validity of contracts.

The Consumer Contract Act contains rules affecting the validity of consumer contracts, such as the right to rescind declarations induced by improper solicitation and the invalidity of clauses fully exempting a business from liability for damages. Qualified consumer organisations may also seek injunctions against violations (Article 12).

The Act on Specified Commercial Transactions regulates representations, delivery of documents and solicitation methods in door-to-door sales, mail-order sales and other transactions. There is a cooling-off period of eight days for door-to-door sales and 20 days for multi-level marketing (Articles 9 and 40). Mail-order sales carry no cooling-off right, but returns are permitted within eight days if certain requirements are met (Article 15-3).

The Act against Unjustifiable Premiums and Misleading Representations prohibits, among other things, representations that quality is significantly better than it actually is ("misleading representations as to quality") and representations that price or terms are significantly more favourable than they actually are ("misleading representations as to terms"); a 2023 public notice of the Consumer Affairs Agency also brought stealth marketing within its scope. Violations may lead to cease-and-desist orders (Article 7) and administrative surcharges (Article 8), and qualified consumer organisations may also seek injunctions (Article 34).

8. Foreign Investment

8.1 Competition and Merger Control

Notification and Review

The Antimonopoly Act (AMA), administered by the Japan Fair Trade Commission (JFTC), applies to domestic and foreign-to-foreign transactions affecting competition in Japan. For share acquisitions, prior notification is generally required where:

- the acquirer's corporate group has Japanese domestic sales exceeding JPY20 billion;
- the target and its subsidiaries have Japanese domestic sales exceeding JPY5 billion; and
- the acquisition takes the group's voting rights above 20% or 50%.

Mergers and joint share transfers generally use JPY20 billion and JPY5 billion group-sales thresholds. Business acquisitions generally require an acquirer group exceeding JPY20 billion and relevant seller or transferred-business domestic sales exceeding JPY3 billion. Company splits have structure-specific thresholds. Intra-group exemptions apply, and the JFTC can review transactions below filing thresholds. There is no filing fee. Closing is prohibited for 30 days after acceptance of a complete notification unless the period is shortened. Where the JFTC requests additional reports in a second-phase review, the statutory deadline for its prescribed response is the later of 120 days after notification and 90 days after receipt of all requested reports.

The substantive test is whether the combination may substantially restrain competition in a particular field of trade. The JFTC examines unilateral and co-ordinated effects, entry, imports, customer bargaining power and efficiencies. Remedies may include divestitures or behavioural commitments.

Non-Compliance and Restrictive Conduct

Failure to notify, false notification and premature closing can attract criminal fines of up to JPY2 million. Substantively unlawful combinations may require divestiture or other corrective measures. The AMA separately prohibits private monopolisation, cartels and unfair trade practices. Enforcement includes inspections, cease-and-desist orders, surcharges for

applicable infringements and criminal prosecution of serious cases; damages claims are also possible.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

FEFTA Screening

The Foreign Exchange and Foreign Trade Act (FEFTA) provides Japan's principal national-security investment review regime. Foreign investors include:

- non-resident individuals;
- foreign entities; and
- certain Japanese entities under foreign ownership or control.

The Ministry of Finance and the ministry responsible for the relevant business review notifications submitted through the Bank of Japan.

Subject to exemptions, acquisitions resulting in ownership of at least 1% of the shares or voting rights of a listed Japanese company conducting a designated business require prior notification. Acquisitions of unlisted shares from domestic holders can be covered regardless of percentage; acquisitions from another foreign investor are separately regulated as specified acquisitions. Relevant businesses conducted by subsidiaries must also be checked. Certain loans, business acquisitions, branch establishments and consents to specified management proposals can trigger separate filings.

Designated sectors include:

- defence;
- nuclear activities;
- certain technologies;
- telecommunications; and
- critical infrastructure.

Exemptions depend on the investor, business and conduct after investment. Typical conditions restrict board participation, proposals to dispose of designated businesses and access to non-public technical information. Core sectors face stricter conditions, including the general investor exemption's below-10% limit for listed investments. Foreign financial institutions have a separate framework; foreign governments, state-owned entities and prescribed high-risk investors face exclusions or special treatment.

There is no filing fee. A notified investment ordinarily carries a 30-day waiting period, which may be shortened or extended; detailed review can extend to five months. Authorities may seek mitigation, recommend modification or discontinuance and ultimately issue orders. Post-investment reporting and compliance monitoring remain relevant even where a prior-notification exemption applies. Breaches can lead to criminal sanctions and divestiture or other corrective orders.

Sector Rules and Investment Support

Separate ownership and licensing rules apply. Foreign voting rights in Japanese airlines must generally remain below one third; broadcasting limits depend on the licence category. NTT has a statutory foreign voting-rights cap, but there is no equivalent blanket cap across all telecommunications businesses. Banking and insurance acquisitions can require major-shareholder approval, irrespective of nationality. Breaches may affect shareholder registration or voting and jeopardise operating licences.

Investors may qualify for R&D tax credits, national or local investment subsidies and special-zone measures. Eligibility depends on the project and programme; foreign status alone does not confer a general tax holiday.

Recent Reforms

The June 2026 FEFTA amendment expands oversight of indirect acquisitions and domestic investments influenced by high-risk foreign persons, introduces measures addressing risks in non-designated sectors and formalises mitigation arrangements. Its principal reforms take effect on 4 January 2027, with full application of the new implementing rules from 3 February 2027; provisions establishing the inter-agency review framework took effect in June 2026.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The core of Japan's general privacy and data protection framework is the obligations imposed on personal information handling business operators under the Act on the Protection of Personal Information. In addition, sector-specific requirements are imposed through individual guidelines and other instruments in areas including:

- finance;
- employment placement and the provision of recruitment information;
- postal services; and
- health insurance societies.

In relation to acquisition, a personal information handling business operator must not acquire personal information by deception or other wrongful means. Except where an exception applies, such as where acquisition is based on laws and regulations, the individual's prior consent is required to acquire special care-required personal information. In relation to use, personal information must not be handled, without the individual's consent, beyond the extent necessary to achieve the purpose of use identified in advance.

Provision of personal data to a third party generally requires the individual's prior consent, except where it is based on laws and regulations or another exception applies. Outsourcing, business succession and certain forms of joint use may not constitute provision to a third party. An individual may request disclosure of retained personal data and, where there has been unlawful handling or similar conduct, may request cessation of use or other handling, or cessation of provision to third parties.

Where there is a leakage, loss, damage or other security-related incident that is highly likely to harm the rights and interests of individuals, the personal information handling business operator must, in principle, report the incident to the Personal Information Protection Commission and notify the affected individuals. In addition, the prescribed matters must be reported within 30 days of the date on which the incident became known, or within 60 days in the case of certain incidents involving unauthorised access or similar conduct.

Provision of personal data to a third party located in a foreign country generally requires the individual's prior consent, except where a statutory exception applies, unless the third party is located in a foreign country whose system is recognised as providing a level of protection equivalent to that of Japan (currently only the EU and the United Kingdom), or the third party has established a system conforming to the prescribed standards for continuously implementing equivalent protective measures. When obtaining consent, the business operator must provide the individual with information concerning the name of the foreign country, the personal information protection regime in that country, and the protective measures implemented by the recipient.

There is no general data localisation requirement mandating that data be stored in Japan.

9.2 Anti-Money Laundering, Sanctions and Corruption

AML/CFT

The Act on Prevention of Transfer of Criminal Proceeds imposes transaction verification, record-keeping and other preventative duties on specified businesses. These include:

- financial institutions;
- relevant payment and crypto-asset businesses;
- real-estate brokers;
- dealers in precious metals and stones; and
- designated professional service providers.

Covered transactions require verification of prescribed customer information, including beneficial ownership and transaction purpose where applicable, with enhanced verification for higher-risk cases. Verification and transaction records are generally retained for seven years under their respective statutory rules. Businesses subject to suspicious-transaction reporting must report to the competent authority without tipping off the customer. Risk assessment, ongoing monitoring, training and management oversight are central to compliance. JAFIC receives and analyses financial intelligence; competent supervisors can

require reports, inspect and order corrective action. Money laundering and terrorist financing also attract criminal liability under separate legislation.

Sanctions and Export Controls

FEFTA implements payment and capital-transaction restrictions, asset-freezing measures and trade controls. Businesses must check designated persons, relevant ownership or control, destinations, goods, technology, end-users and end-use before proceeding. Required permissions are not replaced by a bank's screening. METI administers security export controls, covering listed items and catch-all controls; electronic technology transfers and certain domestic disclosures to persons under foreign influence can also require authorisation.

Violations can lead to transaction restrictions, administrative orders, criminal fines or imprisonment, with corporate penalties and transaction-value-based increases where prescribed.

Bribery and Corruption

The Penal Code criminalises bribery of Japanese public officials. The Unfair Competition Prevention Act prohibits offering, promising or giving benefits to foreign public officials to obtain an improper business advantage in international commercial transactions. There is no general facilitation-payment exemption. Foreign bribery can attract up to 10 years' imprisonment and/or a JPY30 million individual fine, and a corporate fine up to JPY1 billion; extraterritorial provisions can apply.

Police and prosecutors investigate bribery; METI publishes prevention guidance. Businesses should do the following:

- conduct agent and acquisition due diligence;
- control gifts and hospitality;
- verify payments; and
- maintain reporting channels.

Japan has no general commercial-bribery offence. However, the Companies Act criminalises directors, officers and certain other company personnel who solicit or accept benefits in return for an improper request relating to their duties, as well as those who offer such benefits. Private-sector misconduct may also constitute breach of trust or other offences.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Obligations and Climate Risk

The Environmental Impact Assessment Act requires assessment procedures for prescribed projects, while local ordinances may cover additional projects. Air and water pollution laws, waste-management requirements, chemical controls and local standards affect operations and transaction diligence.

Under the Soil Contamination Countermeasures Act, closure of specified facilities, certain land alterations or identified health risks can trigger investigation and regulatory measures. Landowners or other responsible landholders may face duties even if they did not cause contamination. Buyers should investigate historical use, permits and remediation exposure; contractual indemnities allocate costs between parties but do not bind regulators.

Japan combines the existing tax for climate-change mitigation with emissions trading. From fiscal 2026, the statutory GX emissions-trading system covers businesses whose average annual direct CO_2 emissions over the preceding three fiscal years reach 100,000 tonnes. Covered businesses must meet reporting, verification and allowance obligations. A fossil-fuel surcharge is scheduled from fiscal 2028; local schemes, including Tokyo's and Saitama's, also require attention.

Climate disputes raise questions of standing, causation and the legal basis for injunctions against emissions, including challenges to power projects. Environmental permits do not eliminate civil liability.

Workplace Safety and Regulated Businesses

The Industrial Safety and Health Act and related regulations require safety-management arrangements, prescribed training, health examinations and measures addressing workplace hazards. Employers also owe a contractual duty of care. Japan has a national framework administered through the Ministry of Health, Labour and Welfare and labour authorities, rather than separate federal and provincial regimes.

Local environmental and public-health requirements may apply additionally. Since June 2025, prescribed heat-exposure work requires reporting arrangements and response procedures for heat illness.

The following have separate licensing or registration regimes:

- financial services;
- pharmaceuticals and medical devices;
- electricity;
- telecommunications;
- construction; and
- waste services.

Cannabis-related cultivation and products are tightly regulated; lawful pharmaceutical use does not establish a general recreational market. Acquisitions require scrutiny of permit succession, change-of-control approvals, qualified personnel and product authorisations. Asset transfers may require fresh permissions even where a share purchase would preserve the operating entity's licences.

9.4 Artificial Intelligence

Statutory Framework and Governance

The Act on the Promotion of Research and Development and Utilisation of Artificial Intelligence-Related Technology became fully effective in September 2025. It establishes a national policy framework and requires businesses to endeavour to promote AI research and use and to co-operate with government measures. It does not impose a general licensing system or an EU-style schedule of prohibited and high-risk AI applications. The government may investigate harmful uses and provide guidance and advice.

The framework is supplemented by the AI Basic Plan, updated in July 2026, the December 2025 guidelines on appropriate AI research and utilisation, and the MIC/METI AI Guidelines for Business, version 1.2 of March 2026. These address safety, fairness, privacy, security, transparency, accountability and human involvement. Their governance recommendations should be distinguished from enforceable obligations under existing legislation.

AI deployment remains subject to personal-information, copyright, consumer, competition, employment and sector-specific laws, as applicable. Using third-party models does not transfer all legal responsibility to the provider. Businesses should allocate accountable owners, evaluate bias and foreseeable misuse, document testing and data provenance, provide explanations appropriate to the use, and maintain human review and incident-response processes.

9.5 Other Regulatory Compliance Requirements

Supply Chains and Economic Security

The amended legislation governing payments to small and medium-sized entrusted businesses, commonly called the Toriteki Act, applied from 1 January 2026. Depending on transaction type and relative capital or employee size, it requires disclosure of order terms, record-keeping and timely payment, generally within 60 days of receipt. It prohibits specified abusive practices, including unjustified reductions, promissory-note payment and unilateral price determination without the required consultation. The Freelance Act separately governs qualifying engagements, including disclosure, payment and certain workplace protections.

The Economic Security Promotion Act requires designated essential-infrastructure providers to submit plans before introducing specified critical equipment or entrusting its maintenance or management, subject to review and waiting requirements. This is distinct from FEFTA investment screening and may affect procurement and integration after an acquisition.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Basic Frameworks

Japanese employment law focuses on the Labour Standards Act (LSA) and the Labour Contract Act (LCA), alongside many other statutes such as the Minimum Wage Act.

The LSA sets mandatory minimum standards; contractual terms falling below them are void. Working

hours are capped at eight hours a day and 40 hours a week (Article 32); overtime requires a filed labour-management agreement (a "36 agreement") (Article 36 (1)). Even then, overtime is capped, on pain of criminal penalties, at 45 hours a month and 360 hours a year or, under special clauses, 720 hours a year, under 100 hours in any month and 80 hours on average over multiple months (Article 36 (4)–(6)). Premiums of 25% apply to overtime (50% beyond 60 hours a month) and to late-night work (Article 37).

Workplaces with ten or more regular workers must file work rules (Article 89); adverse changes to them require employee consent or reasonableness (LCA, Articles 9 and 10).

Dismissal Regulation

Dismissal requires 30 days' notice or payment in lieu (LSA, Article 20 (1)). The real barrier is the abusive dismissal doctrine: a dismissal lacking objectively reasonable grounds and social acceptability is void (LCA, Article 16). For redundancies, courts weigh the need to reduce headcount, efforts to avoid dismissal, reasonable selection and appropriate procedure (Tokyo High Court, 29 October 1979). Dismissal during a fixed term requires "unavoidable reasons" (LCA, Article 17 (1)). In practice, disputes usually end in agreed termination with a settlement of three to 12 months' wages.

A void dismissal means the employment continues, with back pay. There is no "constructive dismissal" doctrine, but forced resignation or harassment may render a resignation void or voidable or give rise to damages.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

Unless set by the articles, directors' remuneration is determined by shareholders' resolution (Companies Act, Article 361 (1)). In practice, shareholders approve only an aggregate cap and leave individual allocation to the board. However, listed companies and certain others must adopt an individual remuneration policy (Article 361 (7)), and officers paid JPY100 million or more are named in annual securities reports.

Since the 2019 reform, listed companies may issue shares as remuneration without payment (Article 202-2), whereas unlisted companies must still use a contribution in kind of monetary remuneration claims, which the March 2026 reform proposals are expected to address.

Tax considerations have a significant impact on compensation design. Directors' remuneration is tax-deductible only if certain requirements are met (Corporation Tax Act, Article 34 (1)). Stock options are generally taxed as employment income on exercise, but qualifying options defer taxation until sale, at a flat rate of 20.315% (Act on Special Measures concerning Taxation, Article 29-2). The annual exercise price cap of JPY12 million was effectively raised in 2024 to JPY24 million for companies under five years old and JPY36 million for companies five to twenty years old that are unlisted or have been listed for less than five years.

No statute regulates change-of-control provisions as such; they are constrained by directors' duty of care and the remuneration resolution.

Restrictive Covenants

Given the freedom to choose one's occupation (Constitution, Article 22 (1)), courts assess non-compete clauses strictly, weighing the company's interests, the individual's position, the restricted period, area and activities, and any compensation (Nara District Court, 23 October 1970). Reported cases tend to uphold restrictions of around six months to one year for employees and up to around two years for directors. Restrictions without reasonable limits on area or activities, or without compensation, are more likely to be held invalid.

Non-solicitation clauses are upheld more readily, although merely encouraging a move is generally lawful. Confidentiality clauses are valid within a reasonable scope and are usually combined with trade secret protection (Unfair Competition Prevention Act, Article 2 (1)(vii)).

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of ownership include:

- direct ownership by an individual;
- ownership by a domestic corporation; and
- ownership by a foreign corporation.

However, the following should be noted:

- acquisition by a non-resident may be subject to reporting under the Foreign Exchange and Foreign Trade Act;
- land transactions above certain thresholds may require notification under the National Land Use Planning Act; and
- certain land and other property within Special Monitoring Areas may require notification before entering into a contract.

11.2 Commercial Real Estate Transactions

Under the Real Property Registration Act, real property comprises land or buildings, and registration is made in relation to the description of real property and the preservation, creation, transfer and other changes in rights such as ownership, superficies, easements, mortgages and leasehold rights. In Japan, land and buildings are treated as separate real properties.

When acquiring or disposing of real property, it is advisable to verify the registered owner and the relevant rights, security interests and attachments, restrictions under the City Planning Act, Building Standards Act, Agricultural Land Act and other legislation, as well as leases and matters relating to private roads.

Due diligence may be conducted before acquiring the relevant real property, and may include legal, economic and physical investigations. The use of title insurance is not necessarily common in Japan. In relation to environmental liability, the buyer and seller may agree on a transaction-by-transaction basis as to which party is to bear responsibility and to what extent.

In commercial real estate financing in Japan, it is common to create a mortgage or a revolving mortgage over the relevant real property. Where multiple mortgages are created over the same real property, their priority is, in principle, determined by the order of registration.

In Japan, leases of buildings are governed by the Act on Land and Building Leases in addition to the Civil Code. In particular, the distinction between ordinary building leases and fixed-term building leases is important. Under an ordinary building lease, a landlord is, in principle, required to have "justifiable grounds" in order to refuse renewal upon expiration of the lease term, and tenants are afforded relatively strong protection. By contrast, under a fixed-term building lease, the lease may terminate upon expiration of the agreed term without renewal, provided that the formalities, prior explanation, and other requirements prescribed by the Act on Land and Building Leases are satisfied.

As a general rule, the assignment of a leasehold interest or sublease requires the landlord's consent, and an unauthorised assignment or sublease may constitute grounds for termination of the lease. In this regard, under Japanese judicial precedent, even where there has been a breach of contract, termination will not be permitted unless the breach is considered to have destroyed the relationship of trust between the parties. Accordingly, it is important for the lease agreement to clearly define in advance the extent to which use by group companies, changes in the occupying entity as a result of M&A transactions or corporate reorganisations, subleasing and similar arrangements are permitted.

Recent developments in real estate regulation include a requirement, effective from April 2026, that where there is a change in the name or address of a real property owner, an application for registration of the change must, in principle, be made within a prescribed period. In addition, the reporting regime under the Foreign Exchange and Foreign Trade Act in relation to acquisitions of real property in Japan by foreign investors has been expanded, with post-transaction reporting requirements now applying to acquisitions that were previously outside the scope of the regime, including acquisitions for residential or office use.

Trends and Developments

Contributed by:
Akimoto Kawamura and Christopher Hodgens
Atsumi & Sakai

Atsumi & Sakai is a multi-award-winning, independent full-service Tokyo law firm, and the first Japanese law firm to create a foreign law joint venture, which enables it to admit foreign lawyers as partners and so offer its clients the quality of service that the modern international business community demands. Expanding from its highly regarded finance practice, the firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise. Atsumi & Sakai's M&A practice is one of the firm's core practice areas, and its M&A team is well versed across a broad range of sectors, with particular strength in the financial industry, including transactions involving financial institutions and fintech companies. Leveraging a combination of leading Japanese lawyers and experienced international lawyers, its M&A team provides comprehensive support to companies in cross-border transactions.

Authors



Akimoto Kawamura is a senior partner of Atsumi & Sakai's Tokyo head office and a key member of the firm's cross-border M&A practice team. He focuses on M&A and other corporate and securities law matters, and with more than 30 years' practice, he has extensive experience in matters such as domestic and cross-border M&A, private equity, domestic and international joint ventures, and investments into Japan and by Japanese companies overseas, as well as other regulatory aspects of transactions. Prior to joining the firm, he worked as Japan general counsel for Citigroup Japan, where he co-ordinated the overall activities of the Japan legal department.



Christopher Hodgens is a partner at Atsumi & Sakai, Tokyo, and a member of the firm's cross-border M&A practice team. Prior to joining Atsumi & Sakai, he was a partner with Baker McKenzie, Tokyo. Chris has over 25 years' experience in cross-border M&A and other corporate and real estate transactions in Japan, and has helped leading global and international companies to acquire, divest, invest in and operate a wide range of businesses in Japan. His corporate M&A experience covers a diverse range of industries, such as data services, healthcare and life sciences, hotels, life insurance, real estate, retail and telecommunications.

Atsumi & Sakai

Fukoku Seimei Bldg.
2-2-2 Uchisaiwaicho,
Chiyoda-ku
Tokyo
100-0011
Japan

Tel: +81 03 5501 2111
Fax: +81 03 5501 2211
Email: cpg_crossborderm_a@aplaw.jp
Web: www.aplawjapan.com/en

Future Direction of Companies Act Amendments Relating to Corporate Acquisitions and Shareholder Proposals in Japan

Introduction

The Japanese government is seeking to promote a fairer and more balanced environment for listed companies, particularly in relation to investors such as activist funds that actively engage with listed companies through the exercise of voting rights, the submission of proposals and so on. As part of this effort, the government is considering amendments to the Companies Act concerning listed company shareholdings and shareholder meetings.

The Legislative Council, an advisory body to the Minister of Justice, is currently considering amendments to the Companies Act based on issues submitted to it for deliberation by the Minister of Justice. The issues submitted for deliberation cover several important matters in the context of the government's aim of promoting fairness.

This article addresses those matters that may be relevant to investors such as activist funds, whose activities have become quite prominent in Japan, against which listed companies have been considering various strategies.

This article also discusses a supplement recently published by the Ministry of Economy, Trade and Industry (METI) to the Guidelines for Corporate Takeovers issued by METI in 2023.

Amendments to the Companies Act

Overview

In the Legislative Council's deliberations on amendments to the Companies Act, academics, practitioners, industry associations and others participate in the discussion of draft proposals prepared by a secretariat established within the Ministry of Justice. Because the amendments concern the broad direction of the Companies Act, multiple alternative draft proposals are prepared for many of the issues. After a certain amount of discussion, an Interim Draft Proposal was published in March of this year. However, multiple alternatives are still on the table for key issues, and it is expected to take considerable time before an outline of the amendments is prepared, the amending bill is drafted on that basis and the bill is submitted to the Diet.

In terms of the timeline for the amendments, the Ministry of Justice plans to reach a conclusion within the current administrative year (which runs from July 2026 to June 2027), culminating in the submission of the Legislative Council's final report to the Minister of Justice. As the bill will be drafted after this, it would normally be expected to take about two more years before the amended Companies Act comes into effect.

The following overview of the key amendments under discussion is based on the framework set out in the Interim Draft Proposal. In many cases, the Interim Draft Proposal does not represent a definitive conclusion but merely indicates the direction of the amendments, which may change depending on future discussions at the Legislative Council.

Beneficial shareholder identification system

The first topic addressed in this article is the beneficial shareholder identification system.

Where the actual holders of shares in a listed company (beneficial shareholders) are foreign shareholders, funds and so on, Japanese securities firms, banks, trust banks and others provide custody and administrative services on their behalf as custodians, and it is these securities firms and others that are recorded as shareholders in the shareholder register.

It has long been pointed out, however, that this prevents a listed company from identifying its actual shareholders and their shareholding ratios; as a result, when such a shareholder comes to hold more than a certain number of shares, the company is unable to ascertain that shareholder's intentions or engage in dialogue with it, even though it needs to do so.

Furthermore, even when a beneficial shareholder makes a proposal, the listed company has no way of confirming whether that person is in fact a shareholder.

In the Legislative Council's discussions, the Interim Draft Proposal sets out the following framework and direction.

I) Company-initiated identification of beneficial shareholders

The first element is a system under which the company identifies its beneficial shareholders. Where a shareholder recorded in the shareholder register of a listed company is a person defined as an "intermediary" (ie, a nominee shareholder), the persons holding accounts with that intermediary are understood to be either: (i) a further upstream intermediary to which that intermediary provides share custody services, or (ii) a person who holds the right to give instructions on the exercise of voting rights or other rights with respect to the shares held by the intermediary.

Accordingly, under the company-initiated system, the listed company may request the nominee shareholder/intermediary recorded in the shareholder register to provide information concerning these persons.

In the case of the second category, the intermediary's obligation is fulfilled once it provides information on the person holding the instruction right to the listed company. In the case of the first category, however, the intermediary receiving the request must notify the intermediary that holds the account opened with it that the listed company has requested such information, and the intermediary receiving that notice must in turn provide the information to the listed company.

The information to be provided includes the person's name, corporate number, address, email address and other details. If the person holding shares through an intermediary account itself is another intermediary, information on that intermediary (on each of them, if there are several) must be provided. In either case, the number of shares concerned out of the shares held by the nominee shareholder (ie, the number of shares held by the person holding the instruction right or the intermediary that is the subject of the information) must also be provided. An intermediary that provides information may charge the listed company for the costs of doing so.

To ensure the effectiveness of the system, an intermediary that, intentionally or through gross negligence, fails to provide the requested information or provides false information will be subject to a civil fine. However, the Interim Draft Proposal itself already notes that, in the case of the first category above, where the holder of the account opened with the direct intermediary is a foreign intermediary, such sanctions may not be enforceable. Suspension of voting rights was also discussed as a possible sanction in earlier drafts, but this has been dropped.

As a corresponding measure, beneficial shareholders will be able to attend general meetings of shareholders even though they are not recorded in the listed company's shareholder register.

II) Mandatory notification to the company

The second element is a system requiring shareholders to notify the company. The Financial Instruments and Exchange Act (FIEA) establishes a large shareholding reporting regime under which, in principle, a person who comes to hold more than 5% of the shares of a listed company must file a report on the Electronic Disclosure for Investors' NETwork (EDINET; the equivalent of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in the USA) and subsequently must file a further report upon any change of 1% or more in its shareholding ratio. Special rules partially relaxing these reporting obligations apply to persons engaged in investment management as a business, such as investment managers registered under the Financial Instruments and Exchange Act (FIEA).

Under the Interim Draft Proposal, if a report is not filed, or contains a false statement or an omission regarding a material matter, the listed company to which the report relates may, following a resolution of its board of directors, send a notice of suspension of voting rights to the person with the filing obligation, suspending that person's voting rights for approximately five years. If the recipient of the suspension notice remedies the violation, its voting rights will be restored after roughly one year.

Determining what constitutes a violation requires fact-finding. One anticipated case is where parties have an agreement to hold shares jointly but fail to disclose it in their respective reports and therefore report without aggregating the shareholding ratios of their jointly held shares. It is foreseeable, however, that a listed company, given its limited ability to gather information, may find it difficult to establish and determine the existence of such an agreement.

While this amendment could have a substantial impact on funds and other investors, it appears that the Legislative Council needs to further consider the fundamental question of who will determine that a violation has occurred, and on what basis. Moreover, if the board gets it wrong, the directors may face liability claims (specifically, claims for damages) from the shareholder concerned. From this perspective, further discussion is expected to be needed on how to design the system so that it actually works in practice.

III) Shareholder proposal rights

Another area of amendment concerns shareholder proposal rights. Listed companies and others have pointed out that, in Japan, the shareholding threshold requirements for exercising shareholder proposal rights, as well as the scope of matters that may be proposed, are more lenient than in other developed countries, and that, as a result, proposals by activist funds, individual shareholders and others are excessively broad and consume listed companies' resources more than necessary. The current amendments aim to address this issue. However, rather than a comprehensive overhaul, the amendments are expected to address the following two specific points.

- First, the shareholding requirement for exercising shareholder proposal rights may be satisfied either by the number of voting rights held or by the ratio of voting rights held. The former threshold is currently 300 voting rights, and the latter is 1% or more of voting rights. As the former threshold can be quite low for some companies, it is proposed that the number of voting rights be raised (tentative proposals are 500 or more).
- The second point under consideration is the deadline for exercising shareholder proposal rights. Currently, shareholder proposals can be submitted up to eight weeks before the date of the general meeting (the minimum holding period for exercising the right being six months). In view of the heavy administrative workload listed companies face in preparing for a general meeting of a listed company's shareholders, proposals have been put forward to extend the eight-week period to ten weeks or, alternatively, to require shareholder proposal rights to be exercised at least three months before the date of the general meeting where the listed company has notified shareholders of the meeting date at least four months in advance. However, a no-change option has also been presented.

In earlier discussions, it had also been argued that since a general meeting of shareholders is by nature a forum for exercising voting rights on matters that can be resolved at a general meeting under the Companies Act, the scope of matters subject to shareholder proposal rights should be limited (excluding proposals unrelated to matters requiring a shareholder resolution), or that a limit should be placed on the number of proposals a single shareholder may submit (there was a case in which an individual investor submitted a large number of proposals). These points, however, have not been taken up by the Legislative Council as part of its deliberations.

IV) Other matters

Although not necessarily in the context of acquisitions or shareholder proposals, there have been court cases in which directors were held liable for extremely large amounts of damages in shareholder derivative suits (in a shareholder derivative suit, four former directors were held liable to the company for damages of approximately JPY13 trillion. However, the judgment was subsequently reversed on appeal).

Reportedly at the request of the business community, the introduction of a cap on the liability of executive directors to the company is also being discussed, similar to the cap already available for non-executive directors. Under the proposal being discussed, the cap would range from six times or less of annual compensation downward, depending on the director's

position in the executive hierarchy, being highest for representative directors.

Directors may also face personal liability for damages in an M&A context, including the unsolicited acquisitions discussed below. The purpose of this amendment is to remove the chilling effect on accepting directorships and to create an environment in which companies can recruit from a broader pool of talent.

Publication of the supplement to METI's guidelines for corporate takeovers

Overview of the supplement to the guidelines

In 2023, METI published guidelines setting out "best practices" for how the board of directors of a listed company should respond upon receiving an "unsolicited" (hostile) acquisition proposal. The guidelines were considered, prepared and published by a study group established within METI for that purpose, whose members included academics, practitioners, investment bankers and asset management companies in the M&A field.

The guidelines state that the board of a listed company should seriously consider an unsolicited acquisition proposal if the proposal is reasonable. However, some practitioners interpreted this to mean that, in such cases, weight should be given only to the proposed price.

There also seems to have been a concern that accepting a comparatively lower-priced proposal could expose directors to personal liability to the company for damages. Accordingly, in July of this year, METI's study group published a supplement to the guidelines, including a Q&A document, explaining that price is not necessarily the sole determining factor and setting out its views on necessary matters such as the elements of a bona fide proposal and the considerations to be undertaken by the board in light of developments in practice since the publication of the guidelines.

That said, with respect to the unsolicited acquisition proposal by Alimentation Couche-Tard (ACT) for Seven & i Holdings (7&i) (which operates 7-Eleven convenience stores in Japan and abroad), which was launched in 2024 before the publication of the supplement, ACT explained in its press release announcing its withdrawal about one year later that there had been a lack of sufficient engagement by 7&i. This suggests that in some respects guidelines setting out best practices are not always followed.

Even in acquisitions involving major companies in recent years, the responses do not always appear to have been consistent with the guidelines or their spirit, and some listed companies (not all listed companies are large corporations, and there are quite a few smaller-sized corporations) and acquirers do not follow the guidelines.

It should be borne in mind that the guidelines are not law in the first place, carry no sanctions for violations and have no enforcement mechanism behind them. For this reason, it could be said that calls for compliance with the guidelines have, to some extent, become a somewhat academic discussion. In this respect, the guidelines differ fundamentally from the amendments to the Companies Act discussed above, which concern the law itself.

For the parties concerned, especially listed companies that are required to respond in some manner to unsolicited acquisition proposals, while it is important to understand and refer to the guidelines, care should be taken not to be bound solely by their wording.

In the firm's view, such companies are required to respond reasonably in light of the specific circumstances and situation, from the perspective of the directors' duty of care as prudent managers and the business judgment rule under corporate law.

Ongoing issues in M&A practice identified by the METI study group but not addressed in the supplement to the guidelines

During the deliberations of the METI study group that prepared the supplement, materials were also produced on issues that were not taken up in the supplement but arguably should be addressed going forward.

With respect to the actions of boards of directors of listed companies contemplating a takeover proposal, the materials refer to various issues including:

- the need to more proactively use market checks;
- the need for further consideration of the shape that deal protection provisions should take where there are competing proposals (ie, providing guidance on appropriate fiduciary-out and break-up fee provisions);
- the fact that, in going-private transactions of listed companies such as acquisitions of listed subsidiaries by their parent company and management buyouts, there is considerable variation in relation to the question of whether the board of the target listed company, while expressing its support for the transaction, may go further and recommend that shareholders tender their shares; and
- ways of ensuring the quality of fairness opinions and the scope of disclosure when they are utilised.

On the investors' side, the issues cited include:

- questionable collaboration between activist funds and private equity funds (eg, cases in which an activist fund proposes a going-private transaction and, after the company is taken private by a private equity fund, invests in the fund's acquisition vehicle, thereby obtaining benefits more favourable than those available to general shareholders);
- cases in which a competing party announces a planned tender offer as a rival counter-offer, causing the share price to surge, with the result that the initial bidder's tender offer fails while the party that made the tender offer bid announcement never actually launches its tender offer (depriving general shareholders of the opportunity to tender their shares); and
- with respect to the short-swing profit disgorgement rule applicable to major shareholders (10% or more) (in Japan, short-swing trading means trading within six months), the fact that (i) holdings of joint holders are not aggregated and (ii) in the case of trust-type funds, such holdings are excluded from the calculation of voting rights for purposes of the threshold.

The points above can be said to represent some of the important issues that need to be considered and addressed going forward either by amendments to laws and regulations or soft law (like the METI guidelines) in M&A practice in Japan.

LATIN AMERICA-WIDE



Trends and Developments

Contributed by:
Rodrigo Marquez and Mark K. Vasquez
DeForest Abogados

DeForest Abogados is a Mexican law firm with 100+ lawyers and offices in Mexico City, Guadalajara, Querétaro, Puebla and León, as well as in New York and Texas. Its corporate and commercial practice advises Mexican and foreign companies on company formation, corporate governance, commercial contracts, M&A, corporate restructuring and foreign investment, and works closely with the firm's tax, labour, compliance and due diligence, anti-money laundering, intellectual property, data protection and dispute resolution teams. DeForest Abogados has particular experience in the automotive and auto parts, construction and real estate, and technology sectors, and serves international clients through a US practice and German, Chinese, Japanese and French desks. Recent work includes corporate restructure and plant and asset sale of an Italian Company with LATAM HQ in Querétaro, México and selling its manufacturing plant and assets in the Midwest region of the USA. Likewise, the firm assisted its client in Mexico to deploy a USD25 million investment into a commercial property portfolio in the USA worth over USD90 million.

Authors



Rodrigo Marquez has led complex corporate, finance and M&A cross-border transactions. His practice focuses on M&A, cross-border real estate projects, corporate governance, compliance, private equity, securities and foreign investment; with an emphasis on cross-border transactions involving a wide range of individuals and businesses conducting business in the United States, Mexico and Latin America. Rodrigo is licensed to practise in Mexico and assists foreign companies, families and private funds investing from Mexico into the United States.



Mark K. Vasquez is partner and co-head of the US practice at DeForest Abogados, focusing on corporate, cross-border transactions, corporate finance, international business, M&A, real estate and tax law. He provides legal advice and counselling on broad-based business transactions focusing on complex corporate and tax matters, with an emphasis on cross-border transactions involving a wide range of individuals and businesses conducting business in the United States, Mexico and Latin America. Mark assists foreign families and private funds investing in the United States and is admitted to the State Bar of Texas, the United States Court of International Trade and the United States Tax Court.

DeForest Abogados

Boulevard de las Ciencias 3015
Piso 2, Despacho 205
The Village Corporativo
Colonia Juriquilla Santa Fe
Querétaro
Mexico

Tel: +52 442 214 4654
Email: marquezr@deforest.mx
vasquezm@deforest.mx
Web: www.deforest.mx

Trading With the United States: The New Compliance Agenda for Latin American Business

Introduction

For Latin American exporters, access to the United States market used to depend mainly on tariffs and rules of origin. In 2026 it depends just as much on compliance. The duty a product pays, and in some cases whether it can enter at all, now turns on what a country and a company can prove about labour conditions, origin, ownership and the parties they pay.

The rules come from two directions. The United States has built its new tariff measures around compliance conditions and is enforcing customs law as a matter of fraud. Latin American governments are adopting rules of their own to keep or improve their access: import bans on goods made with forced labour, tighter customs controls, investment screening and stricter anti-money laundering duties.

This article describes that pattern across the region and uses Mexico, the region's largest exporter to the United States, as the main example. It reflects the position in early October 2026, and several of the measures discussed are still moving.

Tariffs now depend on compliance

The legal basis of US tariffs changed during 2026. On 20 February, the US Supreme Court struck down the tariffs that had been imposed under emergency powers. A temporary 10% surcharge followed and expired on 24 July. On the same day, new duties took effect under Section 301 of the Trade Act of 1974 on goods from 60 economies, after an investigation into whether each of them prohibits imports of goods made with forced labour.

The rate depends on the answer. Countries that have such a prohibition, or have committed to adopt and enforce one, pay 10%. Countries without one pay 12.5%. In Latin America, the 10% group is Argentina, Ecuador, El Salvador, Guatemala, Honduras and Mexico. The 12.5% group includes Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Nicaragua, Peru, Uruguay and Venezuela, among them several countries that have free trade agreements with the United States.

Three further points complete the picture.

- Goods that qualify under the United States–Mexico–Canada Agreement (USMCA) are exempt. According to Mexico's Economy Ministry, more than 80% of the country's exports to the United States are therefore not affected. Textiles and apparel that qualify under the free trade agreement with Central America and the Dominican Republic (CAFTA-DR) are also exempt.
- Products already subject to sector duties under Section 232, such as steel, aluminium and cars, are outside the new duties but continue to pay their own.
- Brazil has faced a separate 25% duty on a wide range of goods since 22 July 2026, following a different investigation into its trade practices.

These measures are not settled. Importers have challenged the Section 301 duties before the US Court of International Trade. A second investigation, into industrial overcapacity in 16 economies including Mexico, had not produced findings at the time of writing and could add further duties. Section 301 measures also lapse after four years unless they are renewed. The rates may therefore change, but the compliance conditions attached to them are now written into trade agreements and domestic law.

Forced labour: from US rule to regional standard

The United States has long prohibited imports of goods made with forced labour. What is new is that it expects its trading partners to do the same. The reciprocal trade agreements signed in 2026 with El Salvador (29 January), Guatemala (30 January), Argentina (5 February) and Ecuador (13 March) each include a commitment to prohibit the import of goods produced with forced or compulsory labour.

Mexico shows how such a prohibition works and where it can fall short. To comply with Article 23.6 of the USMCA, Mexico issued a ministerial resolution, in force since 18 May 2023, that allows the Labour Ministry to investigate goods on its own initiative or at the request of any person legally established in Mexico, and to bar their import if forced labour is found. In its June 2026 report, however, the US Trade Representative concluded that Mexico was not enforcing the prohibition effectively. The 10% duty on Mexican goods

that do not qualify under the USMCA will remain until the United States is satisfied that it is.

Under the Mexican rules, goods are presumed to be free of forced labour unless the Labour Ministry has issued a resolution against them. Importers into Mexico should therefore check the ministry's resolutions as part of their routine, and should expect more of them.

For business, the consequence is that proof of a clean supply chain is becoming a condition of trade in both directions. More governments in the region can be expected to adopt import prohibitions, because doing so can lower the duty their exporters pay, and to enforce the ones they already have. Companies should:

- map their suppliers beyond the first tier for products and inputs sourced from higher-risk regions;
- obtain written undertakings and audit rights from suppliers; and
- keep the documents that show where inputs come from, because authorities on both sides of the border may ask for them.

Origin and customs: evasion is now treated as fraud

Higher and more varied duties increase the reward for declaring the wrong origin, value or classification, and US enforcement has changed in response. The Department of Justice and the Department of Homeland Security created a Trade Fraud Task Force in August 2025. By July 2026 it reported more than USD1 billion in penalties, forfeitures and charged losses, and the Department of Justice set up a dedicated section to prosecute customs offences.

The main tool is the False Claims Act, which allows the government to recover three times the duties evaded and rewards whistle-blowers who report violations. The conduct targeted includes:

- false declarations of origin;
- undervaluation;
- misclassification;
- misuse of free trade agreement preferences; and
- fraud involving customs brokers.

US authorities have also said that they will look beyond the importer of record to other participants in the supply chain, and they are using data analysis to find suspicious origin claims. A Latin American supplier that issues an inaccurate origin certificate may therefore find itself in an investigation alongside its US customer.

Governments in the region are being asked to help. The reciprocal trade agreements commit the Latin American parties to co-operate with the United States against duty evasion, and those with Argentina and El Salvador provide for specific co-operation agreements on the subject.

Mexico has tightened its own customs regime in the same direction. A reform of the Customs Law, published on 19 November 2025 and in force since 1 January 2026, requires importers and exporters to keep an electronic file for every operation, with invoices, contracts, proof of payment and transport costs. It removes the defences that customs brokers previously had when the information supplied by their client was inaccurate, extends their joint liability for duties and raises fines. Since the same date, Mexico has applied duties of between 5% and 50% to 1,463 tariff lines of goods from countries with which it has no trade agreement, a measure aimed largely at Asian imports.

In practical terms, the following apply.

- Treat every origin claim as a legal statement. The company should hold the bill of materials, supplier declarations and cost data that support each USMCA or other preference claim.
- Choose and supervise customs brokers with care. In Mexico they now share more of the liability, and in US enforcement they are a known point of risk.
- Allocate tariff and customs risk in contracts, including rights to information and audit, and who pays if a preference is denied.
- Review past customs entries before a transaction. Unpaid duties and penalties can remain with the business after a sale.

The USMCA: preferential access under annual review

For Mexico, the value of compliance is concentrated in one agreement. At the first joint review of the USMCA on 1 July 2026, the United States declined to extend it for a new 16-year term. The agreement remains in force until 1 July 2036, but it will now be reviewed every year. Bilateral talks with Mexico are continuing and cover rules of origin for vehicles, steel and aluminium, economic security, labour and agriculture. In the meantime, Section 232 duties of up to 25% on cars and 50% on steel and aluminium continue to apply to Mexican products.

Labour compliance is already enforced plant by plant. Under the agreement's facility-specific labour mechanism, the United States has asked Mexico more than 40 times to review alleged denials of workers' rights at individual plants, most often in the automotive sector. While a review is pending, the United States can suspend the final settlement of customs entries for that plant's goods. A labour dispute at a single site can therefore put the preferential treatment of its products at risk.

Companies that rely on the USMCA should keep their origin calculations up to date and follow the talks on regional content closely. They should also treat freedom of association and collective bargaining at their Mexican plants as a trade compliance matter as well as a labour one.

Investment screening and export controls

The United States is also asking its partners to control who invests in their economies and where sensitive goods end up. The reciprocal trade agreements provide for co-operation on investment security and export controls. El Salvador, for example, agreed to restrict the unauthorised export or re-export of items that are subject to US export control rules.

Mexico is again the clearest example. On 30 August 2026, the government sent Congress a bill to amend the Foreign Investment Law and create a national security review. As drafted, prior approval would be required where foreign investors would hold more than 49% of a Mexican company that is active in a sensitive area, such as strategic infrastructure, critical technologies or sensitive data, and that exceeds an asset threshold still to be set. A transaction that needs approval could not close without it, and investors from USMCA countries would not be exempt. The bill follows a memorandum of intent with the United States on investment reviews and had not been passed at the time of writing.

For transactions, this would add a filing alongside merger control. Mexico's new competition authority, in operation since October 2025, already applies lower notification thresholds. Buyers should identify early whether a target operates in a sensitive sector, who ultimately owns the target and its main suppliers, and whether it handles technology that is subject to US controls.

Payments, cartels and corruption

The compliance agenda extends to the parties a company pays. Since February 2025, the United States has designated at least 20 Latin American and Caribbean criminal organisations as foreign terrorist organisations. Payments or services that reach a designated group can expose a company to liability for providing material support, in addition to liability under sanctions and anti-corruption rules.

Anti-bribery enforcement follows the same priority. Guidelines issued by the US Department of Justice in June 2025 give priority, among other things, to bribery that helps cartels and transnational criminal groups operate.

Two cases show how this affects ordinary trade. In June 2025, the US Treasury used a new power to prohibit US financial institutions from making certain transfers involving three Mexican financial institutions that it linked to money laundering for cartels, and Mexico's banking regulator intervened in them. In July 2026, the US Department of Justice announced a settlement under the Foreign Corrupt Practices Act with a US agricultural company over payments made through customs brokers to Mexican officials. According to the Department, part of the money benefited people linked to a cartel, although the company did not know it.

Mexico has responded with stricter rules of its own. A reform of its anti-money laundering law, in force since

17 July 2025, lowered the threshold for identifying a company's beneficial owner to 25% and requires companies to identify their beneficial owners and keep the supporting records. The implementing regulation was updated in March 2026.

The lessons are practical.

- Third parties are the main source of exposure. Customs brokers, carriers, security contractors and local agents need due diligence that goes beyond a sanctions list check.
- Anti-corruption, sanctions, anti-money laundering and customs controls should be run together because a single payment can raise all four issues.
- Banking relationships are part of the risk. A company should know which institutions process its cross-border payments and have an alternative.
- Records matter. A company should be able to show who was paid, for what and with whose approval.

Beyond Mexico: the same demands across the region

Mexico is the most advanced case, but the same demands are reaching the rest of the region by different routes.

- Central America – Under the agreements with El Salvador and Guatemala, the United States exempts certain goods from its duties, including textiles and apparel that qualify under CAFTA-DR. In return, both countries committed to prohibit imports made with forced labour, strengthen the enforcement of their labour laws and remove specified non-tariff barriers.
- Argentina and Ecuador – Both agreements combine tariff relief for selected products with commitments on forced labour, duty evasion, export controls and investment screening. Argentina also undertook to address intellectual property issues raised by the United States.
- Chile, Colombia and Peru – All three pay the 12.5% rate although they have free trade agreements with the United States. The US Trade Representative has indicated that the rate can fall to 10% for a country that adopts a forced labour import prohibition it regards as effective.
- Brazil – The separate 25% duty followed an investigation that covered digital trade, intellectual property and deforestation, among other matters. Brazil's government has disputed the measures and said it would respond under its reciprocity law.

For companies with operations in several countries, the lesson is that a compliance standard built for Mexico will be needed elsewhere. It is more efficient to design one programme for the region than to add country rules one at a time.

What companies should do now

The measures described above differ in detail, but they ask the same of a company: to know its supply chain, its counterparties and its owners, and to be able to prove what it knows. The priorities are as follows.

- Give one person or team responsibility for trade compliance across customs, labour, sanctions and anti-corruption.
- Review standard contracts. Supply, distribution and logistics agreements should include origin warranties, forced labour undertakings, audit rights, an allocation of tariff risk and a right to terminate for compliance breaches.
- Test the records. Take a sample of recent exports to the United States and confirm that the origin, value and supplier documents would satisfy an audit.
- Include trade compliance in due diligence for acquisitions and joint ventures, covering past customs entries, labour complaints and ownership.
- Follow the calendar: the pending US overcapacity findings, the court challenge to the Section 301 duties, Mexico's investment screening bill and the next USMCA review in July 2027.

Outlook

Tariff rates will continue to move, and some of the measures described here may be struck down or renegotiated. The underlying direction is clearer. Access to the US market is being tied to conduct that can be verified, and Latin American governments are writing those conditions into their own law. Mexico's experience suggests that the companies best placed to benefit are those that can show, with documents, that their products are what they say they are.

LUXEMBOURG



Law and Practice

Contributed by:
Nicolas Bernardy, Sébastien Rimlinger, Lucie Muszynski, Emma Domingues and Stacy Etienne
Brucher Thieltgen & Partners

Contents

1. Business Entities P.430
1.1 Business Organisations p.430
1.2 Incorporation and Ongoing Compliance p.430
1.3 Share Issuances p.431
1.4 Distributions and Return of Capital p.431
1.5 Control Person Reporting p.432

2. Corporate Governance P.432
2.1 Legal Framework p.432
2.2 Directors' Duties and Liabilities p.433
2.3 Board Composition and Independence p.433
2.4 ESG and Disclosure Obligations p.433
2.5 Conflicts of Interest and Related-Party Transactions p.434

3. Shareholder Rights and Agreements P.434
3.1 Shareholder Rights p.434
3.2 Shareholder Agreements p.435

4. Mergers and Acquisitions P.435
4.1 Legal Framework p.435

5. Capital Markets P.436
5.1 Securities Regulation and Public Offerings p.436
5.2 Continuous Disclosure p.437
5.3 Insider Trading p.438
5.4 Shareholder Disclosure p.438
5.5 Internal Controls and Whistle-Blower Regimes p.438

6. Secured Transactions P.439
6.1 Transaction Financing and Security Interests p.439

7. Commercial Contracts P.439
7.1 Contract Formation and Enforceability p.439
7.2 Termination and Remedies p.440
7.3 Intellectual Property in Commercial Transactions p.440
7.4 Consumer Protection p.441

8. Foreign Investment P.441
8.1 Competition and Merger Control p.441
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.442

9. Regulatory Compliance P.443
9.1 Privacy and Data Protection p.443
9.2 Anti-Money Laundering, Sanctions and Corruption p.443
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.444
9.4 Artificial Intelligence p.445
9.5 Other Regulatory Compliance Requirements p.446

10. Employment and Labour P.446
10.1 Employment Standards and Workplace Regulation p.446
10.2 Executive Compensation and Restrictive Covenants p.446

11. Real Property and Commercial Leasing P.447
11.1 Requirements for Land Ownership p.447
11.2 Commercial Real Estate Transactions p.447

Contributed by: Nicolas Bernardy, Sébastien Rimlinger, Lucie Muszynski, Emma Domingues and Stacy Etienne,
Brucher Thieltgen & Partners

Brucher Thieltgen & Partners is an independent, multidisciplinary business law firm based in Luxembourg, bringing together around 40 lawyers and legal advisors and advising domestic and international clients. Its Corporate & Commercial team advises Luxembourg and international companies, shareholders, directors and investors on a broad range of corporate and commercial matters, including corporate transactions, mergers and acquisitions, corporate governance, reorganisations, joint ventures, shareholders' agreements and commercial advisory matters. The team handles both domestic and cross-border matters and works with independent foreign law firms where international co-ordination is required. The firm also advises clients in dispute resolution and alternative dispute resolution, banking and finance, restructuring and insolvency, employment, and real estate, drawing on complementary expertise where matters involve several areas of law.

Authors



Nicolas Bernardy is a senior partner at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2006. A partner in the Corporate & Commercial department and Restructuring & Insolvency team, his practice focuses primarily on company law, M&A, corporate governance and restructuring. He advises Luxembourg SMEs, international groups, shareholders, directors and investors, notably on acquisitions and business transfers, joint ventures and shareholders' agreements. Nicolas chairs Legalink's Companies, Trusts and Taxation Working Group and is a member of the Luxembourg Association of Legal Representatives (ALMJ), the Association of Luxembourg Compliance Officers (ALCO) and TRANSEO.



Sébastien Rimlinger is a counsel at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2003. With over 23 years of experience, his practice is dedicated to corporate and commercial law. He advises Luxembourg and international clients throughout the lifecycle of their businesses, from incorporation and structuring to corporate governance and commercial relationships. Sébastien also has extensive experience in M&A and group restructurings and advises on domestic and cross-border transactions, including acquisitions, business transfers, joint ventures and complex reorganisations.



Lucie Muszynski is a senior legal advisor at Brucher Thieltgen & Partners with over ten years of experience in corporate law. She advises Luxembourg companies and Luxembourg entities of international groups on day-to-day corporate matters, corporate governance and strategic transactions, including M&A, reorganisations and recapitalisations. Her practice also covers statutory filings with the Luxembourg Business Registers (LBR) and the Register of Beneficial Owners (RBE), as well as AML/KYC requirements. Lucie is also regularly involved in corporate restructurings and insolvency proceedings.



Emma Domingues is a junior associate at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2024. Her practice focuses primarily on restructuring and insolvency, as well as commercial matters and related disputes. She assists with bankruptcy and judicial reorganisation proceedings, including the examination of claims, liquidation matters and related proceedings. Emma also advises on matters involving contracts and commercial relationships, debt recovery and related litigation. She is a member of LILLA – Ladies in Law Luxembourg Association.

Contributed by: Nicolas Bernardy, Sébastien Rimlinger, Lucie Muszynski, Emma Domingues and Stacy Etienne,
Brucher Thieltgen & Partners



Stacy Etienne is a junior associate at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2026. Her practice focuses primarily on corporate and commercial law. She advises companies on matters arising throughout their business activities, including day-to-day corporate operations, reorganisation projects and commercial relationships. She also assists with disputes related to these areas. Her practice therefore encompasses both ongoing corporate matters and the assistance of companies in connection with specific transactions and reorganisations.

Brucher Thieltgen & Partners

16 boulevard Emmanuel Servais, L-2535
Luxembourg

Tel: +352 26 02 71
Fax: +352 26 20 36 15
Email: info@btplawyers.lu
Web: www.btplawyers.lu

Contributed by: Nicolas Bernardy, Sébastien Rimlinger, Lucie Muszynski, Emma Domingues and Stacy Etienne,
Brucher Thieltgen & Partners

1. Business Entities

1.1 Business Organisations

Principal Types of Business Entities

Capital companies

The main capital companies are the *société anonyme* (SA) and the *société à responsabilité limitée* (Sàrl). Both provide limited liability to their shareholders or members. The SA is generally suited to businesses with a broader or changing investor base, while the Sàrl is commonly used for closely held businesses and holding structures. Luxembourg also provides for the *société par actions simplifiée* (SAS), which offers significant flexibility in organising the company's governance, and the *société en commandite par actions* (SCA), which can allow managers to retain control while bringing in investors with limited liability.

Partnerships

The main partnership structures are the *société en nom collectif* (SNC), the *société en commandite simple* (SCS) and the *société en commandite spéciale* (SCSp). The SNC involves unlimited liability for its partners. The SCS and SCSp distinguish between general partners, who have unlimited liability, and limited partners, whose liability is generally limited to their contribution. The SCSp is particularly common in private equity, venture capital and other investment structures because of its contractual flexibility and relatively light formal requirements.

Civil companies and sole traders

Luxembourg also recognises civil companies (*sociétés civiles*), which can be used for certain non-commercial activities, including the holding or management of assets. Individuals may also carry on a business as sole traders, without establishing a separate legal entity, although they remain personally liable for the business's obligations.

Choice of Structure

Liability and governance

Limited liability is an important consideration for businesses exposed to financial or operational risks. The parties will also consider how much control the founders should retain, how decisions will be taken and how easily new investors can enter or existing investors can exit.

Tax treatment

Tax treatment can be particularly important for holding and investment structures. SA, Sàrl and SCA are generally subject to Luxembourg corporate income tax and municipal business tax, while SCS and SCSp structures may, subject to certain conditions, benefit from tax transparency. The appropriate structure therefore depends on the activities of the entity and the tax position of its investors.

Flexibility, financing and regulation

The parties will also consider the level of contractual and governance flexibility required, the company's financing needs and any regulatory constraints applicable to its activities. In practice, Luxembourg's flexible corporate framework allows the same type of business function to be carried out through different legal forms.

Luxembourg also offers flexibility in how a particular legal form is used in practice. For example, SOPARFI is not a separate legal form, but rather a tax and functional designation generally used for a Luxembourg company whose purpose is to hold and manage participations. In practice, a SOPARFI is most commonly established as an S.A. or Sàrl. This allows the legal form to be selected according to the specific needs of the business, while the company can perform a particular holding or financing function within a wider structure.

1.2 Incorporation and Ongoing Compliance

Incorporating a Company

The requirements for incorporating a company depend on the legal form chosen. Capital companies such as an SA and a Sàrl must generally be incorporated by notarial deed. The minimum share capital is EUR30,000 for an SA and EUR12,000 for a Sàrl. A Sàrl-S offers a simplified alternative for certain businesses and may be incorporated by private deed with capital ranging from EUR1 to EUR12,000.

The incorporation process generally involves preparing and signing the articles of association before a notary, registering the deed with the Registration Duties, Estates and VAT Authority and filing it with the Trade and Companies Register (RCS). The company must have a registered office in Luxembourg.

Beneficial owners must also be declared in the Register of Beneficial Owners (RBE), and the professionals involved in the incorporation must carry out the applicable anti-money laundering and identification checks.

The notary generally registers the deed within 15 days of its signature and file it with the RCS within one month. The deed is then published electronically. Depending on the proposed activity, a business permit (*autorisation d'établissement*) or other regulatory approval may also be required before the business can start operating.

Compliance Obligations

Accounting and annual accounts

Companies subject to accounting requirements must prepare annual accounts and file them electronically with the RCS. The accounts must generally be approved by the shareholders or members within six months of the end of the financial year and filed with the RCS within one month following approval. This generally results in a maximum filing period of seven months after the financial year-end.

Corporate records and registered information

Companies must keep their corporate records up to date, including registers of shareholders or members and records of decisions taken by the relevant corporate bodies. Information filed with the RCS and information concerning beneficial owners must also be kept up to date when changes occur.

1.3 Share Issuances

Creation and Issuance of Share Capital

The rules governing share capital are primarily set out in the Luxembourg Companies Law of 10 August 1915. Depending on the legal form, shares may be issued with or without a nominal value, in registered or bearer form, and they can be linked to specific investments (tracking shares). The articles of association set out the subscribed share capital, the number and type of shares issued and, where applicable, the authorised capital and the rights attached to each class of shares.

Where authorised capital is provided for in the articles, the competent management body may increase the issued capital within the limits and during the period authorised by the shareholders. This mechanism facilitates future financing without requiring a full amendment of the articles for each issuance.

Changes to Share Capital

An increase or reduction of the share capital generally requires an amendment to the articles of association and must be approved in accordance with the applicable rules for extraordinary shareholder meetings and recorded by notarial deed. Contributions made may be allocated to the share capital and/or to a share premium account.

Structuring Different Classes of Shares

Luxembourg company law provides for considerable flexibility in structuring different classes of shares and tailoring the rights attached to each class. The articles of association must specify the different classes and the rights attached to each of them. These rights may include different voting rights, dividend entitlements, preferential rights on a liquidation or, where appropriate, veto or consent rights.

This flexibility is commonly used to accommodate different investor profiles and economic interests. For example, founders may retain enhanced voting rights, while investors may receive preferential economic rights or specific protections. Where a corporate decision would affect the rights of a particular class, additional approval requirements may apply at class level.

The articles of association are therefore the appropriate instrument for establishing rights that are attached to the shares themselves. A shareholders' agreement can also be agreed alongside the articles to regulate contractual arrangements between shareholders, including voting undertakings or other governance arrangements.

Other instruments such as beneficiary units, stock options, bonds and warrants can also be issued by Luxembourg companies.

1.4 Distributions and Return of Capital

Distributions

Luxembourg law applies capital maintenance rules to distributions to shareholders. Dividends may generally only be paid out of amounts available for distribution,

taking into account the company's accumulated profits and losses and the legal and statutory reserves.

Ordinary dividends are generally approved by the shareholders on the basis of the annual accounts. Interim dividends may also be distributed, subject to specific conditions, including the availability of sufficient distributable amounts and the preparation of interim financial information where required.

Return of Capital

A return of capital may be achieved through a reduction of share capital, subject to the applicable corporate law requirements. Such a reduction generally requires shareholder approval, an amendment to the articles of association and a notarial deed, together with the relevant filings and publications.

The tax treatment of a distribution or return of capital should also be considered separately, as it may differ depending on the nature of the payment and the situation of the shareholders.

Repurchase and Redemption of Shares

The company may only acquire its own shares, either directly or through a person acting in their own name but on behalf of the company, subject to the following conditions:

- authorisation must be granted by the general meeting;
- acquisitions, including shares which the company has previously acquired and holds in its portfolio, as well as shares acquired by a person acting in their own name but on behalf of the company, must not result in the net assets falling below the statutory threshold consisting of the subscribed share capital and non-distributable reserves;
- the transaction may relate only to fully paid-up shares; and
- the offer to purchase must be made on the same terms to all shareholders in the same situation.

Financial Assistance

Financial assistance rules should also be considered where a company, directly or indirectly, provides financing, security or other assistance for the acquisition of its own shares or, in certain circumstances, shares of its parent company. The rules and available exceptions depend on the legal form and the structure of the transaction and should therefore be assessed on a case-by-case basis.

1.5 Control Person Reporting

In Luxembourg, private companies are subject to various reporting and disclosure obligations, including:

- Beneficial ownership– companies must identify their ultimate beneficial owners (UBOs) and report the required information to the Luxembourg Register of Beneficial Owners (RBE). This information must be kept up to date when changes occur.
- Shareholder and member registers– companies must maintain registers of their shareholders or members and keep the relevant information up to date.
- AML/KYC requirements– additional identification and disclosure requirements may apply under Luxembourg anti-money laundering and know-your-customer rules. These requirements are particularly relevant to regulated sectors, including the financial sector, and to professionals such as notaries, lawyers, approved statutory auditors and corporate domiciliation providers.
- Business permit– where the company's activity is subject to a business permit, the permit may, depending on the activity, rely on one of the company's managers meeting the applicable professional requirements.

2. Corporate Governance

2.1 Legal Framework

The principal laws and regulations governing corporate governance in your Luxembourg are as follows:

- The amended Law of 10 August 1915 on commercial companies, which sets out the main rules governing Luxembourg companies and their corporate organisation.
- The amended Law of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of undertakings, which governs, among other matters, registration and filing

requirements and accounting and annual reporting obligations.
- The amended Law of 5 April 1993 on the financial sector, which applies in particular to credit institutions and certain investment firms.
- CSSF circulars and recommendations, which provide additional guidance and requirements for entities falling within the supervision of the *Commission de Surveillance du Secteur Financier*.

2.2 Directors' Duties and Liabilities

The duties of directors primarily derive from the amended Law of 10 August 1915 on commercial companies, supplemented by general principles of agency and civil liability.

Directors are generally expected to act in the best corporate interests of the company, within the scope of their powers and with loyalty towards the company. These principles form the basis of the duties owed by directors in the exercise of their mandate

Directors are liable to the company, in accordance with ordinary law, for the performance of the duties entrusted to them and for any errors committed in the course of their management. They are jointly and severally liable, either to the company or to any third party, for any damage resulting from breaches of the provisions of this Act or the articles of association. In addition, directors may be personally liable under criminal law for offences committed in connection with their functions, such as the use of false corporate documents, misuse of corporate assets or the payment of fictitious dividends.

2.3 Board Composition and Independence

The legal requirements and best practices in Luxembourg regarding board composition, including residence, independence standards, and diversity requirements are as follows:

- SA – an SA is generally managed by a board of directors composed of at least three directors. Where the company has a sole shareholder, a single director is permitted. Directors may be individuals or legal entities.
- Sàrl – a Sàrl is managed by one or more managers. There is no statutory minimum number of managers, and managers may be individuals or legal entities
- Residence – Luxembourg law does not generally impose a residence requirement on directors or managers. It is nevertheless advisable to have a majority of resident directors for tax substance requirements.
- Independence – private companies are not generally required to appoint independent directors. The main considerations are that directors act in the corporate interest and that conflicts of interest are properly managed, with specific procedures applying in certain cases, particularly for SAs.
- Diversity – listed companies are subject to increasing diversity requirements, particularly regarding the representation of women on boards, as a result of European developments. Corporate governance codes also encourage diversity in terms of skills, professional experience, nationality, age and gender.

2.4 ESG and Disclosure Obligations

ESG and Sustainability Obligations

Luxembourg companies are subject to a growing body of EU legislation relating to ESG and sustainability, with the applicable requirements depending on the nature and size of the company and its activities.

- CSRD and ESRS – the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS) provide the framework for sustainability reporting for companies falling within their scope.
- EU Taxonomy Regulation – Regulation (EU) 2020/852 establishes a framework for classifying environmentally sustainable economic activities and provides for related disclosure requirements.
- SFDR – the Sustainable Finance Disclosure Regulation (SFDR) mainly applies to financial market participants and financial advisers and introduces sustainability-related disclosure requirements in the financial sector.
- CSDDD – EU corporate sustainability due diligence rules are also relevant to certain large companies, requiring them, within the applicable scope and timetable, to address adverse human rights and environmental impacts arising from their activities and value chains.

Current Regulatory Requirements

For companies falling within the scope of the CSRD, sustainability reporting must provide information necessary to understand both:

- the company's impacts on sustainability matters; and
- how sustainability matters affect the company's development, performance and position.

The applicable sustainability information is reported in accordance with the relevant ESRS. The EU Taxonomy Regulation also provides specific disclosure requirements concerning environmentally sustainable activities.

Directors' Duties

Under Luxembourg corporate law, directors' duties remain primarily based on the requirement to act in the best corporate interest of their company. There is no general rule imposing specific environmental, social or stakeholder duties on directors.

ESG considerations may nevertheless increasingly form part of the matters considered by directors when assessing the corporate interest, particularly where ESG-related risks may affect the company's business, strategy or long-term interests.

Best Practices for Boards

Boards should consider ESG-related risks and opportunities as part of their broader oversight of the company's business and strategy. In particular, where ESG matters may affect the company's activities, risks or long-term performance, they should be considered when assessing the company's corporate interest and making strategic decisions.

For companies subject to sustainability reporting requirements, the board should also ensure that the relevant ESG information is properly identified and reflected in the company's reporting.

2.5 Conflicts of Interest and Related-Party Transactions

In Luxembourg, conflicts of interest and related-party transactions are subject to various legal and regulatory requirements, as outlined below:

- Conflicts of interest – directors must avoid situations in which their personal interest conflict with those of the company. Where a director has a direct or indirect financial interest conflicting with that of the company in a transaction submitted to the board, the director must inform the board, have the declaration recorded in the minutes and abstain from taking part in the deliberations and vote.
- Related-party transactions – transactions with related parties are not, as a general principle, prohibited. However, specific rules apply to material related-party transactions, including prior approval by the relevant management body and disclosure requirements. These rules are subject to certain exceptions, including transactions entered into in the ordinary course of business and on normal market terms.
- Approval and disclosure – where the relevant related-party transaction involves a director or shareholder, that person may not participate in the approval or vote. In some cases, material transactions must also be disclosed to the shareholders with information allowing them to assess the nature and terms of the transaction.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder Rights Under Corporate Law

Shareholders have a number of statutory rights under Luxembourg corporate law, including:

- Participation and voting– shareholders have the right to participate in and vote at general meetings. Under Article 450-1 of the amended Law of 10 August 1915 on commercial companies, the general meeting has the broadest powers to carry out or ratify acts relating to the company.
- Right to information– shareholders have a right to receive information concerning the company, including access to certain corporate documents such as the annual accounts, the management report and the auditors' report. This right also includes the possibility of asking questions at general meetings.
- Approval of fundamental changes– amendments to the articles of association fall within the compe-

tence of the extraordinary general meeting and are subject to the quorum and majority requirements provided by law.
- Financial rights– shareholders may also benefit from the economic rights attached to their shares, including the right to receive dividends and, where applicable, a share of the liquidation surplus.

Statutory Remedies

Shareholders have several remedies available under Luxembourg corporate law, including:

- Annulment of corporate decisions– shareholders may seek the annulment of corporate decisions in cases provided for by law.
- Liability claims– the general meeting of shareholders may bring liability claims against directors or managers where the applicable conditions are met.
- Abuse of majority or minority– Luxembourg law recognises remedies in cases of abuse of majority or abuse of minority rights.
- Minority protection mechanisms– minority shareholders benefit from specific rights allowing them, subject to the applicable thresholds and conditions, to request the convening of a general meeting, request the addition of items to the agenda or request the postponement of a general meeting, bring a liability claim against the directors, or ask the court to appoint an expert to check some transactions.

3.2 Shareholder Agreements

Shareholder Agreements

Shareholders' agreements are contractual arrangements between shareholders that regulate their relationship and certain aspects of the company's governance. They can therefore supplement the statutory framework and provide for specific arrangements such as restrictions on the transfer of shares, including restrictions on transfers to third parties, best corporate governance practices, exercise of voting rights and information rights.

The enforceability of a shareholders' agreement is primarily of contractual nature. Provisions included in the articles of association are valid towards any third party but those agreed in a shareholders' agreement are usually confidential and cannot be oppose to bona fide third parties. Specific performance of the agreement can be required but a breach often led to damages. It is therefore crucial to ensure that important provisions of the SHA can be automatically enforced by the benefiting party.

Resolving Shareholder Disputes

Shareholder disputes are often solved before Luxembourg courts. Shareholders may, in particular, seek the annulment of a general meeting resolution in the circumstances provided for by Article 100-22 of the amended Law of 10 August 1915 on commercial companies.

The general meeting of shareholders can also bring liability claims in the name and on behalf of the company against directors or certain members of the company's management or supervisory bodies. Such an action is brought in the interests of the company.

Shareholders can also claim, before the judge sitting in urgent matters, for the appointment of experts or interim directors in case of deadlock situations.

Finally, a commercial company may be dissolved by court decision for serious grounds (serious disagreement among shareholders) at the request of a shareholder, with the dissolution followed by the liquidation of the company. Judicial winding-up could also be required by the public prosecutor in case of breach of Luxembourg company law.

Otherwise, Luxembourg company law does not provide, under these terms, for a general "oppression remedy" or "unfair prejudice remedy" comparable to those available in certain common law jurisdictions.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Laws and Regulations

Mergers and acquisitions in Luxembourg are primarily governed by the amended Law of 10 August 1915 on commercial companies. It provides the framework for domestic and cross-border mergers, including mergers by absorption and mergers by incorporation of a new company.

Public takeover bids are governed by the Law of 19 May 2006 on takeover bids. For a Luxembourg public company, the acquisition of 33⅓% of the voting rights generally triggers a mandatory takeover bid.

Depending on the transaction, other regulatory regimes may also be relevant. In particular, certain transactions may be subject to EU merger control rules, while acquisitions by foreign investors of Luxembourg entities carrying out certain critical activities may be subject to the Luxembourg foreign direct investment screening regime introduced in 2023.

Structuring Considerations

Mergers

A Luxembourg merger generally requires the management or governing bodies of the companies involved to prepare common merger terms. These address, among other matters, the exchange ratio, the allocation of shares in the absorbing or newly incorporated company and any special rights attached to certain securities.

The merger must in principle be approved by the general meetings of the companies involved, in accordance with the quorum and majority requirements applicable to amendments to the articles of association. The relevant resolutions are recorded in notarial deeds.

The main effect of a merger is the universal transfer of the assets and liabilities of the absorbed company to the absorbing company. The shareholders of the absorbed company become shareholders of the absorbing company and the absorbed company ceases to exist.

Acquisitions

Private acquisitions are commonly structured either as a share deal or an asset deal. The choice between the two will depend on the assets and liabilities being transferred, the desired corporate structure and the parties' commercial and regulatory considerations.

For public companies, the transaction may instead take the form of a voluntary or mandatory takeover bid, depending on the level of control being acquired and the circumstances of the transaction.

The transaction timetable may also need to take into account regulatory approvals, including any applicable merger control or foreign investment screening requirements.

Deal Structures

The most common private M&A structures are share deals, asset deals and mergers. Share deals are generally used where the buyer intends to acquire the company as a whole, while asset acquisitions allow the parties to identify specific assets and liabilities to be transferred.

For listed companies, acquisitions are generally structured through voluntary or mandatory takeover bids, depending on the circumstances of the transaction.

Regulatory Changes

Recent developments include the implementation of the EU Mobility Directive on cross-border mergers, transformations and divisions, which has introduced additional requirements for cross-border corporate reorganisations.

The Law of 14 July 2023 establishing a foreign direct investment screening mechanism is also relevant to certain M&A transactions. Where the regime applies, a foreign investor must notify the relevant investment before completion, and the investment may not be completed until the screening procedure has been completed and the required authorisation has been obtained.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The Regulatory Framework for Capital Markets

The Luxembourg capital markets framework is mainly based on the Law of 30 May 2018 on markets in financial instruments, the Law of 11 January 2008 on transparency requirements for issuers, and the Law of 23 December 2016 on market abuse and Regulation (EU) 2017/1129 on prospectuses.

The main regulatory authority is the *Commission de Surveillance du Secteur Financier* (CSSF), which supervises the financial markets and is responsible

for the application of the relevant regulatory requirements, including market abuse rules.

The Luxembourg Stock Exchange (LuxSE) operates two main markets: the Luxembourg regulated market, known as the *Bourse de Luxembourg*, and the Euro MTF, which is a multilateral trading facility.

Principal Laws, Regulations, and Requirements for Public Offerings

Where an offer of securities to the public or an application for admission to trading on a regulated market falls within the scope of the Prospectus Regulation, a prospectus must generally be published before the offer or admission. The prospectus must be approved by the CSSF before publication.

The approval process is handled through the CSSF's e-Prospectus platform. The CSSF generally has ten working days to review a prospectus once it has received the documents required for its review. This period may be extended to 20 working days in certain circumstances, and the timetable may be extended where the documentation is incomplete.

For issuers whose securities are admitted to trading on a regulated market and for which Luxembourg is the home member state, the Transparency Law imposes ongoing reporting obligations. These include the publication of an annual financial report within four months of the end of the financial year, a half-yearly financial report within three months of the end of the relevant half-year and certain notifications concerning major shareholdings.

Stock Exchange Listing Requirements

Listing requirements depend on the market chosen by the issuer. A listing on the Luxembourg regulated market is subject to the regulatory framework applicable to regulated markets, including the Prospectus Regulation and the supervision of the CSSF.

The Euro MTF is a multilateral trading facility operated by the LuxSE and has its own admission requirements. The distinction between the two markets is therefore relevant when determining the regulatory and disclosure requirements applicable to an issuer.

Prospectus Exemptions Available for Securities Offerings

The main Luxembourg prospectus exemptions for securities offerings are the EU Prospectus Regulation exemptions, supplemented by Luxembourg's national regime; they relate to qualified investors (broadly MiFID professional clients/eligible counterparties and certain institutional/professional entities), small number of offerees (fewer than 150 natural or legal persons per member state), large investment (at least EUR100.000 for each investor), certain secondary issuances and public offers below the Luxembourg threshold (a total consideration in the EU over 12 months is below EUR12m).

A broader retail/public offer can fall within Luxembourg's EUR12 million exemption, but at EUR5 million plus, the Luxembourg information-note requirement becomes relevant under the current national framework.

Separate disclosure regimes can continue to apply. For example, PRIIPs KID requirements for retail investors, where applicable, and ongoing transparency/market-abuse obligations for issuers within their respective scope.

Resale Restrictions or Hold Periods

There is generally no Luxembourg statutory "holding period" attached merely because securities were initially distributed under a prospectus exemption. The key restriction is instead on how a subsequent resale is made: a resale can itself constitute a new "offer to the public" and therefore may trigger a prospectus requirement unless the resale independently qualifies for an exemption.

If a resale that constitutes a public offer is conducted without the required prospectus, the consequences can include CSSF supervisory measures and administrative sanctions.

5.2 Continuous Disclosure

For issuers whose securities are admitted to trading on a regulated market and for which Luxembourg is the home Member State, the main ongoing disclosure obligations include:

- publication of an annual financial report within four months of the end of the financial year;
- publication of a half-yearly financial report within three months of the end of the relevant half-year; and
- disclosure of certain information relating to major shareholdings.

Issuers are also subject to the applicable market abuse rules.

Material events can be disclosed by the following circumstances.

- Material information falling within the scope of the market abuse rules must be disclosed to the market.
- The disclosure requirements are intended to ensure that relevant information is made available to investors in a timely manner.
- In certain circumstances, disclosure may be delayed where the conditions provided by the applicable rules are satisfied.

5.3 Insider Trading

The main rules on market abuse and insider trading in Luxembourg are set out at EU level in Regulation (EU) No 596/2014 on market abuse (MAR), supplemented by Luxembourg legislation, including the Law of 23 December 2016 on market abuse.

The framework covers, in particular:

- insider dealing;
- unlawful disclosure of inside information; and
- market manipulation.

The CSSF is the main regulatory authority responsible for supervising compliance with the market abuse rules. The Luxembourg Stock Exchange also has a role in monitoring trading on its markets.

The CSSF has supervisory and enforcement powers in relation to market abuse. It may investigate suspected breaches and take the measures and impose the sanctions provided for under the applicable Luxembourg and EU rules.

5.4 Shareholder Disclosure

The disclosure of substantial shareholdings is mainly governed by the Law of 11 January 2008 on transparency requirements for issuers, as amended.

The notification requirements apply to natural or legal persons acquiring or disposing of shares carrying voting rights in an issuer whose shares are admitted to trading on a regulated market and for which Luxembourg is the home member state.

Failure to comply with the applicable notification requirements may result in enforcement measures and sanctions under the Transparency Law.

The CSSF is responsible for supervising compliance with these requirements and may take the measures provided for by the applicable legislation in the event of a breach.

5.5 Internal Controls and Whistle-Blower Regimes

Luxembourg law does not provide for a single, general compliance programme applicable to all companies. Compliance and internal control requirements depend largely on the nature and activities of the company, with more extensive requirements applying to regulated sectors such as financial services.

Companies should nevertheless maintain appropriate internal procedures and controls to identify and manage the legal and regulatory risks arising from their activities. The specific governance framework will therefore depend on the company's business and regulatory status.

The Law of 16 May 2023 implementing Directive (EU) 2019/1937 provides a general framework for the protection of whistleblowers.

Entities falling within the scope of the law may be required to establish internal reporting channels allowing certain violations of the law to be reported. The law also provides protection against retaliation for persons making a protected report.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

The Principal Laws and Regulations

The main Luxembourg laws governing security interests include:

- the Civil Code, which sets out the general rules on security interests;
- the Law of 5 August 2005 on financial collateral arrangements, which provides a specific regime for collateral over, in particular, financial instruments and monetary claims; and
- the Law of 10 August 1915 on commercial companies, including certain provisions relevant to security over shares and partnership interests.

The main types of security interests used in Luxembourg include:

- pledges;
- mortgages, in particular over real estate;
- pledges over financial instruments and monetary claims subject to the 2005 Law;
- certain assignments by way of security; and
- personal security, such as guarantees.

Enforcing Security Interests

The formalities required to make a security interest enforceable against third parties and to establish its priority depend on the type of security and the asset concerned.

For certain security interests, registration in a specific register is required or relevant to establish their enforceability and priority. For example, a mortgage must be registered with the mortgage registry in order to establish its rank.

Security Package Structure

In an acquisition financing, the security package is generally assessed on an asset-by-asset basis and also depends on which entity provides the security.

Depending on the structure of the transaction, the security package may cover:

- shares or partnership interests;
- bank accounts;
- certain receivables;
- financial instruments;
- real estate; and
- other assets that may be given as security.

Where several creditors are involved, their respective rights and priorities may also be organised through intercreditor arrangements.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Luxembourg contract law is mainly governed by the Civil Code. A contract is formed by the common agreement of the parties, provided that they have the required legal capacity and have given free and informed consent.

A commercial contract therefore requires:

- the consent of the parties;
- parties with the capacity to contract; and
- a certain and lawful subject matter.

A contract validly formed is binding on the parties and must be performed in good faith. The parties have broad freedom to determine the terms of their contract, subject to mandatory rules and public policy.

The main grounds for invalidity include defects affecting the consent of a party, such as mistake, fraud or duress, as well as lack of capacity or an unlawful subject matter.

Where the terms of a contract are ambiguous, the courts will refer to the common intention of the parties when interpreting the agreement.

Failure to properly perform contractual obligations may give rise to contractual liability. The parties may, within certain limits, agree contractual limitation or exclusion of liability clauses, subject to mandatory rules of Luxembourg law.

7.2 Termination and Remedies

Remedies for Breach of Contract

The main remedies available for breach of contract include:

- specific performance, where this is possible;
- termination or resolution of the contract in the event of sufficiently serious breach; and
- damages to compensate the loss suffered as a result of the breach.

A party may also, under certain conditions, suspend performance of its own obligations where the other party has failed to perform its corresponding obligations. The parties may also provide for specific contractual remedies, such as a penalty clause.

Termination of the Contract

Legitimate termination

The possibility of terminating a contract depends primarily on its terms. A contract may provide for termination rights and specify the events allowing a party to terminate. The parties may also agree to terminate the contract by mutual agreement.

In the event of sufficiently serious non-performance, a party may also seek termination or resolution of the contract under the applicable rules.

Wrongful termination

A party that terminates a contract without a valid contractual or legal basis may incur contractual liability. The other party may seek compensation for the loss suffered as a result of the wrongful termination.

Force Majeure

Luxembourg law recognises force majeure as a circumstance which may, subject to the applicable conditions, affect a party's liability where it is unable to perform its contractual obligations.

Commercial contracts may also contain specific force majeure clauses defining the events covered and their consequences.

Otherwise, in Luxembourg, the position on contractual "hardship" is relatively restrictive. The key distinction is between hardship, where performance becomes substantially more difficult or expensive, and *force majeure*, where performance becomes impossible.

7.3 Intellectual Property in Commercial Transactions

The main intellectual property rights relevant to commercial transactions include patents, trademarks, copyrights, and designs.

- Patents – patent rights may be assigned or licensed.
- Trade marks – the owner may assign the trade mark or grant a licence. Licences and certain changes of ownership may be recorded in the relevant trademark register.
- Copyright – Luxembourg law distinguishes between economic rights and moral rights. Economic rights may generally be assigned or licensed, while moral rights are subject to separate protection.

The contractual documentation should therefore clearly address the ownership and use of the relevant IP rights. In particular, the mere commissioning and payment for a work does not, by itself, automatically transfer all intellectual property rights to the client.

Specific rules apply to inventions created by employees. An invention generally belongs to the employer where it is made as part of an inventive mission under the employment contract, pursuant to specifically assigned research or studies, or, in certain circumstances, in the course of the employee's functions, within the company's activities or using the company's specific technical resources or information. Inventions falling outside these categories generally belong to the employee.

Where a work is created jointly by several persons and their contributions cannot be separated, Luxembourg copyright law provides for a specific regime for collaborative works. Similarly, several persons may jointly own a patent application and exercise the rights provided by law.

As regards AI-generated content, there is currently no specific Luxembourg rule providing that such content automatically belongs to the user, the AI tool provider

or the company commissioning the content. Ownership should therefore be considered carefully in the contractual arrangements.

Luxembourg has implemented the EU framework on the enforcement of intellectual property rights, including through the Law of 22 May 2009.

A rights holder may seek provisional and protective measures, in particular to prevent or stop an infringement. Other remedies may also be available depending on the type of intellectual property right and the circumstances of the infringement.

7.4 Consumer Protection

The main intellectual property rights relevant to commercial transactions include patents, trademarks, copyrights and designs.

- Patents: patent rights may be assigned or licensed.
- Trade marks: the owner may assign the trade mark or grant a licence. Licences and certain changes of ownership may be recorded in the relevant trademark register.
- Copyright: Luxembourg law distinguishes between economic rights and moral rights. Economic rights may generally be assigned or licensed, while moral rights are subject to separate protection.

The contractual documentation should therefore clearly address the ownership and use of the relevant IP rights. In particular, the mere commissioning and payment for a work does not, by itself, automatically transfer all intellectual property rights to the client.

Specific rules apply to inventions created by employees. An invention generally belongs to the employer where it is made as part of an inventive mission under the employment contract, pursuant to specifically assigned research or studies, or, in certain circumstances, in the course of the employee's functions, within the company's activities or using the company's specific technical resources or information. Inventions falling outside these categories generally belong to the employee.

Where a work is created jointly by several persons and their contributions cannot be separated, Luxembourg copyright law provides for a specific regime for collaborative works. Similarly, several persons may jointly own a patent application and exercise the rights provided by law.

As regards AI-generated content, there is currently no specific Luxembourg rule providing that such content automatically belongs to the user, the AI tool provider or the company commissioning the content. Ownership should therefore be considered carefully in the contractual arrangements.

Luxembourg has implemented the EU framework on the enforcement of intellectual property rights, including through the Law of 22 May 2009.

A rights holder may seek provisional and protective measures, in particular to prevent or stop an infringement. Other remedies may also be available depending on the type of intellectual property right and the circumstances of the infringement.

8. Foreign Investment

8.1 Competition and Merger Control

Luxembourg currently does not have a general domestic pre-merger notification regime. Transactions may nevertheless fall within the EU Merger Regulation where the applicable EU thresholds are met.

In addition, the Luxembourg Competition Authority may seek a referral to the European Commission under Article 22 of the EU Merger Regulation for certain transactions that do not meet the EU turnover thresholds but may affect competition in Luxembourg.

A domestic merger control regime is proposed under Bill No. 8296, initially providing for mandatory notification where the following cumulative thresholds would be met:

- combined Luxembourg turnover of the undertakings concerned exceeding EUR60 million; and
- Luxembourg turnover exceeding EUR15 million for at least two of the undertakings concerned.

The bill is not currently in force and is expected to be revised.

As Luxembourg does not currently have a general domestic merger notification regime, there is no general Luxembourg penalty for failing to notify a transaction under such a regime.

Anti-competitive conduct is, however, subject to the Luxembourg Competition Law and EU competition rules. The Luxembourg Competition Authority has powers to investigate suspected infringements, including through inspections and requests for information, and may impose administrative fines and other remedies where the applicable competition rules have been infringed.

The main areas of concern include anti-competitive agreements and practices, such as cartels, and abuses of a dominant position.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Laws and Regulations

Luxembourg has introduced a foreign direct investment screening mechanism under the Law of 14 July 2023.

The regime applies to investments by investors from outside the EU and EEA that confer control over a Luxembourg entity carrying out a critical activity in Luxembourg. There is no minimum investment amount or general turnover threshold triggering the regime.

The foreign investor must notify the investment to the Minister of the Economy before the investment is completed. The notification is not itself suspensive, but the investment cannot be completed if a screening procedure is initiated until the Minister has issued a decision.

The procedure does not involve a general filing fee. The Minister may ultimately authorise the investment, impose conditions or prohibit it where it is considered likely to affect security or public order.

Foreign Ownership Restrictions

Luxembourg does not generally restrict foreign ownership of Luxembourg companies. However, investments in certain critical activities are subject to the foreign investment screening regime.

The legislation identifies specific critical activities, including areas relating to energy, transport, water, health, communications, data processing and storage, cybersecurity, space activities, defence and certain critical technologies.

Regulated sectors may also be subject to sector-specific licensing or ownership requirements. These requirements apply independently of the foreign investment screening regime.

Security Review Process

The 2023 foreign investment screening mechanism is the Luxembourg process for reviewing foreign investments on national security and public order grounds.

Following notification, the Minister of the Economy, based on the assessment of the interministerial committee responsible for investment screening, decides whether to initiate a screening procedure.

Where screening is initiated, the authorities assess whether the investment may affect security or public order. The screening procedure may result in an authorisation, an authorisation subject to conditions or a prohibition of the investment.

Incentives for Foreign Investors

Foreign investors are generally eligible for the same investment support measures as Luxembourg businesses, provided that the relevant conditions are met.

Depending on the nature of the investment, available support may include investment aid, research and development and innovation support, and certain tax incentives. These measures are generally linked to the nature and characteristics of the investment rather than to the foreign nationality of the investor.

Luxembourg Freeport is also available and provides a high-security storage facility located near Luxembourg Airport. It provides secure, tax-efficient storage

for valuable goods such as works of art, precious metals, jewellery, wine and other collectibles.

Recent Developments

The main recent development is the introduction of the foreign investment screening regime by the Law of 14 July 2023, implementing the EU framework for screening foreign direct investments.

The regime has established a formal review process for foreign investments in critical activities where security or public order concerns may arise. It does not, however, introduce a general restriction on foreign investment in Luxembourg.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Privacy and Data Protection Framework

The main data protection framework in Luxembourg is the General Data Protection Regulation (GDPR – Regulation (EU) 2016/679), which is directly applicable in Luxembourg. The National Commission for Data Protection (CNPD) is the Luxembourg supervisory authority.

Specific rules also apply to electronic communications, including rules on cookies, under the amended Law of 30 May 2005 on the protection of privacy in the electronic communications sector.

Obligations for Organisations

An organisation must have a valid legal basis to process personal data. The GDPR recognises, in particular:

- the individual's consent, which must be freely given, specific, informed and unambiguous;
- the necessity of processing for the performance of a contract;
- compliance with a legal obligation;
- protection of vital interests;
- performance of a task carried out in the public interest; and
- legitimate interests, subject to the applicable conditions.

Organisations must also comply with the GDPR's core principles, including lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, and integrity and confidentiality.

Individuals must receive the information required by the GDPR, including information on the identity of the controller, the purposes and legal basis of the processing, the recipients, the retention period and their rights.

Where a processor is involved, it must process personal data in accordance with the documented instructions of the controller and comply with the applicable security and confidentiality requirements.

In the event of a personal data breach, the controller must assess whether the breach is likely to result in a risk to the rights and freedoms of individuals. Where such a risk exists, the breach must be notified to the CNPD without undue delay and, where feasible, within 72 hours after the controller becomes aware of it.

Cross-Border Data Transfer Requirements and Data Localisation

Transfers of personal data within the EEA are not subject to the specific transfer regime applicable to transfers to third countries, although processing must continue to comply with the GDPR.

Transfers to a country outside the EEA are subject to Chapter V of the GDPR, which sets out specific requirements for international data transfers.

Luxembourg does not generally impose a requirement for personal data to be stored in Luxembourg. The main consideration for businesses is therefore ensuring that any transfer outside the EEA complies with the GDPR's international transfer requirements.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering and Anti-Terrorist Financing Obligations

Luxembourg's main AML/CFT framework is set out in the Law of 12 November 2004 on the fight against money laundering and terrorist financing.

The obligations apply to a broad range of professionals and businesses, and not only to banks. They include, in particular:

- credit institutions and professionals of the financial sector;
- insurance companies and certain insurance intermediaries;
- certain investment funds and management companies;
- crypto-asset service providers;
- lawyers, accountants, auditors and other legal and accounting professionals when carrying out activities covered by the law;
- notaries, bailiffs and other professionals covered by the law;
- certain traders in goods, in particular in relation to cash transactions reaching the applicable statutory threshold; and
- certain professionals operating in the art sector.

The applicable obligations include customer and beneficial owner identification and verification, risk assessment and appropriate due diligence measures, as well as the reporting of suspicious activities to the competent authorities.

Financial Restrictive Measures

The main Luxembourg framework for the implementation of financial restrictive measures is the Law of 19 December 2020 on the implementation of international restrictive measures in financial matters, as supplemented by subsequent legislation and regulations.

Export controls are governed in particular by the Law of 27 June 2018 on export controls, the EU Dual-Use Regulation (EU) 2021/821 and applicable EU restrictive measures.

The Office for the Control of Exports, Imports and Transit (OCEIT) is responsible, among other things, for authorisations relating to the export, transfer, transit, technical assistance, brokering and import of defence-related products, dual-use goods and goods related to torture.

Businesses must therefore assess whether their transactions, products and counterparties are subject to applicable restrictive measures or export controls and obtain any required authorisation.

Violations of the financial restrictive measures covered by the Law of 19 December 2020 are subject to criminal penalties, including imprisonment for between eight days and five years and/or a fine ranging from EUR12,500 to EUR5 million.

Anti-Corruption and Anti-Bribery Obligations

Active and passive bribery are mainly prohibited under the Luxembourg Criminal Code. The relevant provisions cover, among others, persons acting as directors, managers, agents or employees who solicit or accept an undue advantage in connection with their functions without the knowledge or authorisation of the relevant corporate body, principal or employer.

The Law of 16 May 2023 on the protection of whistleblowers also forms part of the Luxembourg framework for preventing and detecting legal violations by protecting individuals who report certain violations.

In practice, companies may use internal reporting channels and other compliance measures to identify and address corruption risks.

Enforcement Powers

Enforcement powers depend on the area concerned. The relevant Luxembourg authorities may supervise compliance, carry out investigations and, where provided by law, impose administrative or criminal sanctions.

In the AML/CFT and financial sanctions fields, the competent supervisory and enforcement authorities have powers to investigate breaches and take the measures provided by the applicable legislation. Criminal authorities may also intervene where conduct constitutes a criminal offence, including breaches of financial restrictive measures or corruption offences.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulatory Requirements

The main environmental regulations relevant to businesses include the Law of 15 May 2018 on environmental impact assessments, which provides for an

environmental impact assessment procedure for projects falling within its scope.

The Law of 10 June 1999 on classified establishments subjects certain industrial, commercial or craft installations to a prior authorisation regime where they may present risks to health, safety or the environment.

The CASIPO (*cadastre des anciennes décharges et des sites potentiellement contaminés*) identifies former landfill sites and potentially contaminated sites. This may be relevant in the context of due diligence for transactions involving real estate or companies holding potentially contaminated land.

Luxembourg is also subject to the applicable EU framework on carbon pricing.

Climate Litigation and Environmental Liability

Climate-related litigation remains relatively limited in Luxembourg. Companies nevertheless remain subject to the applicable environmental requirements and may face liability in case of non-compliance with those requirements.

From a transactional perspective, environmental due diligence should therefore focus in particular on the existence of environmental permits and authorisations, compliance with the applicable requirements and any potentially contaminated sites.

Health and Safety Obligations

Employers are subject to a general obligation to ensure the health and safety of their employees. This includes, in particular, carrying out risk assessments and taking appropriate measures to prevent or reduce occupational risks.

Occupational health monitoring is also required. Compliance with these obligations is monitored, in particular, by the Labour and Mines Inspectorate (*Inspection du travail et des mines* – ITM).

Licensing and Permitting

Businesses may be subject to an establishment permit (*autorisation d'établissement*) depending on the nature of their activities.

In addition, certain activities and installations require specific authorisations under the Law of 10 June 1999 on classified establishments. Environmental permits or authorisations may also be required depending on the activity or project.

In the context of a corporate transaction, it is therefore relevant to verify which permits and authorisations the target holds and whether the transaction, a change of control or a change in the target's activities may require any additional notification, amendment or authorisation.

9.4 Artificial Intelligence

The main regulatory framework governing the use of artificial intelligence in Luxembourg is the EU AI Act – Regulation (EU) 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence. The AI Act applies progressively, with different obligations becoming applicable at different stages.

For organisations, the main areas of compliance include:

- Transparency – specific transparency obligations apply to certain AI systems, including systems interacting with individuals, AI-generated content and general-purpose AI (GPAI) models.
- Bias and non-discrimination – organisations must take into account risks of bias and discriminatory outcomes in the context of the requirements applicable to the relevant AI system.
- Accountability and governance – depending on the type and risk level of the AI system, the AI Act provides for requirements relating to governance, documentation, risk management and human oversight.

Within Luxembourg, Bill No. 8476, submitted on 23 December 2024, aims to designate the competent authorities responsible for supervision and enforcement of the AI Act, including the National Commission for Data Protection (CNPD).

The AI Act also needs to be considered alongside other applicable legislation, in particular the GDPR where the use of an AI system involves the processing of personal data.

9.5 Other Regulatory Compliance Requirements

Additional regulatory compliance requirements are imposed in the insurance, banking and financial sector by the competent authorities.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

The main legal framework governing employment relationships in Luxembourg is the Luxembourg Labour Code (*Code du Travail*).

It regulates, among other things, employment contracts, working conditions and the termination of employment.

For an indefinite-term employment contract (CDI), an employer may in principle terminate the employment relationship with notice, provided that the dismissal is based on real and serious grounds (*motifs réels et sérieux*).

The statutory notice period depends on the employee's length of service:

- Less than five years: two months' notice.
- Between five and ten years: four months' notice.
- Ten years or more: six months' notice.

The employee may request the employer to provide the reasons for the dismissal.

A dismissal with immediate effect and without notice is possible in cases of serious misconduct (*faute grave*), ie conduct making the continuation of the employment relationship immediately and definitively impossible.

A dismissal may be considered unfair (abusive) if it is not based on real and serious grounds or if the applicable procedural requirements have not been complied with. The employee may challenge the dismissal before the competent labour court (*Tribunal du Travail*).

Certain categories of employees also benefit from specific protection against dismissal, including, in certain circumstances, employees benefiting from protections relating to pregnancy, maternity leave, employee representation or other protected statuses.

Finally, an employee may, in certain circumstances, resign with immediate effect due to acts or breaches attributable to the employer and ask the labour court to recognise that the resignation should be treated as a termination with immediate effect due to the employer's fault.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation arrangements are generally structured through the employment agreement and, where applicable, separate incentive or equity plans.

The main considerations include the structure of fixed and variable remuneration and, where applicable, the terms governing equity incentives, including vesting conditions and the consequences of a change of control. A specific regime called "*prime participative*" allow employees to benefit from 50% tax exemption on the paid premium.

The tax treatment of executive compensation, in particular equity-based compensation, should be assessed on a case-by-case basis.

Non-compete clauses are governed by Article L.125-8 of the Luxembourg Labour Code. Luxembourg courts take a strict and restrictive approach to such clauses, given their impact on the employee's freedom to work.

For a non-compete clause to be valid, in particular:

- it must be in writing;
- the employee must be at least 18 years old;
- the employee's remuneration must exceed the statutory threshold set by Grand-Ducal regulation;
- it must be limited to activities that are actually competitive with those of the employer;
- it may not exceed 12 months following termination of the employment relationship; and
- its geographical scope may not extend beyond Luxembourg.

Non-solicitation clauses are not specifically regulated by the Labour Code. Their enforceability is therefore assessed by the courts, in particular by reference to proportionality and the respective legitimate interests of the employer and the employee, including the duration and geographical scope of the restriction.

Confidentiality obligations are based, during the employment relationship, on the employee's general duty of loyalty. Post-termination confidentiality obligations should be clearly defined, proportionate and limited to legitimate confidential information, such as trade secrets or strategic business information.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

The main form of ownership of real estate in Luxembourg is full ownership (*pleine propriété*).

Other forms of rights over real estate include, in particular:

- co-ownership/joint ownership (*copropriété/indivision*);
- emphyteusis (*emphytéose*), which provides a long-term right of enjoyment over real estate; and
- surface rights (*droit de superficie*), which allow, in particular, a person to own buildings or other constructions on land owned by another person.

Transfers of ownership of real estate are generally carried out by notarial deed.

There is no general restriction based on nationality preventing a foreign individual or foreign company from acquiring or holding real estate in Luxembourg.

Similarly, there is no general prohibition based on nationality on the acquisition of particular categories of real estate.

Accordingly, foreign individuals and companies can generally acquire, hold and sell real estate in Luxembourg, subject to the ordinary legal and notarial formalities applicable to real estate transactions.

11.2 Commercial Real Estate Transactions

The main legal framework governing commercial real estate transactions in Luxembourg is mainly based on the Civil Code, together with the rules applicable to land registration, planning, environmental matters and commercial leases.

Acquisition and disposal:

- Real estate transactions are generally documented through a private sale agreement (*compromis de vente*) followed by a notarial deed.
- The transfer of ownership must be registered with the Mortgage Registrar (*Bureau de la conservation des hypothèques*) in order to be enforceable against third parties.
- Due diligence will typically cover title, mortgages and other encumbrances, easements, zoning and planning, existing leases, environmental matters and applicable permits.
- A buyer may also carry out technical, soil and environmental investigations, depending on the property.
- A valid energy performance certificate is generally required for the sale of real estate.

Environmental liability and permits:

- Certain commercial or industrial activities require prior authorisation under the law of 10 June 1999 on classified establishments.
- Depending on the project, an environmental impact assessment may also be required.
- Potentially contaminated land should be checked, including against the CASIPO register of former landfills and potentially contaminated sites.

Mortgage financing:

- Real estate financing is commonly secured by a mortgage over the property.
- The mortgage must be registered with the Mortgage Registrar in order to establish its enforceability and priority against third parties.
- Priority between mortgages generally depends on their rank of registration, subject to applicable legal rules.

Contributed by: Nicolas Bernardy, Sébastien Rimlinger, Lucie Muszynski, Emma Domingues and Stacy Etienne,
Brucher Thieltgen & Partners

Commercial leases:

- Commercial leases are governed primarily by the Civil Code and the contractual terms agreed between the parties.
- The lease should address, in particular, duration and renewal, rent and indexation, permitted use, assignment and subletting, maintenance and repairs, insurance and termination rights.
- The consequences of default, including termination and damages, will depend on the lease and applicable contractual law.

Recent developments:

- Commercial real estate transactions continue to be affected in particular by planning, environmental and energy-efficiency requirements.
- The law of 15 May 2018 on environmental impact assessment and the rules relating to classified establishments are relevant where a transaction involves development, construction or certain regulated activities.

Trends and Developments

Contributed by:
Nicolas Bernardy, Sébastien Rimlinger, Emma Domingues and Stacy Etienne
Brucher Thieltgen & Partners

Brucher Thieltgen & Partners is an independent, multidisciplinary business law firm based in Luxembourg, bringing together around 40 lawyers and legal advisors and advising domestic and international clients. Its Corporate & Commercial team advises Luxembourg and international companies, shareholders, directors and investors on a broad range of corporate and commercial matters, including corporate transactions, mergers and acquisitions, corporate governance, reorganisations, joint ventures, shareholders' agreements and commercial advisory matters. The team handles both domestic and cross-border matters and works with independent foreign law firms where international co-ordination is required. The firm also advises clients in dispute resolution and alternative dispute resolution, banking and finance, restructuring and insolvency, employment, and real estate, drawing on complementary expertise where matters involve several areas of law.

Authors



Nicolas Bernardy is a senior partner at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2006. A partner in the Corporate & Commercial department and Restructuring & Insolvency team, his practice focuses primarily on company law, M&A, corporate governance and restructuring. He advises Luxembourg SMEs, international groups, shareholders, directors and investors, notably on acquisitions and business transfers, joint ventures and shareholders' agreements. Nicolas chairs Legalink's Companies, Trusts and Taxation Working Group and is a member of the Luxembourg Association of Legal Representatives (ALMJ), the Association of Luxembourg Compliance Officers (ALCO) and TRANSEO.



Sébastien Rimlinger is a counsel at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2003. With over 23 years of experience, his practice is dedicated to corporate and commercial law. He advises Luxembourg and international clients throughout the lifecycle of their businesses, from incorporation and structuring to corporate governance and commercial relationships. Sébastien also has extensive experience in M&A and group restructurings and advises on domestic and cross-border transactions, including acquisitions, business transfers, joint ventures and complex reorganisations.



Emma Domingues is a junior associate at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2024. Her practice focuses primarily on restructuring and insolvency, as well as commercial matters and related disputes. She assists with bankruptcy and judicial reorganisation proceedings, including the examination of claims, liquidation matters and related proceedings. Emma also advises on matters involving contracts and commercial relationships, debt recovery and related litigation. She is a member of LILLA – Ladies in Law Luxembourg Association.



Stacy Etienne is a junior associate at Brucher Thieltgen & Partners and a member of the Luxembourg Bar since 2026. Her practice focuses primarily on corporate and commercial law. She advises companies on matters arising throughout their business activities, including day-to-day corporate operations, reorganisation projects and commercial relationships. She also assists with disputes related to these areas. Her practice therefore encompasses both ongoing corporate matters and the assistance of companies in connection with specific transactions and reorganisations.

Contributed by: Nicolas Bernardy, Sébastien Rimlinger, Emma Domingues and Stacy Etienne, **Brucher Thieltgen & Partners**

Brucher Thieltgen & Partners

16 boulevard Emmanuel Servais, L-2535
Luxembourg

Tel: +352 26 02 71
Fax: +352 26 20 36 15
Email: info@btplawyers.lu
Web: www.btplawyers.lu



Doing Business in Luxembourg in 2026: Key Corporate and Commercial Trends

Introduction

Luxembourg continues to occupy a distinctive position in the European business landscape. Its small domestic market is offset by an unusually international economy, sophisticated financial infrastructure, political stability, multilingual workforce and legal environment designed to accommodate cross-border investment. For international groups, Luxembourg is consequently less a conventional "local market" than a European platform from which to hold investments, finance operations, conduct regulated activities, acquire businesses or establish regional headquarters.

That positioning is increasingly relevant in 2026. Luxembourg remains attractive, but the legal environment in which businesses operate has become considerably more demanding. Corporate structures are subject to greater scrutiny; directors and shareholders face heightened governance expectations; M&A transactions increasingly require regulatory and geopolitical analysis; restructuring law has become more sophisticated; and digitalisation, artificial intelligence, sustainability and financial-sector regulation are changing the contractual and compliance landscape.

The central message for businesses considering Luxembourg is therefore straightforward: the jurisdiction remains highly business-friendly, but successful market entry now requires legal structuring and risk management to be considered as part of the commercial strategy rather than as an exercise undertaken after the business model has been established.

Luxembourg remains a strong jurisdiction for international business

Luxembourg's principal corporate advantage is its ability to accommodate international structures. The jurisdiction offers a mature framework for holding companies, operating companies, financing vehicles, investment structures and joint ventures. Its corporate law provides considerable flexibility in structuring share capital, shareholder rights, governance arrangements and corporate reorganisations.

This makes Luxembourg particularly relevant to international groups establishing European platforms. A Luxembourg company can function as a holding entity, financing company, acquisition vehicle, regional headquarters or operating subsidiary, depending on the underlying business.

However, international investors should avoid viewing Luxembourg merely as a jurisdiction offering a convenient corporate form. The legal and regulatory substance of the structure has become increasingly important.

A Luxembourg entity should have a clearly defined purpose, appropriately documented decision-making processes and governance arrangements that correspond to its actual activities. Directors should understand their duties and the boundaries of delegated authority. Intercompany arrangements should be documented consistently with the group's operational reality.

For international groups, corporate housekeeping is becoming an increasingly important component of legal risk management. Minutes, powers of attorney,

shareholder resolutions, delegated authorities, related-party arrangements and intercompany agreements should not be treated as administrative formalities. In a dispute, financing, audit, regulatory review or M&A transaction, they may become critical evidence of how the business was actually managed.

RAIFs: continued expansion of Luxembourg's alternative investment toolbox

The Reserved Alternative Investment Fund (RAIF) has become one of the defining features of Luxembourg's alternative investment offering and is likely to remain an important growth area. Its appeal lies principally in the combination of structural flexibility, relatively rapid time-to-market and access to the EU-wide AIFMD marketing framework, while the RAIF itself is not subject to prior product approval or direct prudential supervision by the CSSF; supervision is instead exercised indirectly through its authorised Alternative Investment Fund Manager (AIFM). This makes the RAIF particularly suitable for private equity, private debt, real estate, infrastructure, venture capital and other alternative strategies where institutional and well-informed investors value both flexibility and an onshore EU domicile. Luxembourg's 2023 modernisation of the investment-fund framework further strengthened the attractiveness of the regime, including by extending the period for RAIFs to reach their minimum capitalisation requirement from 12 to 24 months. The continued expansion of alternative investment activity is also reflected more broadly in Luxembourg's fund market: alternative investment funds accounted for approximately 35% of assets in Luxembourg-domiciled funds at the end of 2025. For sponsors and international investors, the RAIF therefore remains a particularly compelling structuring option, although the choice between a RAIF, SIF, SICAR, Part II fund or other Luxembourg vehicle should be assessed in light of the intended asset class, investor base, tax profile, regulatory requirements and distribution strategy.

M&A activity is recovering, but transactions are becoming more selective

The Luxembourg M&A market experienced the same difficulties as much of Europe during the period of higher interest rates, geopolitical uncertainty and expensive acquisition financing. By 2025, however, transaction activity had begun to recover materially.

This recovery does not mean that the market has returned to the transaction environment of the ultra-low-interest-rate period. Buyers are generally more selective, financing is scrutinised more carefully and valuation gaps remain a feature of certain transactions.

For sellers, this places greater emphasis on preparation. A business entering a sale process should ideally undertake a legal "vendor due diligence" exercise before approaching potential buyers. Particular attention should be paid to corporate records, shareholder arrangements, material contracts, change-of-control provisions, intellectual property, employment arrangements, financing, litigation, regulatory licences, data protection and intra-group relationships.

For buyers, Luxembourg transactions increasingly require a broader conception of due diligence. The question is no longer simply whether the target owns its assets and has valid contracts. Buyers should consider whether the target's business model is exposed to new regulatory regimes, including AI regulation, cybersecurity requirements, sustainability rules, financial-sector regulation or foreign-investment screening.

The traditional M&A process is consequently evolving from a predominantly legal and financial exercise towards a more integrated legal, regulatory and geopolitical risk assessment.

Foreign investment screening should be considered early

Luxembourg introduced its national foreign direct investment screening regime under the Law of 14 July 2023, which entered into force on 1 September 2023. The mechanism applies to certain foreign investments that may affect security or public order.

The practical importance of this regime is increasing. An acquisition involving a non-EU investor should therefore not be analysed solely through the lens of Luxembourg company law. The parties should determine at an early stage whether the target's activities

fall within sensitive areas and whether a notification may be required.

This can have consequences for transaction timetables, conditions precedent, long-stop dates and allocation of regulatory risk in the acquisition agreement.

The issue is particularly relevant to technology, critical infrastructure, energy, communications, data, financial infrastructure and other strategically important activities. At EU level, the framework has also continued to develop.

Foreign direct investment (FDI) analysis should become part of the initial M&A feasibility assessment rather than a regulatory afterthought during signing or closing.

Corporate governance and shareholder relations deserve greater attention

Shareholder conflict is an important area of corporate risk. Disputes frequently arise not because the corporate structure is defective at incorporation, but because relationships between shareholders deteriorate over time.

Joint ventures and closely held companies are particularly exposed. Questions concerning financing, dividends, management appointments, business strategy, related-party transactions, acquisitions and exits can rapidly become contentious.

A well-drafted shareholders' agreement can materially reduce this risk. Shareholders should consider provisions addressing reserved matters; appointment and removal of directors; quorum and voting arrangements; deadlock; transfer restrictions; pre-emption rights; drag-along and tag-along rights; exit mechanisms; information rights; financing obligations; confidentiality; related-party transactions; valuation mechanisms; and dispute-resolution procedures.

The agreement should be designed around the parties' actual commercial relationship. The same principle applies to the company's articles of association. Contractual rights between shareholders and corporate rights enforceable against the company should be co-ordinated carefully.

Directors should approach governance as a continuing process

International groups sometimes treat a Luxembourg subsidiary as a passive administrative vehicle. That approach carries increasing risk.

Boards and managers need to understand what decisions they are making, whether they have sufficient information to make those decisions and whether the decision-making process is properly documented.

This is particularly important when a Luxembourg company enters into significant financing arrangements, acquisitions, disposals, guarantees, upstream or downstream transactions or restructurings.

The increased regulatory emphasis on cybersecurity, sustainability, sanctions, AI and financial crime also means that directors may encounter issues that did not traditionally appear on the corporate agenda.

Good governance does not require directors to become specialists in every regulatory discipline. It does require them to identify when specialist advice is necessary and to ensure that material risks are appropriately considered.

Luxembourg's restructuring and insolvency framework is becoming more useful

The Law of 7 August 2023 on business preservation and the modernisation of bankruptcy law introduced significant changes intended to strengthen the domestic restructuring framework.

The significance for businesses is considerable. Financial distress should no longer automatically be regarded as a binary choice between continuing business as usual and entering bankruptcy. Management and shareholders have a wider range of restructuring tools and should consider them sufficiently early.

The key commercial issue is timing. Once liquidity problems become acute, management's room for manoeuvre can diminish quickly. Creditors become more active, financing arrangements may be triggered, counterparties may terminate contracts and asset values may deteriorate.

Businesses experiencing financial stress should therefore seek advice before a formal insolvency event occurs. For creditors and investors, the new environment also creates opportunities to acquire distressed assets through structured transactions, settlements and other restructuring arrangements.

AI is now a corporate governance issue, not merely a technology issue

Artificial intelligence has become one of the most significant new areas of commercial legal risk. The Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (EU AI Act) applies progressively, with major rules applying from August 2026 subject to specific transitional arrangements.

For Luxembourg businesses, AI governance should now be treated as a board-level business issue. Companies should identify what AI systems they use, what data is supplied to those systems, whether third-party providers are involved, whether employees use generative AI tools and whether AI is incorporated into products or services sold to customers.

Contracts with technology providers should address ownership and licensing, confidentiality, personal data, cybersecurity, liability, service levels, audit rights, data location, subcontracting, regulatory compliance, termination and transition arrangements.

For employers, internal AI use is another important issue. Employees may use generative AI to draft documents, analyse information or process customer data without management having approved the practice. A sensible corporate policy should establish what tools may be used, what information may be uploaded and who is responsible for verifying AI-generated output.

Sustainability regulation is becoming more targeted but not irrelevant

Sustainability regulation has entered a new phase. EU reforms have altered the direction of travel for corporate sustainability reporting and due diligence, with an emphasis on reducing administrative burdens and focusing the most demanding requirements on larger businesses.

This should not be interpreted as a reason to disregard ESG information. Even companies outside the final mandatory reporting perimeter may face requests from banks, investors, customers, insurers and larger counterparties for sustainability information.

This creates a value-chain effect: smaller Luxembourg companies may not themselves be directly subject to every reporting obligation, but may nevertheless be required contractually to provide information to larger customers or group companies.

M&A transactions are also affected. Buyers may increasingly ask whether the target has reliable sustainability data, appropriate policies, exposure to environmental liabilities or contractual commitments relating to sustainability.

Financial-sector regulation continues to influence the wider corporate market

Luxembourg's corporate environment cannot be separated from its financial-sector ecosystem. Many corporate transactions involve banks, investment funds, asset managers, financing vehicles, regulated service providers or financial infrastructure.

Digital operational resilience is a good example. DORA EU Regulation became applicable on 17 January 2025 and establishes requirements designed to strengthen ICT resilience in the financial sector.

For businesses providing technology, outsourcing, cloud, data or other services to regulated financial entities, contractual requirements arising from DORA can become commercially important even if the service provider is not itself a regulated financial institution.

Contracts may therefore need to address incident reporting, audit rights, business continuity, subcontracting, access to information and termination arrangements.

The Luxembourg financial ecosystem continues to create corporate opportunities

The country's position as a major European financial centre remains a significant advantage for corporate clients. The investment-management ecosystem

provides opportunities for businesses raising capital, structuring investment platforms or interacting with institutional investors.

For businesses, financing strategy should be considered alongside corporate structure. A capital raising may involve equity, shareholder loans, convertible instruments, preferred shares or other arrangements. The appropriate solution depends on the company's objectives, investor requirements, governance consequences and regulatory environment.

This is particularly relevant to growing technology and entrepreneurial businesses. The legal documentation should not only establish the immediate financing but anticipate the next financing round, potential investor rights, dilution, exit scenarios and future governance.

Tax and Pillar Two developments reinforce the need for group-wide planning

Corporate structuring cannot be separated from international tax developments. The OECD/G20 Pillar Two framework and the EU's implementation of the global minimum tax have introduced additional compliance and reporting considerations for large multinational groups.

Luxembourg has implemented Pillar Two and has continued adapting its legislation to subsequent OECD and EU developments, including measures relating to DAC9 and the exchange of Pillar Two information.

For corporate lawyers, the significance is not that they replace tax advisers. Rather, tax considerations increasingly affect the legal architecture of transactions.

Acquisition structures, intra-group financing, reorganisations and distributions should therefore be reviewed jointly from corporate, regulatory and tax perspectives.

Commercial contracts require greater regulatory sophistication

Traditional commercial agreements focused primarily on price, delivery, warranties, liability and termination. Modern contracts increasingly include provisions addressing data protection, cybersecurity, AI, ESG, sanctions, business continuity, regulatory change and audit rights.

Businesses entering Luxembourg should review their standard international contracts against Luxembourg mandatory rules and the particular regulatory environment of the sector.

This is particularly relevant for distribution, franchising, outsourcing, technology, services and supply-chain arrangements. A contract governed by foreign law may still have mandatory Luxembourg or EU rules applying to particular aspects of the relationship.

The increasing internationalisation of Luxembourg commerce therefore makes cross-border contractual analysis a core part of ordinary commercial advice.

Litigation risk should be addressed before the dispute begins

Businesses often focus heavily on the merits of a dispute while underestimating procedural and strategic questions: preserving evidence, protecting confidential information, selecting the appropriate forum, obtaining interim relief and controlling communications.

For shareholders, the first important step in a conflict may be determining whether a general meeting can proceed, whether a shareholder resolution can be challenged or whether urgent judicial intervention is required.

For commercial counterparties, it may involve securing assets, preserving evidence or negotiating an exit before the dispute escalates.

A well-designed dispute strategy can therefore preserve commercial value even where litigation ultimately becomes unavoidable.

Cross-border enforcement and international co-ordination remain essential

Luxembourg businesses frequently have shareholders, directors, assets and counterparties in several jurisdictions.

This makes international co-ordination particularly important in M&A, debt recovery, shareholder disputes and insolvency matters. Luxembourg's EU membership provides important advantages through European instruments governing jurisdiction, recognition and enforcement, insolvency and other cross-border matters.

Nevertheless, each transaction should be analysed according to the location of assets, counterparties and decision-makers. International groups should also maintain relationships with counsel in the jurisdictions where material assets or counterparties are located.

What should businesses entering Luxembourg do differently in 2026?

For a foreign company considering establishing or acquiring a Luxembourg business, a practical checklist is increasingly valuable.

- Define the purpose of the Luxembourg entity: operating company, holding company, financing vehicle, acquisition vehicle or regional headquarters.
- Identify licensing and regulatory requirements early.
- Establish governance from the beginning, including delegated authority and shareholder approval requirements.
- Document intra-group relationships concerning services, financing, intellectual property and management.
- Assess FDI screening in relevant acquisitions.
- Undertake meaningful due diligence before acquisitions, including regulatory, technology, employment, litigation and sustainability matters.
- Review AI and cybersecurity exposure.
- Monitor financial distress early and consider restructuring tools before the situation becomes irreversible.
- Anticipate shareholder conflict through a carefully negotiated shareholders' agreement.
- Co-ordinate Luxembourg advice with international corporate, tax, employment, regulatory and financing advisers.

Conclusion

Luxembourg remains an attractive jurisdiction for international business, but the nature of its attractiveness is evolving.

The jurisdiction's traditional strengths–legal flexibility, political stability, financial sophistication and cross-border connectivity–remain intact. At the same time, the regulatory environment is becoming more complex. M&A is recovering but is more selective; foreign investment screening has become a meaningful transaction consideration; corporate governance is under greater scrutiny; restructuring tools have improved; and AI, cybersecurity and sustainability regulation are reshaping commercial relationships.

The result is not a less business-friendly Luxembourg. Rather, it is a Luxembourg in which professional corporate organisation and proactive legal risk management are increasingly important components of doing business successfully.

For investors and international groups, the most effective approach is to involve Luxembourg counsel at the strategic stage: when deciding how to structure the business, before signing an acquisition, when negotiating shareholder arrangements, when designing financing and whenever financial or operational difficulties first appear.

For businesses considering Luxembourg in 2026, the central considerations are therefore: What should the Luxembourg structure do? How should it be governed? What regulatory risks attach to the business? How should shareholder and contractual relationships be documented? And how resilient will the structure remain if the business, financing environment or regulatory landscape changes?

Those questions increasingly distinguish a Luxembourg structure that merely exists from one capable of supporting a successful international business for the long term.

MAURITIUS



Law and Practice

Contributed by:
Yannick Fok, Michael Hough, Jean-François Boisvenu, Padmini Bheekharry, Katelyn Yew Hin, Vedhav Ramparsad and Gideon van Niekerk
Eversheds Sutherland (Mauritius)

Contents

1. Business Entities P.459
1.1 Business Organisations p.459
1.2 Incorporation and Ongoing Compliance p.459
1.3 Share Issuances p.459
1.4 Distributions and Return of Capital p.460
1.5 Control Person Reporting p.460

2. Corporate Governance P.461
2.1 Legal Framework p.461
2.2 Directors' Duties and Liabilities p.461
2.3 Board Composition and Independence p.461
2.4 ESG and Disclosure Obligations p.462
2.5 Conflicts of Interest and Related-Party Transactions p.462

3. Shareholder Rights and Agreements P.463
3.1 Shareholder Rights p.463
3.2 Shareholder Agreements p.463

4. Mergers and Acquisitions P.464
4.1 Legal Framework p.464

5. Capital Markets P.465
5.1 Securities Regulation and Public Offerings p.465
5.2 Continuous Disclosure p.466
5.3 Insider Trading p.467
5.4 Shareholder Disclosure p.467
5.5 Internal Controls and Whistle-Blower Regimes p.468

6. Secured Transactions P.469
6.1 Transaction Financing and Security Interests p.469

7. Commercial Contracts P.471
7.1 Contract Formation and Enforceability p.471
7.2 Termination and Remedies p.471
7.3 Intellectual Property in Commercial Transactions p.472
7.4 Consumer Protection p.473

8. Foreign Investment P.474
8.1 Competition and Merger Control p.474
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.475

9. Regulatory Compliance P.476
9.1 Privacy and Data Protection p.476
9.2 Anti-Money Laundering, Sanctions and Corruption p.477
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.478
9.4 Artificial Intelligence p.478
9.5 Other Regulatory Compliance Requirements p.479

10. Employment and Labour P.479
10.1 Employment Standards and Workplace Regulation p.479
10.2 Executive Compensation and Restrictive Covenants p.480

11. Real Property and Commercial Leasing P.480
11.1 Requirements for Land Ownership p.480
11.2 Commercial Real Estate Transactions p.481

Eversheds Sutherland (Mauritius) is a multi-disciplinary law firm comprising four partners and a team of 12 professionals across two practice groups. The Litigation and Dispute Resolution Practice Group includes five members (three barristers and two attorneys) focused on corporate and commercial disputes (including IP, competition and insolvency). The Transactional and Advisory Practice Group consists of 11 members (seven barristers, one Canadian barrister, two South African attorneys and one US attorney). The firm has experience in corporate advisory, commercial, cross-border transactions, banking and finance, M&A, private equity, securities, financial services, IP, competition, tax, AML/CFT and litigation. As a global firm, Eversheds Sutherland operates from over 70 offices across Europe, Middle East, Asia, Africa and the US. Its lawyers around the world operate seamlessly to deliver legal know-how and strategic alignment to its clients. The firm offers the best of both worlds in terms of lawyers who are committed locally but connected globally.

Authors



Yannick Fok is a partner at Eversheds Sutherland (Mauritius) with over 20 years of experience, having been admitted to the Bar of England and Wales at Lincoln's Inn in 2001 and to the Mauritius Bar in 2002. He has a predominantly commercial and corporate advisory practice with a strong litigation background from his initial ten-year practice in an independent barristers' chambers. He advises on trusts, cross-border transactions, corporate restructuring, M&A and financial services licensing. Yannick is a full member of STEP UK (Society of Trust and Estate Practitioners).



Michael Hough is a partner at Eversheds Sutherland (Mauritius), admitted as an attorney in 2004 and as a conveyancer in 2008 in South Africa, and is a registered foreign lawyer in Mauritius. He advises on cross-border M&A, corporate restructurings, and the formation of publicly listed and private equity funds, with experience in financial regulatory matters including the establishment and licensing of global business companies and compliance with offshore financial services frameworks. Michael acts for fund managers, private equity sponsors, and other financial institutions on structuring investments into emerging markets.



Jean-François Boisvenu is a partner at Eversheds Sutherland (Mauritius), admitted to the Quebec Bar in 1996 and previously a partner at McCarthy Tétrault in Canada before relocating to Mauritius in 2009. He focuses on banking, financing and commercial law, notably international banking transactions and regulation of financial institutions, acting for lenders, borrowers, project and private equity sponsors, and governmental agencies. Jean-François is a Fellow of the Mauritius Institute of Directors and holds a law degree from the Université de Montréal and a business administration degree from the École des Hautes Études Commerciales in Montréal.



Padmini Bheekharry is a senior associate at Eversheds Sutherland (Mauritius) and a qualified barrister with extensive tax expertise. She began her career at the Mauritius Revenue Authority before serving as an adviser at the Ministry of Finance, where she headed the Legal Affairs Unit. She also practised at a first-tier law firm, further deepening her legal and tax acumen. Her practice spans taxation, tax controversy and resolution, international tax, employment, and mergers and acquisitions. Padmini holds an Advanced Diploma in International Taxation (ADIT) and earned her law degree from the University of Mauritius.

Contributed by: Yannick Fok, Michael Hough, Jean-François Boisvenu, Padmini Bheekharry, Katelyn Yew Hin, Vedhav Ramparsad and Gideon van Niekerk, **Eversheds Sutherland (Mauritius)**



Katelyn Yew Hin is an associate at Eversheds Sutherland (Mauritius), is a UK qualified barrister-at-law, admitted to the Mauritian Bar in 2024. Her practice covers corporate and commercial advisory, mergers and acquisitions, employment law and compliance. Having previously worked in the offshore sector in a compliance role, she provides practical advice on anti-money laundering, regulatory compliance and corporate governance.



Vedhav Ramparsad is an associate at Eversheds Sutherland (Mauritius), is a UK qualified barrister-at-law, admitted to the Mauritian Bar in 2024. He holds a Bachelor of Laws in Mauritian law from the University of Mauritius, a Postgraduate Diploma in English Law from the University of Central Lancashire, and a Postgraduate Diploma in Bar Practice from the University of Law. Vedhav specialises in commercial and litigation matters, including data protection, employment law, company and insolvency law.



Gideon van Niekerk is an associate at Eversheds Sutherland (Mauritius), admitted as an attorney of the High Court of South Africa in 2023 after completing his candidature at Niehaus McMahon from 2021 to 2023. He earned his LLB from the University of Stellenbosch in South Africa and a Master's degree in European Business Law from the University of Radboud in the Netherlands. Gideon specialises in drafting and reviewing corporate and commercial documents while providing extensive support on regulatory, compliance, competition and mergers and acquisitions matters.

Eversheds Sutherland (Mauritius)

Edith, Block B 2nd Floor
Edith Cavell Street
Port Louis
11302
Mauritius

Tel: +230211 0550
Fax: +2302110780
Email: yannickfok@eversheds-sutherland.mu
Web: www.eversheds-sutherland.com

Contributed by: Yannick Fok, Michael Hough, Jean-François Boisvenu, Padmini Bheekharry, Katelyn Yew Hin, Vedhav Ramparsad and Gideon van Niekerk, **Eversheds Sutherland (Mauritius)**

1. Business Entities

1.1 Business Organisations

Mauritius offers the following business entities:

- domestic companies;
- global Business companies (GBC);
- authorised companies (AC);
- protected cell companies (PCC);
- variable capital companies (VCC);
- general partnerships;
- limited partnerships (LP);
- limited liability partnerships (LLP);
- sole proprietorships;
- trusts; and
- foundations.

Choice of structure depends on:

- liability exposure (unlimited for sole proprietorships and general partnerships; limited for companies and LLPs);
- tax residence and treaty access (GBCs require Mauritius management-and-control substance; ACs are managed abroad);
- capital raising and investment structuring (PCCs and VCCs enable segregated cell or sub-fund structures);
- licensing and regulatory treatment (GBCs require a Financial Services Commission (FSC) Global Business Licence (GBL); ACs require FSC authorisation; other regulated activities carry separate licensing obligations); and
- wealth planning objectives (trusts and foundations serve succession and philanthropic purposes).

1.2 Incorporation and Ongoing Compliance

The Registrar of Companies administers incorporation through the Companies and Business Registration Integrated System (CBRIS). GBCs, ACs, collective investment schemes, insurance businesses and FSC-licensed entities must appoint a licensed management company to handle regulatory and corporate filings, provide the registered office and company secretary, maintain statutory registers, and ensure ongoing compliance.

Incorporation Procedure

The proposed company name may be reserved through CBRIS for up to six months.

The incorporation application must be filed through CBRIS with director, secretary and shareholder consents, beneficial ownership information, registered office details, proposed activities and company type. A constitution is optional for a private company.

On approval, the Registrar issues a certificate of incorporation and company number. Incorporation fee for a private company is MUR3,000; annual registration fees range from MUR500 to MUR27,000 depending on company type and turnover. A Business Registration Card is also issued.

Incorporation alone does not authorise regulated activities. A GBC requires an FSC GBL (processing fee USD600, annual fee USD2,600) and must satisfy management-and-control and substance requirements. An AC requires FSC authorisation (processing fee USD600, annual fee USD1,400) and is subject to activity restrictions. Other FSC-licensed activities require separate applications, fees and conditions as prescribed in the Financial Services (Consolidated Licensing and Fees) Rules 2008.

Ongoing Compliance

Entities must:

- maintain the required registers (shareholders, directors, beneficial owners, charges), minutes and accounting records for at least seven years;
- maintain accounting records, prepare financial statements and undergo an audit unless exempt (GBCs must file audited financial statements with the FSC and Registrar. Certain small entities may qualify for simplified filings);
- comply with applicable tax, filing, regulatory and annual return requirements; and
- keep beneficial ownership information up to date and make required filings within prescribed time limits.

1.3 Share Issuances

Mauritius does not use “authorised” share capital. Share creation, issuance and alteration is governed by

the Companies Act 2001 (the "CA 2001"). The board may issue shares at any time, subject to the constitution and applicable law.

Share capital:

- issue on incorporation – shareholders named in the application are deemed issued the stated shares. The board may issue further shares subject to the constitution and pre-emptive rights;
- no-par-value and stated capital – shares are no-par-value by default; par value remains valid for pre-commencement companies and by Registrar dispensation for foreign reporting. GBCs and ACs may issue either. Par value premiums go to a share premium account. A stated capital account must be maintained for each class, recording consideration received or payable; it is not a fixed limit and may be reduced subject to applicable law;
- consideration – may be cash, property, securities, promissory notes or future services. The board must determine fair and reasonable value; non-cash issues require a director's certificate;
- pre-emptive rights – new shares ranking equally with or in priority to existing shares must be offered to existing holders to maintain their relative rights, subject to the constitution;
- alteration of capital – shares may be subdivided or consolidated by ordinary resolution. Reduction of stated capital requires a special resolution, 30 days' public notice and satisfaction of the solvency test; and
- non-citizen restrictions – share issues or transfers to non-citizens may require prior approval under the Non-Citizens (Property Restriction) Act (NC(PR)A) if the company owns immovable property (even indirectly).

Share classes:

- default rights – a share confers one vote, an equal share in dividends and an equal share in surplus on liquidation. These may be restricted or altered by the constitution or terms of issue;
- classes and structuring – the constitution or terms of issue may create different classes with different dividend, capital, conversion, voting and transfer rights; and
- variation of class rights – requires a special resolution or written consent of 75% of the class holders.

1.4 Distributions and Return of Capital

Distributions, returns of capital, repurchases and redemptions are governed by the CA 2001 and require satisfaction of the solvency test.

Distributions:

- dividends are authorised by the board, subject to the solvency test and constitution; and
- the solvency test requires that (i) the company can pay debts as they become due, and (ii) assets exceed liabilities plus stated capital.

Repurchase and redemption:

- buyback is permitted if authorised by the constitution, the board determines it is in the company's best interests, terms are fair to non-selling shareholders, and the solvency test is satisfied;
- treasury shares – acquired shares are cancelled unless the constitution permits holding as treasury shares (up to 10% of the class for non-GBL companies);
- redemption – applies only to redeemable shares. Terms and pricing must be specified in the constitution or terms of issue. Shares must be fully paid and a solvency test applies;
- financial assistance – restricted but permitted if the board determines it is in the company's best interests, terms are fair and the solvency test is satisfied. Auditor certification is required if assistance exceeds 10% of stated capital; and
- liability – directors voting for an unlawful distribution may be personally liable. Shareholders knowingly receiving an unlawful distribution may be required to repay it.

1.5 Control Person Reporting

Private companies are subject to beneficial ownership transparency under the CA 2001 and the Financial Intelligence and Anti-Money Laundering Act (FIAMLA). The regime identifies natural persons who ultimately own or control the company.

Obligations:

- the company must record steps taken to identify each beneficial owner, including a written declaration confirming their status;
- beneficial ownership information must be lodged through CBRIS at incorporation. Changes must be filed within 14 days;
- reporting persons under FIAMLA must conduct CDD to identify the beneficial owner of legal person customers. CDD records must be kept for at least seven years after the business relationship ends; and
- management companies administering GBCs and ACs must undertake CDD and maintain beneficial ownership records per FSC guidelines.

2. Corporate Governance

2.1 Legal Framework

Corporate governance rests on the CA 2001, Financial Reporting Act, and for listed issuers, the Securities Act (SA) and Stock Exchange of Mauritius Listing Rules (Listing Rules).

National Code of Corporate Governance (NCCG)

Corporate governance is principles-based with an "apply-and-explain" methodology. The NCCG covers governance structure, board composition, director duties, remuneration, risk governance, reporting, audit and stakeholder relations. Binding law prevails.

Listed and Regulated Entities

Listed issuers must comply with Listing Rules, SA and FSC requirements. Specific practices include separation of chairperson and CEO roles, audit committee of board members only, and NCCG compliance disclosure in annual reports.

Banks and Financial Institutions

These entities are subject to the Banking Act, Financial Services Act (FSA) and Bank of Mauritius (BOM) or FSC guidelines, including the BOM Guideline on Corporate Governance.

2.2 Directors' Duties and Liabilities

Directors' duties are governed by the CA 2001, the constitution, common law fiduciary principles and sectoral rules. Duties are owed to the company, not to shareholders or creditors.

Fiduciary Duties

Directors must exercise powers honestly, in good faith, for proper purposes and within the Act and constitution.

A director interested in a transaction must disclose the interest to the board and enter it in the interests register.

Directors must not use company information except for the company's purposes or as required by law.

Standard of Care

Officers must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

A director satisfies the care standard if the decision is made in good faith, for a proper purpose, without material personal interest, on an informed basis and with a reasonable belief it serves the company's best interests.

Personal liability may arise from bad faith, self-dealing, breach of statutory duties, unlawful distributions, failure to keep records, or misuse of company assets or information.

2.3 Board Composition and Independence

Board composition is governed by the CA 2001, FSA and, for listed issuers, the SA and Listing Rules. The NCCG also applies.

Board composition:

- residence:
  - (a) every company must have at least one Mauritius-resident director. An AC may have non-resident directors and appoint a corporation as director;
  - (b) a GBC must have at least two Mauritius-resident directors; meetings must include at least

two Mauritius-resident directors;
- independence standards:
  (a) public company must have at least two independent directors. The NCCG recommends two for all organisations; and
  (b) Mauritius-resident directors must exercise independent judgement. No statutory minimum for private companies, but the NCCG recommends two for public interest entities; and
- diversity requirements:
  (a) a public company must have at least one woman on the board. Listed companies require minimum 25% women; and
  (b) no statutory gender quota applies for private companies; the NCCG recommends gender diversity.

Public, listed and private companies:

- public companies – at least two independent directors and one woman on the board. The NCCG recommends separation of chairperson and CEO roles;
- listed companies – minimum 25% women on the board. Chairperson and CEO roles must be separate; audit committee of board members only. NCCG compliance disclosure required in annual reports; and
- private companies – may set board size, reserved matters and committees in their constitution. No statutory independence or gender quota for private companies, but sectoral licences may impose fit-and-proper, and residency requirements for directors.

2.4 ESG and Disclosure Obligations

ESG obligations arise under environmental, employment, data protection and corporate legislation, supplemented by the NCCG and sectoral rules.

Legislation

The Environment Protection Act (EPA) requires EIAs and imposes polluter duties. The Climate Change Act (CCA) addresses adaptation and mitigation. The Waste Management and Resource Recovery Act regulates waste handling.

The Workers' Rights Act (WRA) and Occupational Safety and Health Act (OSHA) govern employment and safety. The Equal Opportunities Act prohibits discrimination. Companies must pay 2% of their chargeable income of the preceding year towards CSR.

Disclosure Requirements

Principle 6 of the NCCG requires boards to present a fair, balanced assessment of financial, environmental, social and governance position.

The 2026 amendments to the Financial Reporting Act permit IFRS/ISSB-aligned sustainability standards, potentially mandatory by sector.

Listed issuers must address material ESG matters under Listing Rules and continuing-disclosure requirements.

FSC Guidelines (March 2025) require ESG-focused schemes to have at least two-thirds NAV ESG-focused and submit annual Sustainability Reports.

Directors' ESG Duties

Directors' statutory duty is to the company, but they must consider stakeholder and creditor interests where relevant.

The NCCG expects boards to understand material environmental, social and stakeholder effects.

ESG board best practices include:

- assigning ESG responsibility, setting measurable targets and integrating ESG into strategy and risk appetite;
- assessing climate-related physical and transition risks and supply-chain vulnerabilities; and
- ensuring ESG data is reliable, challenging greenwashing and recording the basis for material disclosures.

2.5 Conflicts of Interest and Related-Party Transactions

The CA 2001, constitution, sector rules and governance codes govern conflicts and related-party transactions.

Disclosure obligations:

- directors must act in good faith for the company's best interests;
- an interested director must promptly disclose the nature and record it in the interests register, minutes and any required annual report;
- a public-company director generally cannot vote on interested transactions; a private-company director may vote after disclosure unless excluded;
- the board should assess best interests and fair value; independent review or shareholder approval may be required for material transactions; and
- undisclosed or unfair transactions may be avoided; the director may have to compensate the company or account for profit.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder rights arise under the CA 2001, the constitution and class terms, varying by company type, listing status and class.

Shareholder Rights

Shareholders vote at meetings or by written resolution where permitted; rights may be preferential, limited, conditional or non-voting. Ordinary resolutions generally require a simple majority; special resolutions require 75% of votes entitled and voting.

Shareholders may receive or inspect the constitution, share register, annual reports, financial statements and prescribed filings, subject to statutory limits, and may request a statement of class rights. Listed or reporting issuers have additional SA, FSC and SEM disclosure duties.

A special resolution is generally required for constitutional changes, reduction of stated capital, major transactions, amalgamations and voluntary liquidation. Dissenters may have minority buy-out rights in specified cases.

Lawful dividends and distributions, pre-emption and surplus on winding-up depend on class terms and solvency rules. Class rights generally cannot be varied without the required 75% approval; dissenters may seek relief or purchase.

Statutory Remedies

With court leave, a shareholder or director may sue in the company's name for harm to the company; recovery belongs to the company.

An entitled person may apply where company affairs or an act is oppressive, unfairly discriminatory or unfairly prejudicial. The court may order a buy-out, compensation, governance or constitutional changes, rectification, a receiver, set aside action or liquidation.

A shareholder may sue for breach of a right owed personally by the company or a director, or seek an order requiring statutory or constitutional compliance.

The court may restrain threatened conduct contrary to the Act or constitution, including an unlawful issue, transfer, distribution or meeting decision.

A shareholder may petition where trust and confidence has been broken down or the company cannot operate as intended; the court may prefer a buy-out or governance remedy.

3.2 Shareholder Agreements

A shareholder agreement supplements the CA 2001 and constitution in private companies and joint ventures, allocating governance, transfer and exit rights without overriding mandatory law.

Transfer and Exit Provisions

Transfer and exit provisions incorporate the following.

- Pre-emption and first-offer rights – these provisions set the notice, valuation, price and acceptance process for a proposed transfer.
- Tag-along rights – minority holders may participate in a majority sale on the same terms.
- Drag-along rights – a qualifying majority may require a sale to a bona fide buyer, subject to clear price, notice, consideration and liability protections.
- Lock-up and reserved matters – lock-ups may restrict transfers for a period or to competitors; reserved matters may require an agreed majority or

unanimity for new shares, acquisitions, borrowing, business changes, related-party transactions and distributions.
- Governance and deadlock – agreements may cover board appointments, quorum, vetoes, information, funding, dividends and a staged negotiation, mediation, arbitration or buy-sell process.
- The agreement binds its parties; the company should join it or relevant provisions should be mirrored in the constitution if they must bind the company or affect third parties. Mandatory CA 2001, securities, competition, insolvency and regulatory rules prevail.
- Dispute resolution – disputes may be referred to negotiation, mediation or arbitration, but court relief remains necessary for injunctions, rectification, oppression, derivative proceedings, winding-up or orders affecting non-parties.

Statutory Remedies

The remedies described in **3.1 Shareholder Rights** remain available alongside contractual enforcement where applicable.

For LP or LLP disputes, start with the partnership agreement's management, transfer, valuation, exit and forum clauses; statutory beneficial-ownership, registration, insolvency, tax and regulatory duties remain.

4. Mergers and Acquisitions

4.1 Legal Framework

Legislation

The main legal framework for M&A comprises the CA 2001, SA and Competition Act 2007 (the "CA 2007"), together with their implementing rules.

- CA 2001 – governs acquisitions, amalgamations, arrangements and reconstructions, including court-sanctioned schemes.
- SA – applies to listed company transactions; regulates securities offerings, disclosure and takeovers.
- Securities (Takeover) Rules 2010 – set out takeover requirements for listed companies, including mandatory offers and disclosure.
- CA 2007 – governs merger control where an acquisition may substantially lessen competition.
- SEM Rules – listed companies must comply with applicable listing and disclosure requirements.
- Sector-specific requirements – additional approvals may be required for regulated sectors, particularly financial services.

Requirements depend on the transaction type, whether the target is listed or private, the sector and any competition or regulatory issues.

Structuring Considerations

The structure of an M&A transaction depends on commercial objectives, the nature of the target and applicable regulatory requirements.

- Share acquisitions – commonly used for private M&A where the buyer wishes to acquire the business as a whole.
- Asset acquisitions – allow the buyer to select assets and liabilities; individual assets, contracts and licences may require separate transfers.
- Amalgamations – the CA 2001 provides for statutory amalgamations where combining companies is preferable to conventional acquisition.
- Listed-company takeovers – subject to Takeover Rules and SEM requirements, with emphasis on disclosure and shareholder treatment.
- Regulatory considerations – competition issues, change-of-control provisions, regulatory approvals, financing and tax implications should be identified early.

Negotiated share purchases are generally preferred for straightforward private acquisitions; more complex transactions may combine acquisition and restructuring mechanisms.

M&A Structures

The most common structures are share acquisitions and asset acquisitions, particularly for private transactions.

- Share purchase – the buyer acquires shares from existing shareholders and takes control of the target.
- Asset purchase – the buyer acquires selected assets or a business from the target.

- Amalgamation – two or more companies combine under the CA 2001, with one surviving or a new company established.
- Takeover offer – used for listed company acquisitions, subject to applicable takeover rules.
- Hybrid structures – complex transactions may combine share acquisition with subsequent amalgamation or restructuring.

Negotiated share purchases remain the most straightforward and common structure for private M&A.

5. Capital Markets

5.1 Securities Regulation and Public Offerings Framework

The capital markets framework is governed by the SA and regulations issued by the FSC.

The FSC is the principal regulator of the non-bank securities market, responsible for licensing and supervising securities exchanges, market intermediaries and reporting issuers.

The SEM operates the securities market and handles admission to listing and monitoring compliance with the Listing Rules.

The BOM regulates banks and banking-related activities separately from the FSC's securities market role.

Public Offerings

A public offer of securities generally requires a prospectus prepared and registered with the FSC under the SA.

The prospectus must provide sufficient information for investors to assess the issuer and securities, covering business, financial position, management, material risks, use of proceeds and securities rights.

The SA requires material information to be disclosed in a manner that is full, true and plain.

Follow-on public offerings are subject to the same prospectus framework, although requirements depend on the issue nature and available exemptions.

A prospectus is generally valid for six months from registration. Material changes may require amendment or supplement.

Where securities are also being listed on the SEM, the issuer must satisfy SEM admission requirements in addition to FSC requirements.

There is no single statutory timetable for an IPO; timing depends on transaction complexity, issuer readiness and regulatory review.

The process generally involves prospectus preparation, regulatory review, addressing comments, obtaining approvals, publication and completion of subscription and listing.

Listing and Securities Regulation

The SA and Listing Rules operate together. An issuer seeking a listing must satisfy SEM admission criteria in addition to applicable prospectus requirements.

For the Official Market, the SEM generally requires, among other things:

- an appropriate trading record, normally supported by financial statements covering the preceding three years;
- an expected market capitalisation of at least MUR20 million; and
- at least 25% of the shares in public hands, with a minimum of 200 shareholders, subject to permitted exceptions.

Once listed, the issuer remains subject to SEM continuing obligations including periodic financial reporting and prompt disclosure of material or price-sensitive information.

In practice, FSC and SEM requirements should be considered together from the outset. The FSC focuses on statutory securities compliance; the SEM focuses on admission and market compliance.

Prospectus Exemptions and Preferential Offers

The SA provides exemptions from the prospectus requirement in certain circumstances. These include:

- private placements;
- offers made exclusively to sophisticated investors or to related corporations;
- certain employee share schemes; and
- certain dividend reinvestment and similar arrangements.

A private placement involves securities offered to investors for their own account without publicity, subject to a minimum subscription of MUR1 million per investor.

Mauritius uses the concept of a sophisticated investor, including specified institutional and professional investors such as banks, insurers, investment dealers, CIS managers and FSC-designated persons.

A prospectus exemption does not remove the offer from the securities regulatory framework. Certain exempt offers may be subject to the Securities (Preferential Offer) Rules.

The preferential-offer framework applies where an issuer makes an offer to 25 or more investors in Mauritius or where the issuer is a reporting issuer.

Requirements for exempt offerings depend on the exemption type, number and nature of investors and whether the issuer is a reporting issuer.

Resale Restrictions

Mauritius does not impose a single statutory lock-up period for securities issued under a prospectus exemption.

However, securities issued under an exemption are not automatically freely distributable; any subsequent resale must be assessed under the SA to determine whether it constitutes a public offer or falls within another exemption.

The SA and FSC Rules provide conditions for subsequent offers of securities originally acquired through private placements, which may include a prescribed minimum holding period.

Where securities are listed, the Listing Rules may impose additional requirements concerning transfers and public distribution.

Offer documentation should identify any restrictions on the securities and circumstances for subsequent transfer.

Failure to comply with exemption conditions may expose the issuer and other persons to regulatory sanctions, statutory penalties and criminal liability. The FSC may take enforcement action, while the SEM may take action affecting the listing or trading of securities.

5.2 Continuous Disclosure

Continuing disclosure requirements include the following.

- Listed companies must comply with SA and Listing Rules continuing obligations.
- A reporting issuer must disclose without delay any material change likely to significantly affect the value or market price of its securities.
- Listing Rules require timely disclosure of price-sensitive information to ensure equal investor access.
- Listed companies must also make periodic financial disclosures, including annual and interim reports, within prescribed timeframes.
- Continuing disclosure obligations also cover matters such as:
  (a) changes in the company's capital structure;
  (b) issues or redemptions of securities;
  (c) changes in the rights attached to listed securities;
  (d) changes to the board or senior executive positions;
  (e) material changes to the company's constitution; and
  (f) significant acquisitions or transactions which may affect the company or its group.
- The test is whether information might reasonably be expected to materially affect market activity or the price of securities.

Disclosure of material events is as follows.

- Material events are disclosed through market announcements made available to the SEM and investing public.
- A reporting issuer must issue an immediate press release in plain language where a material change may significantly affect securities' value.
- Where securities are listed, a copy of the announcement must also be filed with the SEM.
- Listed companies often issue cautionary announcements for price-sensitive matters still under discussion.
- Confidentiality must be maintained before announcement; selective disclosure to shareholders or analysts is prohibited.
- A clarifying announcement may be required if confidential information leaks or inaccurate reports risk a false market.
- The key principle is timely, equal and clear disclosure of material price-sensitive information.

5.3 Insider Trading

Market Abuse and Insider Trading Laws

The main framework dealing with market abuse and insider trading is contained in the SA and FSC regulations.

The legislation prohibits persons possessing inside information from dealing in securities, encouraging another to deal, or disclosing the information, except in the proper course of duties.

- Inside information is specific, not publicly available and likely to have a material effect on the price of securities if made public.
- The rules apply to anyone possessing inside information, including directors, employees, professional advisers and others who obtain it through their work or relationship with an issuer.
- The market-abuse framework also addresses market manipulation and dissemination of false or misleading information.
- Listed companies and their directors should have appropriate internal controls including dealing restrictions during sensitive periods, insider lists, confidentiality arrangements and conflict management procedures.

Enforcement Powers

The FSC:

- is the principal regulator responsible for supervising the securities market and enforcing the SA;
- may require information and documents, conduct inspections and investigations, and require explanations or assistance;
- may refer matters for criminal prosecution where conduct amounts to an offence; and
- works with other authorities where suspected market abuse may constitute a criminal offence.

Where the FSC identifies potential breaches, it can take regulatory and enforcement action including directions, sanctions and action concerning licences.

The legislation provides significant penalties for insider dealing and market-abuse offences, including regulatory sanctions, criminal liability, fines and imprisonment.

Publicly traded companies should have procedures for identifying inside information, controlling access, monitoring dealings and escalating suspected breaches.

5.4 Shareholder Disclosure

Substantial shareholding rules are in CA 2001, with additional requirements under SA and SEM rules for reporting issuers or listed companies.

Public companies and their subsidiaries or holding companies must maintain a register of substantial shareholders under CA 2001. A substantial shareholder holds 5% or more of voting power, including interests held directly or through nominees.

Listed or reporting issuers have additional disclosure obligations for significant ownership changes. Listing rules may impose further notification requirements when voting interest crosses specified thresholds.

Applicable Thresholds

The key threshold under the CA 2001 is 5% of aggregate voting power. These provisions apply to public companies and their subsidiaries or holding companies, not private companies.

The SA imposes a separate regime for reporting issuers, generally including listed companies.

Listing rules may introduce additional thresholds and notification requirements.

Companies and significant shareholders should monitor changes in voting interests, particularly near thresholds.

Non-Compliance

Failure to disclose may result in statutory penalties or regulatory action.

Breaches of SA disclosure requirements may constitute an offence with statutory penalties.

Listed companies may face FSC or SEM action for non-compliance.

Unexplained failures to disclose may attract regulatory scrutiny and raise governance concerns.

Companies with significant or changing shareholder bases should have procedures to identify reportable changes and file within applicable time limits.

5.5 Internal Controls and Whistle-Blower Regimes

Compliance and Internal Controls

Mauritius has no single law requiring every company to maintain a formal compliance programme. Requirements arise from the CA 2001, NCCG and sector-specific regulation.

Companies should maintain internal controls and risk-management systems covering:

- compliance with applicable laws and regulations;
- financial and operational controls;
- prevention and detection of fraud and misconduct;
- segregation of duties and appropriate authorisation procedures;
- protection of company assets and information; and
- accurate and reliable financial and regulatory reporting.

NCCG places board responsibility for overseeing risk management and internal controls.

AML/CFT-regulated businesses have additional requirements: risk assessments, customer due diligence, beneficial ownership identification, suspicious transaction reporting, record keeping and employee training. Such businesses must maintain Compliance Officer and MLRO arrangements for managing AML/CFT risks and reporting to the FIU.

Whistle-Blowing and Reporting

No general statutory requirement exists for all companies to establish an internal whistle-blowing mechanism.

NCCG encourages mechanisms for employees and stakeholders to raise concerns regarding misconduct or irregularities.

Certain sectors are subject to mandatory reporting obligations:

- AML/CFT reporting persons must report suspicious transactions to the FIU where statutory conditions are satisfied;
- regulated entities may have additional reporting obligations from their regulator; and
- regulatory breaches may trigger reporting, investigation and enforcement consequences.

Section 45A FSA provides a statutory whistle-blowing mechanism to the FSC.

Companies should implement internal whistle-blowing procedures proportionate to size and risk profile, including confidential reporting, retaliation protection, independent investigation and escalation.

Compliance Risk Governance

Companies should develop their governance framework by reference to CA 2001, NCCG and any sector-specific requirements.

An appropriate compliance-risk framework should include:

- board-level responsibility for compliance and risk oversight;
- identification and periodic assessment of legal and regulatory risks;
- defined responsibilities for management and compliance personnel;
- documented compliance policies and procedures;
- appropriate internal controls and segregation of duties;
- periodic compliance monitoring and testing;
- internal audit or other independent assurance, where appropriate;
- employee training and awareness programmes;
- confidential whistle-blowing and escalation procedures; and
- processes for recording, investigating and remediating compliance breaches.

The board should receive regular reporting on material compliance risks, breaches and remedial measures.

Regulated sectors, particularly financial services, should supplement with specific governance, compliance and reporting requirements from the relevant regulator.

The framework should be proportionate to size, nature, complexity and risk profile.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Types of Security Interests

Mauritius does not have a single comprehensive secured-transactions regime. Security interests are governed principally by the Code Civil Mauricien (CCM) and Code de Commerce (CC).

The main forms of security interests are mortgages, fixed and floating charges, pledges and assignments by way of security. The type of security interests available depends on the underlying asset:

- shares by way of a pledge (civil or commercial) or charges;
- bank accounts by way of a pledge, charge (fixed or floating);
- receivables by way of a pledge, charge (fixed or floating) or assignment by way of security;
- ships and aircraft by way of mortgage or charge (fixed or floating);
- movable property generally by way of a pledge or charge (fixed or floating); and
- immovable property by way of mortgage or charge (fixed or floating).

Fixed and floating charges may be granted only in favour of an *Institutions Agréées*. Fixed charges may only charge present property (as opposed to future or after-acquired property).

Perfection Requirements

Shares

Security over shares is documented through a written pledge agreement. Perfection requires delivery of share certificates, transfer-in-guarantee documentation, an undated blank share transfer form and inscription of the pledge in the issuer's registers. A secured creditor may register the pledge with the Registrar General to establish a *date certaine*.

Bank accounts

Security over a bank account is generally perfected by serving notice of the security interest on the account bank under the terms of the relevant security arrangement.

Mortgages and charges

Mortgages over immovable property and fixed and floating charges over assets must be filed with the Conservator of Mortgages and registered with the Registrar General within eight days of execution (three months for offshore companies) to be perfected against third parties.

Registration and filing fees are calculated by reference to the value of the secured transaction, subject to a statutory maximum of approximately MUR54,000.

Priority

Priority generally follows the first-in-time rule: the first security interest perfected on an asset will generally have priority on that asset.

- For mortgages and charges, perfection is by date of inscription and registration.
- For share pledges, perfection is by delivery of certificates and inscription in the issuer's register. For receivables and bank accounts, perfection is by notice to the account debtor or account bank.
- For assignments by way of security, priority follows the date of the relevant bordereau or equivalent perfection document.
- In insolvency proceedings, preferential (legal) creditors rank ahead of secured creditors to the extent provided by law, and secured creditors rank ahead of ordinary unsecured creditors. A secured creditor must obtain court leave to enforce security against an insolvent company.

Enforcement

Enforcement requires an event of default and varies by security type.

Mortgages

A mortgage is enforced through service of a *commandement*. If payment remains unpaid after the statutory period of ten days, the mortgaged property may be sold through judicial proceedings.

Pledges

A commercial pledge may generally be enforced by self-help without court proceedings, except for domestic company shares which require court supervision or an auctioneer.

Charges

A fixed charge is enforced through seizure and sale of the charged assets. A floating charge must crystallise into a fixed charge before enforcement.

Framework

The legal framework governing acquisition financing includes the CA 2001, Insolvency Act, Banking Act, FSA, CCM and CC.

The BOM regulates banks and deposit-taking institutions. The FSC regulates non-bank financial services.

Acquisition Financing

Senior secured lending is extended by local and international banks.

Bonds are commonly issued, including sustainability linked bonds and by Mauritian subsidiaries of international groups for African project funding.

Syndicated loans are preferred where borrowers seek greater flexibility in accessing funds.

Mezzanine facilities are also available for entities seeking flexibility.

Security Packages

A recommended security structure combines a floating charge and a pledge over the borrower's assets located in Mauritius. The floating charge offers flexibility over any asset type, while the pledge enables direct collection of receivables and sale of offshore company shares. This combined structure provides greater certainty on enforcement.

Intercreditor Arrangements

Intercreditor agreements are common in multi-lender transactions and can follow LMA standards. Contractual subordination is the most common form.

Priority and intercreditor arrangements

Priority generally follows the first-in-time rule: the first creditor to perfect its security interest over an asset has priority for that asset, except as modified by an intercreditor agreement.

For registered charges, priority is determined by registration date and time.

The Insolvency Act establishes preferential regime for certain categories of creditors including employees (unpaid salaries) and the government. Registered security such as fixed and floating charges ranks below preferential claims but above unregistered security.

Duty of Confidentiality

Banks' duty of confidentiality has been extended to align with stronger AML laws. Banks must now disclose information to the Financial Crimes Commission or if required by court order.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Contract Law Principles

A contract is formed by mutual consent of the parties to the terms of the contract.

Sale and other specific contracts may generally be concluded without specific formality unless the law provides otherwise.

Contract interpretation

Courts seek the parties' true common intention rather than limiting themselves to literal wording. They read contracts as a whole, preferring interpretations that give clauses effect.

Where a term is ambiguous, courts select the meaning best fitting the contract's subject matter and purpose, considering customary practices and implied terms.

Where ambiguity remains, interpretation generally favours the obligor. Broad wording is not given unlimited scope, and examples are treated as illustrative unless otherwise intended.

Contract enforceability

Under the privity-of-contract principle, a validly formed contract is enforceable only between the parties involved.

Formation Requirements

Substantive conditions

The formation of a commercial contract requires:

- the consent of all parties involved;
- the capacity to contract;
- a certain and definite object; and
- a lawful object and cause.

Formal conditions

Commercial agreements are not generally subject to specific formalities.

Contracts exceeding MUR5,000 must be in writing. Insurance contracts, settlement agreements, floating charges and facility agreements must be evidenced in writing.

Main Grounds for Invalidity

A contract may be declared invalid on the grounds of:

- consent – must be freely given; may be annulled for mistake, misrepresentation or duress;
- capacity – contracts by minors, protected adults or legally prohibited persons are voidable;
- certainty – the subject matter must be sufficiently certain or determinable; and
- lawful cause – a contract lacking a cause, based on a false cause, or contrary to law, public order or good morals is void.

Enforcement of Contracts

Limitation and exclusions of liability

Parties may limit or exclude contractual liability, but not for gross negligence (*faute lourde*) or fraud (*dol*).

An exclusion clause cannot completely negate a party's fundamental obligation, as doing so destroys the cause of the contract, rendering the abusive clause invalid.

Principle of good faith

Parties must act in good faith, which is presumed; any party alleging bad faith must prove it. This principle includes prohibiting abusive clauses between parties with unequal bargaining power.

7.2 Termination and Remedies

Breach of Contract Remedies

Suspension of performance

Suspension of performance allows a party to temporarily withhold their contractual obligations when the other party has failed to perform.

Damages

Damages are the primary remedy, compensating direct losses (lost profits, additional expenses) and indirect losses (consequential damages, loss of reputation).

Specific performance
Specific performance may be requested if performance is still possible, but requires a court order.

Rescission
Rescission restores parties to their pre-contract position and is available only for serious breach or nullity.

Termination
Termination ends the contract where it lies without restitution, and may occur via express clause, unilateral action or judicial decision.

Termination Grounds and Wrongful Termination
Grounds for termination
Where a contract provides for express grounds of termination, the contract may be terminated under such grounds.

Statutory grounds for termination are also available. A contract may be terminated:

- if the consent of one party is given under duress, by mistake or misrepresentation;
- by the incapacitated party where such a party did not have the capacity to enter into the contract;
- where the object of the contractual obligation cannot be ascertained by reference to its nature or quantity, or is prohibited from trade;
- where the contractual obligation is without cause, based on a false cause, or an unlawful cause (prohibited by law, against public order, or good morals);
- in case of a severe violation of a contractual obligation that substantially deprives the innocent party of what they were entitled to expect under the contract; or
- if an external event that is unforeseeable and irresistible renders performance permanently impossible, the contract is automatically terminated without liability for damages. If the impediment is only temporary, performance is merely suspended.

Consequences of wrongful termination
In case of wrongful termination, the injured party may seek compensation for the losses suffered or may seek specific performance of the contract. These remedies require court intervention.

Force majeure, frustration and hardship
Force majeure
A force majeure event must be unforeseeable, unavoidable and beyond the control of the affected party. No damages may be claimed for non-compliance caused by force majeure.

Force majeure is a statutory defence and need not be expressly provided in a contract. However, the burden rests on the party relying on it to establish the requirements. In practice, contracts commonly include non-exhaustive lists of force majeure events.

Frustration
As it is not recognised in Mauritius, parties may provide for similar circumstances through force majeure or termination clauses. Where performance becomes impossible due to unforeseen circumstances, the contract may be terminated with compensation unless a force majeure defence applies.

Hardship
Mauritian law does not recognise a broad hardship doctrine allowing courts to rewrite contracts that become less profitable or more onerous. Parties should expressly include hardship provisions in their contracts.

7.3 Intellectual Property in Commercial Transactions
Intellectual property (IP) rights are primarily governed by the Industrial Property Act, the Copyright Act and the CCM.

The CCM provides that the transfer of incorporeal rights is effected by delivery of the relevant title documents or by the acquirer's use of the right with the transferor's consent.

Patents, Utility Models, Industrial Designs and Trade Marks
Patents may be assigned or transferred by succession, and any change in ownership must be entered in the relevant register before it becomes effective against third parties.

The same assignability and registration requirements apply to utility models, industrial designs and trade marks.

Any licence agreement relating to an industrial property right (other than a geographical indication) must be submitted to the Director of the Industrial Property Office for recording and publication; until so recorded, a licence has no effect against third parties.

Copyrights

Copyrights are governed by the Copyright Act, which permits the assignment and licensing of economic rights and requires assignments to be in writing to be valid. Moral rights remain inalienable.

Trade Secrets

Trade secrets are protected through confidentiality and non-disclosure agreements. The Protection Against Unfair Practices (Industrial Property Rights) Act offers remedies against misappropriation. Enforcement includes injunctive relief, damages and criminal sanctions.

IP Ownership in Commercial Relationships

Employee-created IP

The general rule is that the inventor is the first owner of the right to a patent. However, where IP is created in the course of employment, the employer is entitled to ownership rights unless otherwise provided in the employment contract. The employee-inventor may be entitled to compensation in specific circumstances.

For copyrights, the opposite principle applies: the employer is entitled to the economic rights only if so provided in the contract, and moral rights are always retained by the creator.

Joint development

Where an invention is made jointly by two or more persons, the right to the patent belongs to them jointly. Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date is entitled to the patent.

Commissioned works

Where an invention, layout-design or industrial design is created under a commission contract whose essential purpose is creating the relevant IP, ownership vests in the commissioning party unless provided otherwise in the commissioning agreement. For copyrights, ownership typically remains with the author unless expressly assigned in writing.

AI-generated content

The legal framework does not expressly address the ownership of IP generated by artificial intelligence.

IP infringement remedies

The holder of an industrial property right may apply to the Supreme Court against any person who has infringed, or is likely to infringe, that right.

Civil remedies include injunctive relief, damages, account of profits and delivery up of infringing goods.

In addition to civil remedies, criminal sanctions apply to knowing infringement, with penalties of up to MUR250,000 and five years' imprisonment. The Director of the Industrial Property Office has broad investigative powers, including the ability to apply for search and seizure orders and to refer matters to the Director of Public Prosecutions. Claims must be brought within five years of the claimant becoming aware of the infringing act.

7.4 Consumer Protection

Legislation

The principal consumer protection laws are:

- Fair Trading Act (FTA);
- Trader's Warranty Regulations;
- CA 2007;
- CC; and
- CCM.

Interaction with Commercial Agreements

Unfair practices and disclosure requirements

There is no law expressly regulating unfair contractual terms, but any valid obligation must have a lawful cause and object.

The FTA prohibits any person from, for trade or promotional purposes, misleading or confusing consumers; withholding information about consumer rights; exercising undue pressure to enter transactions; or causing consumers to enter into transactions adverse to their interests (Section 4).

Warranties and fitness for purpose

Under the Trader's Warranty Regulations, every trader selling goods to a consumer gives an implied warranty of fitness for purpose. This does not apply where the trader informed the consumer of a defect, the defect was visible or the consumer was already aware.

Under the CCM, the seller guarantees goods are free from hidden defects (*vices cachés*). The buyer may rescind the sale, seek a price reduction or claim damages.

Cooling-off periods

There are no statutory cooling-off periods; parties may include such provisions contractually.

Limitation of liability

Parties cannot derogate from the FTA or Trader's Warranty Regulations 1981 in consumer contracts. Liability caps in commercial contracts are subject to court revision.

Key Enforcement Mechanisms

Regulatory enforcement

Regulators may investigate complaints, conduct inspections, issue directions or prohibition notices, impose penalties and initiate court proceedings.

Under the CCM, a buyer may rescind the sale, seek a price reduction or claim damages, including a direct claim against the manufacturer.

Courts apply the general requirement that contractual obligations must have a lawful cause and object; commercial liability caps are subject to court revision.

Unfair Business Practices

The FTA prohibits conduct that misleads or confuses consumers, withholds information about consumer rights, exercises undue pressure to enter transactions or causes consumers to enter into transactions adverse to their interests.

The CA 2007 prohibits business practices that prevent, restrict or distort competition, including cartels, resale price maintenance, abuse of monopoly power and anti-competitive mergers.

Misleading Advertising

Under Section 4 of the FTA, it is prohibited to mislead or confuse consumers for trade or promotional purposes. The implied warranty under the Trader's Warranty Regulations 1981 takes into account the trade description and advertisement of goods when assessing fitness for purpose.

E-Commerce Consumer Protection

There is no specific e-commerce framework; the same general rules apply. The Data Protection Act (DPA) requires businesses to protect customers' personal data through adequate security measures.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control is governed by the CA 2007 and administered by the Competition Commission; COMESA jurisdiction may also apply to cross-border transactions.

Merger Control

- Notification – filing is voluntary and non-suspensory, with no fee; any party may notify, commonly before signing or closing, for guidance.
- Thresholds – 30% combined market share (horizontal) or 30% share by any party (non-horizontal) may trigger review where competition may be substantially lessened; controlling minority acquisitions and linked transactions included.
- Substantive test – whether competition would be substantially lessened, considering market structure, entry, buyer power, closeness and efficiencies.
- Procedure and timing – notification identifies parties, control change, affected markets, shares and key documents. Pre-notification advisable; prelimi-

nary review ~30 working days; non-problematic cases eight-to-ten weeks total.

Failure to Notify

Because filing is voluntary, non-notification is not generally a standalone gun-jumping offence. Commission may investigate, require notification and impose post-closing remedies.

Anti-Competitive Conduct and Remedies

Remedies include dissolution, divestment, conditions or undertakings; price-fixing, bid-rigging, market-sharing and RPM may attract fines and sanctions.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

The principal regimes governing foreign investment are the NC(PR)A, CA 2001, FSA, Economic Development Board Act and sectoral laws.

Laws, Regulations and Transactions

Mauritius is generally open to foreign investment with no universal minimum threshold. Sectoral licences, approvals or notifications may be required before implementation.

In respect of immovable property, non-citizens generally need PMO approval under the NC(PR)A to acquire immovable property or shares in companies holding such property. Exemptions cover listed securities and approved property schemes.

Restrictions

Restrictions or approvals may apply to broadcasting, sugar, tourism, construction, financial services and insurance, enforced through licensing and ownership limits.

In broadcasting, foreign ownership is capped at 49.9% of shares or directors; cross-media restrictions apply where 20%+ shares are held by newspaper/magazine owners.

In construction, the Construction Industry Authority Act requires registration; foreign consultants/contractors must collaborate with local parties and subcontract 25%+ of renewable energy projects (2MW+) to local contractors. Non-compliance carries fines up to MUR1 million and imprisonment up to five years.

In financial services, FSC licences are required for CIS managers/administrators, investment advisers/dealers, asset managers, reinsurance, aircraft leasing/financing, Payment Intermediary Services, Robotic and AI Enabled Advisory Services, VASPs, Global Treasury Activities, Global Headquarters Administration and Global Shared Services. GBCs require an FSC GBL with substance requirements; ACs require FSC authorisation; controller changes need approval.

National security review process

There is no standalone CFIUS-style review; sensitive investments may be examined through property, sectoral, fit-and-proper, competition and licence controls.

Investment incentives

Tax holidays

- Non-citizen investors (USD25 million+) – five years.
- EDB Investment Certificate – eight years.
- Freeport operators (MUR50 million+) – eight years.
- Global Headquarters Administration – eight years.
- Global Treasury/Legal Advisory – five years.
- Family Office – ten years.
- Captive insurance –ten years.
- Mauritian Diaspora Scheme – ten years.
- 80% partial exemption:
  - (a) foreign PE profits; CIS/CEF and fund managers;
  - (b) ship/aircraft/locomotive leasing;
  - (c) reinsurance;
  - (d) aircraft sales/financing;
  - (e) fibre leasing;
  - (f) P2P lending interest;
  - (g) Robotic/AI Advisory;
  - (h) Payment Intermediary Services; and
  - (i) VASPs.
- Exempt gains – sale of units, securities, gold, silver or platinum (held six+ months).
- EDB certificates and approved schemes may provide permits, freeport benefits, grants or tax concessions. Schemes may impose investment, employment or reporting requirements.

Recent developments
GBL holders and ACs are exempt from domestic debenture rules for debentures issued exclusively to non-residents outside Mauritius.

There is a new dedicated licence category for private wealth management.

Trust asset particulars are no longer recorded in the register.

A new statutory body, the National Fintech Governance Committee, co-ordinates fintech strategies.

Turnover threshold for LP/LLP audit exemption increased from MUR50 million to MUR100 million.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Framework
The DPA, effective since January 2018, is the principal statute governing privacy and data protection inspired by the GDPR and Convention 108.

Under the DPA, a controller determines processing purposes and means; a processor processes data on behalf of the controller; and data subjects are identified or identifiable individuals. The DPA provides for:

- the obligations upon data controllers and processors;
- a framework for transfer of personal data outside of Mauritius; and
- the rights of data subjects.

The Data Protection Office and the Data Protection Commissioner (Commissioner) are empowered to, inter alia:

- ensure compliance with the DPA;
- issue regulations;
- investigate complaints or suspected offences;
- maintain a register of controllers and processors; and
- undertake research and monitor data protection developments.

Consent and Collection of Personal Data
Consent must be freely given, specific, informed and unambiguous. Data subjects may withdraw consent at any time. Other lawful bases include inter alia:

- the performance of a contract;
- compliance with legal obligations;
- protection of vital interests of the data subject or another person; and
- legitimate interests of the controller or a third-party recipient.

Controllers may only collect personal data for a lawful purpose connected to their functions where collection is necessary. Controllers must inform data subjects of inter alia:

- the controller's identity and contact details;
- the collection purpose; and
- the intended recipients of the data.

Use and Disclosure
Use and disclosure must remain compatible with the specified purpose and have a lawful basis. Unlawful disclosure incompatible with the collection purpose is an offence.

Controllers and processors must implement appropriate security measures to prevent unauthorised access, alteration, disclosure, accidental loss or destruction, including encryption, pseudonymisation, system resilience, timely restoration and regular security testing.

Once the retention purpose has lapsed, controllers must destroy data as soon as reasonably practicable and instruct processors to do the same.

Data subjects have rights to inter alia:

- access and obtain copies of their data;
- receive information about processing and transfers;
- request correction, erasure or restriction of processing; or
- object to processing.

Data Breach
The DPA requires data breach notifications to:

- the Commissioner; and
- affected individuals, where the breach is likely to create a high risk to their rights and freedoms.

The Commissioner must be notified without undue delay and, where feasible, within 72 hours. Controllers must provide reasons for delay. Processors must inform controllers without undue delay.

Breach notifications to the Commissioner must include:

- nature of breach, including categories and approximate number of affected records;
- contact details of data protection officer or relevant contact point; and
- recommended measures to address the breach and mitigate adverse effects.

Individual notifications are not required where:

- no high risk to individuals' rights and freedoms;
- effective measures render affected data unintelligible to unauthorised persons;
- the controller has taken measures such that the high risk is unlikely to materialise; or
- notification would involve disproportionate effort and a public communication has informed individuals equally effectively.

Cross-Border Transfers and Localisation

The DPA does not require data localisation in Mauritius but permits international transfers subject to safeguards, including:

- proof of appropriate safeguards provided to the Commissioner;
- explicit consent after informing the data subject of potential risks;
- transfer from a publicly accessible register; or
- necessity for inter alia:
  (a) contract performance with the data subject;
  (b) a contract in the data subject's interest with a third party;
  (c) the establishment, exercise or defence of a legal claim; or
  (d) protection of vital interests (where the data subject cannot consent).

For businesses, cloud hosting, regional HR systems, offshore companies and multinational structures require documented transfer bases. In practice, businesses need robust data protection clauses, updated processing records, audits, risk assessments and adherence to Commissioner directives.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT)

FIAMLA applies to reporting persons including financial institutions and designated non-financial businesses. They must conduct risk assessments, customer and beneficial ownership due diligence, appoint compliance personnel, maintain records for seven+ years, provide training and report suspicious transactions to the FIU.

Sanctions, Trade Restrictions and Export Controls

Mauritius does not maintain a standalone export controls regime equivalent to those found in certain other jurisdictions; rather, trade restrictions are implemented through customs regulations, sector-specific permit requirements, and the arms embargo provisions of the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act (UNSA), as well as through obligations arising from UN Security Council resolutions and other international commitments. The UNSA requires all individuals and businesses operating in Mauritius to comply with UN sanctions measures. Businesses must screen customers, beneficial owners and transaction parties against applicable sanctions lists, and immediately report assets linked to designated persons to the National Sanctions Secretariat. Failure to comply including facilitating transactions involving sanctioned entities may result in fines of up to MUR5 million or twice the value of the assets involved, whichever higher, as well as imprisonment for a minimum of three years.

Anti-Corruption, Anti-Bribery and Enforcement Laws

Anti-corruption compliance is governed by the Financial Crimes Commission Act which prohibits corruption, bribery and conflicts of interest in public and private sectors. Businesses typically implement com-

pliance measures such as gift policies, third-party due diligence and whistle-blowing mechanisms.

The BOM and FSC oversee regulatory compliance through inspections, directives, fines and licence revocations. The FIU may suspend suspicious transactions for up to 72 hours, while the Financial Crimes Commission has power to freeze assets, compel evidence and prosecute financial crimes with penalties of up to MUR10 million and five years' imprisonment for serious AML/CFT breaches.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Key laws are the EPA, CCA, Waste Management and Resource Recovery Act and OSHA, supplemented by sectoral rules.

Regulatory Requirements

Prescribed undertakings under the EPA require an EIA licence before relevant works or operations; diligence should verify EIA, planning and discharge approvals, waste arrangements and compliance history.

Polluter-pays and remedial powers mean historic contamination can affect value; material risk is addressed through diligence, warranties, indemnities, escrow or conditions.

Mauritius has no economy-wide carbon-pricing scheme, but permit limits, contractual obligations and environmental-liability claims remain possible.

Climate Litigation and Environmental Liability

The CCA covers adaptation and mitigation. There has been limited climate-related litigation to date, but prosecutions may arise from statutory breaches or permit violations.

Companies may be liable for ecocide-unlawful acts causing severe, widespread or long-term environmental damage. Directors and senior officers may face personal liability. Penalties include fines, restoration orders and imprisonment for up to ten years. Companies with turnover exceeding MUR50 million are subject to a 2% Corporate Climate Responsibility levy on their chargeable income every year.

The BOM requires financial institutions to report climate-related financial risks half-yearly. The FSC's 2018 ESG Guidance Note provides voluntary guidelines; no mandatory ESG legislation is yet in place.

Health and Safety Obligations

The OSHA requires safe workplaces, risk assessment, safe systems and equipment, training and accident reporting; enforcement may include notices, fines and prosecution.

The WRA governs work agreements, pay, hours, leave, discrimination, workplace violence, records and termination, creating potential successor liabilities.

Mauritius has a unitary national system; local authorities and sector regulators may impose building, public-health, environmental or operational requirements.

Licensing and Permitting Requirements

- Industry-specific licences – businesses are required to register and obtain a Business Registration Number (BRN), while additional permits, such as trade permits, Building and Land Use Permits, environmental licences and health-related permits, may be required before operations can start. Financial services businesses must obtain licences from the FSC, while sectors such as banking, healthcare, pharmaceuticals, tourism, construction and energy are regulated through specialised approval regimes.
- Transaction diligence – pre-signing verification of permits, notices, employee liabilities and licence conditions is customary.

9.4 Artificial Intelligence

Mauritius has no consolidated AI statute; relevant duties arise under data-protection, cyber, financial-services, intellectual-property, consumer and employment law.

Framework

The DPA regulates automated processing, requiring lawful, fair and transparent processing, purpose limitation, security, records and impact assessments where appropriate.

AI-enabled advisory services may require FSC licensing; financial institutions must also address outsourcing, resilience, conduct, investor protection and AML/CFT.

From 1 September 2026, the National Fintech Governance Committee co-ordinates fintech policy but does not replace product-specific licensing.

The ICT Act, Cybersecurity and Cybercrime Act and Virtual Asset and Initial Token Offering Services Act add cyber and digital-asset controls. From 13 August 2026, unlicensed providers and unregistered issuers may not solicit or target Mauritian investors, including through online or AI-assisted marketing.

Transparency, Bias and Accountability Obligations

Individuals must be informed about profiling and automated decisions and may not generally be subject solely to decisions with significant effects; fairness rules address discriminatory risk.

High-risk processing may require prior consultation; breaches must be notified within 72 hours where feasible; cross-border transfers need permitted safeguards.

Boards should inventory AI uses, assign accountability, protect data, test for bias and manage vendor risk.

9.5 Other Regulatory Compliance Requirements

In addition to sector-specific regimes, businesses must comply with general regulatory requirements covering foreign exchange, tax, property, registration, corporate compliance, sanctions and data protection.

Other Compliance Regimes

Mauritius generally has no exchange controls; repatriation remains subject to tax, AML/CFT, sanctions, reporting and bank verification.

The Income Tax Act applies 15% corporate tax, subject to exemptions. Companies must meet income-tax, withholding, transfer-pricing, record-keeping and VAT obligations including the Fair Share Contribution.

The Registration Duty Act and Land (Duties and Taxes) Act impose duties or taxes on relevant property, leasehold and share transfers; non-citizen transactions may require declarations or property approvals.

Persons carrying on business must register and hold a Business Registration Card; trade fees and business details must remain current.

The UNSA implements targeted asset freezes, financial prohibitions, arms embargoes and travel bans; businesses must screen and freeze or report as required.

The DPA covers registration, lawful processing, security, records, impact assessments, data-subject rights, breach notification and cross-border safeguards.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Legislation

The principal labour laws are the WRA (contracts, wages, leave, terminations, redundancy) and Employment Relations Act (collective relations, trade unions, collective bargaining, dispute resolution). Additional legislation includes the OSHA and Non-Citizens (Employment Restriction) Act.

Termination of Employment

Notice requirements

Termination requires 30 days' notice (or payment in lieu) with valid reasons.

Justified dismissal

For misconduct dismissals, employers must notify the employee within ten days of becoming aware of the alleged misconduct, provide at least seven days' notice before a disciplinary hearing, and effect termination within seven days after the hearing. For poor performance, employers must provide at least seven days' notice to answer charges in an oral hearing.

Wrongful dismissal

Dismissals are unlawful if based on race, colour, caste, national extraction, social origin, age, pregnancy,

maternity or paternity leave, religion, political opinion, sex, sexual orientation, gender, HIV status, impairment, marital status, family responsibilities, temporary sickness absence, trade union membership or activities, filing complaints against an employer, or exercising rights under the WRA.

Constructive dismissal

Employees can claim constructive dismissal if forced to resign due to substantial unilateral change in employment conditions, ill-treatment, non-payment of wages, failure to provide work, or resignation obtained by fraud or duress.

Severance allowance

Where termination is unjustified, employees with at least 12 months' continuous employment are entitled to severance of three months' remuneration per 12 months of service. Employees may alternatively claim reinstatement through the Employment Relations Tribunal within 15 days.

Redundancy procedures

For employers with 15+ workers and MUR25 million+ annual turnover, workforce reductions require negotiations with employees and notification to the Redundancy Board.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

Executive compensation is primarily contractual. Companies may follow the NCCG and CA 2001. Key considerations include fair, transparent and market-competitive remuneration aligned with performance. Equity incentives may be implemented through employee share schemes under Section 144 of the CA 2001, with provisions addressing vesting conditions, exercise timing and treatment of unvested awards upon departure. Share options typically trigger tax at exercise. Change-of-control arrangements should specify treatment of outstanding awards. Employment-related remuneration and benefits in kind are taxable under the Income Tax Act.

Enforcement

There is no statutory maximum for restrictive covenants. Enforceability is assessed case-by-case applying proportionality and reasonableness. Courts have enforced up to two years against employees. A restrictive covenant must be limited in time and geographical scope, must not prevent earning a living, and must protect legitimate business interests. Confidentiality covenants are enforceable where information is confidential, communicated in circumstances importing confidentiality, and unauthorisedly disclosed to the employer's detriment.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Mauritian property law recognises three principal forms of land ownership.

Full ownership

Full ownership confers complete rights – use, enjoyment of fruits/income and disposal/sale/mortgage.

Dismembered ownership

Dismembered ownership arises when these attributes are divided. The most common form is usufruct, where the usufructuary holds use and enjoyment rights while the bare owner (*nu-propriétaire*) retains disposal rights.

Shared ownership

Shared ownership takes two forms – indivision (co-ownership of undivided shares of a property) and *copropriété* (condominium ownership of distinct private lots with shared common areas managed by a syndic).

Foreign Ownership Requirements

Licensing or registration requirements

Subject to exceptions, non-citizens (including foreign individuals, foreign-controlled companies, certain trusts and foundations) generally require prior approval from the Prime Minister's Office and, in specified cases, the EDB to acquire Mauritian immovable property. Foreign investors may acquire freehold or leasehold property for approved business purposes, G+2 apartments, or under approved schemes (Property Development Scheme, Smart City Scheme) with EDB approval.

Non-citizens are subject to a minimum 5% registration duty on property value, unless specific higher rates or exemptions apply.

Restrictions

Non-citizens with residence status may, with Prime Minister's approval, acquire one residential property (minimum USD500,000) outside EDB schemes, provided the purchaser is not merely a dependent of another permit holder.

Large parcels, state land and specific residential developments remain subject to additional restrictions.

Prohibitions of certain property type

Foreign individuals and foreign-controlled entities face important restrictions on real property acquisition.

Non-citizens may acquire certain property with requisite approvals but are prohibited from acquiring property outside approved development schemes, property on state land (including *Pas Géométriques*), bare or serviced land exceeding 0.5276 hectare, or standalone residential property on land exceeding that threshold.

These restrictions extend to shares in property-holding companies and beneficial interests held through trusts, foundations or other structures.

11.2 Commercial Real Estate Transactions

Framework

The commercial real estate key legal framework include the following:

- CCM;
- Land (Duties and Taxes) Act;
- Registration Duty Act;
- NC(PR)A;
- Transcriptions and Mortgage Act; and
- Landlords and Tenant Act.

Land Registration Systems

Land registration is handled electronically through the Registrar-General's Department via the Mauritius eRegistry System.

Acquisitions and Dispositions of Commercial Real Property

AML/CFT due diligence must be performed at different stages by the real estate agent, notary and bank.

Title insurance is not customary; title risks are addressed through notarial verification and registry searches.

All transfers of immovable property must be executed before a Notary Public, who prepares and authenticates the deed of sale. The deed of sale is then submitted by the notary to the RGD for registration. The buyer pays 5% registration duty on the transaction value. The seller pays 5% land transfer tax on the same value.

Environmental liability is governed by the Environment Act, imposing obligations relating to pollution, waste management, permits and remediation. Certain developments require environmental approvals.

Commercial Mortgage Financing

Mortgages are created by notarial deed and perfected through registration with the Conservator of Mortgages.

Mortgages acquire priority through inscription with the Conservator of Mortgages, ranking by registration order subject to statutory preferential claims.

Enforcement involves court orders and judicial sale, with proceeds applied per mortgage ranking and prior claims.

Creditors may also pursue attachment and enforcement proceedings to preserve and realise assets.

Commercial Leases

A written lease terminates automatically upon expiry. If the tenant remains with landlord acquiescence, tacit renewal creates a new lease. Once termination notice is served, tacit renewal cannot be claimed. The Landlord and Tenant Act may impose additional protections.

A tenant may sublet or assign unless expressly prohibited in the lease. This prohibition may be total or partial.

Parties may provide specific remedies for default. Upon termination by tenant's fault, the tenant remains liable for rent during re-letting plus damages. Courts may grant grace periods for rent defaults.

The Real Estate Agent Authority introduced a regulatory framework for real estate agents, land promoters and property developers, strengthening transparency and AML/CFT compliance.

MEXICO



Law and Practice

Contributed by:
Luis Joaquín Chávez Vila and Arnulfo E Treviño Garza
Treviño Chávez

Contents

1. Business Entities P.485
1.1 Business Organisations p.485
1.2 Incorporation and Ongoing Compliance p.485
1.3 Share Issuances p.486
1.4 Distributions and Return of Capital p.487
1.5 Control Person Reporting p.487

2. Corporate Governance P.487
2.1 Legal Framework p.487
2.2 Directors' Duties and Liabilities p.488
2.3 Board Composition and Independence p.488
2.4 ESG and Disclosure Obligations p.488
2.5 Conflicts of Interest and Related-Party Transactions p.488

3. Shareholder Rights and Agreements P.488
3.1 Shareholder Rights p.488
3.2 Shareholder Agreements p.489

4. Mergers and Acquisitions P.489
4.1 Legal Framework p.489

5. Capital Markets P.490
5.1 Securities Regulation and Public Offerings p.490
5.2 Continuous Disclosure p.490
5.3 Insider Trading p.491
5.4 Shareholder Disclosure p.491
5.5 Internal Controls and Whistle-Blower Regimes p.491

6. Secured Transactions P.492
6.1 Transaction Financing and Security Interests p.492

7. Commercial Contracts P.492
7.1 Contract Formation and Enforceability p.492
7.2 Termination and Remedies p.493
7.3 Intellectual Property in Commercial Transactions p.493
7.4 Consumer Protection p.493

8. Foreign Investment P.494
8.1 Competition and Merger Control p.494
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.494

9. Regulatory Compliance P.495
9.1 Privacy and Data Protection p.495
9.2 Anti-Money Laundering, Sanctions and Corruption p.495
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.496
9.4 Artificial Intelligence p.496
9.5 Other Regulatory Compliance Requirements p.497

10. Employment and Labour P.497
10.1 Employment Standards and Workplace Regulation p.497
10.2 Executive Compensation and Restrictive Covenants p.497

11. Real Property and Commercial Leasing P.498
11.1 Requirements for Land Ownership p.498
11.2 Commercial Real Estate Transactions p.498

Treviño Chávez has partners and members with unique backgrounds and decades working as general counsels or lead counsel in leading Mexican and international companies. The firm strives to bring value-enhancing legal advice to achieve its client's objectives, balancing their business demands with solid legal advice. It promotes legal services based on results and client satisfaction, consistently aligning with their needs while proactively advancing their unique objectives in every transaction. Fully aware that time is of the essence, it takes great pride in its unwavering commitment to delivering timely and effective results. It has wide experience with transactional law and focuses on making deals happen, without jeopardising a deal's legal foundation or its clients' best interests.

Authors



Luis Joaquín Chávez Vila has extensive expertise in mediating disputes between private and public entities in addition to developing and implementing mitigation strategies for legal risks. He has held positions as manager of regulatory and litigation in Heineken Mexico and was previously a member of Chevez, Ruiz, Zamarripa and Cia. He is Professor at the Universidad de Monterrey & Tecnológico de Monterrey for the Tax and Administrative Procedural Law course.



Arnulfo E Treviño Garza has an extensive background in managing legal departments, corporate affairs, sales, safety and human resources. He has served in senior executive roles within prominent business groups such as IMSA (currently TERNIUM), FEMSA, Heineken Mexico and Farmacias del Ahorro. He is a member of multiple boards of directors and civil organisations.

Treviño Chávez

Av. De la Industria 300. Col. Veredalta
Punto Central Oficina 21 San Pedro
Garza García, NL C.P 66270
Mexico

Tel: +52 81 2721 0080
Email: luisjoaquin@tchabogados.com
Web: www.tchabogados.com

1. Business Entities

1.1 Business Organisations

Mexican corporate law, primarily governed by the *Ley General de Sociedades Mercantiles* (General Law of Commercial Companies or LGSM), recognises several forms of commercial entities. These include the *sociedad anónima* (S.A.), *sociedad de responsabilidad limitada* (S. de R.L.), *sociedad por acciones simplificada* (S.A.S.), *sociedad en nombre colectivo*, *sociedad en comandita simple*, *sociedad en comandita por acciones* and *sociedad cooperativa*.

In practice, however, the S.A. and the S. de R.L. are by far the most commonly used vehicles for domestic and foreign investment. Both provide limited liability to their shareholders or quota holders and are suitable for a broad range of commercial activities. Most companies may also adopt a de capital variable (variable-capital) regime, which facilitates capital increases and reductions without requiring a by-law amendment in every case.

For companies seeking greater flexibility in corporate governance, particularly in private equity, venture capital or joint venture transactions, the *Sociedad Anónima Promotora de Inversión* (S.A.P.I.), regulated under the *Ley del Mercado de Valores* (Securities Market Law or LMV), is frequently preferred. Publicly listed companies are generally incorporated as *Sociedades Anónimas Bursátiles* (S.A.B.) under the same statute.

The choice of corporate vehicle is primarily driven by the nature of the business, the profile of the investors, governance requirements, financing strategy, tax considerations and any applicable sector-specific regulation.

From a liability perspective, shareholders or quota holders of an S.A., S. de R.L. and S.A.S. are generally liable only up to the amount of their capital contributions, whereas partners in certain partnership structures may incur unlimited or subsidiary liability.

Governance considerations also play an important role:

- an S.A. follows a more formal corporate regime, with shareholders' meetings and management vested in either a sole director or a board of directors, making it the preferred vehicle for businesses expecting external investment or future expansion;
- an S. de R.L. offers greater contractual flexibility, restrictions on the transfer of equity interests and a governance structure that is often better suited to closely held companies, family-owned businesses and joint ventures; and
- the S.A.S., which may be incorporated electronically by a single individual shareholder, is intended for small businesses meeting the statutory requirements established by the LGSM.

From a tax perspective, commercial companies are generally treated as separate taxpayers under the *Ley del Impuesto sobre la Renta* (Income Tax Law or LISR). As a result, the choice of entity is typically driven more by governance, liability and operational considerations than by material differences in tax treatment, although each structure should be evaluated based on the specific circumstances of the transaction.

Finally, certain regulated sectors including financial services, insurance, energy, telecommunications, transportation and healthcare, are subject to additional legislation that may impose foreign investment restrictions, licensing requirements or prior governmental authorisations, all of which should be considered when selecting the appropriate corporate structure.

1.2 Incorporation and Ongoing Compliance

The incorporation of a commercial company in Mexico is primarily governed by LGSM, together with the *Código de Comercio* (Commercial Code) and other applicable federal regulations, except for the S.A.S., which may be incorporated electronically.

The incorporation process generally involves:

- obtaining authorisation for the proposed corporate name from the *Secretaría de Economía* (Ministry of Economy);
- preparing and executing the company's constitutional documents before a Mexican notary public;

- registering the incorporation deed with the *Registro Público de Comercio* (Public Registry of Commerce or RPC); and
- registering the company with the *Servicio de Administración Tributaria* (Tax Administration Service or SAT) to obtain its *Registro Federal de Contribuyentes* (Federal Taxpayer Registry or RFC).

Where foreign investors participate in the company's capital, the company may also be required to register before the *Registro Nacional de Inversiones Extranjeras* (National Registry of Foreign Investments or RNIE), in accordance with the *Ley de Inversión Extranjera* (Foreign Investment Law).

Depending on the company's activities, additional registrations or permits may be required before sector-specific authorities, as well as registrations with labour or social security authorities.

The timeframe for incorporation varies. Under ordinary circumstances, a standard incorporation can generally be completed within four weeks. Costs vary depending on the corporate structure, notarial fees, registration fees and the state in which the company is incorporated.

Once incorporated, companies are subject to ongoing corporate, tax and regulatory compliance obligations. Under the LGSM, companies must maintain their corporate books and records, including shareholders' or partners' meeting minutes, management resolutions and, where applicable, share registry books, partners' registry books and capital variation records.

Commercial companies are generally required to hold at least one annual ordinary shareholders' (or partners') meeting to approve the financial statements, address the management report where applicable, appoint or ratify corporate officers and resolve any other matters required by law or the company's by-laws.

Companies must also maintain accounting records and comply with their tax obligations before the SAT, including periodic tax filings and information returns, as applicable. In addition, amendments to the by-laws, changes in management, capital increases or reductions, mergers, spin-offs and other corporate acts may require notarisation and registration with the RPC to become enforceable against third parties.

1.3 Share Issuances

The regulation of share capital in Mexico is primarily governed by the LGSM, while publicly listed companies and certain investment vehicles are also subject to the LMV.

Unlike many common law jurisdictions, Mexican corporate law does not recognise the concept of authorised share capital. Instead, companies have a subscribed capital that may be divided into fixed capital and, where the company's by-laws so provide, variable capital. The variable-capital regime is widely used in practice because it allows capital increases and reductions to be implemented with fewer corporate formalities than changes to fixed capital.

Capital contributions are represented by shares (or equity interests, in the case of an S. de R.L.) that are subscribed by the shareholders. Mexican law generally contemplates shares with a stated nominal value and does not recognise the concept of no-par value shares. Corporate capital must be reflected in the company's by-laws, corporate books and accounting records.

Capital increases and reductions must be approved by the competent corporate body in accordance with the company's by-laws and the LGSM. Depending on whether the amendment affects fixed or variable capital, additional corporate approvals, notarisation and registration with the RPC may be required.

The LGSM allows companies to create different classes or series of shares, provided that the rights attached to each class are clearly established in the by-laws and comply with the applicable legal framework. In practice, different share classes are frequently used to accommodate investment structures, joint ventures and family-owned businesses.

Different classes of shares may provide for different economic or corporate rights, including preferential dividend rights, liquidation preferences, enhanced or limited voting rights, appointment rights in respect of

directors or officers, and other governance arrangements permitted by law. The by-laws may also include transfer restrictions, rights of first refusal, tag-along and drag-along rights, approval requirements and other mechanisms commonly used to regulate shareholder relationships.

Where greater contractual flexibility is required, particularly in private equity and venture capital transactions, companies are often incorporated as S.A.P.I. under the LMV. The S.A.P.I. regime allows shareholders to adopt more sophisticated governance arrangements and shareholder rights than those typically available to a traditional S.A., making it one of the preferred corporate vehicles for investment transactions in Mexico.

1.4 Distributions and Return of Capital

Dividends may only be distributed from net profits reflected in the company's approved financial statements. Before any distribution, companies must allocate 5% of their annual net profits to the legal reserve until it reaches 20% of the company's share capital, as required by the LGSM. Dividend distributions must be approved by the shareholders' meeting and comply with the rights attached to the relevant class or series of shares, as well as any applicable tax obligations under the LISR.

Returns of capital are subject to the procedures applicable to capital reductions under the LGSM, which may require corporate approvals, creditor protection measures and registration with the RPC, depending on the transaction.

The acquisition, redemption and cancellation of a company's own shares are permitted only in the circumstances provided by the LGSM or other applicable legislation. Unlike some common law jurisdictions, Mexican law does not impose a statutory solvency test or a general prohibition on financial assistance. Instead, creditor protection is achieved through the rules governing distributable profits, legal reserves and capital maintenance. Accordingly, any share repurchase or financing structure should be assessed on a case-by-case basis to ensure compliance with the applicable corporate and regulatory framework.

1.5 Control Person Reporting

Private companies in Mexico are not generally subject to public disclosure obligations regarding their ownership or control comparable to those applicable to publicly listed companies. However, they are subject to beneficial ownership reporting requirements under the *Código Fiscal de la Federación* (Federal Tax Code or CFF).

Companies must identify, obtain, maintain and update information regarding their *beneficiarios controladores* (beneficial controllers), including the individuals who ultimately own, control or benefit from the company, whether directly or indirectly. Such information must be kept available and provided to the SAT upon request, and any changes must be updated within the statutory timeframe.

In addition, companies must comply with applicable tax reporting obligations before the SAT, including maintaining updated information regarding their shareholders and ownership structure where required under the applicable tax regulations.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Mexico is primarily governed by the LGSM, while listed companies and certain regulated entities are subject to additional requirements under the LMV and CNBV regulations.

Private companies generally have flexibility to structure their governance through their by-laws and shareholders' agreements, whereas listed companies are subject to enhanced requirements regarding board composition, disclosure, minority shareholder protection and oversight.

Although not legally binding, the *Código de Principios y Mejores Prácticas de Gobierno Corporativo* (Code of Principles and Best Practices of Corporate Governance), issued by the *Consejo Coordinador Empresarial* (CCE), is widely recognised as a leading corporate governance benchmark and is commonly adopted by large private companies and institutional investors.

2.2 Directors' Duties and Liabilities

Directors' duties in Mexico are primarily governed by the LGSM, with additional duties of care and loyalty under the LMV for listed and certain regulated companies. Directors are expected to act in the company's best interests, exercise due care and diligence, avoid conflicts, protect confidential information and comply with applicable law and corporate documents.

Courts generally assess liability based on the directors' conduct and the circumstances of each case, rather than merely on the outcome of a business decision. Directors may face personal civil, administrative or, in certain cases, criminal liability for breaches of their duties, exceeding their authority, misuse of corporate assets or information, bad faith, gross negligence or unlawful acts causing damage.

2.3 Board Composition and Independence

Private companies generally have flexibility regarding board size and composition, and Mexican law does not generally impose nationality, residency, independence or diversity requirements for their directors. These matters are typically addressed through the bylaws and shareholders' agreements, with board independence and diversity increasingly recognised as best practices.

Listed companies are subject to additional requirements under the LMV, CNBV regulations and applicable stock exchange rules, including a minimum of 25% independent directors and committees with predominantly independent members. Accordingly, private companies have greater contractual flexibility, while listed companies are subject to more prescriptive governance standards.

2.4 ESG and Disclosure Obligations

Mexico does not have a single comprehensive ESG framework. ESG obligations arise from the LGSM, LMV, environmental and labour legislation, and some sector-specific regulations.

For listed companies, ESG disclosures are primarily governed by LMV, CNBV regulations and applicable financial reporting standards. Private companies generally have no equivalent public disclosure obligations.

Mexican law does not impose a separate fiduciary duty requiring directors to pursue ESG objectives. However, boards should consider material ESG risks affecting the company's operations, compliance or long-term sustainability. Best practices include board oversight, ESG policies, risk monitoring and consistent disclosure.

2.5 Conflicts of Interest and Related-Party Transactions

Under the LGSM, directors are expected to act in the best interests of the company and perform their duties with loyalty and due care. Directors who have a personal interest in a matter under consideration should disclose the nature of the conflict and, where appropriate, abstain from participating in the corresponding deliberation or decision. In practice, many companies supplement these statutory rules through their by-laws, shareholders' agreements or internal corporate governance policies.

For private companies, the approval of related-party transactions is generally governed by the company's by-laws and internal governance structure. Depending on the nature and materiality of the transaction, approval may be required from the board of directors, the shareholders' meeting or both.

Publicly listed companies are subject to a more comprehensive framework under the LMV, which establishes additional approval, oversight and disclosure requirements for related-party transactions. These include the involvement of the board of directors and, where applicable, the corporate practices committee, as well as ongoing disclosure obligations designed to promote transparency and protect minority shareholders.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholder rights in Mexico are primarily governed by the LGSM, the company's by-laws and, where applicable, shareholders' agreements. Shareholders generally have voting rights, rights to receive duly declared dividends, pre-emptive rights in certain capital increases, access to relevant corporate and

financial information, and rights to participate in the distribution of assets upon liquidation.

The LGSM also provides statutory remedies, including the ability to challenge corporate resolutions adopted in violation of the law or bylaws and, subject to applicable thresholds, request shareholders' meetings, appoint certain corporate bodies and pursue liability against directors. Listed companies benefit from additional minority shareholder protections under the LMV.

3.2 Shareholder Agreements

Shareholders' agreements are widely used in closely held companies, joint ventures and private equity transactions to regulate governance, voting, transfers and exit rights. Common provisions include rights of first refusal, tag-along and drag-along rights, lockups and consent requirements.

They are generally enforceable between the parties, provided they comply with mandatory provisions of LGSM and public policy. Provisions intended to bind the company, or third parties should generally be reflected in the by-laws.

Shareholder disputes may be resolved through negotiation, arbitration or judicial proceedings. LGSM provides statutory remedies, including challenges to unlawful corporate resolutions and certain minority shareholder rights, but does not provide a direct equivalent to common-law oppression or unfair prejudice remedies.

4. Mergers and Acquisitions

4.1 Legal Framework

M&A in Mexico are primarily governed by the LGSM, which regulates corporate reorganisations, mergers, spin-offs and other corporate transactions. Public M&A transactions are additionally subject to the LMV, particularly with respect to tender offers, disclosure obligations, corporate governance and the protection of minority shareholders. Depending on the transaction, other statutes may also apply, including the LFCE, the LIE and sector-specific regulations.

Private M&A transactions are generally structured through negotiated agreements between the parties, while acquisitions involving publicly listed companies must comply with the mandatory procedures established under the LMV and the regulations issued by the CNBV.

The structure of an acquisition is typically driven by tax, regulatory and commercial considerations. The most common transaction structures are share acquisitions, asset acquisitions and statutory mergers. Share acquisitions are generally preferred where business continuity, licences, permits and contractual relationships are intended to remain in place, whereas asset acquisitions may be more appropriate when the purchaser seeks to acquire selected assets while limiting the assumption of liabilities. Statutory mergers are frequently used for internal reorganisations and post-closing integration.

Unlike certain common law jurisdictions, Mexican law does not provide for court-approved schemes of arrangement or similar judicial reorganisation mechanisms for corporate acquisitions. Mergers are implemented through the corporate approval procedures established under the LGSM, together with the applicable creditor protection and registration requirements. Public acquisitions involving listed companies may also trigger mandatory tender offer requirements under the LMV.

Regardless of the transaction structure, buyers typically conduct comprehensive legal, tax, financial and regulatory due diligence. Key considerations commonly include merger control clearance, foreign investment restrictions, sector-specific approvals, labour and employment matters, intellectual property, environmental compliance, tax contingencies and contractual change-of-control provisions. Transaction documents generally allocate risk through representations and warranties, indemnification mechanisms, covenants and, where appropriate, escrow or holdback arrangements.

One of the most significant recent developments affecting M&A practice was the reform to the LFCE, which replaced the former COFECE with the *Comisión Nacional Antimonopolio* (CNA) as Mexico's compe-

tition authority. The reform also introduced changes to the merger control regime and strengthened the institutional framework for antitrust enforcement. In addition, recent amendments to the LMV continue to modernise the regulatory framework applicable to public companies and capital markets, with an impact on public M&A transactions.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Mexico's capital markets are primarily governed by LMV and regulations issued by CNBV. The *Secretaría de Hacienda y Crédito Público* (Ministry of Treasury and Public Credit or SHCP) is responsible for broader financial policy and regulatory matters, while Banco de México exercises relevant powers concerning the functioning and stability of the financial system. Securities are principally traded through the BMV and the BIVA.

Public offerings generally require the relevant securities to be registered in the *Registro Nacional de Valores* (National Security Registry or RNV) and prior authorisation from CNBV, unless a statutory exemption or simplified regime applies. Issuers must generally prepare offering documentation and comply with applicable disclosure requirements, including financial and material information.

The process typically involves the issuer, legal and financial advisers, auditors, underwriters and, where applicable, the relevant securities exchange. Timing varies depending on the issuer, type of security, transaction structure, regulatory review and completeness of the information submitted.

Registration with RNV and listing on BMV or BIVA are distinct requirements, although they are generally co-ordinated as part of the same transaction. Issuers must comply with LMV, CNBV regulations, RNV requirements and the applicable rules of the relevant securities exchange.

LMV permits certain offerings to be conducted outside the ordinary public offering regime, including offerings made exclusively to institutional or qualified investors and certain other transactions meeting statutory requirements, such as specified offerings to a limited number of investors, employee stock plans and offerings to existing shareholders or partners. The availability and scope of these exemptions depend on the particular security and transaction.

Exempt offerings remain subject to applicable corporate, contractual, tax and other regulatory requirements. There is no general statutory holding period applicable to all securities offered under an exemption. However, securities that have not been registered for public offering may not subsequently be offered to the public without satisfying the applicable registration requirements, and contractual transfer restrictions may also apply.

5.2 Continuous Disclosure

Listed issuers in Mexico are subject to ongoing disclosure obligations intended to ensure that investors have timely and sufficient information regarding the issuer and its securities. These obligations are primarily governed by LMV, the applicable CNBV rules and the requirements of the relevant securities exchange. They generally include annual and quarterly financial reporting, corporate information and the disclosure of other information that may be relevant to investors' decisions.

Issuers must also have appropriate internal procedures to identify and timely report material information. CNBV supervises compliance with these obligations, while the relevant securities exchange provides the principal mechanism for the dissemination of information to the market through its applicable electronic reporting systems.

Material events must generally be disclosed promptly once the issuer becomes aware of the relevant circumstances and the information is subject to disclosure under the applicable framework. The information is typically submitted electronically through the relevant securities exchange and subsequently made available to CNBV through the applicable regulatory reporting systems.

The applicable framework permits limited delays where the statutory conditions for maintaining confi-

dentiality are satisfied. Once those conditions cease to apply, the issuer must make the corresponding disclosure to the market in accordance with the applicable requirements.

5.3 Insider Trading

The LMV establishes a comprehensive framework addressing market abuse, insider trading and other conduct that may affect the integrity and proper functioning of the securities market. It prohibits the use or improper disclosure of inside information, as well as market manipulation and other practices intended to influence the price or quotation of securities through unlawful means. Inside information generally refers to non-public information relating to an issuer or relevant event that could materially influence the price or quotation of its securities.

These restrictions apply to persons who obtain inside information by virtue of their position, relationship with the issuer or other circumstances, and may extend beyond the issuer's directors and officers to other persons with access to such information. Issuers and their relevant personnel are therefore expected to maintain appropriate controls over the handling and disclosure of sensitive information. Certain violations may also constitute criminal offences, including trading on the basis of inside information or unlawfully disclosing such information.

CNBV has broad supervisory, investigative and enforcement powers under the LMV. These include requesting information and documentation, conducting inspections and investigations, and imposing administrative sanctions for violations of applicable securities laws and regulations. Depending on the nature and severity of the violation, sanctions may include fines, suspension or disqualification from holding certain positions or participating in regulated activities.

5.4 Shareholder Disclosure

The LMV establishes disclosure requirements designed to provide transparency regarding significant ownership positions and changes in shareholdings of listed issuers. These requirements apply primarily to issuers whose securities are registered in the RNV and to certain shareholders, related persons and other individuals whose positions or transactions may be relevant to the market. The applicable disclosure obligations may depend on the type of security, the nature of the person involved and the percentage or change in ownership.

For listed companies with ordinary shares, persons or groups acquiring, directly or indirectly, a position equal to or greater than 10% but less than 30% of the ordinary shares must generally disclose the acquisition to the public through the relevant securities exchange no later than the following business day. In addition, persons related to the issuer who directly or indirectly increase or decrease their participation by 5% are generally subject to a similar disclosure requirement. The LMV also establishes additional disclosure and reporting obligations for certain persons with access to inside information, directors, officers and other relevant persons, depending on their position and transactions.

These requirements are primarily applicable to listed issuers and the shareholders or other persons falling within the categories established by LMV and the applicable CNBV rules. The relevant information is generally disclosed through the securities exchange on which the issuer's securities are listed, in accordance with the applicable reporting procedures and timeframes. Failure to comply with these disclosure obligations may result in administrative sanctions imposed by CNBV, including fines and other regulatory measures, depending on the nature and severity of the violation.

5.5 Internal Controls and Whistle-Blower Regimes

Mexico does not impose a single corporate compliance or internal control framework applicable to all companies. Requirements vary depending on the company's activities and may arise from anti-corruption, anti-money laundering, tax, data protection, labour, environmental and sector-specific regulations. Listed and regulated companies may be subject to additional requirements concerning internal controls, risk management, and corporate oversight.

Companies should implement controls proportionate to their size, activities and risk profile, commonly

including policies and procedures, assigned responsibilities, training, risk assessments, monitoring and reporting channels.

There is no general statutory whistleblowing regime applicable to all private companies. However, certain sectors and laws establish specific reporting obligations. Companies commonly adopt confidential reporting channels, investigation procedures and non-retaliation measures as a matter of good corporate governance.

Compliance risk should be overseen by the board or management through clear responsibilities, periodic risk assessments, internal controls, training, monitoring and escalation procedures. Listed and regulated companies should integrate these mechanisms into their broader governance and risk-management frameworks.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Secured transactions in Mexico are principally governed by the *Ley General de Títulos y Operaciones de Crédito* (General Law of Negotiable Instruments and Credit Transactions or LGTOC), together with the *Código de Comercio* and applicable civil and sector-specific legislation. Common security interests include pledges over movable assets, mortgages, security trusts and security assignments, including non-possessory security interests over movable assets.

Perfection generally requires compliance with the formalities applicable to the relevant collateral, which may include notarisation, delivery or control and registration. Movable security may be registered with the *Registro Único de Garantías Mobiliarias* (RUG), while real estate mortgages are generally registered with the relevant RPP. Priority is generally determined by applicable perfection and registration rules, including the timing of registration.

Acquisition financings commonly include pledges over shares or equity interests, security over material assets and receivables, guarantees and, where appropriate, security trusts. Where multiple lenders are involved, intercreditor agreements establish contractual payment priorities, enforcement rights and recoveries, while statutory perfection and priority rules continue to apply.

Recent amendments to the LGTOC, particularly those published in March 2024, have affected aspects of secured financing. Financing practice continues to focus on appropriate collateral selection, proper perfection and registration, and clear enforcement and intercreditor arrangements.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Commercial contracts in Mexico are primarily governed by the *Código Civil Federal* (Federal Civil Code or CCF), the *Código de Comercio* and applicable sector-specific legislation. Contracts are generally based on consent and freedom of contract, subject to mandatory law and public policy, and are binding once validly formed.

Valid formation generally requires consent, a lawful object and legal capacity. Consideration is not an independent requirement under Mexican law. Formalities depend on the transaction and may include written form, notarisation or registration.

Contracts may be invalid or subject to annulment due to defects in consent, lack of capacity, an unlawful object or purpose, or failure to comply with mandatory formalities. Consequences may include annulment, restitution and, where applicable, damages.

Interpretation generally considers the contractual wording, the parties' intent and the agreement. Parties have broad flexibility to allocate risks through limitations of liability, indemnities, guarantees, termination rights and dispute-resolution provisions, subject to mandatory law and public policy. Good faith is relevant to contractual performance and interpretation, while Mexican law has no direct equivalent to the common-law doctrine of unconscionability.

7.2 Termination and Remedies

The principal remedies for breach of contract in Mexico include specific performance, rescission or termination, damages and, where agreed, contractual penalties. The applicable remedy depends on the nature of the breach, the contract and the applicable law.

Termination or rescission may arise from a material breach, non-performance or other grounds established by law or contract. Commercial agreements commonly establish termination events, notice requirements and cure periods. Wrongful termination may result in liability for damages and other contractual consequences.

Mexican law recognises force majeure and acts of God where an unforeseeable or unavoidable event prevents performance without fault by the affected party. Depending on the circumstances, these events may suspend or exclude liability.

Mexico does not have a general statutory equivalent to the common-law doctrines of frustration of purpose or hardship applicable to all commercial contracts. Parties commonly address significant changes in circumstances through contractual mechanisms such as force majeure, material adverse change, price adjustments or renegotiation provisions.

7.3 Intellectual Property in Commercial Transactions

Intellectual property considerations are an important part of commercial transactions in Mexico, particularly where the transaction involves technology, branding, content or proprietary information.

Industrial property, including patents and trade marks, is primarily governed by the *Ley Federal de Protección a la Propiedad Industrial* (Federal Law for the Protection of Industrial Property or LFPPI), while copyright is governed by the *Ley Federal del Derecho de Autor* (Federal Copyright Law or LFDA). Commercial agreements should clearly identify ownership and permitted uses of the relevant IP and address, as applicable, assignments, licences, territory, duration, confidentiality, improvements and enforcement rights. Assignments and licences should comply with the applicable statutory formalities and, where required or advisable, be recorded with the *Instituto Mexicano de la Propiedad Industrial* (IMPI). Trade secrets are protected under the specific regime established by LFPPI and through contractual confidentiality and information-security measures.

Ownership of IP created in a commercial relationship depends on the type of IP involved and the legal relationship between the parties. Employment, commissioned works and joint-development arrangements may be subject to different statutory rules, making it important for the relevant agreements to expressly address ownership, licensing rights, permitted uses, derivative works and rights to future developments. In joint-development projects, parties should also establish in advance how jointly developed IP will be owned, registered, licensed and commercialised, as well as how improvements and independently developed technology will be treated.

AI-generated content presents an evolving area of Mexican IP law. While the use of AI may raise questions concerning authorship, originality, infringement and ownership, the applicable framework should be assessed based on the degree of human contribution and the type of IP involved. Parties therefore increasingly address AI use contractually, including ownership of outputs, permitted uses of third-party models and training data, confidentiality, infringement risks and responsibility for AI-generated materials.

Infringement of IP rights may give rise to administrative, civil and, in certain circumstances, criminal consequences. IMPI has investigative and enforcement powers in relation to industrial property rights and may impose sanctions and order measures aimed at preventing or stopping infringement.

7.4 Consumer Protection

The principal consumer protection framework in Mexico is the *Ley Federal de Protección al Consumidor* (Federal Consumer Protection Law or LFPC), which regulates consumer contracts, information and advertising, unfair commercial practices and electronic commerce. Consumer-facing agreements must provide clear and accurate information and may not impose terms or practices prohibited by LFPC. The law also provides specific cancellation or withdrawal

rights for certain transactions, including certain distance sales, and establishes additional protections for recurring subscriptions and memberships.

PROFECO is responsible for enforcing LFPC and may investigate complaints, conduct inspections, impose administrative sanctions and order corrective measures. Consumers may submit individual complaints and, where applicable, participate in collective actions or pursue judicial remedies.

LFPC prohibits misleading or abusive advertising and certain coercive commercial practices. In e-commerce, suppliers must generally disclose information regarding their identity, the goods or services, price, payment and delivery terms, applicable conditions and cancellation policies. PROFECO may monitor online businesses and require corrective measures or impose sanctions for non-compliance.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control in Mexico is primarily governed by the *Ley Federal de Competencia Económica* (Federal Economic Competition Law or LFCE) and is currently administered by the *Comisión Nacional Antimonopolio* (CNA). The LFCE requires certain anti-competitive mergers to be authorised before closing where any of the statutory monetary or shareholding thresholds is exceeded. These include transactions exceeding 16 million times the applicable daily UMA, acquisitions of 30% or more of the assets or shares of an economic agent meeting the applicable 16 million UMA threshold, and transactions involving the accumulation of assets or capital exceeding 7.4 million UMA where the participating economic agents meet the applicable 40 million UMA threshold.

The CNA generally has 30 days to resolve a notified anti-competitive merger, calculated from receipt of the notification or, where applicable, the additional information requested. In exceptionally complex cases, the statutory period may be extended by up to 20 additional days. The substantive assessment focuses on whether the concentration may impede, diminish, damage or prevent competition and free market access, and the CNA may authorise the transaction, impose conditions or object to it.

An anti-competitive merger subject to mandatory notification may not be completed without prior authorisation. Transactions carried out in breach of the notification requirement do not produce legal effects, and the relevant acts may not be recorded in corporate books, formalised in a public instrument or registered with the RPC until the required authorisation has been obtained or the applicable statutory review period has elapsed. Failure to obtain the required authorisation may result in fines of up to 8% of the relevant economic agent's income, while an unlawful anti-competitive merger may give rise to fines of up to 10% of income, in addition to potential civil or criminal liability where applicable.

The LFCE prohibits absolute and relative monopolistic practices, as well as unlawful anti-competitive mergers. The CNA may impose significant administrative fines, order the correction or suppression of anti-competitive conduct. Absolute monopolistic practices may result in fines of up to 15% of the relevant economic agent's income, while relative monopolistic practices may result in fines of up to 10%.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign investment in Mexico is primarily governed by the *Ley de Inversión Extranjera* (Foreign Investment Law or LIE). Foreign investors may generally participate in Mexican companies without a general ownership limit, subject to restrictions applicable to certain activities, and may be required to obtain CNIE authorisation or comply with registration and reporting obligations before the RNIE.

The LIE reserves certain activities to the Mexican State or Mexican nationals and establishes foreign ownership limits for others. Additional restrictions may apply in regulated sectors, including energy, telecommunications, broadcasting, transportation and financial services, as well as to certain real estate transactions.

Mexico does not have a standalone national security review regime comparable to CFIUS. National security and public-interest considerations may nevertheless

be relevant under the foreign investment and sector-specific regulatory framework.

Mexico does not provide a general incentive programme exclusively for foreign investors. Incentives are generally sectoral, regional or project-specific, including tax incentives under *Plan México*2025 and the *Polos de Desarrollo Económico para el Bienestar*. Recent policy has focused on attracting productive investment, strengthening supply chains and promoting nearshoring.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Private-sector data protection in Mexico is principally governed by the *Ley Federal de Protección de Datos Personales en Posesión de los Particulares* (Federal Law on Protection of Personal Data Held by Private Parties or LFPDPPP). The framework is supplemented by sector-specific rules, particularly in financial, healthcare and telecommunications activities. Following the 2025 institutional reforms, the *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (INAI) was abolished, and its federal data-protection functions were transferred to other authorities, and LFPDPPP was amended accordingly.

Organisations must process personal data in accordance with the principles established by LFPDPPP, including lawfulness, purpose, proportionality, information and responsibility. They must generally provide a privacy notice explaining the purposes and conditions of processing and obtain consent where required, subject to statutory exceptions. Additional requirements apply to sensitive personal data. Organisations must also implement appropriate security measures, respect data-subject rights and properly address transfers of personal data to third parties.

Where a security breach materially affects individuals' rights or interests, the organisation must notify the affected individuals and take the corrective measures required under the applicable framework. Organisations should therefore maintain appropriate procedures for identifying, assessing and responding to security incidents, including measures to mitigate their effects and address applicable notification obligations.

Mexico generally does not impose broad data-localisation requirements on private businesses. Cross-border transfers are permitted subject to LFPDPPP and its implementing rules, and businesses should ensure that their privacy notices and contractual arrangements properly address international transfers and that recipients assume the applicable data-protection obligations.

These requirements are particularly relevant for multinational groups using shared services, foreign affiliates or cloud providers. Businesses should assess the nature and purpose of each transfer, the parties involved and any applicable sector-specific requirements when structuring international data flows.

9.2 Anti-Money Laundering, Sanctions and Corruption

The principal anti-money laundering and counter-terrorist financing framework in Mexico is the *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita* (Federal Law for the Prevention and Identification of Transactions with Resources of Illicit Origin or LFPIORPI). It applies to financial institutions and persons carrying out designated *Actividades Vulnerables*, including certain real estate, corporate, professional and high-value transactions. Obligations generally include identifying clients and beneficial controllers, maintaining records, implementing risk-based procedures and filing the applicable reports with the authorities. Recent amendments to LFPIORPI and its implementing regulations have strengthened beneficial-controller and compliance requirements.

Mexico does not operate a comprehensive autonomous economic sanctions regime equivalent to the US OFAC system. Restrictions may instead arise from Mexican foreign-trade, customs and export-control legislation, applicable permits and controls, and Mexico's international obligations, including measures adopted through the United Nations. Businesses engaged in cross-border transactions should therefore assess counterparties, goods, destinations and

applicable licences or restrictions. Non-compliance may result in administrative fines, seizure of goods, suspension or loss of permits and, depending on the conduct, criminal liability.

Anti-corruption and anti-bribery obligations arise primarily under the *Ley General de Responsabilidades Administrativas* (General Law of Administrative Responsibilities or LGRA), together with applicable criminal and sector-specific legislation. Companies may be subject to liability for certain serious administrative offences committed by individuals acting on their behalf to obtain a benefit for the company. Compliance programmes should therefore include a code of conduct, clear responsibilities, risk-based controls, training, monitoring and reporting mechanisms, with particular attention to interactions with public officials and third parties.

Enforcement powers vary according to the applicable regime. In AML, tax and customs matters, relevant authorities include the SAT and the *Unidad de Inteligencia Financiera* (UIF), while anti-corruption matters may involve federal or state administrative authorities and prosecutors. Depending on the applicable legislation, authorities may request information, conduct inspections or investigations, impose administrative sanctions and refer matters for criminal prosecution.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental requirements in Mexico arise principally under the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (General Law of Ecological Balance and Environmental Protection or LGEEPA) and sector-specific legislation. Depending on the nature and location of a project, environmental impact authorisations, permits, licences and other approvals may be required. In corporate transactions involving industrial operations or potentially contaminated properties, due diligence should address historical contamination, permitting compliance, remediation obligations and potential environmental liabilities, as these risks may not be fully eliminated through contractual indemnities.

Mexico also has carbon-pricing mechanisms, including an emissions trading system and carbon-related fiscal measures. These requirements may be relevant to transactions involving industrial activities or businesses subject to emissions regulation and should be considered as part of the broader environmental and regulatory due diligence.

Climate-related litigation remains relatively developing in Mexico, although companies may face administrative or judicial proceedings concerning environmental damage, emissions, permits and regulatory compliance. Environmental liability may extend beyond the contractual allocation of risk between the parties, making historical contamination, permitting deficiencies and remediation obligations important considerations in acquisitions and other corporate transactions. Increasing regulatory and stakeholder attention to sustainability also makes environmental risks relevant to corporate governance and long-term business planning.

Employers must comply with the *Ley Federal del Trabajo* (Federal Labour Law or LFT) and applicable occupational health and safety requirements, including NOMs issued by the relevant authorities. Unlike jurisdictions with federal and provincial occupational health and safety systems, Mexico has a predominantly federal framework for labour and workplace safety matters, although state authorities may have enforcement or related responsibilities.

Licensing and permitting requirements vary significantly depending on the business activity and location. Common requirements may include environmental, land-use, construction, operating, health, customs and sector-specific permits. Regulated industries, including energy, financial services, pharmaceuticals, telecommunications and transportation, may be subject to additional authorisations, licences or concessions, and corporate transactions should assess whether these may be transferred, require prior regulatory approval or otherwise be affected by a change of control or asset transfer.

9.4 Artificial Intelligence

Mexico does not yet have a single comprehensive AI statute in force. The use of AI is currently governed through existing legal frameworks, including data protection, consumer protection, intellectual property,

labour and sector-specific regulations, which may impose obligations relevant to transparency, responsible use and accountability depending on the application.

Several legislative proposals have been introduced to establish a broader AI framework addressing matters such as transparency, risk management and accountability. Accordingly, organisations should comply with the legal requirements currently applicable to their AI use while monitoring legislative developments and avoiding assumptions that a comprehensive AI-specific regime is already in force.

9.5 Other Regulatory Compliance Requirements

The applicable requirements will depend largely on the nature of the business and the transaction involved. Accordingly, companies should conduct a compliance assessment based on their specific activities and regulatory exposure rather than relying solely on a general corporate compliance framework.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment relationships in Mexico are principally governed by the LFT, together with the Constitution, social-security legislation and applicable NOMs. Mexican labour law establishes mandatory minimum standards regarding wages, working hours, rest periods, holidays, benefits, termination and workplace health and safety. Employers must also comply with social-security obligations before the *Instituto Mexicano del Seguro Social* (IMSS), as well as applicable housing, payroll and employment-related reporting requirements.

Termination of employment is generally governed by whether there is a legally recognised cause under LFT. Where an employer terminates without justified cause, the employee may generally be entitled to reinstatement or statutory severance, depending on the circumstances and applicable legal remedies. Where severance applies, it generally includes three months' salary, together with other amounts required by law and, in applicable cases, 20 days' salary per year of service.

Mexican law does not generally provide for a statutory notice period equivalent to those applicable in some common law jurisdictions; however, employers must comply with the formal requirements applicable to a justified termination and properly communicate the grounds for termination. Failure to establish the statutory cause or comply with applicable requirements may result in a wrongful dismissal claim. Constructive dismissal may also arise where the employer engages in conduct that legally entitles the employee to terminate the employment relationship and seek the corresponding compensation.

In M&A transactions, potential severance, reinstatement and other employment liabilities should therefore be reviewed as part of employment due diligence, particularly in connection with workforce changes and pending disputes.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation arrangements in Mexico may include salary, bonuses, benefits, equity incentives and change-of-control arrangements, subject to applicable corporate, labour, securities and tax considerations. Equity-based compensation should be consistent with the company's corporate documents and, where applicable, LMV and other securities requirements, particularly for listed companies. Change-of-control arrangements should clearly establish the applicable triggering events and payment or vesting consequences. The tax treatment will depend on the nature and structure of the compensation and should be considered when designing both cash and equity incentives.

Mexican law does not establish a broad statutory regime specifically governing post-employment non-compete covenants. Their enforceability must therefore be assessed in light of constitutional protections, including the freedom to work, as well as reasonableness and proportionality. Courts may scrutinise restrictions that disproportionately limit an individual's ability to engage in lawful employment or business activities.

Confidentiality obligations are generally more defensible, particularly where they protect legitimate trade secrets or other confidential business information. Non-solicitation provisions may also be enforceable depending on their scope, duration, purpose and drafting. In practice, these restrictions should be narrowly tailored to protect legitimate business interests while avoiding unnecessary limitations on an individual's ability to work.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Mexico recognises several forms of landholding, including private property, *ejidal* and communal land, and federal or other public property. Commercial real estate is generally held as private property and registered with the relevant public property registry. *Ejidal* and communal land is subject to a separate legal regime, including specific rules governing its use, conversion and transfer, which should be addressed as part of real estate due diligence.

The acquisition of real property by foreign individuals and entities is primarily governed by Article 27 of the Constitution and the LIE. Outside the restricted zone, foreign individuals and companies may generally acquire real property, subject to the applicable requirements and procedures before the *Secretaría de Relaciones Exteriores* (SRE). Foreign purchasers must also comply with the relevant registration, tax and notarial requirements applicable to the transaction.

Within the restricted zone, consisting of land located within 100 kilometres of Mexico's borders or 50 kilometres of its coastlines, foreign individuals and entities may not directly acquire ownership of land. Residential property in the restricted zone may generally be acquired through a *fideicomiso* established with a Mexican financial institution and authorised by SRE, allowing the foreign beneficiary to use and enjoy the property while legal title is held by the trustee.

Mexican companies with foreign investment may directly acquire certain non-residential real property within the restricted zone, subject to the requirements established by LIE and applicable regulations. The structure of the acquisition intended use of the property and status of the purchaser should therefore be reviewed at the outset of a transaction, together with applicable registration, tax and regulatory requirements.

11.2 Commercial Real Estate Transactions

Commercial real estate transactions in Mexico are governed principally by the applicable state civil legislation, together with tax, zoning, environmental, planning and registration requirements. Ownership and encumbrances are generally recorded with the relevant RPP, typically through a *folio real* system. Real estate due diligence should confirm title, liens and other encumbrances, permitted use, easements, zoning, and the seller's authority to dispose of the property.

Acquisitions and dispositions generally require review of title and encumbrances, zoning and permitted use, corporate authority, tax matters, environmental compliance, existing leases, permits and litigation. Environmental due diligence is particularly relevant for industrial properties or sites with potentially contaminated histories, as contractual indemnities do not necessarily eliminate statutory environmental liabilities. Title insurance is available in Mexico, although it is not as commonly used as in certain common law jurisdictions.

Commercial mortgage financing generally involves a properly documented and registered *hipoteca* over the relevant real property. Lenders should conduct title and lien searches and ensure that the mortgage is duly recorded with the applicable RPP, as registration is an important element in establishing priority against competing rights. Enforcement is generally judicial and may result in foreclosure and sale of the property, subject to applicable procedural and creditor-protection rules.

Commercial leases are largely governed by the applicable state civil legislation and the terms agreed by the parties. Lease agreements should clearly address the term, rent and adjustments, renewal rights, permitted use, assignment and subletting, maintenance,

insurance, default and termination. Commercial parties generally have significant contractual flexibility, although mandatory local rules may apply; assignment and subletting should therefore be expressly regulated, and landlords commonly require prior consent.

Recent developments include the continued digitisation and modernisation of property-registration and investment procedures, together with regulatory developments affecting environmental, energy, infrastructure and foreign-investment matters. For transactions involving foreign investors or property in the restricted zone, current SRE procedures, fees and applicable filing requirements should be confirmed at the time of closing. More broadly, commercial real estate transactions increasingly require an integrated review of title, zoning, environmental, foreign-investment and sector-specific regulatory matters.

Trends and Developments

Contributed by:
Luis Joaquín Chávez Vila and Arnulfo E Treviño Garza
Treviño Chávez

Treviño Chávez has partners and members with unique backgrounds and decades working as general counsels or lead counsel in leading Mexican and international companies. The firm strives to bring value-enhancing legal advice to achieve its client's objectives, balancing their business demands with solid legal advice. It promotes legal services based on results and client satisfaction, consistently aligning with their needs while proactively advancing their unique objectives in every transaction. Fully aware that time is of the essence, it takes great pride in its unwavering commitment to delivering timely and effective results. It has wide experience with transactional law and focuses on making deals happen, without jeopardising a deal's legal foundation or its clients' best interests.

Authors



Luis Joaquín Chávez Vila has extensive expertise in mediating disputes between private and public entities in addition to developing and implementing mitigation strategies for legal risks. He has held positions as manager of regulatory and litigation in Heineken Mexico and was previously a member of Chevez, Ruiz, Zamarripa and Cia. He is Professor at the Universidad de Monterrey & Tecnológico de Monterrey for the Tax and Administrative Procedural Law course.



Arnulfo E Treviño Garza has an extensive background in managing legal departments, corporate affairs, sales, safety and human resources. He has served in senior executive roles within prominent business groups such as IMSA (currently TERNIUM), FEMSA, Heineken Mexico and Farmacias del Ahorro. He is a member of multiple boards of directors and civil organisations.

Treviño Chávez

Av. De la Industria 300. Col. Veredalta
Punto Central Oficina 21 San Pedro
Garza García, NL C.P 66270
Mexico

Tel: +52 81 2721 0080
Email: luisjoaquin@tchabogados.com
Web: www.tchabogados.com

From Legal Advice to Business Solutions: The Evolving Role of Counsel in Mexico

The issue behind the legal question

In corporate and commercial practice, clients rarely seek legal advice because they have identified a legal issue. More often, they arrive with a business objective: to invest, acquire another company, expand its operations, or renegotiate a contract, not typically thinking in terms of the legal issues that might arise. Behind that objective lies a broader set of legal, regulatory, operational and commercial considerations that have not yet been fully assessed. Therefore, the lawyer's role is not simply to answer a legal question, but to assess a fundamental part of the action and provide strategic guidance based on the objective.

This may seem like a simple distinction, but it has significant implications for how legal advice is provided. A question like "How can we do this?" may require much more than a simple yes or no answer. It is necessary to understand what the company is really seeking, how much time it has to do so, what risks it is willing to assume, what other areas are involved, and what consequences each alternative would have for the operation.

In recent years, this reality has reinforced the idea that effective legal advice extends beyond interpreting statutes or identifying risks. Its real value lies in translating legal analysis into practical, commercially sound solutions that enable businesses to achieve their objectives while managing legal and commercial exposure.

Understanding what the company really needs

In a corporate matter, two structures may be equally valid from a legal standpoint yet have very different consequences for the business. The most suitable option may depend on factors not specified in the law, such as implementation timelines, costs, financing, relationships with partners or suppliers, operational capacity, or strategic growth plans.

The same is true in commercial matters. When faced with a breach of contract, the question is not always what legal action can be taken. It may be more important to determine whether the business relationship remains valuable, whether there is a reasonable chance of reaching an agreement, or whether an overly rigid stance could end up creating a bigger problem for the business.

This requires counsel listening carefully before making recommendations. The attorney needs to understand what the company wants to achieve and why, as that information can shape legal strategy. A technically flawless recommendation may be of little use if it does not address the reality in which it will be applied.

A broader profile for the corporate attorney

This evolution is also reshaping the profile of the corporate attorney. Legal expertise remains the cornerstone of the profession and can never be replaced. However, the real challenge lies not only in identifying the legally correct course of action, but in translating that analysis into guidance that aligns with the client's commercial objective. Businesses often seek solutions that can be implemented quickly, while legal counsel has the responsibility of ensuring that speed does not come at the expense of long-term certainty. Finding the right balance between commercial urgency and legal soundness has become one of the defining responsibilities of the modern lawyer.

Negotiation illustrates this shift particularly well. In today's business environment, where markets evolve rapidly and companies are expected to make decisions at an unprecedented pace, commercial parties often prioritise quick solutions over comprehensive ones. The lawyer's role is therefore not limited to knowing what the client is legally entitled to demand, but to understanding the strategic priorities of the client, distinguishing between essential and negotiable positions, by also identifying the preservation of relevant relationships. Sometimes the best negotiation is not the one that extracts the greatest concessions, but the one that allows a transaction to move forward while adequately protecting the client's interests.

Communication plays a similar role. A CEO or business owner typically does not need to know all the legal provisions underlying a legal conclusion. What they usually need is a clear understanding of the available options, associated risks, and the practical steps to move forward. The ability to communicate complex legal issues in a concise commercially meaningful way

has therefore become just as valuable as the legal analysis itself.

The ability to collaborate with professionals from other disciplines has also become increasingly important. A major transaction may involve financiers, accountants, tax specialists, consultants, human resources teams, operational managers and other stakeholders. The attorney does not have to assume the role of any of them but must understand their priorities and concerns well enough so that the legal strategy falls within the broader context of the entire project.

Even areas that traditionally appear distant from the legal practice can provide a useful insight. Understanding how a company operates, how a product is presented, and how it communicates with customers can reveal legal and commercial risks that would not be apparent if the matter were analysed exclusively from a legal lens.

Mexico: an environment that demands greater adaptability

In Mexico, these capabilities take on special importance at a time of institutional and regulatory changes. Judicial reform, legislative and regulatory amendments, coupled with the evolution of various administrative processes, are transforming the environment in which companies make decisions.

It is not necessary to label these changes as positive or negative to recognise their practical impact. For a company, what matters is that what used to work under certain rules or procedures may now be subject to new conditions, interpretations or methods of implementation. This situation raises questions that cannot always be resolved simply by reading the text of a provision.

The institutional context also matters. A transaction may involve federal, state and municipal authorities, as well as regulatory agencies, courts and other institutions. At the same time, the company will need to co-ordinate with its shareholders, executives, employees, suppliers, customers and business partners. For the legal counsel, this means that knowing the law is only part of the job. They also need to know stakeholders, what powers each party has, and how the interaction among them can affect the project.

The ability to engage in dialogue

Here we encounter a skill that sometimes receives less attention than it deserves: the ability to engage in dialogue. In complex business matters, knowing how to explain a legal position is important, but so is knowing how to actively listen to the other party's position and understand what lies behind it.

This is particularly relevant when a company has to interact with authorities and other stakeholders involved in a project. The goal is not to replace legal analysis with personal relationships, nor to turn the lawyer into a political actor. It is simply to recognise that a strategy can be legally sound and yet still require communication, negotiation and co-ordination in order to be implemented.

The relationship between companies and authorities is, moreover, only one part of this reality. In business, there are many actors who depend on one another. A company needs suppliers and customers; projects require authorities to regulate them; operations depend on workers and communities; and investors need certainty from the financial sector. Each has a distinct role, and precisely for that reason, the ability to find common ground can be decisive.

In this regard, dialogue is not a skill unrelated to the practice of law. It can be a tool for preventing conflicts, breaking deadlocks on projects, and finding solutions before a disagreement escalates into a formal dispute.

Making sure the solution works in practice

There is another consequence of this approach to consulting: distinguishing between designing a solution and making it work. On paper, a corporate structure may seem perfect. A contract may contain all the legal safeguards one could wish for. A regulatory strategy may be backed by sound arguments. But if the solution cannot be implemented within the business's timeframe, if it generates costs the company cannot bear, or if it fails to account for how the various stakeholders will react, its usefulness will be limited.

This is particularly evident in complex transactions. A lawyer's role does not necessarily end when they deliver the contract, legal opinion or corporate documents. In many cases, that is when the real work begins coordinating, negotiating, explaining and adjusting the strategy so that what was legally designed can be executed. Legal advice does not create value because it is legally correct. It creates value because it enables the business to move forward with confidence. Delivering technically sound documents is important, but their real value lies in whether they enable the client to move forward with certainty, efficiency and measurable results. The difference between a legal response and truly useful advice lies precisely in what happens after the document is delivered.

Measuring value beyond billable hours

This broader understanding of legal practice also invites a different conversation: how the value of legal advice should be measured. Clients do not measure success by the number of legal opinions received. They measure it by whether the transaction closed, the investment moved forward or the dispute was avoided. They seek guidance that enables them to make informed decisions, manage risks and achieve objectives. The way legal services are priced may differ from one engagement to another, but regardless of the billing model, the real measure of value should remain the same: whether the advice meaningfully contributed to solving the client's problem.

Billing structures inevitably influence the way legal work is organised and perceived. Where the primary metric is time spent or the volume of work produced, it becomes easier to evaluate effort than impact. Yet these two concepts are not always the same. A matter may require extensive drafting, negotiations, and meetings without materially advancing the client's objectives, while a strategic recommendation delivered at the right moment may prevent months of future disputes or regulatory complications.

This potential disconnect is particularly relevant in corporate and commercial matters. If the client's goal is to close a transaction, structure an investment, resolve a contractual dispute or prevent a contingency, the outcome of the legal work should not depend solely on how much time was spent on the matter or how many documents were prepared. What matters is whether that work effectively contributed to achieving the stated goal.

For this reason, many firms and clients are increasingly exploring fee structures that better reflect the value created rather than simply the work performed. Depending on the nature of the engagement, this may involve fixed fees, milestone-based arrangements, success components, or other alternative pricing models. The objective is not to replace traditional billing methods but to ensure that the lawyer's incentives remain aligned with the client's business objectives throughout the engagement.

From this perspective, the conversation can shift from "how much work was done" to "what needed to be resolved". This makes it possible to prioritise efforts, avoid work that does not add value and focus legal resources on what can truly make a difference for the client. For a corporate and commercial practice, where timing, opportunity and the ability to execute can be just as important as legal analysis, that difference can be significant.

A different set of expectations for corporate advisers

For companies, this evolution may translate into broader expectations regarding their advisers. Technical knowledge remains the starting point, but it is also valuable to have someone who can understand the logic of the business, identify the risks that truly matter, explain the alternatives, and work with the people who will have to implement the decision. This also makes personalisation an important factor. Not all companies, nor all the decision-makers within them have the same priorities, circumstances or risk tolerance, so useful advisory services can hardly be completely standardised.

This human dimension takes on special significance at a time when technology and artificial intelligence are transforming various aspects of professional work. These tools can streamline many tasks and make legal work more efficient, but understanding what concerns the client, what they are trying to achieve and which solution best fits their circumstances requires sound judgement, adaptability and a person who can pro-

vide them with peace of mind through a thoughtful response. In a people-centred profession, technology can complement a lawyer's work, but the ability to understand the client and tailor advice to their needs remains an essential part of their value.

The lawyer as a facilitator

The role of the corporate and commercial lawyer remains, first and foremost, a legal one. The difference is that the problems they face are increasingly less isolated and, therefore, require a broader perspective to be addressed properly.

In today's environment, the ability to combine legal knowledge with commercial judgment, negotiation skills, communication, teamwork and an understanding of institutional dynamics can be particularly important. These skills do not replace legal expertise; rather, they enable that expertise to be applied more effectively.

Ultimately, a company does not hire a lawyer to have the lawyer take centre stage in its decision-making. It hires a lawyer to have a tool that allows it to better understand its options, reduce risks and move forward. When that function is fulfilled, legal advice ceases to be merely a statement of what the law says and becomes part of the solution to the problem the client needs to resolve.

MONTENEGRO



Law and Practice

Contributed by:
Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Mario Kijanović, Nemanja Sladaković, Nadežda Miljanović and Luka Marosiuk
Kinstellar

Contents

1. Business Entities P.508
1.1 Business Organisations p.508
1.2 Incorporation and Ongoing Compliance p.508
1.3 Share Issuances p.508
1.4 Distributions and Return of Capital p.509
1.5 Control Person Reporting p.509

2. Corporate Governance P.509
2.1 Legal Framework p.509
2.2 Directors' Duties and Liabilities p.510
2.3 Board Composition and Independence p.510
2.4 ESG and Disclosure Obligations p.510
2.5 Conflicts of Interest and Related-Party Transactions p.511

3. Shareholder Rights and Agreements P.511
3.1 Shareholder Rights p.511
3.2 Shareholder Agreements p.512

4. Mergers and Acquisitions P.512
4.1 Legal Framework p.512

5. Capital Markets P.513
5.1 Securities Regulation and Public Offerings p.513
5.2 Continuous Disclosure p.513
5.3 Insider Trading p.513
5.4 Shareholder Disclosure p.514
5.5 Internal Controls and Whistle-Blower Regimes p.514

6. Secured Transactions P.514
6.1 Transaction Financing and Security Interests p.514

7. Commercial Contracts P.515
7.1 Contract Formation and Enforceability p.515
7.2 Termination and Remedies p.515
7.3 Intellectual Property in Commercial Transactions p.515
7.4 Consumer Protection p.516

8. Foreign Investment P.516
8.1 Competition and Merger Control p.516
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.517

9. Regulatory Compliance P.518
9.1 Privacy and Data Protection p.518
9.2 Anti-Money Laundering, Sanctions and Corruption p.519
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.519
9.4 Artificial Intelligence p.520
9.5 Other Regulatory Compliance Requirements p.521

10. Employment and Labour P.521
10.1 Employment Standards and Workplace Regulation p.521
10.2 Executive Compensation and Restrictive Covenants p.521

11. Real Property and Commercial Leasing P.521
11.1 Requirements for Land Ownership p.521
11.2 Commercial Real Estate Transactions p.522

Contributed by: Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Mario Kijanović, Nemanja Sladaković, Nadežda Miljanović and Luka Marosiuk, **Kinstellar**

Kinstellar is a leading independent law firm in Central and Eastern Europe, South-East Europe and Central Asia, with over 400 lawyers across 15 jurisdictions and offices in Almaty, Astana, Belgrade, Bratislava, Bucharest, Budapest, Istanbul, Kyiv, Prague, Sofia, Tashkent, Vienna and Zagreb. In Serbia, Kinstellar operates through its affiliate law firm SOG, whose four partners and 25 lawyers are recognised for their corporate and commercial work. The team advises local and international clients on M&A, corporate governance, restructurings, joint ventures, commercial contracts and day-to-day corporate matters. Supported by expertise in employment, tax, compliance, competition, real estate, finance, regulatory and dispute resolution matters. Kinstellar has also developed the Western Balkans Hub, combining the expertise of its Belgrade and Zagreb offices to provide co-ordinated legal support and seamless cross-border advice to investors and businesses across Slovenia, Croatia, Serbia, Bosnia & Herzegovina, Montenegro, North Macedonia, Albania and Kosovo.

Authors



Miloš Velimirović is managing partner of Kinstellar's Belgrade office and co-head of the firm-wide Financial Institutions and Technology sectors and Telecommunications service line. With over 15 years of experience, he advises companies, financial institutions and investors on M&A, joint ventures, banking and finance, and project development. He has participated in complex financing transactions exceeding EUR2 billion involving corporate clients, public authorities and state-owned entities, and is recognised for his expertise in financial regulatory matters, fintech, data protection and GDPR compliance. He is a member of the General Assembly of Serbia's Central Depository and Clearing House.



Milan Samardžić is a partner in the Belgrade office of Kinstellar, leading the Corporate and Commercial practice and advising on complex transactions. With over 20 years of experience, he advises international and domestic clients on M&A, joint ventures, employment matters, and market entry into Serbia and Montenegro. Milan has been involved in some of largest privatisations and M&A transactions, as well as major regional investment projects. Combining deep legal expertise with practical business insight, he delivers solutions tailored to complex regulatory environments. He serves on the Board of Governors of AmCham Serbia and is a member of the American Bar Association.



Radovan Grbović is a partner in the Belgrade office and co-head of Kinstellar's Dispute Resolution practice. With over 20 years of experience across the Western Balkans market, he advises on disputes, energy, real estate, infrastructure projects, and risk and investigations. He represents clients in domestic and international litigation, as well as arbitration proceedings under leading institutional rules, including those of the ICC and UNCITRAL. Previously, he served as an adviser to the Vice President of the Parliament of Serbia and Montenegro. He also completed specialist studies at the Diplomatic Academy of the Ministry of Foreign Affairs of Serbia and Montenegro.



Olga Šipka is a partner in the Belgrade office of Kinstellar and co-head of its Competition and State Aid practice. She advises leading domestic and international clients on competition and antitrust, regulatory, compliance and data protection matters across the Western Balkans region. Olga has extensive experience supporting clients in highly regulated sectors, including pharmaceuticals, energy, banking, consumer/retail, telecommunications, IT and healthcare. She is also recognised for designing and delivering compliance training programmes covering competition, anti-bribery, white-collar crime, regulatory and data protection issues. In addition, Olga regularly advises international institutions and public bodies on policy development and stakeholder engagement initiatives.

Contributed by: Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Mario Kijanović, Nemanja Sladaković, Nadežda Miljanović and Luka Marosiuk, **Kinstellar**



Mario Kijanović is a managing associate in the Belgrade office of Kinstellar with over ten years of experience in real estate, construction, planning and energy projects across the Western Balkans. He advises investors, developers, financial institutions and public sector clients on complex real estate transactions, renewable energy developments, project finance and construction matters. Mario has been involved in major investment projects in the region and supports clients on acquisitions, disposals, leasing and development projects. He is President of the Infrastructure & Real Estate Committee of the Foreign Investors Council in Serbia, where he contributes to improving the investment and regulatory environment.



Nemanja Sladaković is a senior associate in the Belgrade office of Kinstellar and a member of its Corporate and Commercial team. He advises international clients on company formation, market entry, corporate structuring and business operations across the Western Balkans. His practice focuses on contract law, regulatory compliance, corporate housekeeping and investment structures, supporting clients throughout their business lifecycle. He advises technology companies, start-ups and scale-ups on corporate governance, intellectual property and investment readiness. He also advises on employment law matters, including contractual frameworks, HR policies and workforce restructurings. He holds a Master's degree from Aix-Marseille University, Faculty of Economics and Management.



Nadežda Miljanović is a senior associate in the Belgrade office of Kinstellar, specialising in competition law and data privacy. She advises domestic and international clients on all aspects of competition law, with a focus on merger control and the competition aspects of complex M&A transactions, including multi-jurisdictional filings. Nadežda supports clients throughout the transaction lifecycle, from regulatory assessment and merger filings to obtaining clearance from competition authorities across eight Western Balkan countries. She also advises on data privacy and cybersecurity matters, helping businesses navigate compliance requirements and manage regulatory risks across highly regulated sectors, including energy, banking, automotive and telecommunications.



Luka Marosiuk is a senior associate in the Belgrade office of Kinstellar, specialising in banking and finance. He advises domestic and international clients on complex financing, M&A, corporate governance and regulatory matters across Serbia and the wider region. Luka represents creditors and debtors in commercial and financial transactions involving both local and international financial institutions. His practice covers NPL transactions, insurance sector governance, takeover bids and going-private transactions. He has significant arbitration and dispute resolution experience, including investment arbitrations before ICSID and commercial arbitrations under LCIA and SCC rules. He is a member of the CELIS Institute, Young ICCA and ArbCEE.

Kinstellar

Bulevar Mihajla Pupina 6/4, Ušće Tower 1,
11070 Belgrade,
Republic of Serbia

Tel: +38111 3210 200
Email: office@sog.rs
Web: www.kinstellar.com

Contributed by: Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Mario Kijanović, Nemanja Sladaković, Nadežda Miljanović and Luka Marosiuk, **Kinstellar**

1. Business Entities

1.1 Business Organisations

The principal forms of business organisation available in Montenegro are the general partnership, limited partnership, joint-stock company and limited liability company. Entrepreneurs may also conduct business as registered natural persons, while branches of foreign companies may be registered in Montenegro but do not constitute separate legal entities.

The choice of legal structure in Montenegro is influenced by several factors, including the extent of liability, regulatory and corporate requirements, capital requirements and tax considerations. In a general partnership, partners have unlimited liability for the obligations of the partnership, while in a limited partnership, general partners have unlimited liability, and limited partners are generally liable only up to the amount of their agreed contribution. Members of a limited liability company and shareholders of a joint-stock company generally have limited liability and are not personally liable for the obligations of the company.

The choice may also be affected by regulatory and corporate requirements, including registration with the Central Register of Business Entities (known by its Montenegrin acronym, CRPS), sector-specific licences or approvals, and structure-specific capital requirements, such as EUR1 for a limited liability company and EUR25,000 for a joint-stock company.

Taxation is also relevant because corporate entities are generally subject to corporate income tax at rates prescribed by the Corporate Income Tax Act, while distributions to shareholders may also be subject to withholding tax, subject to applicable exemptions and treaty relief.

1.2 Incorporation and Ongoing Compliance

The following summary describes the incorporation procedure for a limited liability company, the corporate form most commonly used in Montenegro.

The incorporation documents typically include:

- a founding act, namely, a resolution for a single founder or an agreement for two or more founders;
- the Articles of Association;
- if the founder is a legal entity, an excerpt from the relevant register in the founder's country of origin;
- if the founder is a natural person, a passport (if the founder is a foreign national) or a Montenegrin identity document (if the founder is a Montenegrin citizen);
- a completed registration application form with all required information; and
- any other necessary approvals/licences/certificates in accordance with planned activities, company size or other relevant parameters.

The CRPS issues a decision on the registration application within ten days.

Companies are generally required to maintain prescribed corporate records and keep their registered details with the CRPS up to date, and comply with annual financial and other reporting obligations under the applicable tax and sector-specific legislation.

1.3 Share Issuances

The Companies Act regulates the creation, maintenance, and alteration of share capital of a joint-stock company and permits authorised increases of share capital subject to statutory requirements.

A resolution of the Shareholders' Meeting may authorise the board to increase the share capital by issuing new shares, subject to the statutory amount and time limitations. Shares may be issued either with or without par value, provided that all shares in the company follow the same approach. No-par-value shares have an accounting value determined by dividing the company's share capital by the total number of shares. Increases and reductions of share capital are subject to the applicable corporate approval and registration requirements. The Companies Act does not use a separate "stated capital account" concept; it regulates registered share capital and, separately, share premium.

A joint-stock company may issue ordinary and preference shares. Ordinary shares constitute a single class, while several classes of preference shares may be issued. The rights attached to preference shares may include preferential dividend and liquidation rights,

conversion rights and redemption rights. When structuring different classes, particular attention should therefore be paid to the economic and voting rights, transfer restrictions, pre-emption rights and statutory class consent requirements attached to each class. The aggregate nominal value of issued and authorised preference shares may not exceed 50% of the company's share capital.

In a limited liability company, share capital is divided into ownership interests rather than shares, and members hold participation interests expressed as a percentage of the company's share capital. The share capital is increased through additional contributions of the members, rather than by issuing shares, as ownership interests in a limited liability company are not securities.

1.4 Distributions and Return of Capital

Distributions, including dividends, are subject to statutory restrictions. A company may not distribute profits to shareholders if, following the distribution, its net assets would fall below the amount of its share capital together with reserves that may not be distributed under the law or the company's Articles of Association. The amount available for distribution may not exceed the profit for the relevant financial year, increased by retained profits from previous years and available reserves, and reduced by losses carried forward and amounts required to be allocated to reserves under applicable law and the company's Articles of Association.

If it is established that shareholders knew or could have known that a distribution was not made in accordance with these requirements, the shareholders may be required to return the amounts received.

A joint-stock company may acquire its own shares (treasury shares) subject to statutory requirements, including shareholder approval, a net asset test, a 10% limit on the company's own shares and the requirement that the shares be fully paid. The acquisition resolution must specify the maximum number of shares, the minimum and maximum purchase price and the acquisition period, which may not exceed two years. Certain statutory exceptions apply.

The treasury shares generally must be disposed of within the statutory deadlines; otherwise, they must be cancelled in accordance with the applicable statutory requirements. While held by the company, treasury shares do not carry voting or dividend rights and are not counted for quorum purposes. The acquisition and disposal of treasury shares must also be reported in the company's financial statements and registered with the CRPS.

The company may pay for its shares only from available reserves or proceeds from the sale of its own shares. The company may not distribute profits or acquire additional treasury shares until the withdrawing member has been paid in full.

A limited liability company may acquire an ownership interest from one or more of its members with the approval of members holding at least two-thirds of the share capital. The proposed acquisition agreement must be provided to all members at least 21 days before the decision.

Financial assistance is generally prohibited: a company may not directly or indirectly provide loans, guarantees or other financial support to a person intending to acquire shares in the company. Exceptions apply to financial institutions and acquisitions of shares for the purpose of allocating them to employees.

1.5 Control Person Reporting

Control person reporting obligations for private companies primarily concern the disclosure of beneficial ownership information. Companies are generally required to identify and register their beneficial owners, and update information regarding them, in accordance with the rules governing the Register of Beneficial Owners.

2. Corporate Governance

2.1 Legal Framework

The principal laws and regulations governing corporate governance in Montenegro are:

- the Companies Act;

- the Act on Registration of Business and Other Entities;
- the Capital Markets Act;
- the Audit Act;
- the Bankruptcy Act;
- tax legislation relevant to corporate governance and reporting obligations;
- the Accounting Act;
- the Corporate Governance Code; and
- the Rules on Corporate Governance Reporting by Issuers whose Securities are Admitted to Trading on a Regulated Market.

In the case of regulated business activities, such as banking, the relevant special legal framework also applies.

2.2 Directors' Duties and Liabilities

The principal fiduciary duties of directors include the duty to act with due care and in the best interests of the company, the duty to disclose personal interests and avoid conflicts of interest, the duty of confidentiality and the duty to comply with non-compete restrictions. Although published case law is relatively limited, breaches of duty-of-care, loyalty and conflict-management obligations may give rise to liability.

Directors are required to act with the care of a prudent businessperson and in the reasonable belief that they are acting in the company's best interests. A breach of their fiduciary duties may give rise to personal liability for any resulting damage suffered by the company.

2.3 Board Composition and Independence

Limited liability companies are generally managed by a Shareholders' Meeting and a director, although their Articles of Association may provide for a board of directors instead.

In case of joint-stock companies, in addition to the Shareholders' Meeting, the management system can be either one-tier or two-tier. Under a one-tier management system, the joint-stock company has a director or a board of directors, while under a two-tier management system, it has a director or management board and a supervisory board.

For joint-stock companies, where a board of directors is established, it must have at least three members and an odd number of directors.

Public joint-stock companies are subject to stricter composition and independence requirements than other joint-stock companies, including a majority of non-executive directors, at least one independent director and, for large public joint-stock companies, gender representation requirements.

As regards the independence requirements, at least one-third of the members of the board of directors must be independent directors. In the case of a public joint-stock company, at least two-fifths of the members of the board of directors must be independent directors.

Only a natural person with full legal capacity may be appointed as a member of the board of directors. A person may not serve as a member of the board of directors if such person has been convicted of certain criminal offences against employment rights, intellectual property, payment transactions and commercial operations, property or official duty, for a period of three years from the date on which the judgment became final. Any period spent serving a prison sentence is not included in this three-year period.

In addition, a member of the board of directors may not be the company's auditor or a person who has audited the company's financial statements. A person subject to a prohibition on carrying out an activity constituting the company's principal business activity may not serve as a member of the board for the duration of such prohibition. An executive director of the company may not serve as a member of the board of directors, except in the case of a single-member company.

The company's Articles of Association may prescribe additional eligibility requirements for the appointment of members of the board of directors.

2.4 ESG and Disclosure Obligations

Montenegrin legislation does not provide for a standalone ESG regulatory framework. ESG and sustainability-related requirements are addressed through

various laws and regulations, primarily the Accounting Act, the Companies Act and the Environmental Protection Act. The applicable legal framework covers, among other matters, non-financial reporting, corporate governance, environmental protection and sustainable development.

Under the Accounting Act, certain large legal entities and parent companies of large groups are required to include in their management report, or in a separate non-financial report, information concerning their business model, relevant policies relating to environmental, social and employee matters, human rights and anti-corruption, the results of such policies, principal risks and relevant non-financial key performance indicators.

Under the Companies Act, executive directors and members of the relevant management and supervisory bodies are required to act conscientiously, with the care of a prudent businessperson and in the interests of the company as a whole. This general duty is not expressly formulated as a standalone ESG obligation, although ESG considerations may be relevant when assessing the long-term interests of the company.

As a matter of best practice, boards should integrate material ESG considerations into risk management and long-term business planning, monitor compliance with applicable ESG-related requirements and oversee relevant ESG policies, risks and non-financial performance indicators. This approach is consistent with the non-financial reporting requirements under the Accounting Act.

2.5 Conflicts of Interest and Related-Party Transactions

A personal interest in a transaction must be disclosed to the company in advance, and the transaction must be approved by persons who have no personal interest in the transaction.

The relevant person must notify the company of the existence of such personal interest before the transaction is entered into or the relevant action is taken. The notification must include, among other things, the nature and extent of the personal interest, a description and value of the transaction, the proposed date of the transaction, and other information necessary to assess whether the transaction is fair and reasonable from the perspective of the company and the shareholders or members who have no personal interest.

For joint-stock companies, transactions representing at least 10% of the company's total assets are subject to an additional fairness assessment, while a notice of approved transactions involving a personal interest must be published and made available to interested persons.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholders are entitled to certain proprietary and non-proprietary rights, including the right to:

- participate in the distribution of profits through dividends;
- receive a share of the company's remaining assets following liquidation;
- receive shares free of charge in the case of a share capital increase from the company's own funds;
- exercise pre-emption rights in connection with new issues of shares and convertible bonds;
- dispose of their shares;
- attend and vote at the Shareholders' Meeting;
- access certain corporate and financial information and documents;
- appoint an expert to examine the company's business operations or accounts, subject to the applicable statutory requirements;
- ask questions in connection with matters considered at the Shareholders' Meeting; and
- request the repurchase of their shares in certain circumstances where they dissent from a resolution of the Shareholders' Meeting.

Statutory remedies available to shareholders include:

- claims for damages suffered personally by the shareholder due to the breach duty;
- derivative actions brought in the shareholder's own name but on behalf of the company;
- challenges to Shareholders' Meeting resolutions that are contrary to the Companies Act or the com-

pany's Articles of Association or were adopted at an improperly convened or held meeting;
- buyout rights of dissenting shareholders in connection with certain fundamental corporate decisions; and
- court protection of information rights where a shareholder has been unjustifiably denied an answer to a question raised at a Shareholders' Meeting in connection with transactions involving assets of significant value, as provided under the Companies Act.

3.2 Shareholder Agreements

Shareholder agreements are frequently used to regulate voting arrangements, board representation, exit mechanisms and restrictions on share transfers, including pre-emption, tag-along and drag-along rights. They serve as a contractual framework governing the relationship between shareholders alongside the statutory framework under company law. Their enforceability may be affected where contractual arrangements conflict with mandatory company law provisions or the company's constitutive acts.

Shareholder disputes are commonly addressed through court proceedings challenging corporate decisions or seeking protection of shareholder rights. Depending on the circumstances, parties may pursue claims for damages, contest the validity of shareholders' resolutions or request judicial intervention in relation to the management and operation of the company. Where conflicts significantly impair the company's functioning, the courts may also order the company's dissolution in accordance with the requirements of company law.

4. Mergers and Acquisitions

4.1 Legal Framework

The principal laws and regulations governing mergers and acquisitions in Montenegro are:

- the Companies Act, which regulates mergers, demergers, acquisitions, corporate reorganisations, and other changes in ownership and corporate structure;
- the Law on Takeovers of Joint-stock Companies, which governs mandatory and voluntary takeover bids, as well as the acquisition of control over joint-stock companies;
- the Capital Markets Act, which regulates securities transactions, disclosure obligations, and other capital markets aspects relevant to M&A transactions; and
- the Law on Protection of Competition, which provides the merger control framework and requires notification and clearance of concentrations meeting the prescribed thresholds.

The choice of M&A structure depends on whether the transaction involves an acquisition of shares, a transfer of assets or a statutory merger. Statutory mergers require a merger agreement, corporate approvals and registration, with safeguards for shareholders and creditors and judicial involvement in specified matters rather than general court approval. Public takeovers involve additional considerations, particularly mandatory offer requirements, shareholder protection and regulatory approval.

The principal M&A structures are share acquisitions, asset acquisitions and statutory mergers. Share acquisitions involve purchasing existing ownership interests, while asset acquisitions allow buyers to acquire selected business assets and assume agreed liabilities. Statutory mergers provide an alternative where the intention is to combine businesses through the transfer of assets and liabilities by operation of law.

The new Companies Act, applicable since January 2026, has updated the framework for corporate governance and restructuring, including procedures and safeguards relevant to mergers. The new Law on Protection of Competition, adopted in 2026, is also relevant to transactions requiring merger-control assessment. Certain cross-border restructuring provisions under the Companies Act will apply only upon Montenegro's accession to the EU.

While Montenegrin courts continue to play an important role in resolving shareholder, corporate governance and transactional disputes, recent developments in the M&A framework have been driven primarily by legislative and regulatory reforms rather than land-

mark judicial decisions. Court practice in this area remains relatively limited and has not yet resulted in the development of distinct judicial doctrines or principles specific to M&A transactions. Instead, the role of the courts has largely been to ensure compliance with the applicable corporate and regulatory framework and to safeguard shareholder rights.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The primary regulatory bodies overseeing capital markets in Montenegro are:

- the Capital Market Authority of Montenegro, which is the principal regulatory body responsible for supervising the capital market, market operators, investment firms and other authorised participants; and
- the Central Bank of Montenegro, which is also relevant where credit institutions provide investment services.

Initial and follow-on public offerings are primarily governed by the Capital Markets Act and generally require an approved prospectus, subject to statutory exemptions and ongoing disclosure requirements for listed issuers. The prospectus approval period is generally ten working days from the filing of a complete application. However, the review period is extended to 20 working days where the issuer is making its first public offer of securities or is seeking admission of its securities to trading on a regulated market for the first time.

Stock exchange requirements apply in addition to statutory securities regulation, so admission to trading on the Montenegro Stock Exchange requires compliance with both the Capital Markets Act and the applicable market-segment admission rules.

Prospectus exemptions include offers exclusively to professional investors, offers to no more than 150 non-professional investors, offers of securities with a denomination of at least EUR100,000 and offers requiring an investment of at least EUR100,000 per investor, as well as certain takeover, merger, division and other corporate restructuring transactions, share dividends, replacement shares not involving an increase of share capital, and employee share schemes. In certain cases, an information document must be made available instead of a prospectus. Exempt offers remain subject to any applicable notification, filing and other regulatory requirements imposed by the Capital Market Authority.

Securities offered under an exemption may be resold, but each subsequent offer is assessed separately and may require a prospectus unless another exemption applies. There is no general statutory holding period, while a non-exempt public offer made without a prospectus is void and may also be suspended or prohibited by the Capital Market Authority.

5.2 Continuous Disclosure

Listed entities are subject to ongoing reporting and disclosure obligations under the Capital Markets Act, including periodic financial reporting and disclosure requirements concerning information relevant to investors and the market. Such information is subject to the applicable publication and reporting requirements and must be made available to the public and reported to the Capital Market Authority in accordance with the applicable rules.

Material events are generally disclosed through the prompt publication of inside information relating to the issuer. Such information must be disclosed in a manner that enables prompt access and a complete, correct and timely assessment by investors, and must also be published on the issuer's website. Disclosure may be delayed only in limited circumstances, provided that the delay is not likely to mislead the public, that the confidentiality of the information can be maintained and that the applicable statutory conditions are met.

5.3 Insider Trading

The principal rules governing market abuse and insider trading are contained in:

- the Capital Markets Act, which prohibits insider dealing, unlawful disclosure of inside information and market manipulation and regulates the disclosure of inside information by issuers; and

- secondary legislation issued by the Capital Market Authority, which further develops the applicable compliance and reporting requirements.

Specific rules on the prevention and sanctioning of market abuse have also been adopted and are expected to come into force upon Montenegro's accession to the EU.

As regards the enforcement powers of the relevant regulatory bodies, the Capital Market Authority has broad supervisory and enforcement powers, including the power to request information and documents, conduct on-site inspections, access trading and communication records, order corrective measures, suspend or prohibit trading, and initiate proceedings before the competent court.

5.4 Shareholder Disclosure

The disclosure of substantial shareholdings is primarily governed by the Capital Markets Act. The framework requires shareholders and other persons entitled to exercise or control voting rights in listed companies to notify the issuer of relevant changes in their interests, while the issuer is responsible for making the notified information publicly available.

The disclosure obligation is triggered when voting rights reach, exceed or fall below 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75%. It applies to shareholders and other persons who are entitled to exercise or control voting rights in issuers whose shares are admitted to trading on a regulated market.

Non-compliance with these rules may result in fines ranging from EUR5,000 to EUR40,000 for legal entities and from EUR500 to EUR4,000 for responsible persons, with additional percentage-based fines possible for more serious infringements. The Capital Market Authority may also impose supervisory measures and require compliance with the applicable disclosure obligations.

5.5 Internal Controls and Whistle-Blower Regimes

The key legal requirements for corporate compliance programmes and internal control systems include internal controls, clear allocation of responsibilities, effective risk-management procedures and ongoing compliance monitoring, with additional obligations applying in regulated sectors.

Mandatory whistle-blowing mechanisms require regulated capital market entities to provide internal channels for employees to report suspected breaches, supported by secure reporting to the Capital Market Authority, protection of the reporter's identity, and safeguards against retaliation or discriminatory treatment.

Effective compliance risk management requires companies to implement an independent and effective compliance function, risk-management policies, internal controls, staff training, reporting procedures and, where appropriate, internal audit arrangements, supported by regular oversight from senior management and the governing body.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

The principal legislation governing secured transactions includes:

- the Law on Secured Transactions, which governs pledges over movable property and receivables;
- the Law on Property Relations, which governs mortgages over real estate and other property-law security rights; and
- the Law on Obligations, which recognises assignment of receivables by way of security.

The principal forms of security include mortgages over real estate, possessory and registered pledges over movable assets and rights, assignments of receivables by way of security, fiduciary transfers of ownership and, in the financial sector, financial collateral arrangements.

Perfection requirements depend on the type of security. Mortgages must be registered in the Real Estate Cadastre, while registered pledges must be entered in the Pledge Register. Priority is determined by the order of registration or perfection, and enforcement is

carried out through realisation of the secured asset in accordance with the applicable statutory procedure.

In acquisition financings, security may be taken over shares or interests, real estate, movable assets, bank accounts and receivables, while relationships between multiple secured creditors are typically addressed through subordination or intercreditor arrangements, subject to applicable registration, priority and financial-assistance rules.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

The key principles of contract formation include freedom of contract, equality of the parties, good faith and the binding force of contractual obligations, with contracts formed by an agreement on essential terms, interpreted by reference to their wording and the parties' common intention, and enforced through claims for performance, damages or, where applicable, termination.

A commercial contract is validly formed where the parties have capacity and authority to contract, the parties have agreed on its essential terms, the subject matter and legal basis are permitted, and any mandatory form requirements are satisfied; consideration is not a separate requirement.

The principal grounds of invalidity include illegality of the subject matter or legal basis, lack of required capacity, failure to comply with mandatory form requirements and defects in consent, such as mistake, fraud or duress.

The laws and rules affecting the interpretation and enforcement of commercial contracts are primarily set out in the Contracts and Torts Act, including the principles of freedom of contract and good faith and the rules governing interpretation of contracts, performance and non-performance, damages, contractual penalties, termination and contractual limitations of liability.

7.2 Termination and Remedies

The key legal remedies for breach of contract include performance, damages, termination of the contract and, where agreed, contractual penalties.

A party may terminate a contract in the event of non-performance or another material breach, subject to any applicable notice or cure requirements, while wrongful termination may give rise to liability for damages suffered by the other party.

The Contracts and Torts Act provides the principal framework for impossibility of performance and hardship, including rules on exemption from liability and the amendment or termination of contracts due to changed circumstances. For international sales of goods, the UN Convention on Contracts for the International Sale of Goods may also apply, which provides exemption from liability where non-performance results from an impediment beyond a party's control.

7.3 Intellectual Property in Commercial Transactions

Key considerations regarding intellectual property (IP) in commercial transactions include confirming ownership of patents, trade marks and copyright, properly documenting their assignment or licensing, completing any applicable registration formalities, and protecting trade secrets through appropriate confidentiality arrangements.

Ownership of IP created in a commercial relationship is primarily determined by statutory rules and the parties' contractual arrangements, with specific rules applying to employee-created works and inventions, commissioned works and jointly created IP. Published case law is limited, although the Supreme Court has distinguished ownership of a physical asset from the underlying author's rights, while no specific rules or established case law currently address ownership of AI-generated content.

Remedies available for infringement of IP rights include injunctions, damages, removal or destruction of infringing goods, and provisional measures.

7.4 Consumer Protection

The principal consumer protection laws and regulations in Montenegro are:

- the Consumer Protection Act, which regulates consumer rights, unfair commercial practices, disclosure requirements and consumer remedies;
- the Consumer Protection in Financial Services Act, which regulates the provision of financial services to consumers and related consumer rights;
- the Contracts and Torts Act, which governs general contractual relationships and remedies for breach; and
- the Electronic Commerce Act, which regulates certain aspects of online transactions and electronic contracting.

Consumer protection rules may affect commercial agreements by imposing mandatory disclosure requirements, restricting unfair contractual terms and granting consumers certain statutory rights, including cooling-off rights in specific circumstances.

Key enforcement mechanisms available to regulators include inspections, information-gathering powers, administrative measures and the imposition of sanctions, while consumers may seek redress through complaints procedures, alternative dispute resolution mechanisms and court proceedings.

Courts and regulators address unfair business practices, misleading advertising and e-commerce consumer protection issues through inspections, corrective measures and enforcement proceedings. Regulators may investigate misleading, aggressive and other unfair commercial practices, and require traders to remedy identified infringements, while courts may provide remedies to affected consumers and impose monetary penalties. Depending on the nature of the breach, legal entities may be subject to fines ranging from EUR3,000 to EUR20,000 for unfair commercial practices, while certain e-commerce infringements may attract fines of up to EUR10,000.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control in Montenegro is governed by the Law on Protection of Competition, supplemented by the Merger Notification Guidelines, the Relevant Market Rulebook and the Regulation on the List of Competition Rules. A merger filing with the Montenegrin Agency for Protection of Competition ("Agency") is required if either of the following thresholds is met in the preceding financial year:

- combined Montenegrin turnover of at least two parties exceeds EUR5 million; or
- combined worldwide turnover exceeds EUR20 million and at least one party generates at least EUR1 million in Montenegro.

Turnover is assessed at group level, excluding intra-group sales.

There is no statutory filing deadline, but closing must await clearance. The Agency has 30 days from receipt of a complete filing to clear the transaction or open an in-depth investigation. If opened, the investigation must be completed within four months from the submission of the filing.

The Agency assesses whether the transaction would significantly restrict effective competition, particularly through the creation or strengthening of a dominant position.

Implementing a notifiable concentration without prior clearance (gun jumping) may result in a fine of up to 1% of the undertaking's worldwide annual turnover. Implementation of a prohibited concentration may result in a fine of up to 10% of worldwide annual turnover.

The Agency may also order divestment, unwinding of the transaction or other measures to restore effective competition.

Failure to comply with certain Agency orders may trigger periodic penalties of up to 5% of average daily turnover for each day of non-compliance.

Prohibited restrictive agreements and abuse of dominance may result in fines of up to 10% of the undertaking's worldwide annual turnover and behavioural or structural remedies. Prohibited agreements are null and void, and injured parties may seek damages. Responsible individuals may also face imprisonment of three months to five years for abuse of a monopolistic or dominant position or conclusion of monopolistic agreements, where the statutory conditions for criminal liability are met.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign Investment Regulations in Montenegro

Montenegro has no general FDI screening regime. Foreign investments are governed by the Law on Foreign Investments, which grants foreign investors national treatment and imposes no general notification or approval requirements.

Under the currently applicable framework, foreign investments in companies engaged in the production and trade of arms and military equipment require prior approval from the relevant ministry. No minimum investment value or shareholding threshold applies. The Law does not prescribe a specific approval fee or review deadline.

Investments in regulated sectors, including banking, insurance and other financial services, may require separate sector-specific approvals, generally irrespective of the investor's nationality.

Foreign Ownership

Foreign ownership is generally permitted in Montenegro, but restrictions apply in certain sectors and asset classes.

In the defence industry, foreign investments require prior approval, although no general foreign ownership cap applies.

Foreign persons are generally prohibited from acquiring agricultural land, forests, natural resources, islands, property within one kilometre of the state border and certain protected or strategically important properties, subject to limited statutory exceptions.

Air carriers holding a Montenegrin operating licence must be majority-owned and effectively controlled by Montenegro or Montenegrin nationals, unless an international treaty provides otherwise.

Acquisitions of qualifying shareholdings in banks and insurance companies, generally starting at 10%, require prior regulatory approval.

Telecommunications and broadcasting are primarily subject to licensing and regulatory requirements rather than general foreign ownership caps.

These restrictions are enforced through sector-specific regulatory approvals, licensing requirements and property registration rules, as applicable.

National Security Review Process With Respect to Foreign Investment

Montenegro has no standalone, economy-wide national security screening regime for foreign investments. National security considerations are addressed through sector-specific approval procedures, particularly in the defence industry.

Under the Law on Foreign Investments, investments in companies engaged in the production and trade of arms and military equipment require prior approval from the relevant ministry, following consultation with the authorities responsible for defence and internal affairs.

In July 2026, the government initiated the establishment of a comprehensive FDI screening mechanism. A dedicated law is currently under preparation and has not yet been adopted.

Incentives

Foreign investors are generally eligible for the same incentives as domestic investors, subject to applicable eligibility criteria.

Newly established companies operating in economically underdeveloped municipalities may benefit from a 100% corporate income tax exemption for up to eight years, capped at EUR200,000, and subject to certain sector-specific exclusions.

Additional incentives include grants and subsidies for eligible investment, innovation and agricultural projects, as well as local tax and administrative benefits in designated business zones.

Montenegro also offers customs and VAT relief for qualifying activities in free zones, subject to applicable conditions.

Recent Developments and Policy Changes

Montenegro has undertaken several legislative reforms to align its investment framework with EU standards.

In March 2025, amendments to property ownership legislation provided for equal treatment of EU nationals in acquiring real estate, with application deferred until Montenegro's accession to the EU.

In February 2026, Montenegro adopted a new Law on Free Zones, updating the regulatory framework for their establishment and operation.

In July 2026, the government adopted a proposal to establish a general FDI screening mechanism. Public consultations on drafting the relevant legislation commenced in September 2026, but no screening law has yet been adopted.

A new Law on the Production of Arms and Military Equipment was also adopted in July 2026, introducing additional national security requirements for foreign investments in the defence sector. Its application is deferred until 11 August 2027.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Data Protection Framework

Montenegro's data protection framework is currently governed by the Law on Personal Data Protection (Official Gazette of Montenegro Nos. 79/08, 70/09, 44/12, 22/17 and 77/24). A new Law on Personal Data Protection, aligned more closely with the GDPR, was adopted in September 2026 and is scheduled to apply from 20 March 2027. Until then, the existing law remains the principal framework for personal data processing, subject to the new law's transitional provisions. The Agency for Personal Data Protection and Free Access to Information is the principal supervisory authority.

Additional requirements apply in specific sectors: the Law on Electronic Communications regulates the confidentiality of communications and related data, healthcare legislation governs the processing and management of health data, and the Law on Labour Records regulates employee-related records. Video surveillance is also subject to specific rules under the personal data protection framework.

Key Obligations for Organisations Under Montenegro's Privacy Law

Under the existing Law on Personal Data Protection, organisations must:

- process personal data lawfully and fairly;
- process personal information for specified purposes and only to the extent necessary;
- ensure that data collection is proportionate;
- ensure data accuracy;
- protect confidentiality; and
- implement appropriate security measures.

Consent is one legal basis for processing, while disclosure to third parties and processing of sensitive data are subject to specific statutory requirements.

The existing law does not establish a general data breach notification regime equivalent to the GDPR. From 20 March 2027, the new law will introduce a GDPR-aligned framework, including notification of qualifying breaches to the supervisory authority within 72 hours and notification of affected individuals where a breach is likely to result in a high risk to their rights and freedoms.

Cross-Border Data Transfer Requirements and Data Localisation Considerations

Under the currently applicable Law on Personal Data Protection, transfers of personal data outside Montenegro generally require prior approval from the Agency for Personal Data Protection and Free Access to Information, unless a statutory exception applies. Exceptions include transfers to EU/EEA countries and other countries recognised as providing an adequate level

of protection, as well as certain transfers necessary for contractual performance or the protection of legal interests. This is particularly relevant for businesses using foreign cloud providers, sharing employee or customer data with overseas group companies, or outsourcing data processing.

The new Law on Personal Data Protection, applicable from 20 March 2027, will regulate international transfers as follows:

- *Adequacy decisions*: Transfers will be permitted to countries, territories, sectors or international organisations recognised as providing an adequate level of data protection.
- *Appropriate safeguards*: Where no adequacy decision applies, transfers may rely on safeguards such as standard contractual clauses, binding corporate rules for transfers within corporate groups, or approved codes of conduct and certification mechanisms, subject to the statutory conditions.
- *Specific derogations*: In limited circumstances, transfers may be permitted based on explicit consent, contractual necessity or the establishment, exercise or defence of legal claims.
- *Data localisation*: The law does not impose a general requirement to store all personal data in Montenegro, although specific sectoral requirements may apply.
- *EU/EEA transfers*: Transfers from the EU/EEA to Montenegro remain subject to the GDPR's separate international transfer requirements, where applicable.

9.2 Anti-Money Laundering, Sanctions and Corruption

Principal AML/CFT obligations include:

- conducting customer due diligence, including the identification of customers and beneficial owners;
- monitoring business relationships and transactions on an ongoing basis;
- reporting suspicious transactions and activities to competent authorities;
- maintaining records relating to customers, transactions and AML/CFT measures; and
- implementing risk-based AML/CFT policies, procedures and internal controls, including employee training and compliance measures.

Entities subject to these requirements are:

- financial institutions, including banks, payment institutions and certain insurance undertakings;
- virtual asset service providers;
- professional service providers, including auditors, accountants, tax advisers, lawyers and notaries in prescribed circumstances;
- real estate professionals; and
- gambling operators and certain dealers in high-value goods.

In relation to sanctions, trade restrictions and export controls, Montenegro implements UN sanctions and restrictive measures aligned with the EU sanctions framework. Businesses are required to comply with applicable financial and trade restrictions, while breaches may give rise to administrative, misdemeanour or criminal liability.

In relation to anti-corruption and anti-bribery compliance, businesses are prohibited from engaging in bribery and other forms of corrupt conduct and may be exposed to both individual and corporate liability. Risk mitigation is typically achieved through compliance programmes, including anti-corruption policies, employee training, third-party due diligence, conflict-of-interest controls, and whistle-blowing or other internal reporting procedures.

To ensure compliance with these requirements, the competent authorities have broad supervisory, investigative and enforcement powers, including the power to request information and documentation, conduct inspections and impose administrative, misdemeanour or criminal sanctions for non-compliance.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulation

The key environmental regulatory requirements in Montenegro arise primarily from the Environmental Protection Act, the Environmental Impact Assessment

Act, the Environmental Liability Act and the Climate Change Act.

Projects that may have significant environmental effects, including certain industrial, energy, infrastructure and tourism projects, are subject to environmental impact assessment requirements and must obtain the relevant approvals before implementation.

Environmental liability is based on the "polluter pays" principle, under which operators are responsible for preventing and remedying environmental damage. In corporate transactions, particular attention is typically paid to potentially contaminated sites, remediation obligations, environmental assessments and potential environmental claims.

Montenegro's climate change framework regulates greenhouse gas emissions, monitoring and reporting obligations, and permitting requirements for certain emitters. The framework is being further aligned with EU climate legislation and is intended to support future integration with the EU emissions trading framework (EU ETS).

Climate-Related Litigation and Environmental Liability

Climate-related litigation in Montenegro remains relatively undeveloped. However, companies may face civil, administrative and, where applicable, criminal liability for environmental damage or non-compliance with environmental regulations.

Operators may be required to implement preventive measures, remedy environmental damage, and undertake remediation activities in accordance with applicable legislation. For companies operating in sectors such as energy, industry and infrastructure, potential risks include remediation costs, regulatory enforcement measures, fines and environmental damage claims.

As Montenegro continues to align its legislation with EU environmental and climate standards, climate-related obligations and environmental liability issues are expected to become increasingly significant from both a regulatory and transactional perspective.

Health and Safety

Occupational health and safety obligations in Montenegro are primarily governed by the Occupational Health and Safety Act and the Labour Act.

Employers are required to provide safe and healthy working conditions, carry out risk assessments, implement preventive measures, provide employee training and personal protective equipment, and organise mandatory medical examinations where required.

Montenegro does not have separate federal or provincial occupational health and safety regimes. A single national legal framework applies throughout the country.

Licensing and Permitting

Licensing and permitting requirements depend on the nature of the business activities carried out by the relevant company. Industry-specific regulatory regimes apply in sectors such as energy, banking and financial services, telecommunications, pharmaceuticals and environmental protection.

Certain activities, particularly in regulated sectors, may only be carried out on the basis of the relevant licences, permits or regulatory approvals issued by the competent authorities.

In addition, certain facilities may require environmental permits, environmental impact assessment approvals or integrated permits. Accordingly, legal due diligence in corporate transactions should include verification of the validity of all relevant licences and permits, compliance with the conditions under which they were issued and any regulatory approvals required following a change of ownership or control.

9.4 Artificial Intelligence

Montenegro does not yet have a comprehensive AI regulatory framework. AI use is currently governed through existing data-protection, anti-discrimination and sector-specific rules. Organisations must ensure lawful and transparent processing of personal data, observe restrictions and safeguards relating to solely automated decision-making, prevent discriminatory outcomes, and comply with any applicable sector-

specific requirements concerning the safety and reliability of AI systems.

9.5 Other Regulatory Compliance Requirements

Other relevant compliance regimes include tax, accounting and financial reporting requirements and, for business falling within their scope, cybersecurity and information-security rules. Additional requirements may apply to businesses participating in public procurement or otherwise subject to specific regulatory regimes.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

The principal employment and labour laws applicable to employers include:

- the Labour Act, which sets out the general framework for employment relationships;
- the Occupational Health and Safety Act, which governs workplace health and safety;
- the Prohibition of Harassment at Work Act, which regulates protection against workplace harassment;
- the Peaceful Resolution of Labour Disputes Act, which governs alternative resolution of labour disputes; and
- the General Collective Agreement, which supplements statutory employment rules with generally applicable employment terms.

Termination of employment is primarily governed by the Labour Act and must be based on a legally permitted ground and carried out in accordance with the applicable procedural and notice requirements. Depending on the grounds for termination, specific requirements may apply in relation to notice, severance, and the procedure preceding dismissal. Employees may challenge an unlawful dismissal and seek the remedies available under the Labour Act.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation arrangements are primarily governed by the Companies Act, the Labour Act and applicable tax legislation. For public joint-stock companies, the remuneration policy may cover management personnel and must address fixed and variable remuneration, including share-based remuneration and the financial consequences of termination.

Non-compete covenants are expressly regulated by the Labour Act and are enforceable subject to statutory requirements. Post-termination non-compete restrictions may be agreed for up to two years, provided that the employer undertakes to pay the employee agreed monetary compensation. Confidentiality obligations may be contractually agreed, while trade secrets also benefit from statutory protection.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Under Montenegrin law, land can be owned by private individuals and legal entities, the State of Montenegro, municipalities and other public entities. Ownership rights may be held as sole ownership or co-ownership of multiple persons. In addition to ownership rights, land may be subject to other rights, including easements, mortgages and rights of use, in accordance with the Law on Ownership Rights. Property rights over real estate, including land, are acquired, transferred and recorded through registration in the Real Estate Cadastre.

As a general rule, foreign natural persons and foreign legal entities may acquire, hold and dispose of real estate in Montenegro, subject to the restrictions prescribed by the Law on Ownership Rights.

Pursuant to Article 415 of the Law on Ownership Rights, foreign persons may not acquire ownership rights over:

- natural resources;
- assets in general use;
- agricultural land;

- forests and forest land;
- cultural monuments of exceptional or special significance;
- real estate located within the land border zone extending one kilometre from the state border and on islands; or
- real estate situated in areas designated by law, for reasons of state interest and security, as areas in which foreign ownership is prohibited.

By way of exception, a foreign natural person may acquire ownership of agricultural land, forests and forest land with a surface area of up to 5,000 sq m, provided that the subject matter of the transfer agreement (eg, sale and purchase, gift, exchange, etc) is a residential building situated thereon.

Furthermore, natural and legal persons from EU member states will be entitled to acquire ownership rights under the same conditions as domestic persons (rule applicable as of the moment of accession of Montenegro to the EU).

Additionally, foreign persons may obtain long-term lease rights, concessions, BOT arrangements and other forms of PPPs with respect to the categories of real estate listed above, under the same conditions as domestic persons.

11.2 Commercial Real Estate Transactions

Key Legal Framework Governing Commercial Real Estate Transactions

Commercial real estate transactions in Montenegro are primarily governed by the Law on Ownership Rights, the Law on State Survey and Real Estate Cadastre, the Law on Obligations, the Law on Spatial Planning and Law on Construction of Facilities and other sector-specific regulations, depending on the nature of the asset.

Depending on the nature of the property and transaction, additional regulations may apply, including those concerning planning and construction, agricultural land, status of maritime property, environmental protection, energy production and supply, cultural heritage and archaeological findings. Planning and construction legislation is particularly relevant when assessing permitted use, development potential and the permitting of existing buildings.

Land Registration System

The Real Estate Cadastre is the principal public register of real estate in Montenegro and contains spatial and descriptive data on real properties, registered proprietary rights, encumbrances and other rights and legally relevant facts subject to registration. Basic cadastral information is publicly available through the eKatastar platform, including information on registered properties and their registered right-holders. Cadastral procedures have become increasingly digitalised, with electronic communication and submission mechanisms available to notaries and other authorised professional users.

As a general principle, ownership and other proprietary rights over real estate acquired on the basis of a legal transaction are acquired upon registration in the Cadastre, rather than by execution of the underlying agreement alone.

The cadastral system is based, among others, on the principles of publicity, reliance and priority. In particular, under the principle of reliance, information registered in the Cadastre is deemed true and complete, and a good-faith person may rely on such information without suffering adverse consequences as a result of that reliance. The principle of priority generally determines the ranking of registered rights by reference to the time of receipt of the relevant document or application for registration.

In transactional practice, registration is of particular importance for the acquisition and effectiveness of proprietary rights, while the cadastral records also provide the principal reference point for establishing ownership, registered encumbrances and other relevant rights and restrictions affecting a property.

Structuring Commercial Real Estate Transactions

Commercial real estate acquisitions in Montenegro are commonly structured either as an asset transaction, involving direct acquisition of the property, or as a share transaction, involving acquisition of the company owning the relevant property. The appropriate structure depends principally on the circumstances of

the transaction, the property portfolio and the commercial and tax considerations of the parties.

Legal due diligence is an important feature of both structures. For an asset acquisition, the review typically focuses on the seller's title and chain of title, cadastral status and registered encumbrances, third-party rights, planning and construction matters, relevant permits, access and utilities and, where the property is income-generating, material lease arrangements. Particular attention should be given to consistency between the factual status of the property and cadastral and permitting records as discrepancies with material consequences are widespread in practice.

In a share acquisition, the review is broader because the purchaser acquires the property-owning company together with its historical liabilities. Corporate, financing, tax, contractual and regulatory matters therefore typically supplement the real estate review.

Title insurance is not a customary feature of Montenegrin real estate transactions. Transactional protection is instead principally achieved through legal due diligence, verification of the cadastral records, appropriate representations and warranties, and contractual allocation of identified risks.

Environmental considerations depend substantially on the nature, historical use and intended development of the property. As a general rule, a purchaser does not automatically assume the historical polluter's liability merely by acquiring the property. Existing contamination may nevertheless give rise to remediation or other obligations affecting the current owner or user. Enhanced environmental review is recommended for industrial, logistics and brownfield sites. As regards pollution-intensive facilities or potentially contaminated sites, any changes in ownership over the company or any other form of property transfer must include an environmental assessment and determination of responsibility for historical environmental pollution, as well as the settlement of debts (liabilities) by the previous owner for pollution caused and/or damage inflicted on the environment.

Mortgage Financing

Real estate financing in Montenegro is typically secured by a mortgage, governed principally by the Law on Ownership Rights. In larger real estate financings, the mortgage will typically form part of a broader security package, potentially including security over shares in the property-owning company, receivables, bank accounts and other assets and rights relevant to the financed property or its income stream.

A mortgage may secure existing, future or conditional claims and may be established over various categories of real estate and certain real estate rights, including, buildings and separate parts of buildings under construction.

A mortgage is established on the basis of an appropriate mortgage agreement or unilateral mortgage statement and requires registration against the relevant property in the Real Estate Cadastre. Mortgage documentation is subject to prescribed notarial form requirements.

Priority is a critical financing consideration. A mortgage entitles the secured creditor, following default, to satisfy the secured claim from the value of the mortgaged property ahead of unsecured creditors and subsequent-ranking mortgage creditors, irrespective of a subsequent change in ownership of the property. Consequently, lenders typically carry out detailed cadastral searches before closing and co-ordinate registration mechanics carefully as part of the conditions precedent process.

Mortgage Enforcement

Montenegrin law provides mechanisms for enforcement against mortgaged real estate. Mortgage documentation satisfying the statutory requirements may constitute a directly enforceable instrument, while the mortgage regime also allows the lender, subject to additional statutory requirements, to realise the security directly through an out-of-court enforcement procedure.

Commercial Real Estate Leases

Commercial leases are primarily governed by the Law on Obligations, although certain properties, particularly publicly owned premises, may be subject to

additional statutory or local rules. Montenegrin contract law generally permits parties broad freedom to regulate their contractual relationship within the boundaries of mandatory law, public policy and good customs.

As a result, commercial leases are almost entirely contract-driven. Notarisation is mandatory, and as a result, attention is ordinarily given to the duration of the lease; rent, indexation and operating costs; security deposits or bank guarantees; fit-out arrangements; maintenance and repair responsibilities; permitted use; insurance; termination rights; reinstatement obligations; the consequences of a change of control or transfer of the property; and the form of the agreement.

Renewal, Assignment and Subletting

Renewal rights are generally dealt with contractually, as commercial tenants have no statutory right to require renewal or pre-emption right to a new lease. Longer-term leases commonly contain express provisions concerning extension or renewal or pre-emption right to a new lease.

Assignment of a lease requires the consent of the other party. A change of ownership of the leased property does not terminate the lease and the new owner assumes the landlord's position, although the tenant is entitled to terminate the lease.

Subletting is restricted unless permitted by the lease agreement.

Remedies on Default

Default provisions are an important area of negotiation. Typical triggers include non-payment of rent, material breaches of permitted-use provisions, and other material contractual breaches. Remedies may include termination, claims for unpaid rent and damages, enforcement of contractual security and recovery of possession in accordance with applicable law.

In the event of non-payment, a landlord may seek termination and recovery of unpaid rent and, where voluntary surrender is not forthcoming, seek possession through enforcement proceedings.

Recent Developments

Recent real estate regulatory developments in Montenegro have primarily been driven by legislative reforms in the areas of spatial planning, construction and legalisation of unauthorised buildings.

In 2025, Montenegro adopted the new Law on the Legalisation of Unauthorised Buildings which introduced a comprehensive framework for the registration and legalisation of unlawfully constructed buildings. The legislation imposed new registration requirements, established restrictions on transactions involving certain non-legalised buildings, and significantly increased the importance of reviewing legalisation status during real estate due diligence.

In parallel, reforms of the spatial planning framework, including the adoption of the new Law on Spatial Planning in 2025, have materially affected development projects and commercial real estate transactions by introducing a revised planning regime and new rules relating to land use and development documentation.

NEW ZEALAND



Law and Practice

Contributed by:
Hayley Buckley, Kimberley Wong, Jarrod McDermott and Maria Nieto
Wynn Williams Lawyers

Contents

1. Business Entities P.527
1.1 Business Organisations p.527
1.2 Incorporation and Ongoing Compliance p.528
1.3 Share Issuances p.529
1.4 Distributions and Return of Capital p.529
1.5 Control Person Reporting p.530

2. Corporate Governance P.531
2.1 Legal Framework p.531
2.2 Directors' Duties and Liabilities p.531
2.3 Board Composition and Independence p.532
2.4 ESG and Disclosure Obligations p.532
2.5 Conflicts of Interest and Related-Party Transactions p.533

3. Shareholder Rights and Agreements P.534
3.1 Shareholder Rights p.534
3.2 Shareholder Agreements p.535

4. Mergers and Acquisitions P.535
4.1 Legal Framework p.535

5. Capital Markets P.536
5.1 Securities Regulation and Public Offerings p.536
5.2 Continuous Disclosure p.537
5.3 Insider Trading p.537
5.4 Shareholder Disclosure p.537
5.5 Internal Controls and Whistle-Blower Regimes p.537

6. Secured Transactions P.538
6.1 Transaction Financing and Security Interests p.538

7. Commercial Contracts P.538
7.1 Contract Formation and Enforceability p.538
7.2 Termination and Remedies p.539
7.3 Intellectual Property in Commercial Transactions p.539
7.4 Consumer Protection p.539

8. Foreign Investment P.540
8.1 Competition and Merger Control p.540
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.540

9. Regulatory Compliance P.541
9.1 Privacy and Data Protection p.541
9.2 Anti-Money Laundering, Sanctions and Corruption p.542
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.542
9.4 Artificial Intelligence p.543
9.5 Other Regulatory Compliance Requirements p.543

10. Employment and Labour P.543
10.1 Employment Standards and Workplace Regulation p.543
10.2 Executive Compensation and Restrictive Covenants p.544

11. Real Property and Commercial Leasing P.544
11.1 Requirements for Land Ownership p.544
11.2 Commercial Real Estate Transactions p.545

Wynn Williams Lawyers Wynn Williams' Corporate Advisory and Transactions team advises domestic and international clients on complex corporate transactions, commercial contracts, capital raising, corporate governance, competition law issues and strategic projects. The team supports directors, boards, companies, limited partnerships and other market participants on shareholder and partnership matters, intellectual property and day-to-day operational issues. This corporate capability is backed by a full-service firm with almost 170 years of experience, 27 partners and more than 150 lawyers and support staff across Auckland, Christchurch and Queenstown. Its lawyers are consistently recognised in leading New Zealand and international legal directories.

Authors



Hayley Buckley is a partner in Wynn Williams' Corporate Advisory and M&A team. She advises large corporates, private equity funds and management teams on domestic and cross-border transactions, governance, capital markets, complex sales and major commercial contracts. Hayley serves on Mainfreight and SCG Legal's board of directors, a global network of independent law firms. A former NZX Future Director, she is qualified to practise in New Zealand, England and Wales.



Kimberley Wong is a partner leading Wynn Williams' Corporate Advisory and M&A team. She advises domestic and international clients on mergers and acquisitions, private equity investments, corporate governance, shareholder arrangements and board matters. Her funds practice includes establishing and funding private equity and private debt funds, including limited partnerships in the agricultural sector. Kimberley has worked on complex cross-border transactions in New Zealand and the UK, and regularly advises international clients on New Zealand's overseas investment regime and obtaining consent.



Jarrod McDermott is a solicitor in Wynn Williams Corporate Advisory and M&A team. Jarrod supports the team on corporate and commercial matters, including business transactions, governance and general advisory work. His experience provides a practical foundation for assisting companies and stakeholders with their day-to-day legal and transactional requirements.



Maria Nieto is a senior associate in Wynn Williams' Corporate Advisory and M&A team. She advises New Zealand and international clients on mergers and acquisitions, commercial contracts, business structuring, corporate governance and cross-border operations, particularly in the technology, transportation and retail sectors. Maria previously worked as in-house commercial counsel for a listed company in Mexico and New York, and at firms in Mexico City and Auckland. Admitted in New Zealand and Mexico, she is fluent in English and Spanish and is a member of the Latin America New Zealand Business Council.

Contributed by: Hayley Buckley, Kimberley Wong, Jarrod McDermott and Maria Nieto, **Wynn Williams Lawyers**

Wynn Williams

Level 20
Vero Centre
48 Shortland Street
Auckland 1010
New Zealand

Tel: (+64) 9 300 2600
Email: kimberley.wong@wynnwilliams.co.nz
Web: wynnwilliams.co.nz



1. Business Entities

1.1 Business Organisations

The principal types of entity in New Zealand are as follows.

Companies

New Zealand companies are incorporated and regulated by the Companies Act 1993 ("the Companies Act"). Companies are separate legal entities (ie, they can contract in their own name and sue or be sued) and are taxed at a flat corporate rate of 28%.

Branch offices

Overseas companies can establish a branch in New Zealand by registering with the Companies Office as an overseas company. This registration is compulsory if the overseas company is "carrying on business in New Zealand". A branch is not a separate legal entity to the overseas company.

Limited Partnerships

Limited Partnerships are established and governed by the Limited Partnerships Act 2008 ("the LP Act") and the required limited partnership agreement. Limited partnerships are separate legal entities and must be established with at least one general partner and one limited partner.

General Partners are responsible for management of the limited partnership and must be either:

(a) an individual, limited partnership with at least one general partner, or a partnership with at least one partner, that lives in New Zealand or if in Australia is an Australian resident director;
(b) a New Zealand registered company; or
(c) an overseas company registered under the Companies Act with at least one New Zealand director or Australian resident director.

Limited Partners contribute capital to the limited partnership and are typically passive investors.

Partnerships

Partnerships are governed by the Partnership Law Act 2019, together with the partnership agreement. Partnerships are not separate legal persons, which therefore means that:

- partnership property is held by the partners jointly; and
- each partner has unlimited personal liability for the debts and tax liabilities of the partnership.

Considerations When Selecting an Entity Type

Entity choice in New Zealand is driven primarily by liability allocation, tax, and governance. The most common entity is the limited liability company, with limited partnerships typically utilised for pooled investment vehicles or where there are material tax drivers.

In respect of liability, a company is a separate legal person and shareholder liability is limited to capital commitments, with distributions being regulated by the Companies Act rather than shareholders made liable for company debts. The liability is instead transferred to the board, which, under the Companies Act, has statutory duties.

The limited partnership deliberately allocates liability asymmetrically. General partners are jointly and severally liable for the limited partnership's debts and liabilities, subject to the statutory limitations, while a limited partner's liability is limited provided it does not take part in management. From a structuring and governance perspective, limited partnerships are often considered more cumbersome, given the need to establish and maintain a general partner, which is typically a limited liability company.

An overseas branch, by contrast, gives no liability protection at all, since the overseas company itself carries on the business in New Zealand.

The tax drivers operate at a structural level rather than through any single rate. Company profits are taxed to the company, and the imputation system then integrates company and shareholder tax by allowing the company to pass on the benefit of New Zealand tax it has already paid through credits attached to its dividends. Limited partnerships are look-through for tax purposes so that partners are taxed at their marginal tax rate for distributions, while losses may be offset against that partner's income tax (subject to the loss limitation rules).

1.2 Incorporation and Ongoing Compliance

Incorporation Requirements

Company incorporation in New Zealand is fairly straightforward and can generally be completed within one to three business days. To incorporate a company, the following are required at a minimum:

- a name, which must be reserved before the application, is filed and must not be identical or almost identical to the name of another company;
- one or more shares;
- one or more shareholders, with each signing consent to be a shareholder in the prescribed form;
- one or more directors, one of whom must either be resident in New Zealand, or resident in Australia and director of a company incorporated in Australia; each director must sign the Director Consent and Certificate form to the effect that they are not disqualified from being appointed or holding office as a company director; and
- a registered office address and service address in New Zealand.

Applications for an IRD number and GST registration can also be made simultaneously.

Incorporation Process

Incorporation applications are filed through the New Zealand Companies Office online portal. The cost to incorporate a company as at October 2026 is NZD136.55 including GST.

A company may, but is not required to, adopt a constitution that sets out the rights and obligations of shareholders and directors on or after incorporation. If a constitution is adopted, a company can negate or modify certain provisions under the Companies Act (for example, the pre-emptive rights regime on the issuance of shares).

Ongoing Compliance

Once established, companies must:

- file an annual return with the Companies Office confirming the registered details of the company;
- maintain statutory records at the company's registered office, including its share register and register of directors;
- hold an annual meeting of shareholders, unless the constitution opts out of this requirement or if there are no resolutions to be put forward for shareholder approval; and
- notify the Registrar of Companies (Registrar) of changes to its directors, registered office, company name, amalgamations and/or shareholder details (including its ultimate beneficial owner) by updating the Companies Office.

"Large" companies (ie, those with more than NZD66m of assets or NZD33m of turnover in each of the last two financial years), and companies with ten or more shareholders must also appoint an auditor each year to audit their financial statements.

Failure to meet these compliance obligations can result in penalties and/or removal from the register.

1.3 Share Issuances

Share Capital Framework

New Zealand does not have a concept of par value, authorised capital or stated capital accounts.

The boards of directors of New Zealand companies are free to issue shares to any person, in any number, and at any price they see fit, subject to the Companies Act, the constitution and/or any shareholders' agreement, including any pre-emptive rights on issuance and the requirement that consideration be fixed by the board and be fair and reasonable to the company and existing shareholder(s) unless approval of all entitled persons is obtained. The board's discretion is also constrained by the directors' duties prescribed in the Companies Act and any interest group rules (described further below).

The Financial Markets Conduct Act 2013 (FMCA) also regulates the issuance of shares in New Zealand. An issue of equity will be a regulated offer requiring a product disclosure statement and register entry under Part 3 of the FMCA unless a Schedule 1 exclusion (wholesale investors, small offers, employee share schemes, offers of financial products of the same class as quoted products, etc) applies to every offeree. The provisions of the Takeovers Code will also apply if a company is a code company.

Recording of a person's name in the share register of a company is prima facie evidence of legal title to the shares. While share certificates may be requested by a shareholder, they are not common in New Zealand.

Multiple Classes of Shares

In structuring multiple classes of shares and attaching rights, restrictions and conditions to such classes, a company should consider the following key considerations:

- share classes can only be established if the constitution of the company permits;
- the basic Companies Act rights attaching to shares can only be modified or negated, and share classes can therefore only be created by the constitution of the company or the terms on which the shares are issued; and
- the establishment of multiple share classes also gives rise to interest groups under the Companies Act; each interest group must approve by special resolution any action proposed by the company that affects the rights attached to the shares of the relevant interest group.

Common share structures include ordinary shares with standard voting and dividend rights, and preference shares with fixed or preferential dividend entitlements, priority on liquidation, or redemption rights. Non-voting shares may also be created to enable capital raising without diluting existing control.

1.4 Distributions and Return of Capital

The key legal requirement on distributions and returns of capital is that a distribution can only be made if the board is satisfied that the company will, immediately after the distribution is made, satisfy the solvency test. The directors who vote in favour of the distribution must provide a certificate to the Registrar confirming this and the grounds on which that determination was made.

The solvency test requires that:

- the company can pay its debts as they become due in the normal course of business; and
- the value of the company's assets exceeds the value of its liabilities, including contingent liabilities.

In addition, dividends must be paid pro rata to all shareholders unless the constitution provides for differential dividends or all entitled persons consent to a differential dividend.

Reductions of capital, returns of capital, dividends and share cancellations are not formally legislated and proceed as "distributions" authorised by the board under the Companies Act.

Buyback of Shares

A company may only acquire its own shares (whether repurchase or redemption) if its constitution expressly permits it. A company without a constitution, or that is silent on company buybacks, must amend this before buybacks are possible.

The board must then resolve that:

- the acquisition is in the company's best interests;
- the terms and consideration are fair and reasonable to the company; and
- the solvency test will be satisfied immediately after the repurchase and certify as such including the grounds for the determination.

An acquisition may be a pro rata offer to all shareholders, special offer to selected shareholders, or on-market with or without prior notice to shareholders. If an acquisition is to selected shareholders, disclosure to non-offerees is required and the non-offerees have the right to object and require the company to purchase their shares.

While shareholder approval is not required, if it is obtained, procedural requirements can be negated to expedite the acquisition and reduce the director compliance burden.

A repurchase contract may be unenforceable where the company does not satisfy the solvency test.

Redeemable shares are established from the terms of issue and may be redeemable at the company's option, at the holder's option or on a fixed date. Company-option redemptions require board authorisation and satisfaction of the solvency test; a special redemption requires benefit and fairness resolutions, disclosure and objection rights; and holder-option and fixed-date redemptions, while contractually mandatory, remain statutorily conditional on solvency and are treated as distributions.

Cancellation and Treasury Stock

Shares repurchased or redeemed must be cancelled unless the constitution expressly allows it to hold up to 5% of its shares as treasury stock or all entitled person consent is obtained. Rights attaching to those shares are suspended while held, and reissue must satisfy the resolution, solvency and disclosure requirements. Section 82 of the Companies Act separately prohibits a subsidiary from holding shares in its holding company, subject to limited exceptions and disposal obligations.

Financial Assistance

Financial assistance for the purchase of a company's own shares is permitted where the board resolves that it is in the company's best interests and on fair and reasonable terms, with certificates signed, and the company will satisfy the solvency test immediately afterwards. Special assistance requires additional disclosure and confers objection and buy-out rights on non-participating shareholders, while assistance not exceeding 5% of shareholders' funds is permitted where given to all shareholders or pro rata and the other conditions are met. Non-compliant transactions may be unenforceable against the company. Unlike a repurchase, financial assistance does not need to be expressly permitted by the constitution and is not a distribution.

For NZX-listed issuers, the NZX Listing Rules impose further buy-back notification and conduct requirements.

If entitled persons consent is obtained, shares can be acquired or redeemed, and financial assistance can be provided without compliance with the above procedural and governance provisions applying. The solvency requirements will still be required.

Personal Liability

Breach of the solvency test requirements may give rise to personal liability for directors.

1.5 Control Person Reporting

Ultimate Holding Company

The board must notify the Registrar as to whether the company has an ultimate holding company – ie, a company that holds or exercises more than half of the voting rights and is not itself a subsidiary – and, if it does, any changes to its ultimate holding company including its name, registration country, registration number and registered office.

Notification must be made within 20 working days of the change by updating the Companies Office records.

2. Corporate Governance

2.1 Legal Framework

Principal Legislation

The Companies Act is New Zealand's principal corporate governance statute. It contains a comprehensive set of default rules, including directors' duties, shareholder rights and a framework for board decision-making.

Additional Governance Legislation

The FMCA and, for listed companies, the NZX Listing Rules, impose additional governance obligations, including financial reporting obligations, continuous disclosure requirements and restrictions on insider trading.

The NZX Corporate Governance Code ("the Code"), which is a subset of the NZX Listing Rules, addresses board composition, audit committees, risk management, remuneration and shareholder relations in listed companies.

Financial Reporting

The Financial Reporting Act 2013 (FRA) sets the accounting standards/reporting tiers applicable to public and private companies. Importantly, the FRA also sets the definition of "large" (see **1.2 Incorporation and Ongoing Compliance**).

2.2 Directors' Duties and Liabilities

Statutory Framework

The principal fiduciary duties owed by directors are codified in sections 131 to 138 of the Companies Act. The principal duties are as follows.

- Duty to act in good faith – this core duty requires every director to act in good faith and in what they believe to be the best interests of the company.
- Duty to exercise powers for proper purpose – directors must exercise their powers for a proper purpose; this duty regulates their ability to exercise their powers for a collateral or self-interested purpose.
- Duty to comply with law and constitution – directors must ensure that the company complies with the Companies Act and the company's constitution (if any); this obligation applies regardless of whether the director believes an action to be in the best interests of the company.
- Creditor protection duties – two duties are targeted at creditor protection:
  (a) directors must not allow the company's business to be carried on in a manner likely to create a substantial risk of serious loss to creditors; and
  (b) they must not agree to the company incurring an obligation unless they believe it to be on reasonable grounds, and that the company will be able to perform it when required.

Standard of Care

Directors are required to exercise the care, diligence, and skill that reasonable directors would exercise under the same circumstances. This is an objective standard – a director cannot avoid liability merely by showing honest or good-faith intentions. However, a director may rely on reports, statements, and other information prepared by other directors, group employees, or expert advisers, provided it is reasonable to do so.

Additional Duties

Additionally, directors must:

- refrain from disclosing, using or acting on information accessed in their capacity as directors other than for the company's purposes or as required by law;
- disclose interests in a transaction or proposed transaction with the company; and
- ensure that the company keeps proper accounting records that correctly record and explain its transactions and make it possible to determine its financial position with reasonable accuracy.

Court Application of Duties

Core duty

In relation to the core duty, practically, while the company is solvent, the company's "best interest" will often align with the collective interests of its shareholders. However, the courts have taken the view that, as a company nears insolvency, directors must take into consideration the interests of the company's creditors.

Reckless trading

Under Section 135 (reckless trading) of the Companies Act, the courts have held that the "substantial risk of serious loss" test is met only if the company's financial position would have alerted a reasonable and prudent director that a transaction would cause serious loss to the company's creditors.

Personal liability

Directors can be held personally liable for breach of certain directors' duties. Liability can arise on liquidation by court order as a result of a shareholder claim for duties owed to them directly or for criminal offences under the Companies Act. Directors may also face criminal liability, disqualification from office and personal liability under other legislation (eg, the Health and Safety at Work Act 2015).

2.3 Board Composition and Independence

Best Practice

While the statutory requirements regarding board composition, particularly for private companies, are limited, best practice in New Zealand is to achieve a balanced board based on size, skills and experience, executive vs non-executive roles, independent and interested directors and diversity. The manner in which these aspects are balanced depends on the size and nature of the company.

Statutory Requirements

Other than the minimum director requirements specified in incorporation requirements, the Companies Act does not prescribe additional board composition requirements for private companies.

Regarding independence, directors must disclose the transactions they are "interested" in (see **2.2 Directors' Duties and Liabilities**). A director's interest generally arises where a material financial benefit from the transaction will or may be received by:

- the director;
- a close family member of the director (a parent, child, spouse, civil union partner or de facto partner); or
- an entity of which the director is a director, officer or trustee (excluding the company's wholly owned subsidiary or its wholly owned holding company).

Interested directors may still vote on a resolution to enter a transaction that they are interested in.

Listed Companies

The NZX Listing Rules require the board of listed companies to consist of at least three directors, two of whom must ordinarily live in New Zealand and at least two independent directors.

Additionally, the Code recommends that a majority of a listed company board be independent. The Code also recommends that boards establish and disclose a diversity policy, including measurable objectives for gender diversity and report against those objectives annually.

2.4 ESG and Disclosure Obligations

Climate-Related Disclosure

New Zealand has no single ESG statute for companies. Obligations come from several regimes, and only the FMCA, Financial Markets Conduct Regulations 2014 and the External Reporting Board reporting standards require sustainability reporting.

The FMCA requires large listed issuers, registered banks, licensed insurers, credit unions, building societies and managers of large, registered investment schemes to produce annual climate statements. Whether an entity is "large" is defined in the FMCA in respect of each category of entity, and includes quoted securities exceeding NZD60 million in fair value or market price or total assets exceeding NZD1 billion. The climate statements must be made in accordance with the External Reporting Board climate standards and lodged with the Registrar.

A climate reporting entity and each of its directors may be subject to penalties, which include imprisonment, if they fail to comply with the climate reporting requirements.

A 2023 amendment to the Companies Act provides that directors may, in considering the best interests of a company, consider matters other than the maximisation of profit (eg, ESG matters). This allows directors to take ESG matters into account, but does not require them to do so.

Best practice for boards includes establishing ESG governance frameworks, integrating climate and sustainability risk into enterprise risk management, and ensuring adequate oversight of ESG-related disclosures and targets.

2.5 Conflicts of Interest and Related-Party Transactions

New Zealand has no single statute on conflicts of interest and related-party transactions. The rules depend on the type of entity.

Companies Act Approval

For private companies, unless the company's constitution provides otherwise, shareholder approval is not required for the company to enter into a transaction where a director is conflicted via a financial interest, nor is that director disqualified from voting on a decision for the company to enter into that transaction (unless the constitution expressly provides otherwise).

Instead, the relevant director must disclose the nature and extent of their "interest" to the board as soon as is practicable and enter that in the company's interests register. Any interests entered in the interests register must be disclosed to shareholders in the annual report. A failure to disclose does not, by itself, make the transaction invalid.

A company may avoid a transaction in which a director is interested within three months after the transaction has been disclosed to all shareholders. However, such transactions cannot be avoided where the company receives fair value under the transaction.

NZX Listing Rules

For listed companies, Section 5.2 of the NZX Listing Rules requires shareholder approval before a listed issuer (or any of its subsidiaries) enters a "material transaction" with a related party. A "related party" is broadly defined and includes directors, senior managers, holders of more than 10% of the company's voting securities, and their associated persons.

Related-party transactions must be approved by ordinary resolution of disinterested shareholders (ie, shareholders excluding the related party and its associates). Before the shareholder vote, the company must commission an independent appraisal report from a qualified independent adviser, which assesses the merits and fairness of the transaction and is made available to shareholders.

Once entered into, the company must publicly disclose that fact through NZX.

Certain categories of transaction are exempt from the shareholder approval requirement, including transactions on arm's-length commercial terms that are not material to the listed issuer and transactions entered into in the ordinary course of business on standard commercial terms.

NZX Corporate Governance Code

The Code makes recommendations on managing conflicts of interest. These recommendations include that:

- boards adopt and disclose a conflicts-of-interest policy; and
- directors recuse themselves from deliberations and voting where they have a material personal interest.

Managed Investment Schemes

The manager of a registered managed investment scheme under the FMCA must not enter into a transaction that gives a "related-party benefit". The prohibition also covers investment managers, administration managers and anyone else the manager has contracted functions out to.

The exceptions to this general prohibition include:

- where the scheme manager has obtained the consent of the transaction supervisor prior to entering into to the transaction;
- where the manager has certified that the transaction is on arm's length commercial terms; involves the acquisition or disposal of managed investment products in another registered scheme or a prescribed interest in a prescribed overseas scheme; involves an investment made in the ordinary course of business or any other prescribed benefit or transaction under the FMCA; or

- where the transaction is approved by, or contingent on approval by, a special resolution of the class of affected scheme investors.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Default Rights

Unless modified or negated by the company's constitution or the terms on which the shares are issued, all shareholders have the default rights specified in the Companies Act – ie, the right to one vote per share, and the right to an equal share in authorised dividends and in any distribution of surplus assets of the company.

Shareholders are also entitled to receive the company's annual report, request a copy of company-held information, and to inspect certain company records on written notice. These rights ensure that shareholders have access to material information about the company's affairs, governance and financial position.

While the board has broad authority to act without shareholder consent on most operational and strategic matters, certain fundamental matters require shareholder approval by special resolution (typically 75% of votes cast), including:

- approving a major transaction (ie, a transaction involving the acquisition or disposition of assets or incurring an obligation exceeding 50% of the value of the company's assets before the transaction);
- approving an action that affects the rights attached to shares; this requires approval by special resolution of each class of shares;
- adopting, amending or revoking a constitution;
- putting the company into liquidation or approving an amalgamation; and
- requesting removal of the company.

In addition, the shareholders have the right to appoint and remove directors by ordinary resolution.

Statutory Remedies

Unfairly prejudicial conduct

Under section 174 of the Companies Act, shareholders or former shareholders may apply to the New Zealand High Court where the company's affairs have been, are being, or are likely to be, conducted in a manner that is oppressive, unfairly discriminatory or unfairly prejudicial. Failure to comply with certain provisions of the Companies Act, including relating to pre-emptive rights, dividends, alteration of shareholders rights and major transactions, are deemed to be unfairly prejudicial.

The court has broad remedial discretion to grant any order it thinks fit, including orders regulating the company's future conduct, requiring the company or other shareholders to purchase the applicant's shares, setting aside transactions or placing the company into liquidation.

Minority buy-out rights

Shareholders that vote against a resolution on any of the following matters have the right to require the company to purchase their shares at a fair and reasonable price (calculated in accordance with the Companies Act):

- an action that affects the rights attached to shares;
- adoption of or a change in constitution, with such change imposing or removing a restriction on the company's activities;
- approval of a major transaction or amalgamation.

Fundamentally, this remedy recognises that dissenting shareholders should not be forced to remain part of company.

Personal actions by shareholders

Shareholders and former shareholders may also bring an action against a director or the company for breach of a duty owed to them as a shareholder. The Companies Act specifies certain duties which are owed to shareholders and others which are owed to the company only and not shareholders.

Requirement to act

Shareholders also have the right to apply to the High Court to request that the court make an order to

require a director or the company take action required under the constitution, the Companies Act, or grant other consequential relief.

Representative actions

The court can appoint a shareholder representative where shareholders with substantially the same interests bring action against the company or a director.

3.2 Shareholder Agreements

Shareholders' agreements operate alongside a company's constitution and the Companies Act and can be used to provide detailed rights, processes, obligations or protections. As they are private contracts, they allow confidentiality to be maintained.

Transfer Restrictions

Shareholders' agreements typically restrict the transfer of shares through pre-emptive rights regimes, tag and drag along rights, lock-up periods and compulsory transfer regimes for death, termination of employment or default by a shareholder.

Enforceability Considerations

Enforcement of shareholders' agreements is contractual. Therefore, a shareholders' agreement is only enforceable between the parties to the agreement.

Since certain Companies Act provisions can only be negated or modified if provided for in the constitution, the constitution must cross-refer to the shareholders' agreement to ensure enforceability while also maintaining confidentiality.

Dispute Resolution

In addition to any contractual rights under a shareholders' agreement, shareholders retain the statutory protections under the Companies Act as described in **3.1 Shareholders' Rights** above.

Common forms of dispute resolution mechanisms within a shareholders' agreement include:

- mediation, arbitration and/or court proceeding (or a combination of these steps); and/or
- commercially negotiated deadlock provisions, eg, requiring one shareholder to offer to buy the other's shares (or to sell their own shares to the other shareholder) or providing for the company to be liquidated.

4. Mergers and Acquisitions

4.1 Legal Framework

Principal Laws and Regulations

The principal laws and regulations governing mergers and acquisitions in New Zealand are:

- the Companies Act, which provides the basic corporate governance framework (eg, major transaction approvals) and governs schemes of arrangements and amalgamations;
- the FMCA, which governs market conduct and disclosure;
- the Takeovers Act 1993 and associated regulations (together "the Takeovers Code"), which govern changes of control in "code companies" – ie, those listed on the NZX, with 50 or more shareholders and at least medium-sized (with broadly NZD30 million in assets or NZD15 million in revenue);
- the NZX Listing Rules, which cover M&A involving listed companies;
- the Commerce Act 1986 ("the Commerce Act"), which regulates merger control by prohibiting acquisitions that would or would be likely to substantially lessen competition in a market; this is a voluntary regime; and
- the Overseas Investment Act 2005 (OIA), which governs foreign investment (see **8. Foreign Investment**).

There are also sector-specific laws and regulations that may apply, for example in relation to a significant acquisition of a New Zealand-registered bank or insurer.

Deal Structures

Deal structure depends on whether the target is a private, public and/or code company.

Private Companies

Private-company acquisitions are typically structured as either share or asset purchases, driven by regulatory, tax, and commercial considerations – unless the

target is a code company. The transaction is negotiated bilaterally between the seller and buyer.

Code and Public Companies

If the target is a code company – and the transaction would trigger the relevant thresholds under the Takeovers Code – or is a listed company, the transaction is structured as either a scheme of arrangement or a full or partial takeover offer under the Takeovers Code.

In a takeover offer, the buyer makes an offer to shareholders to acquire all or some of their shares. If the buyer wishes to acquire all of the shares in the target company, it must control at least 90% of the target's shares.

A scheme of arrangement is a court-approved process under Part 15 of the Companies Act that can be used to acquire 100% of a company.Scheme processes are controlled by the target company and require the approval of the target's shareholders (ie, 75% of votes cast in each interest class entitled to vote and who are voting and a simple majority of all shareholders entitled to vote), and the court. It also generally requires the Takeovers Panel to give the court a "letter of no objection" confirming that the disclosure is equivalent to a Code offer and that the shareholder voting classes are appropriate.

The preferred structure depends on the buyer's preference for certainty as against timing; a scheme can provide greater certainty, but the timetable is partly within the court's control, whereas a takeover offer is buyer controlled but has less certainty as a higher shareholder approval threshold will be required.

Recent Developments

The OIA reforms constitute the most significant legal development affecting M&A recently, having come into force on 6 March 2026. The reforms formed part of the New Zealand government's policy to promote foreign direct investment into the country while maintaining protection of New Zealand's national interest where appropriate. The reforms consolidate the former benefit to New Zealand, investor, and national interest tests into a single national interest consent pathway for most asset classes. Under the new pathway, the OIO must conduct an initial national interest risk assessment within 15 working days. If no risks are identified, consent will be granted. If the OIO has reasonable grounds to consider that a risk to the national interest exists, a Stage 2 assessment will be required (see **8.2. Foreign Investment Restrictions and Sector-Specific Rules**).

A review of New Zealand's competition settings, with a focus on merger control, was also launched in December 2024 with the Commerce (Promoting Competition and Other Matters) Amendment Bill currently before Parliament. If approved, the Commerce Commission will have expanded merger powers to challenge deals that entrench market power, review acquisitions made in the previous three years and suspend unnotified deals for up to 40 working days during assessment. The Commission will also be permitted to accept behavioural undertakings. A new ban on predatory (below-cost) pricing will also be introduced.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulatory Framework

As indicated, the Financial Markets Conduct Act or FMCA is the primary legislation governing capital markets in New Zealand. The Financial Markets Authority or FMA is the principal regulator overseeing compliance.

Public Offerings

Public offers require a product disclosure statement (PDS), which must be registered on the Disclose Register. The PDS must contain all material information about the offer, be accurate and understandable, and comply with prescribed content and length requirements. The FMA does not formally approve a PDS before registration but has the power to stop an offer if the disclosure does not comply with the FMCA. The IPO process typically involves board and shareholder approval, appointment of advisers, preparation and registration of the PDS, marketing (usually including an institutional bookbuild and a retail offer), NZX listing approval, and allotment.

Exemptions and Wholesale Investors

The FMCA provides a range of exclusions to disclosure under Schedule 1. The most commonly relied upon exclusions are as follows.

- Wholesale investors, which include persons investing at least NZNZD750,000 in a single transaction; persons or entities with net assets of at least NZD5 million; large entities meeting prescribed size thresholds; government agencies; and eligible investors certified by an independent person as having sufficient financial markets experience.
- Small offers: an offer to no more than 20 investors in any 12-month period, raising no more than NZNZD2 million.
- Other exclusions: these include offers to close business associates and relatives; employee share schemes (subject to conditions) and other specified categories.

Resale Restrictions and Enforcement

Securities issued under a Schedule 1 exclusion are generally subject to on-sale restrictions – ie, they may only be resold to other persons who qualify for an exclusion (such as wholesale investors) or within the context of a regulated offer with full PDS disclosure.

5.2 Continuous Disclosure

Listed issuers must comply with continuous disclosure obligations under the NZX Listing Rules by filing half-year and full-year financial statements.

Listed issuers must also promptly disclose to NZX any material information that would be expected to have a material effect on the price of the issuer's financial products. An issuer may withhold this information in limited circumstances (ie, if it is incomplete).

5.3 Insider Trading

Insider Trading

The FMCA prohibits insider trading in quoted financial products of listed issuers. A person is an "information insider" if they possess information about a listed issuer that is not generally available to the market but which, if it were, a reasonable person would expect to have a material effect on the price of the issuer's quoted financial products. The person must also know, or ought reasonably to know, that they hold such information. An information insider must not trade in the relevant financial products, disclose the inside information to another person who is likely to trade on it, or advise or encourage another person to trade or continue to hold the products.

Market Manipulation

It is an offence to take, or omit to take, any action that the person knows or ought reasonably to know will create, or is likely to create, a false or misleading appearance of trading activity, or of the supply, demand, price, or value of quoted financial products. Separately, it is prohibited to make statements or disseminate information about a listed issuer that the person knows, or ought reasonably to know, is false or materially misleading and is likely to influence trading or the price of that issuer's quoted financial products. The FMCA provides limited defences and exceptions to these prohibitions, including for knowledge of the person's own trading intentions, transactions entered into under pre-existing trading plans, information barrier arrangements, and certain corporate actions, such as takeover offers.

Enforcement Powers

Both civil and criminal liability can arise from insider trading and market manipulation. The FMA may bring civil proceedings seeking pecuniary penalty orders and compensation for affected investors.

5.4 Shareholder Disclosure

Substantial Product Holder Regime

Under the FMCA, a person who has a relevant interest in 5% or more of a class of quoted voting products in a listed issuer is a "substantial product holder" and must notify the listed issuer and NZX within two trading days.

A substantial product holder must also notify the issuer and NZX of any change of 1% or more in their holding, and of any change in their relevant interest.

5.5 Internal Controls and Whistle-Blower Regimes

Whistle-Blower Protections

The Protected Disclosures (Protection of Whistleblowers) Act 2022 provides the principal whistle-blower protection framework. The Act protects current and

former employees, contractors, volunteers, and other persons in a work context who report "serious wrongdoing" – a broadly defined term that includes criminal offences, serious risks to health, safety, or the environment, serious misuse of public funds, and oppressive or grossly negligent conduct by public sector bodies. Disclosure is not mandatory.

Governance Frameworks for Managing Compliance Risk

Good governance practice in New Zealand, informed by directors' statutory duties, the NZX Corporate Governance Code, and regulatory expectations, typically involves a board-approved compliance policy and charter, clear allocation of responsibility for legal and regulatory compliance, and established escalation pathways.

Listed issuers are expected to have an audit committee comprising a majority of independent directors, with responsibility for overseeing financial reporting, internal controls, and risk management. The NZX Corporate Governance Code also recommends that boards maintain a risk management framework proportionate to the company's risk profile.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Personal Property Securities

The Personal Property Securities Act 1999 (PPSA) governs security interests over personal property in New Zealand. The PPSA applies to any transaction that, in substance, creates a security interest, regardless of its form. Security interests are perfected by registration of a financing statement on the Personal Property Securities Register. Priority between competing security interests is generally determined by the order of registration, although purchase money security interests receive super priority if perfected within prescribed timeframes.

Types of security interests include general security over all present and after-acquired property, specific security (ie, over certain assets), hire purchase agreements, leases/bailments for a term of more than one year and security taken to secure all or part of an asset's purchase price.

Real Property Securities

Mortgages over land are registered under the Land Transfer Act 2017 and the Property Law Act 2007 (PLA), with priority determined by the order of registration on the relevant title.

Acquisition Finance

Banks remain the primary source of debt finance in New Zealand. There are no specific regulatory approvals required for a company to borrow or grant security, although shareholder approvals may be required under the Companies Act, particularly if the financing is to be secured against target group assets. Acquisition financing is typically structured through a combination of senior secured debt and, in larger transactions, mezzanine or subordinated debt. Security packages commonly include general security agreements covering all personal property, specific security over key assets, and mortgages over real property. Intercreditor arrangements govern the priority and enforcement rights among multiple lenders.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation Requirements

New Zealand contract law is governed by common law principles and the Contract and Commercial Law Act 2017 (CCLA). The CCLA does not contain the statutory writing requirements for land contracts and guarantees which are governed by the PLA. A valid contract requires offer, acceptance, consideration, certainty of terms, intention to create legal relations, and capacity. These are common law requirements and are not codified in the CCLA. Contracts generally need not be in writing to be enforceable, except for contracts dealing with the sale or disposition of land, guarantees, discharge of a debt or deeds.

Invalidation and Interpretation

Contracts may be invalidated on grounds including misrepresentation, mistake, duress, undue influence, unconscionability, and illegality. The CCLA codifies

some of these grounds while others remain common law or equitable doctrines.

New Zealand courts interpret commercial contracts objectively, seeking to ascertain the meaning of the language used by the parties in the context of the contract as a whole.

7.2 Termination and Remedies

Remedies for Breach

Remedies for breach of contract include damages (compensatory, consequential, and in some cases exemplary), termination, specific performance and injunctive relief. Damages are assessed on the basis of putting the innocent party in the position they would have been in had the contract been performed.

Termination and Wrongful Termination

A party may terminate a contract for a repudiatory breach, for breach of an essential term or in accordance with a contractual termination clause agreed in the contract.

Wrongful termination may amount to repudiation (ie, evidencing the terminating party's intention to not perform, or complete performance, of its contractual obligations), giving the non-terminating party a right to terminate.

Force Majeure and Frustration

New Zealand law does not have a statutory doctrine of force majeure. The scope and application of any force majeure event is determined by the terms of the relevant agreement. The common law doctrine of frustration applies where performance becomes impossible or fundamentally different from what the parties contemplated, through no fault of either party. Frustration discharges the parties from future obligations under the contract.

7.3 Intellectual Property in Commercial Transactions

Commercial Considerations

In dealing with intellectual property (IP) it is important to ensure that ownership of that IP and the rights associated with it vests with the correct entity. IP in New Zealand is regulated through specific laws and administered primarily by the Intellectual Property Office of New Zealand (IPONZ). Common forms of registerable IP in New Zealand are trade marks, patents and designs. It is recommended that all registerable IP in New Zealand is registered with IPONZ. Copyright and trade secrets cannot be registered in New Zealand. However, copyright protection is automatic on creation of the works, provided the works meet the criteria specified by the Copyright Act 1994.

IP can be assigned or licensed. Assignments of registered IP should be documented and filed with the New Zealand Intellectual Property Office (IPONZ) to ensure enforceability against third parties. Copyright assignments must also be in writing.

Licences may be exclusive, sole, or non-exclusive, with commercial transactions commonly addressing territory, duration, sub-licensing rights, quality control (particularly for trade marks) and termination.

Ownership rules are a key consideration. Employers generally own copyright in works created by employees in the course of employment, and commissioners are presumed to own copyright in certain commissioned works. For patents, the inventor is the first owner unless the invention was made in the course of employment.

Remedies for IP infringement include injunctions, damages or an account of profits and delivery up of infringing goods. Infringement of copyright works and counterfeiting of registered trade marks can also give rise to criminal sanctions of imprisonment up to five years or a fine of up to NZD150,000.

7.4 Consumer Protection

Principal Consumer Protection Laws

New Zealand's consumer protection regime is built on three principal statutes: the Fair Trading Act 1986 (FTA), the Consumer Guarantees Act 1993 (CGA) and the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

FTA

The FTA prohibits misleading and deceptive conduct in trade (Section 9), false or misleading representations, and unsubstantiated representations (Section 12A). The FTA's unfair contract terms regime applies

to standard form consumer contracts and to standard form "small trade contracts" that do not exceed NZD250,000 per annum. The Commerce Commission may apply to the court for a declaration that a term is unfair, and, if a term is declared unfair, it is a breach of the FTA to enforce it.

CGA

The CGA implies statutory guarantees into all consumer transactions for consumer goods and services. It is not possible to contract out of these guarantees in consumer transactions. In business-to-business transactions, the parties may agree in writing to contract out of the CGA, but only if it is fair and reasonable to do so.

CCCFA

The CCCFA regulates consumer credit contracts – ie, credit provided to individuals for personal, domestic, or household purposes. The CCCFA imposes lender responsibility principles (requiring lenders to exercise the care, diligence, and skill of a responsible lender), prescriptive disclosure requirements, and limits on interest and fees for high-cost consumer credit.

Enforcement Mechanisms

Consumers can enforce rights directly against suppliers and manufacturers under the CGA. Depending on the nature of the failure, consumer remedies under the CGA include repair, replacement, refund, compensation for reduction in value or compensation for reasonably foreseeable loss.

The Commerce Commission's enforcement powers under the FTA include seeking pecuniary penalties (up to NZD600,000 for companies and NZD200,000 for individuals), injunctions, corrective advertising orders, enforceable undertakings, and management banning orders against repeat offenders.

Under the CCCFA, courts may impose penalties of up to NZD600,000 for companies and NZD200,000 for individuals, and may amend the terms of a credit contract, grant injunctions, or prohibit enforcement of contractual terms.

Unfair Practices, Misleading Advertising, and E-Commerce

The FTA's prohibition on unconscionable conduct gives the courts a broad tool to address serious misconduct that falls below accepted standards of business behaviour. In assessing unconscionable conduct, the court may have regard to a range of factors, including the relative bargaining positions of the parties, any undue influence or unfair tactics and the terms and conditions of the transaction.

The FTA's prohibitions apply equally to online transactions. Section 3 of the FTA extends the FTA to conduct outside New Zealand to the extent that it relates to the supply of goods or services within New Zealand which captures cross-border e-commerce arrangements targeting New Zealand consumers.

8. Foreign Investment

8.1 Competition and Merger Control

Commerce Act

The Commerce Act also prohibits acquisitions of shares or business assets that would have, or would be likely to have, the effect of substantially lessening competition in a market. New Zealand operates a voluntary clearance regime. There is no mandatory notification requirement for mergers, but parties can apply for clearance, which the Commission aims to decide within 40 working days.

Penalties

Penalties for breaching the Commerce Act are significant. An individual may be fined up to NZD500,000. A company may be fined up to the greater of NZD10 million, three times the commercial gain from the contravention, or 10% of the company's group turnover. Criminal sanctions apply to cartel conduct, with imprisonment of up to seven years for individuals.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign Investment Overview

The OIA is the principal screening statute, administered by the Overseas Investment Office (OIO). An "overseas person" includes any individual who is not a New Zealand citizen or ordinarily resident in NZ; any

body corporate incorporated outside New Zealand; and any New Zealand entity in which overseas persons have more than 25% ownership or control.

OIO consent is required before an overseas person acquires:

- significant business assets – where the value of securities, consideration, or assets exceeds NZD100 million (or NZD200 million for investors from certain free trade agreement partner countries, and approximately NZD676 million for certain Australian non-government investors);
- sensitive land – this is specifically defined, but broadly includes residential land, non-urban land over five hectares, farm land, and certain forestry rights; and/or
- fishing quota – governed through the OIA's incorporation of sections 56–58B of the Fisheries Act 1996.

Overseas persons must obtain OIO consent before acquiring a legal or equitable interest in significant business assets, sensitive land or fishing quota (though agreements can be conditional on consent). The OIO decides most applications, except where the national interest test applies, which will require a decision from the Minister of Finance. Application fees can range up to NZD136,300. Statutory timeframes range from 15 working days (under the new consolidated pathway) to 100 working days (farm land) and 200 working days (fishing quota).

All applicants must satisfy the investor test, a bright-line assessment of 12 character and capability factors including criminal convictions, corporate fines, immigration ineligibility, tax avoidance penalties and unpaid tax of NZD5 million or more.

Sector-specific restrictions on foreign ownership

New Zealand does not generally prohibit foreign ownership in specific sectors, and 100% foreign ownership is permitted subject to meeting the OIA criteria. However, several regulated industries impose separate approval requirements.

National security review process

The OIA includes a national security call-in regime for transactions involving strategically important businesses (SIBs). SIBs include businesses involved in military or dual-use technology, ports and airports, electricity, water and telecommunications and important financial institutions and financial market infrastructure.

Notification is mandatory for transactions involving military/dual-use technology or critical direct suppliers. Voluntary notification is available for other SIB transactions either before or within six months after completion. If not notified, the Minister retains power to call in the transaction.

Incentives for foreign investors

New Zealand does not operate a formal foreign investment incentive programme such as tax holidays, free trade zones, or direct grants. Practical advantages include a competitive corporate tax rate of 28%, no stamp duty, no general capital gains tax on most asset disposals, and an R&D Tax Incentive offering a 15% tax credit for eligible R&D expenditure.

Recent developments

The Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025 took effect on 6 March 2026. It consolidates the former benefit to New Zealand, investor, and national interest tests into a single national interest consent pathway for most asset classes. Under the new pathway, the OIO must conduct an initial national interest risk assessment within 15 working days. If no risks are identified, consent will be granted. If the OIO has reasonable grounds to consider that a risk to the national interest exists, a Stage 2 assessment will be required.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Privacy Act 2020

The Privacy Act 2020 (Privacy Act) and the Biometric Privacy Code 2025 form New Zealand's principal data protection legislation. The Privacy Act is built around 14 Information Privacy Principles that govern the col-

lection, storage, use and disclosure of personal information in New Zealand. Generally:

- consent should be obtained from the individual prior to collection;
- collected information must only be used in connection with the purpose it was collected for;
- individuals have a right to request access to, and correction of, information held about them; and
- disclosure of information is limited.

The Privacy Act prescribes a mandatory notification regime for privacy breaches that have caused, or are likely to cause, serious harm to affected individuals, with penalties of up to NZD10,000 for failure to notify.

Cross-Border Transfers

There are no blanket data localisation requirements in New Zealand, but agencies must take reasonable steps to ensure that overseas recipients of personal information are subject to comparable privacy protections.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) requires reporting entities (such as banks, financial institutions and lawyers) to conduct risk assessments, perform customer due diligence, report suspicious transactions, and maintain adequate records.

Sanctions and Trade Restrictions

New Zealand implements the full range of United Nations Security Council sanctions through regulations made under the United Nations Act 1946. These apply to all persons and entities in New Zealand.

The Russia Sanctions Act 2022 is New Zealand's only autonomous (non-UN) sanctions legislation. It establishes a framework for asset freezes, travel bans, trade prohibitions, and services restrictions targeting designated Russian persons and entities.

Export controls on strategic goods are administered under the Customs and Excise Act 2018. The Customs Export Prohibition (Strategic Goods) Order 2021 prohibits the export of specified military goods, dual-use goods, items that may be destined for use in chemical or biological weapons, and related documentation.

Anti-Corruption and Anti-Bribery

Bribery and corruption are criminal offences under the Crimes Act 1961 and the Secret Commissions Act 1910. The Crimes Act 1961 prohibits bribery and corruption in the public sector while the Secret Commissions Act 1910 criminalises corrupt gifts and secret commissions given to or received by agents in commercial dealings.

Companies operating in New Zealand are expected, as a matter of good governance, to implement appropriate measures. These typically include board-approved anti-bribery and corruption policies, staff training, risk assessments, due diligence on third-party intermediaries and agents, gifts and hospitality registers and whistle-blower channels.

Enforcement

Under the AML/CFT Act, the Department of Internal Affairs can issue formal warnings, censures, enforceable undertakings, injunctions, and civil pecuniary penalty proceedings in the High Court.

The Serious Fraud Office (SFO) is the principal enforcement body for serious and complex fraud, bribery, and corruption. The SFO has broad investigative powers, including compulsory production orders and powers to compel testimony.

The Ministry of Foreign Affairs and Trade (and its sanctions unit) administer sanctions and related restrictions. Enforcement is supported by New Zealand Customs, which administers export controls on strategic goods and the New Zealand Police.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulation

The Resource Management Act 1991 (RMA) is the principal environmental statute, providing a framework for the sustainable management of natural and physical resources including land use, air and water quality, and the coastal environment. Resource consents are required for activities that may have environmental

effects. New Zealand operates an Emissions Trading Scheme (ETS) under the Climate Change Response Act 2002 as its primary carbon pricing mechanism. Climate-related litigation is an emerging area, with increasing scrutiny of corporate environmental disclosures and conduct.

Health and Safety

The Health and Safety at Work Act 2015 imposes duties on persons conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of workers and others affected by the work. WorkSafe New Zealand is the principal regulator. Penalties for serious breaches are substantial, including fines of up to NZD3 million for companies and up to NZD600,000 for individuals, and imprisonment of up to five years for reckless conduct causing death or serious injury.

9.4 Artificial Intelligence

Current Regulatory Position

New Zealand does not have specific legislation governing the use of artificial intelligence. Existing laws, including the Privacy Act, the FTA and the FMCA may apply to AI systems depending on their use. The Government is monitoring international developments in AI regulation. At present, the emphasis is on principles-based guidance, ethical AI use, and the application of existing legal frameworks to emerging technologies rather than prescriptive AI-specific legislation.

9.5 Other Regulatory Compliance Requirements

Other Regulatory Requirements

Certain industries in New Zealand are subject to specific licensing and regulatory regimes. These include the Land Transport Rule: Operator Licensing 2017 (governing transport service licences for passenger, rental, vehicle recovery, and goods services), the Gambling Act 2003, and sector-specific licensing for financial services, telecommunications, and energy. Building and construction activities are regulated under the Building Act 2004.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Legislation

The Employment Relations Act 2000 (ERA) is the primary employment legislation in New Zealand. All employees must have a written individual employment agreement or be covered by a collective agreement entered into between the employer and a trade union. The ERA imposes a broad duty of good faith on employers and employees in their dealings with each other. Employees have the right to bring claims against their employer at any stage of the employment relationship, including if they have been unjustifiably disadvantaged in any way.

Minimum employment standards include a minimum wage (currently NZD23.50 per hour) four weeks' paid annual holiday/vacation; 10 days' paid sick leave; paid bereavement leave; and 12 public holidays. Parental leave of up to 52 weeks is available, with 26 weeks' paid leave (at a fixed rate) funded by the Government.

Termination of Employment

Employees who believe they have been unjustifiably dismissed may raise a personal grievance. A dismissal will be unjustified if the employer did not have a substantive reason to dismiss (such as misconduct, incapacity or redundancy) or did not follow a fair and reasonable process in reaching the decision to dismiss.

The "justification test" under the ERA requires the employer to demonstrate that its actions were what a fair and reasonable employer could have done in the circumstances, which includes the key principles of natural justice and good faith.

Recent changes to New Zealand law include that new (and, from February 2027, all) employees earning over a pay threshold (currently NZD200,000 per annum) or in a contractual 90-day trial period, do not have the right to bring a personal grievance.

Disputes of any kind relating to employment are resolved through the Employment Relations Authority, with appeal to the Employment Court. The Govern-

ment also provides a free Mediation Service to assist resolution of employment disputes.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

There is a broad range of approaches to executive compensation in New Zealand which may include salary only, long- and short-term cash incentive arrangements (usually either wholly discretionary or EBITDA linked), equity (or phantom equity) arrangements (usually with malus, forfeiture and clawback rules, as well as restrictions on share sales).

The tax implications of executive compensation depend upon the type of compensation. Under qualifying schemes, the grant of shares is taxable to the employee at the date they obtain beneficial ownership of the shares and tax is paid at the marginal tax rate (up to 39%). Employers may be able to claim a corporate tax deduction in the same amount. Any subsequent growth in value is generally considered a tax-free capital gain.

Change-of-control provisions are less common in New Zealand than many other jurisdictions, primarily because of the size of the New Zealand market. The typical change-of-control arrangement, if applicable, would be an immediate vesting of share grants or options, or similar, in the event of termination following a change of control.

Restrictive Covenants

Post-employment restraints of trade (such as non-competition, non-dealing, non-solicitation, non-interference and non-poaching covenants) are commonly included in executive employment agreements. New Zealand courts will enforce such covenants only to the extent that they are necessary to protect a legitimate proprietary interest of the employer and therefore need to be reasonable in terms of duration, geographic scope (if relevant), and the activities restricted. The size of the New Zealand market (both with respect to the need for a restraint, and the employee's ability to work elsewhere) will be relevant.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership

The principal forms of land ownership include the following.

- Freehold (fee simple) – this is the preferred form of ownership. The registered owner owns the land, and anything permanently attached to it, with no time limit. They can sell it, lease it, mortgage it or leave it by will.
- Leasehold – the registered owner has a right of exclusive possession in respect of the relevant land for a set period of time or term, under the terms of a lease document.
- Cross-lease (a form of ownership common in residential property) – each owner holds an undivided share (as tenant in common) in the freehold of the head title, together with the other owners, and a long-term lease over their own dwelling, plus any areas set aside for their exclusive use.
- Unit titles (under the Unit Titles Act 2010) – the owner of fee simple or leasehold land can subdivide their land to create a unit title development – commonly apartments, townhouses and other multi-unit developments. Each owner holds a principal unit (designed for use as a place of residence or business etc) and the common property is owned and managed by the body corporate. The body corporate is made up of the owners of each principal unit within the development.

Restrictions of buying real property in New Zealand

Under the OIA, "sensitive land" includes:

- all residential land;
- non-urban land of over five hectares; and
- foreshore, lakes, heritage, *wāhi tapu* and some reserves over 0.4 hectares.

The consent pathways for an overseas person purchasing sensitive land are:

- the "national interest test" – applies to transactions involving significant business assets and sensitive

land, other than farm land and most residential land;
- the "benefit to New Zealand test" – applies to transactions involving sensitive land that do not fall within another pathway; the "farm land benefit test" will apply to farmland; and
- the "commitment to reside in New Zealand test" – applies in respect of residential land.

The OIA also includes certain exemptions, some of which apply to all types of overseas investment and others which are only available for particular investment pathways. These are as follows.

- Internal restructuring of any overseas person where there is no material change in ownership.
- Investment in sensitive land by an overseas person if the interest acquired is, or will be, relationship property of the overseas person and his or her spouse, civil union partner or de facto partner who is not an overseas person.
- Transfer of sensitive land from executor to beneficiary under a will.
- Permitted security arrangements (but not extending to the exercise of the security in land).

There are no additional taxes or levies payable by a non-resident purchaser beyond the general land transfer and income tax rules, though the "bright-line" test imposes income tax on gains from the sale of residential property within specified holding periods.

11.2 Commercial Real Estate Transactions

Land Registration System

New Zealand operates a Torrens title system under the Land Transfer Act 2017, with most land titles maintained on an electronic register by Land Information New Zealand (LINZ).

The Torrens title system is based on a single register for each land holding. Evidence of ownership is "lodged for registration" with LINZ, which records all details and interests affecting that piece of land based on the information provided by the lodging party. The Government guarantees the accuracy of the register, and title is indefeasible upon registration, subject to limited statutory exceptions.

Real property in New Zealand is also governed by the PLA (which contains requirements and rules around leasing, enforcement, mortgages and other property matters) and the RMA (which is the core legislation which deals with the management of the environment and planning requirements in respect of real property).

Sale and Purchase Agreements

The New Zealand market predominately uses the Law Association of New Zealand standard form of Agreement for Sale and Purchase of Real Estate ("Standard Agreement"). The Standard Agreement is designed to be vendor-/purchaser-neutral, including standard-form warranties, a compensation scheme for breach of contract by the vendor and standard purchaser conditions. Purchasers may also consider including conditions which allow for:

- general due diligence;
- title investigation;
- reports from valuers, engineers or builders;
- obtaining finance and insurance approval in respect of the property;
- investigation of any leases or other occupation rights;
- reviewing the Land Information Memorandum from the local council; and
- review of the natural hazards databases and the Hazardous Activities and Industries List to identify any existing contamination on the property for which the purchaser could become liable.

Commercial Mortgages

Mortgages are registered on the relevant record of title through LINZ. For order of priority, please see **6.1 Transaction Financing and Security Interests**. If the borrower defaults, the mortgagee must comply with the requirements of the PLA when exercising its power of sale. This includes serving a notice on the borrower (and any other parties with a registered or notified interest) specifying the default and (unless an exception applies) giving the borrower a chance to remedy the default.

Where the default is not remedied, the mortgagee may sell the property, take possession and collect rents, or appoint a receiver. In realising an asset, a mortgagee owes certain persons (including the mortgagor) a duty

of reasonable care to obtain the best price reasonably obtainable at the time of sale.

Commercial Leases

Commercial leases are governed by the PLA and general contract law. Any renewal rights must be negotiated and included in the lease. Generally, under a lease, assignment and subletting require the landlord's prior written consent (which cannot be unreasonably withheld), and rent review mechanisms commonly include market review, CPI adjustments, and fixed percentage increases.

A lease can be cancelled for breach by following the procedures in the PLA, which first require a Landlord to serve notice on the Tenant in respect of the breach. For unpaid rent, the rent must be at least ten working days in arrears, and the tenant must be given at least ten working days to remedy. For other breaches, the tenant must be given a reasonable time to remedy. Tenants may apply to the court for relief against cancellation.

Recent Developments

Seismic risk

Parts of New Zealand are prone to seismic activity. Sale and purchase agreements and commercial leases commonly specify the seismic rating of a property, which is set out as a percentage of the "New Build Standard" (NBS) – ie, a building would be considered earthquake prone if it had a percentage rating of less than 67% NBS. Recent legislative reforms have introduced a more proportionate, risk-based approach to seismic risk, including removal of Auckland and Northland from the Earthquake Prone Building regime due to their low seismic risk.

Resource management and planning

The Government is replacing the RMA with two new statutes. The relevant policy direction focuses on a move towards spatial planning, with the intention of creating more standardised national rules and allowing for more permitted activities and fewer consents. Both statutes will be phased in over four years, with the RMA continuing to apply until around 2030.

PHILIPPINES



Law and Practice

Contributed by:
Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga
Cruz Marcelo & Tenefrancia

Contents

1. Business Entities P.549
1.1 Business Organisations p.549
1.2 Incorporation and Ongoing Compliance p.549
1.3 Share Issuances p.550
1.4 Distributions and Return of Capital p.550
1.5 Control Person Reporting p.551

2. Corporate Governance P.551
2.1 Legal Framework p.551
2.2 Directors' Duties and Liabilities p.552
2.3 Board Composition and Independence p.552
2.4 ESG and Disclosure Obligations p.552
2.5 Conflicts of Interest and Related-Party Transactions p.553

3. Shareholder Rights and Agreements P.554
3.1 Shareholder Rights p.554
3.2 Shareholder Agreements p.554

4. Mergers and Acquisitions P.555
4.1 Legal Framework p.555

5. Capital Markets P.555
5.1 Securities Regulation and Public Offerings p.555
5.2 Continuous Disclosure p.556
5.3 Insider Trading p.556
5.4 Shareholder Disclosure p.557
5.5 Internal Controls and Whistle-Blower Regimes p.557

6. Secured Transactions P.558
6.1 Transaction Financing and Security Interests p.558

7. Commercial Contracts P.558
7.1 Contract Formation and Enforceability p.558
7.2 Termination and Remedies p.559
7.3 Intellectual Property in Commercial Transactions p.559
7.4 Consumer Protection p.560

8. Foreign Investment P.561
8.1 Competition and Merger Control p.561
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.561

9. Regulatory Compliance P.562
9.1 Privacy and Data Protection p.562
9.2 Anti-Money Laundering, Sanctions and Corruption p.563
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.563
9.4 Artificial Intelligence p.564
9.5 Other Regulatory Compliance Requirements p.565

10. Employment and Labour P.565
10.1 Employment Standards and Workplace Regulation p.565
10.2 Executive Compensation and Restrictive Covenants p.566

11. Real Property and Commercial Leasing P.567
11.1 Requirements for Land Ownership p.567
11.2 Commercial Real Estate Transactions p.568

Contributed by: Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga, **Cruz Marcelo & Tenefrancia**

Cruz Marcelo & Tenefrancia (CMT) was established in 2013, and is a leading Philippine full-service law firm with 75 lawyers. Its core strengths span corporate and M&A, dispute resolution, intellectual property, mining, natural resources, and energy, supported by practices in capital markets, infrastructure, taxation, labour, telecommunications, data privacy, competition, fintech, and family law. CMT advises on domestic and cross-border acquisitions, joint ventures, restructurings, and financing across key industries. Notable engagements include the privatisation of a hydroelectric power complex, a major group's agribusiness expansion, the acquisition of a substantial equity interest in an e-commerce platform, and a PHP1 billion sustainability-linked financing for a property developer. The firm provides comprehensive support in transaction structuring, due diligence, negotiation, documentation, and regulatory approvals, addressing complex foreign ownership, competition, land use, and governance issues.

Authors



Patricia A. O. Bunye is the managing partner of CMT, the head of its Mining & Natural Resources Department and the Energy practice group, and is also a senior partner in the Intellectual Property Department. Her Intellectual Property practice is focused on trade marks and IP commercialisation, including licensing and franchising, and regulatory matters relating to food, cosmetics, and pharmaceutical products. She is recognised among the foremost mining lawyers in the Philippines. She is a Fellow of the Institute of Corporate Directors and the Chairman of the Good Governance Committee of the Makati Business Club.



Aida Araceli G. Roxas-Rivera is a senior partner in CMT's Corporate and Commercial Law Group and heads the firm's Retainer, Corporate Governance & Regulation, and Gaming practice groups. She advises domestic and foreign clients on investments in the Philippines. Her practice involves dealing with the Securities and Exchange Commission, Department of Trade and Industry, Board of Investments, Philippine Economic Zone Authority, Bangko Sentral ng Pilipinas, and Philippine Amusement and Gaming Corporation, and negotiation and implementation. Ms Rivera obtained her Bachelor of Laws degree from the University of the Philippines in 1995.



Rogelio D. Torres, Jr. is a partner in CMT's Litigation and Dispute Resolution Department. His practice includes dispute prevention and resolution, labour and employment, corporate governance and regulation, rehabilitation and reorganisation, banking, energy and mining disputes, and anti-money laundering compliance. He regularly advises employers on labour standards, workplace policies, collective bargaining and termination matters and represents clients before courts and quasi-judicial agencies. He has served as an Investigating Commissioner of the Integrated Bar of the Philippines Commission on Bar Discipline since 2019.



Christianne Grace F. Salonga is a partner in CMT's Corporate and Commercial Law Group. Her practice focuses on capital markets, securities regulation, competition, and corporate and commercial law. She has advised on IPOs and follow-on offerings involving companies in the food production, technology retail, semiconductor manufacturing and consumer goods sectors. Her regulatory practice includes cross-border financial products, ISDA documentation and derivatives transactions. She holds a Juris Doctor degree from Ateneo de Manila University and a Master of Laws degree from the University of Sydney.

Contributed by: Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga, **Cruz Marcelo & Tenefrancia**

Cruz Marcelo & Tenefrancia

9th, 10th, 11th & 12th Floors
One Orion
11th Avenue corner University Parkway
Bonifacio Global City
Taguig 1634 Metro Manila
Philippines

Tel: +632 8810 5858
Email: info@cruzmarcelo.com
Web: www.cruzmarcelo.com

1. Business Entities

1.1 Business Organisations

Principal Business Structures

Businesses may operate as sole proprietorships, general or limited partnerships, or corporations. General partners and sole proprietors bear unlimited personal liability. Limited partners and corporate shareholders generally limit their exposure to their investment, subject to exceptions.

Stock corporations divide capital into shares and may distribute dividends while non-stock corporations cannot distribute income to members. A subsidiary is a domestic corporation owned by another company, rather than a separate statutory form. A one-person corporation (OPC) has a single shareholder who must be a natural person, trust or estate. Close corporations have no more than 20 shareholders and must satisfy statutory transfer restrictions and prohibitions on public offerings or listing; some activities are excluded.

Foreign corporations may establish licensed branches or representative offices. Branches may earn Philippine income while representative offices undertake permitted liaison activities and depend on funding from abroad. Regional headquarters and regional operating headquarters are specialised structures for qualifying multinational groups, with restricted functions.

Choosing the Appropriate Structure

A subsidiary generally separates Philippine operating liabilities from its foreign parent. Meanwhile, a branch, being a mere extension of the parent company, may expose the parent directly to Philippine liabilities. An OPC suits an eligible sole owner but cannot be used by a corporate shareholder. Corporations facilitate equity funding and transfers, while partnerships may better suit closely held professional or joint businesses. Note that assigning a partnership interest does not itself confer management rights.

Tax, permitted activities, foreign ownership limits, funding requirements and incentives should be assessed together. Sole proprietors are taxed as individuals; business partnerships generally receive corporate tax treatment, while general professional partnerships pass income through to partners.

1.2 Incorporation and Ongoing Compliance

Incorporation Process

A domestic company requires a certificate of incorporation from the Securities and Exchange Commission (SEC). The Revised Corporation Code (RCC) generally permits incorporation without minimum capital, but the Foreign Investments Act (FIA) and regulated activities may impose separate requirements. Applicants submit articles of incorporation, by-laws where applicable, capital and share-class information, incorporator and officer details, beneficial ownership information and supporting authorisations.

The SEC's ZERO system uses its eSPARC and OneSEC portals for electronic registration, with account credentialing and document authentication. Foreign signatories should arrange identity verification and authenticated overseas documents early. Restricted or regulated purposes, nationality questions, non-standard articles of incorporation, non-cash contributions and capital requirements can require additional review. Financing, lending and other regulated businesses also need a secondary licence before conducting the relevant activity.

Timing and Costs

Straightforward applications may be processed quickly, but there is no official timetable covering incorporation and readiness to operate. Foreign documentation, regulatory endorsements and local permits commonly determine the timing. Investors should distinguish issuance of the incorporation certificate from completion of operational registrations.

For a par-value stock corporation, the principal SEC fee is generally 0.2% of authorised capital or the subscription price of subscribed capital, whichever is higher, with a PHP2,000 minimum. Separate by-laws, FIA and legal research charges may apply, subject to the current SEC assessment and available discounts. Original share issuance generally attracts documentary stamp tax of 0.75% of par value, or consideration for no-par shares.

Ongoing Compliance

Companies must maintain corporate records, minutes and a stock and transfer book, and complete applicable tax, local business, labour and employer registrations, including social insurance and housing contributions.

Annual SEC obligations include the General Information Sheet (GIS), generally due within 30 calendar days after the annual shareholders' meeting, and financial statements, audited where required, under the applicable filing schedule. Beneficial ownership declarations and changes are addressed in **1.5 Control Person Reporting**. Tax returns, permit renewals and sector reports require a separate compliance calendar.

1.3 Share Issuances

Share Capital and Issuance

Corporations may issue shares within their authorised capital. Increasing or reducing the authorised capital requires majority board approval, approval by stockholders representing at least two-thirds of outstanding capital stock at a duly called meeting, and SEC approval for the amendment of the articles of incorporation. At least 25% of the increase must be subscribed and 25% of the subscription paid. On the other hand, reductions must not prejudice creditors. See **3.1 Shareholder Rights** for appraisal rights.

Classes of Shares and Investor Rights

The RCC permits share classes or series with different voting, dividend, liquidation, redemption and transfer rights, specified in the articles of incorporation and certificates. At least one class or series must have complete voting rights. Nonvoting shares retain votes on specified fundamental matters.

Permitted Consideration

Shares cannot be issued below par or issued price. Permitted consideration includes cash, property actually received, services already rendered, existing corporate debt, unrestricted retained earnings capitalised, and qualifying share exchanges or other accepted consideration. Non-cash valuations require corporate determination and SEC approval. Promissory notes and future services are impermissible.

Par and No-Par Shares

Where permitted, no-par shares must be issued for at least PhP5 each. They are fully paid and nonassessable, and all proceeds constitute capital unavailable for dividends. Preferred shares require a stated par value. Note that banks, insurers, public utilities and certain other corporations cannot issue no-par shares.

It is important to align share class rights with investor voting, economic and exit arrangements and applicable nationality limits.

1.4 Distributions and Return of Capital

Dividends and Capital Returns

The board may declare cash, property or stock dividends from unrestricted retained earnings, respecting share-class rights. Stock dividends additionally

require approval by holders of at least two-thirds of outstanding capital stock. Retained surplus generally cannot exceed 100% of paid-in capital, except for definite board-approved expansion, outstanding creditor-consent restrictions or special circumstances such as contingency reserves.

Note that capital cannot fund dividends. Returning capital through a capital reduction requires majority board, two-thirds stockholder and SEC approval without prejudicing creditors. Meanwhile, liquidating distributions follow settlement of corporate debts and liabilities.

Repurchases and Treasury Shares

Share repurchases require a legitimate corporate purpose and sufficient unrestricted retained earnings. Fully paid reacquired shares generally become treasury shares and may be reissued. Note that repurchase does not automatically cancel shares or reduce authorised capital. Capital reductions need the corresponding approvals.

Redemption and Financial Assistance

Redeemable shares may be redeemed without unrestricted retained earnings if authorised by the articles of incorporation and consistent with their terms and SEC rules. Redemption must leave sufficient assets to cover debts and liabilities, inclusive of capital stock, and must not cause insolvency or inability to meet debts.

The RCC contains no general prohibition on financing purchases of the corporation's or its parent's shares. Assistance nevertheless requires corporate authority and legitimate purpose, compliance with approvals and fiduciary duties, creditor protection and applicable sector restrictions.

It is important to confirm distributable earnings and creditor protection before committing to distributions or repurchases.

1.5 Control Person Reporting

Identifying Ultimate Owners and Controllers

SEC Memorandum Circular (MC) No 15 (2025) requires private corporations to identify, verify and disclose the natural persons ultimately owning or controlling them. Reportable categories include direct or indirect ownership of at least 20% of voting rights, voting shares or capital, and control through contracts, board-election powers, dominant influence, nominees or other means. Senior management is identified only after reasonable efforts fail to establish ownership or control under the other categories.

Nominees are required to disclose their status and principals. The Beneficial Ownership Declaration requires prescribed identity and contact information, the ownership or control category, percentage where applicable, means of control and commencement date. Companies must retain supporting records sufficient to explain the ownership chain.

Filing and Monitoring Changes

New corporations disclose their beneficial owners at incorporation while existing companies follow the applicable GIS deadline. Declarations are filed separately through SEC HARBOR, and changes must be reported within seven calendar days. Businesses should require owners and nominees to notify them promptly of changes, including changes above an intermediate holding company. It is advisable for deal completion checklists to assign responsibility for these filings.

2. Corporate Governance

2.1 Legal Framework

General Framework

The RCC governs board powers, duties, meetings, shareholder rights and conflicts. Meanwhile, the Securities Regulation Code (SRC) governs securities disclosure and investor protection. Corporations vested with public interest face additional requirements, including independent directors. Listed companies also follow Philippine Stock Exchange (PSE) rules, and regulated businesses follow Bangko Sentral ng Pilipinas (BSP), Insurance Commission or other sector requirements.

Governance Codes and Best Practice

SEC Governance Codes for listed companies and public companies or registered issuers follow a comply-or-explain approach. They cover independence, committees, remuneration, controls, risk and stake-

holders. Note that recommendations do not replace mandatory requirements.

The 2025 SEC rules add beneficial ownership and sustainability obligations, discussed in **1.5 Control Person Reporting** and **2.4 ESG and Disclosure Obligations**. OECD principles and the ASEAN Corporate Governance Scorecard provide further benchmarks.

Note that each group entity should identify its applicable regime rather than assume that listed-parent rules apply uniformly.

2.2 Directors' Duties and Liabilities

Duties and Personal Liability

Directors owe duties of obedience, diligence and loyalty. They must act within corporate authority, make informed, independent decisions, avoid conflicts, and act in good faith with due care for the company and its shareholders.

RCC Section 30 imposes joint and several liability for resulting damages where directors knowingly and willfully approve patently unlawful acts, act with gross negligence or bad faith, or acquire conflicting personal or pecuniary interests. Directors must account for profits from breaches of confidence or appropriated corporate opportunities. The latter may be ratified under Section 33 by stockholders representing at least two-thirds of outstanding capital stock.

Business Judgement and Judicial Approach

The business judgement rule generally protects authorised decisions made in good faith. Commercial failure alone does not establish personal liability. In *Philharbor Ferries and Port Services, Inc. v Carlos* (*2024*), the Supreme Court rejected an officer-liability claim concerning expenditure overruns because gross negligence and bad faith were not proved by clear and convincing evidence.

Board papers and minutes should record the information considered, conflicts disclosed and reasons for significant decisions.

2.3 Board Composition and Independence

General Board Requirements

Stock corporations may have up to 15 directors, each continuously holding at least one registered share. Directors have no general residency requirement, but reserved activities attract nationality restrictions, including Anti-Dummy Law limits on foreign board representation.

Independent Directors

Corporations vested with public interest must have independent directors comprising at least 20% of the board. The listed-company governance code recommends at least three independent directors or one-third of the board, whichever is higher, and a majority of non-executive directors. For public companies and registered issuers, it recommends at least two independent directors or one-third, whichever is higher. These recommendations follow "comply or explain" without displacing mandatory rules.

Independent directors must satisfy SEC criteria and must have no relationships that materially impair judgement, including disqualifying business, family or professional connections. Under SEC MC No 7 (2026), equity-listed companies' independent directors face a cumulative nine-year limit, subject to transition rules. Governance codes recommend diversity across gender, age, ethnicity, skills and experience.

Private Companies

Private companies outside the public-interest category generally need not appoint independent directors or adopt listed-company recommendations, but remain subject to the RCC, corporate documents and applicable sector rules.

It is recommended that succession planning track independence and tenure alongside the skills needed to oversee the business.

2.4 ESG and Disclosure Obligations

ESG Regulatory Framework

Environmental, social and governance (ESG) obligations arise under environmental, labour, safety, privacy and sector laws, rather than one comprehensive ESG statute. SEC governance and disclosure rules supplement these duties. Bangko Sentral ng Pilipinas (BSP)

sustainable-finance rules require supervised institutions to integrate environmental and social risks. Voluntary green-investment frameworks do not impose universal reporting obligations.

Sustainability and Climate Disclosure

SEC MC No 16 (2025) adopts Philippine Financial Reporting Standards (PFRS) S1 for sustainability disclosures and S2 for climate disclosures. Mandatory adoption begins for financial years starting on or after:

- 1 January 2026 for Philippine Stock Exchange (PSE) equity-listed companies with market capitalisation above PHP50 billion;
- 1 January 2027 for those above PHP3 billion up to PHP50 billion; and
- 1 January 2028 for smaller PSE-listed companies, debt-only Philippine Dealing & Exchange

Corporation (PDEx) listed companies, and large non-listed entities with annual revenue above PHP15 billion.

Classification uses the circular's market-capitalisation reference dates and revenue measurement rules, including consolidated revenue for parent entities. Listed companies continue under the 2019 reporting guidelines until their adoption year. These reports require board approval and must be accompanied by annual reports or financial statements, subject to transition relief. Initial climate-first reporting and deferral of Scope 3 emissions are available while limited assurance over Scope 1 and 2 emissions is phased in after initial adoption.

Directors' Duties and Board Oversight

The RCC creates no separate duty to prioritise environmental or social interests. Directors nevertheless need to address material ESG risks through their duties of care, loyalty and legal compliance. Boards should assign oversight, obtain relevant expertise and connect material risks with strategy, financing and capital allocation.

The implementation of ESG requires reliable data and controls before the first reporting deadline. Boards should approve measurable targets, examine climate resilience and monitor progress, while ensuring that sustainability claims are supported and consistent with financial disclosures. Companies approaching a reporting threshold should establish their category early and plan data collection and assurance accordingly.

2.5 Conflicts of Interest and Related-Party Transactions

Corporate Approval and Conflicts

The RCC regulates contracts involving directors, trustees, officers and specified relatives. Interested directors' presence and votes must be unnecessary for quorum and approval, and terms must be fair and reasonable. Officer contracts need prior board authorisation. Material contracts of public-interest corporations additionally need approval by two-thirds of the board, including a majority of independent directors.

Where legally available, ratification requires two-thirds shareholder or member approval, full disclosure and fair terms. Related safeguards govern interlocking directors and corporate opportunities. Interested directors must disclose conflicts and observe applicable abstention requirements.

Listed Company Transactions and Disclosure

SEC rules treat listed-company related-party transactions reaching 10% of total assets, individually or aggregated with the same party over 12 months, as material. They require a two-thirds board vote, including a majority of independent directors, with prescribed shareholder ratification where the latter approval is absent. A material-transaction policy and pre-execution independent fairness assessment are required.

Material transactions appear in the annual governance report and an SEC Advisement Report within three calendar days after execution. Financial-statement, exchange and sector disclosures also apply. Companies must identify relationships and thresholds before signing. Note that post-transaction disclosure does not replace prior approval.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Voting Information and Economic Rights

Shareholders receive meeting notices, attend and vote personally or by proxy, nominate directors and exercise cumulative voting, subject to share rights. Fundamental changes commonly need two-thirds shareholder approval. Other thresholds also apply, including majority approval for amendment of bylaws. Non-voting shares retain votes on specified fundamental matters.

Inspection and copying of records are subject to good faith, legitimate purpose and statutory competitor and confidentiality restrictions. Requested financial statements must be supplied within ten days of written request. Economic rights include declared dividends, liquidation surplus and pre-emptive rights, subject to share terms, articles of incorporation and statutory exceptions.

Appraisal and Remedies

Appraisal applies to specified changes in rights or term of the corporation, mergers, consolidations, substantially-all-asset sales and investments outside the primary purpose. Dissenters must vote against the action, demand payment within 30 days and follow further procedures. Payment requires unrestricted retained earnings. Note that disagreement with management alone creates no appraisal right.

Remedies include SEC enforcement of inspection rights and proceedings to enforce personal rights, challenge unlawful acts or claim damages. Derivative actions pursue the corporation's claim, subject to ownership, exhaustion and other requirements. Close-corporation remedies additionally address deadlock, oppression and waste, including compulsory purchases or dissolution where statutory conditions are met.

It is advisable for minority investors to negotiate information and exit arrangements at entry.

3.2 Shareholder Agreements

Agreements and Transfer Restrictions

Shareholder agreements commonly address board representation, reserved matters, funding, information, dividends and exit through options, first-refusal, tag-along and drag-along rights. They bind their parties but cannot override mandatory law, nationality restrictions, corporate formalities or directors' duties. Relevant terms should be reflected in corporate documents where required, and incoming owners should accede. A contractual veto does not automatically displace the board's statutory powers.

Close-corporation transfer restrictions must appear in the articles of incorporation, bylaws and certificates to bind good-faith purchasers and cannot exceed the statutory reasonable purchase-option mechanism. The RCC recognises certain voting and management agreements, but shareholders exercising management powers may assume directors' liabilities. Transfers generally need entry in corporate books to operate beyond the transferring parties.

Disputes and Remedies

Parties may negotiate buyouts or use mediation, arbitration or litigation. Intra-corporate cases generally belong to designated commercial Regional Trial Courts. Remedies include contractual enforcement, inspection, injunctions, damages and challenges to invalid acts. Compliant corporate arbitration agreements exclude criminal offences and third-party interests.

A derivative suit pursues the company's claim and recovery belongs to it. It requires the relevant share ownership, exhaustion of internal remedies unless excused, and compliance with appraisal and other procedural conditions.

There is no general unfair-prejudice petition covering every corporation. Close-corporation remedies include deadlock orders, provisional directors, fair-value purchases and dissolution on the statutory grounds. Investors should therefore negotiate workable deadlock and exit terms rather than assume litigation will produce a buyout.

Partnership remedies include inspection, accounting, recovery of profits, damages and dissolution. Judicial dissolution or supervised winding up is available for prescribed misconduct, impracticability, losses or other sufficient cause. Dissolution is followed by set-

tlement of liabilities and distribution while wrongful dissolution may attract damages.

4. Mergers and Acquisitions

4.1 Legal Framework

Framework and Deal Structures

The RCC, Securities Regulation Code (SRC), Philippine Competition Act (PCA) and Tax Code principally govern mergers and acquisitions. Foreign ownership restrictions, sector approvals, employment, privacy and PSE rules may also affect the transaction.

Share purchases, subscriptions, asset acquisitions, statutory mergers and joint ventures are commonly used. A share purchase preserves the target and its liabilities while an asset purchase allows selection of assets and assumed obligations, subject to statutory and successor-liability rules. Structure should reflect tax, ownership eligibility, financing and the transferability of licences and contracts.

Mergers and Court Processes

A statutory merger generally requires majority board approval and approval by shareholders representing two-thirds of outstanding capital in each constituent corporation. It becomes effective upon the SEC certificate of approval, with statutory succession to assets and liabilities. Ordinary acquisitions generally require no court approval. A distressed acquisition may form part of court-supervised rehabilitation rather than a general scheme-of-arrangement procedure.

Public Company Acquisitions

Subject to exemptions, acquisitions reaching 35% of voting shares, or sufficient shares to control the board, within 12 months trigger tender-offer rules. The offer ordinarily covers the relevant proportion, but qualifying direct acquisitions from existing shareholders require an offer for all voting shares. Acquisitions taking ownership above 50% of outstanding equity generally require an offer for all remaining equity. Pricing, fairness, disclosure, timing, equal treatment, public float and delisting requirements should be assessed before committing to the acquisition.

Recent Developments and Judicial Guidance

Competition filing and standstill obligations are addressed in **8.1 Competition and Merger Control**. The 2026 notification thresholds and restored filing deadline affect transaction timetables. CREATE MORE incentives, reduced exchange-traded stock transaction tax and the 13th Foreign Investment Negative List also updated the list of restricted industries.

Fernando v Torres (2025) distinguishes remedies for fraud and mismanagement from the specific statutory grounds for appraisal. *Cemco Holdings v National Life Insurance* remains relevant to indirect acquisitions of control under tender-offer rules.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Regulators and Public Offerings

The SRC, SEC rules, RCC and sector legislation govern capital markets. The SEC regulates securities offerings and market conduct while the PSE administers equity listing. Meanwhile, PSE's Capital Markets Integrity Corporation (CMIC) monitors trading and participants. PDEx operates the organised fixed-income market. BSP requirements separately apply to supervised institutions.

Unless exempt, an offering requires an effective SEC registration statement and prospectus covering material issuer, security, financial, risk and distribution information. Applications use the Online Application for Registration Statements (OARS). The review framework provides a 40-day period, subject to the applicable filing requirements and extensions. However, it is not a guaranteed end-to-end offering timetable. Audit readiness, disclosure responses, underwriting and exchange approval often determine launch timing.

An initial public offering separately needs PSE listing approval. Follow-on offerings require registration or an exemption and applicable additional-listing approval. Shelf registration allows successive tranches within the permitted period, with updated disclosures. Issuers should plan SEC and exchange workstreams

together, because registration alone does not establish listing eligibility.

Listing and Continuing Requirements

PSE criteria address operating history, profitability, equity, shareholder spread and public ownership, with different routes and exceptions. The 2026 minimum public ownership rules use market capitalisation and offer size to determine the initial float. Issuers should model the applicable requirement before settling the offer structure.

Exempt Offerings

Exemptions include specified government and bank securities, private placements to fewer than 20 persons in the Philippines within 12 months, and sales to qualified buyers. Qualified buyers include prescribed institutions and eligible individuals or entities meeting regulatory financial and experience requirements. Other registered individual qualified buyers need prescribed experience and either PHP10 million annual gross income for the preceding two years, PHP10 million qualifying securities investments, or PHP30 million net worth. Other juridical buyers need PHP100 million gross assets or PHP60 million qualifying investments. It is important to document the applicable category before accepting subscriptions.

Under SEC MC No 11 (2025), SRC Section 10.1 exemptions generally require no notice or fee, although issuers may request SEC confirmation. Discretionary exemptions under SRC Section 10.2 require approval. Applicable disclosures must identify the exemption and resale restrictions. Private placements, for instance, prohibit general solicitation and require prescribed issuer and financial information. Note that anti-fraud and corporate requirements continue to apply.

Resales and Enforcement

There is no universal holding period after which exempt securities become freely transferable. Each subsequent offering must be registered or independently exempt. Resales that defeat the private-placement conditions create compliance risk, and separate PSE lock-ups may apply to particular shareholders or pre-offering acquisitions.

Issuers should control solicitation, maintain investor and exemption records and include transfer restrictions in subscription documents. Breaches may result in stop orders, administrative sanctions, civil liability and qualifying criminal penalties. Note that control acquisitions may separately trigger tender offers.

5.2 Continuous Disclosure

Periodic Reporting

Listed companies generally file Form 17-A annual reports within 105 calendar days of year-end and Form 17-Q within 45 days after each of the first three quarters, subject to extensions. Ownership, governance and sustainability reports also apply.

Material Events

Material information can reasonably affect investment decisions or significantly influence trading or value. PSE rules generally require disclosure within ten minutes of the event or receipt of information, before release to news media. Current reports use SEC Form 17-C, which is filed through the SEC's eFAST (Electronic Filing and Submission Tool). Meanwhile, PSE filings use EDGE (Electronic Disclosure Generation Technology) and may satisfy SEC filing through the information-sharing arrangement.

Events include control changes, major transactions, borrowings, defaults, litigation, dividends and insolvency. Quantitative triggers supplement general materiality. Reports should explain terms and expected effects, and be corrected or updated promptly under the applicable rules. Issuers must ensure equal access, address material rumours and observe trading-halt requirements.

An internal escalation process should bring developments to the disclosure officer immediately. Breaches can attract SEC or PSE sanctions, suspension and liability for misleading disclosures.

5.3 Insider Trading

Market Abuse and Insider Trading

The SRC prohibits manipulation, fraudulent securities schemes, material misstatements and misleading omissions. Manipulation includes wash sales, matched orders and transactions creating artificial prices or misleading activity.

Trading while possessing material non-public information is generally prohibited. Insiders include issuers, directors, officers, controllers, persons with access through an issuer relationship, specified officials and recipients of inside information. Materiality turns on likely price effects or importance to a reasonable investor. Tipping and misuse of tender-offer information are also restricted.

Companies should use insider lists, access controls and trading-clearance procedures during fundraising and acquisitions. Note that disclosure obligations do not authorise selective release of inside information to favoured investors.

Enforcement

The SEC can investigate, compel testimony and records, issue qualifying cease-and-desist orders and impose administrative sanctions following due process. It may suspend or revoke registrations, disqualify responsible directors or officers of reporting issuers, and refer criminal prosecutions. Civil claims may separately arise.

CMIC monitors trading and examines participants, requiring records and explanations within its jurisdiction. It may impose reprimands, fines and trading-access restrictions, while referring matters beyond its powers to the SEC. The PSE separately enforces issuer disclosure and continuing-listing rules.

5.4 Shareholder Disclosure

Substantial Shareholdings

SRC disclosure rules apply to listed companies, registered issuers and other companies with at least PHP50 million assets and 200 shareholders each holding at least 100 shares of a class, under SRC Section 17.2. Beneficial ownership includes direct or indirect voting and investment powers. Note that co-ordinated holdings may require aggregation. These securities disclosures differ from the corporate beneficial ownership declarations in **1.5 Control Person Reporting**.

Acquisition of 5% or more of an equity class generally requires Form 18-A to the SEC, issuer and applicable exchange within five business days. It identifies the owner, interest, funding, purpose and arrangements. Material changes require amendments under the applicable rules. Qualifying institutions investing in the ordinary course without a control purpose may use Form 18-AS, subject to its conditions and timetable.

Directors, Officers and Principal Shareholders

Directors, officers and beneficial owners covered by the 10% reporting rules have additional initial and change-reporting duties. SEC Form 23-A is generally due within ten calendar days of becoming covered while SEC Form 23-B generally reports changes within ten calendar days after the relevant month. Exchange rules impose separate, often shorter deadlines. Listed issuers must also report specified changes in directors' and principal officers' holdings.

Control Acquisitions and Consequences

An intended acquisition of 15% of a public company's equity within 12 months requires an SEC declaration under the tender-offer rules. Higher thresholds and acquisitions of board control may trigger a tender offer as described in **4.1 Legal Framework**. Investors should assess indirect interests, aggregation and timing before acquiring shares in stages.

Late or inaccurate filings attract applicable SEC or PSE sanctions while fraud can create civil or criminal liability. The SEC may, on complaint, nullify acquisitions violating tender-offer rules and require an offer. Acquisition documents should allocate filing responsibility without assuming that contractual allocation releases the statutory reporting person.

5.5 Internal Controls and Whistle-Blower Regimes

Internal Controls and Governance

Public-interest corporations require at least 20% independent directors and a board-elected compliance officer. SRC Section 22 requires covered issuers to maintain records and internal accounting controls reasonably assuring authorised transactions, reliable reporting and asset accountability.

SEC governance codes recommend the setting up of committees on audit, governance and risk oversight, independent internal audit and enterprise risk management. Covered companies must also have an empowered compliance officer. Separate risk functions and Chief Audit Executive or Chief Risk Officer

appointments should reflect size and complexity. Note that "comply or explain" flexibility does not displace binding legal requirements.

Whistle-Blowing and Mandatory Reports

There is no whistle-blowing hotline requirement for private companies. Governance codes recommend confidential channels, anti-retaliation protection and access to an independent director or designated unit. Meanwhile, BSP rules impose duties on covered institutions. RCC Section 169 penalises intentional retaliation against truthful reporting of possible RCC violations while Section 168 penalises knowingly tolerating specified fraud or corruption. Covered and suspicious transaction reporting and qualifying privacy-breach notification are separately mandatory.

Effective frameworks allocate board and management responsibility and provide written policies, segregation of duties, approval controls, training and monitoring proportionate to risk.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Real Property and Movable Security

Real estate mortgages follow the Civil Code and land-registration laws. Registration generally establishes effect against third parties and priority, subject to statutory claims. Judicial foreclosure or authorised extrajudicial foreclosure requires the prescribed notice, sale and redemption process. Note that automatic appropriation is prohibited. Antichresis permits application of property fruits to interest and principal and requires written principal and interest terms.

The Personal Property Security Act (PPSA) governs movable security regardless of labels such as pledge, chattel mortgage or security assignment. Ships and aircraft follow special laws. A signed written security agreement must adequately identify collateral, which can include shares, receivables, equipment, inventory, deposits, future assets once acquired and identifiable proceeds.

Perfection Priority and Enforcement

Perfection uses Personal Property Security Registry (PPSR) notice, possession of eligible assets or control of deposits and investment property. Registration cannot cure an invalid agreement. Priority generally follows first registration or perfection, with exceptions including purchase-money interests, possessory liens and control interests. A deposit bank's security or set-off can outrank another lender.

Enforcement may involve authorised peaceful repossession, receivables collection and commercially reasonable sale, generally after ten days' notice unless excepted. Retention of collateral requires the statutory post-default process.

Acquisition Financing and Registry Developments

Acquisition packages commonly combine loans, share and asset security, mortgages and guarantees. Target support requires review of authority, benefit, approvals, covenants and insolvency risk. Intercreditor agreements co-ordinate enforcement and proceeds but cannot replace perfection or bind non-consenting third parties.

The PPSR commenced operation on 3 February 2025, with concurrent electronic chattel-mortgage processing continuing until 29 August 2025. Closing diligence should include PPSR and legacy searches, releases, correct collateral descriptions and timely notice amendments or extensions.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation and Formalities

The Civil Code permits contractual freedom subject to the law, morals, good customs, public order and public policy. Valid contracts require consent, a lawful and certain or determinable object, and lawful cause. Cause may be a promised prestation or liberality, rather than common-law consideration. Parties need capacity and representatives need authority; some contracts also require delivery.

Contracts generally bind regardless of form unless specific validity or enforceability requirements apply.

The Statute of Frauds requires written evidence for specified executory agreements, including land sales, leases exceeding one year and certain guarantees. Public instruments and registration may be needed for particular transactions or third-party effect. Electronic documents and signatures are recognised subject to authentication and transaction formalities.

Invalidity

Voidable contracts, including defective consent or incapacity, bind until annulled and may be ratified. Unenforceable contracts, including unauthorised agreements and transactions inadequately documented under the Statute of Frauds, generally require ratification for enforcement. Void contracts cannot be ratified. Rescissible contracts are valid but subject to remedies for specified prejudice, such as creditor fraud.

Interpretation and Liability

Clear wording generally governs, but evident intent prevails over inconsistent language. Courts read provisions together and consider conduct and usage. Note that ambiguity is construed against its author. Good-faith performance is required, and validity or performance cannot rest solely on one party's will.

Liability limits remain subject to law and policy and future fraud cannot be waived. Courts may reduce unconscionable penalties or decline to enforce oppressive adhesion terms. Authority and any required formalities should be confirmed before performance begins.

7.2 Termination and Remedies

Breach and Termination

Remedies include performance, resolution and damages. For reciprocal obligations, Civil Code Article 1191 permits performance or resolution, with damages in either case. Resolution generally requires substantial breach. Its remedy differs from rescission for specified economic prejudice. Recoverable losses and lost profits require proof and remain subject to causation, foreseeability and mitigation.

Contractual notices and cure periods must be followed. Extrajudicial resolution is available in appropriate cases, particularly where stipulated, but must be communicated and remains reviewable. Restitution ordinarily follows, subject to applicable terms and third-party rights. Wrongful termination can itself attract damages and excessive contractual penalties may be reduced.

Force Majeure and Hardship

Article 1174 generally excuses liability for unforeseeable or unavoidable events preventing normal performance without the invoking party's fault, unless the law or contract allocates the risk otherwise. Disruption alone is insufficient. Clauses should specify events, notice, mitigation and consequences.

Article 1266 addresses faultless legal or physical impossibility of an obligation to do. Article 1267 exceptionally permits release for extraordinary difficulty beyond the parties' contemplation. Ordinary cost increases or financial distress generally do not suffice. Frustration of purpose is not separately codified. Claims generally depend on the contract and applicable statutory doctrines.

7.3 Intellectual Property in Commercial Transactions

Intellectual property (IP) commercialisation requires attention to ownership, licensing formalities, and enforceability. Technology Transfer Arrangements (TTAs) must satisfy the IP Code's prohibited-clause and mandatory-provision rules in Sections 87–88. Whether an IP transfer or licence constitutes a TTA requires reviewing its substance, including whether there is an actual transfer of systematic knowledge. Compliant TTAs are generally not required to be registered with the Documentation, Information and Technology Transfer Bureau (DITTB) of the Intellectual Property Office of the Philippines (IPOPHL). On the other hand, non-compliant TTAs are unenforceable unless an exemption is granted based on the exceptional and meritorious grounds under Section 91, and the arrangement is approved and registered with the DITTB.

Trade mark licences, including franchise arrangements, separately require Bureau of Trademark recordal to be effective against third parties. Thus, while TTA registration and trade mark recordal are distinct processes, they essentially serve the same purpose, which is to ensure that the relevant agreements may be legally recognised with respect to third parties.

IP ownership may generally be allocated by agreement within statutory limits. Patent rights ordinarily belong to inventors; copyright to authors; and trade mark rights to the first valid registrant, subject to bad faith and other statutory restrictions. Joint creation or registration may produce co-ownership.

In case of inventions or works created in the course of an employment contract, employers own inventions or works resulting from the performance of the employees' regularly assigned duties, unless there is a contrary agreement. However, employees own inventions and works if their creation falls outside the scope of their regular duties.

As to commissioned works, in the absence of a contrary agreement, persons who commission an invention own the patent, while parties who commission and pay for copyrightable work own the work itself but the copyright remains with the creator.

AI-created copyright remains unsettled. The IP Code recognises only natural-person authors. IPOPHL's September 2026 draft registration guidelines emphasise original human creative contribution; they are proposals, not binding rules establishing protection for autonomous AI output.

Intellectual property owners may enforce their rights by filing criminal, civil, and administrative actions against infringement. However, unlike criminal actions for trade mark or copyright infringement which may be filed against offenders in the first instance, criminal liability only attaches with respect to patent infringement if, after final judgment against the infringer, it is established that there is repeated infringement. In actions for infringement, intellectual property owners may also avail of other reliefs including recovery of damages, attorney's fees, litigation costs, injunctions, and the destruction of infringing goods, subject to applicable proof and procedures.

7.4 Consumer Protection

Consumer Rights and Contract Terms

The Consumer Act, RA No 7394, and implementing rules govern product safety, warranties, labelling, pricing, advertising, promotions and consumer credit. Mandatory protections prevail over contrary terms and supplement Civil Code remedies.

There is no one applicable cooling-off period. Product-specific rights arise under special legislation, including the Financial Products and Services Consumer Protection Act, RA No 11765, and regulator rules. That Act requires clear terms, cost and risk disclosures, fair treatment and accessible complaints processes and prohibits specified waivers. "No return, no exchange" terms cannot defeat defective-product remedies, although changing one's mind generally creates no refund entitlement.

Consumer Act Articles 50 and 52 prohibit deceptive and unconscionable practices, including misrepresentation, concealment, exploitation of vulnerability, gross overpricing and excessively one-sided dealings. Article 110 prohibits materially misleading advertising, including omissions. Consent does not validate prohibited conduct.

Enforcement

DTI, DOH and DA enforce their respective mandates, alongside financial regulators. Administrative mediation and adjudication may lead to cease-and-desist orders, undertakings, restitution or rescission without damages, seizure of dangerous products and fines. Judicial damages and criminal proceedings remain available where appropriate, with prescribed appeal and review rights.

Online Transactions

For covered online transactions, the Internet Transactions Act, RA No 11967, imposes seller-identification, information, diligence and redress duties. Merchants bear primary liability while platforms may incur subsidiary or solidary liability in specified circumstances, including diligence failures or failure to remove prohibited or dangerous listings after notice. Repair, replacement and refund remedies remain available. Internal platform or e-retailer redress must generally be used first and is deemed exhausted after seven calendar days without resolution. DTI may issue qualifying take-down orders and impose penalties.

Consumer-facing terms and online processes should preserve mandatory remedies rather than rely on blanket exclusions.

8. Foreign Investment

8.1 Competition and Merger Control

Notification Thresholds

The PCA and Philippine Competition Commission (PCC) rules govern merger control. From 1 March 2026, compulsory notification generally requires both the PHP9.1 billion Size of Party and PHP3.8 billion Size of Transaction thresholds to be exceeded. Calculations use prescribed assets, revenues and transaction rules, rather than purchase price alone. Below-threshold transactions remain reviewable for anti-competitive effects.

Filing and Review Process

PCC MC No 26-004 restored the 30-calendar-day notification deadline for definitive agreements signed on or after 3 October 2026. Earlier signed, unconsummated transactions receive a 90-calendar-day transitional filing period from effectivity. Notification may follow signing, but the parties must observe standstill until clearance or expiry of the applicable review period. The expedited-review procedure remains suspended.

Ordinary review includes a 15-calendar-day sufficiency check, a 30-calendar-day Phase 1 and, where necessary, a further 60-calendar-day Phase 2. Phase 1 begins on the first working day after fee payment following a sufficient filing. Information requests and permitted extensions affect timing. Deemed approval depends on expiry of the applicable review period, rather than the separate deadline for submitting notification.

Parties should prepare group financial data and competition information before signing, and allow for filing preparation and review in the closing timetable. Conditions precedent, long-stop dates and co-operation clauses should reflect the possibility of Phase 2 and remedies. Early operational integration may breach standstill even before the formal closing date.

Substantive Review and Failure to Notify

The PCC may prohibit or impose remedies on transactions that substantially prevent, restrict or lessen competition. Demonstrated efficiencies or qualifying failing-firm circumstances may support statutory exemptions. Premature completion of a notifiable transaction renders it void and attracts fines of 1%–5% of transaction value. Late notification before completion attracts a separate penalty.

Anti-Competitive Conduct

The PCA also prohibits anti-competitive agreements and abuse of dominance. Competitor price-fixing and bid-rigging are prohibited outright. Other restrictions generally require assessment of competitive effects. Enforcement may include corrective orders, substantial administrative fines and civil claims following the required PCC inquiry. Specified cartel offences separately attract imprisonment and criminal fines for responsible persons knowingly and wilfully participating. Note that criminal liability does not attach to every violation.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

General Foreign Investment Regime

The FIA generally permits full foreign ownership unless the Constitution, Foreign Investment Negative List (FINL) or sector law restricts the activity. There is no universal investment-value threshold for foreign investment approval. Investors still need SEC registration or licensing, ownership disclosures and applicable capital and sector approvals. Registration requirements also apply when an existing corporation increases foreign equity beyond 40%.

Domestic-market enterprises with more than 40% foreign equity generally need USD200,000 paid-in equity. This falls to USD100,000 for qualifying advanced-technology enterprises, endorsed startups or enablers, or enterprises whose direct employees are majority Filipino and number at least 15 Filipinos. Application fees depend on the entity, capital and approvals sought.

Foreign Ownership Restrictions

The 13th FINL under Executive Order No 113 (2026) distinguishes constitutional and statutory restrictions from restrictions based on security, health, morals

and enterprise size. Mass media generally permits no foreign equity, subject to exceptions while advertising permits 30%. Landholding corporations, public utilities and many natural-resource activities generally permit up to 40%, subject to the particular rules. Foreign-owned retailers need PHP25 million paid-up capital, reciprocity and, where applicable, PHP10 million investment per store.

Solar and wind activities generally permit full foreign participation, but landholding and resource permits remain separate issues. Financial institutions follow their own licensing and capital rules. Meanwhile, qualified foreign banks may fully own a domestic bank with BSP approval. Nationality compliance examines voting and beneficial interests, and nominee arrangements evading restrictions risk Anti-Dummy Law liability.

Public Services and Critical Infrastructure

The amended Public Service Act limits public utilities to specified services, including electricity transmission and distribution, petroleum pipelines, water and wastewater pipelines, seaports and public utility vehicles. Airlines may generally be wholly foreign-owned, subject to licensing, franchise and air-service requirements. Telecommunications permits full foreign equity where reciprocity applies and otherwise up to 50%. Broadcasting remains subject to separate restrictions.

New investment by foreign government-controlled entities in public utilities or critical infrastructure is generally prohibited, subject to statutory exceptions.

National Security Review

The President may suspend or prohibit foreign-control transactions in public services following review by the relevant agency. The implementing process includes voluntary declarations or agency-initiated review, an initial assessment, comprehensive review where necessary and presidential action. No general monetary threshold applies. Sensitive transactions should be screened early because investment openness does not remove national security risk.

Separately, the FIA co-ordination mechanism permits review, upon presidential direction, of specified sensitive investments, including military industries, cyber infrastructure and pipelines, where the statutory investor or location criteria apply.

Incentives and Recent Developments

CREATE and the CREATE to Maximise Opportunities for Reinvigorating the Economy Act (CREATE MORE) incentives depend on the registered project, its location and activity, and compliance with performance conditions. Investors apply through the Board of Investments (BOI), Philippine Economic Zone Authority (PEZA) or another competent investment promotion agency, with Fiscal Incentives Review Board (FIRB) approval where required. Benefits can include income tax holidays, enhanced deductions, a special corporate income tax regime for qualifying exporters, and conditional customs and VAT relief. Foreign ownership alone does not confer eligibility.

The 2026 Strategic Investment Priority Plan identifies eligible activities. Investors should compare incentive routes before starting the project and budget for continuing reports and conditions. The 13th FINL and qualifying 99-year private-land leases expand structuring options while preserving nationality limits. The lease regime is discussed in **11.1 Requirements for Land Ownership**.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Processing Requirements

The Data Privacy Act (DPA), National Privacy Commission (NPC) rules and sector requirements govern personal-data processing, including certain overseas processing with Philippine connections. Protection is not confined to Filipino citizens or residents. Bank secrecy and financial cybersecurity rules may separately apply.

Processing requires transparency, legitimate purpose, proportionality and a lawful basis. Ordinary-data bases include consent, contractual necessity, legal duties and qualifying legitimate interests. Sensitive and privileged data require stricter statutory conditions; contractual necessity or legitimate interests alone is insufficient. Consent must be freely given, specific, informed, evidenced and withdrawable.

Organisations need notices, appropriate security, data minimisation, retention controls and respect for applicable individual rights. A data protection officer, privacy assessments and required officer and system registration support compliance. Outsourcing contracts need prescribed safeguards while controllers retain accountability.

Breach Notification

Notifiable breaches involve sensitive or identity-fraud-enabling information reasonably believed to have been acquired without authority and likely to create a real risk of serious harm. Controllers must notify the NPC and affected individuals within 72 hours of knowledge or reasonable belief by the controller or processor, subject to limited exceptions. The NPC uses its breach notification system. Individual notices are separate. An incomplete investigation ordinarily does not justify withholding the initial notification.

Cross-Border Transfers

Overseas transfers are permitted, with controllers ensuring comparable protection through contractual or other reasonable means. Security, onward transfer and sector confidentiality or regulatory-access requirements should be addressed. NPC model clauses provide a voluntary tool. The DPA does not impose general localisation of all personal data, but sector constraints must be checked before selecting offshore services.

9.2 Anti-Money Laundering, Sanctions and Corruption

Anti-Money Laundering

The Anti-Money Laundering Act and terrorism-financing legislation impose duties on regulated financial businesses, casinos, qualifying precious-metal and stone dealers, company and specified professional service providers, and real estate developers and brokers. Thresholds and privilege exceptions apply. Offshore gaming is prohibited under the Anti-POGO Act of 2025.

Covered persons must register with the Anti-Money Laundering Council (AMLC), verify customers and beneficial owners, monitor transactions, retain records for at least five years and submit prescribed reports. Suspicious transactions are reportable regardless of value and tipping off is prohibited. Programmes require responsible officers, risk-based diligence, training and independent audit.

Sanctions and Strategic Trade

Targeted financial sanctions implement applicable UN resolutions and domestic terrorism and proliferation designations. Businesses must avoid prohibited dealings. Covered persons screen customers and transactions, freeze assets pursuant to applicable orders without delay and report. Criminal and administrative consequences can apply beyond financial institutions.

The Strategic Trade Management Act controls strategic goods, software, technology and services, including qualifying unlisted items based on end-use or end-user risk. Businesses should classify items, screen destinations and users, and obtain required Strategic Trade Management Office (STMO) registrations and authorisations. Violations can attract fines, forfeiture, revocation and imprisonment.

Corruption and Enforcement

Bribery and anti-graft laws can reach private persons bribing or conspiring with public officers. Companies should control gifts, conflicts, intermediaries and payments, maintain accurate records and investigate concerns confidentially.

The AMLC investigates, sanctions, seeks judicial freezing and forfeiture, and refers prosecutions; direct freezing powers apply in specified cases. Sector regulators supervise covered institutions. STMO administers trade controls and Customs enforces borders. The Ombudsman investigates and prosecutes public corruption, including implicated private persons, before competent courts.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Permits and Liability

The environmental assessment system, pollution, waste and sector laws govern commercial operations. Covered projects need an environmental compliance certificate (ECC) before implementation, with separate emissions, wastewater, waste or resource permits where applicable. Transactions should examine permit

scope and approvals or notifications for changes in ownership, operations or capacity.

Contamination can attract cleanup duties, government cost recovery, fines, closure, damages and qualifying criminal liability. Buyers should investigate historic use, disposal and rehabilitation requirements. Indemnities allocate costs between parties but cannot displace regulatory powers or statutory liability.

Carbon Markets and Climate Litigation

There is no general carbon tax or mandatory emissions-trading system. The developing voluntary forest-carbon framework includes Department of Environment and Natural Resources (DENR) Administrative Order No 2026-05. Projects require review of tenure, community rights, registration, monitoring and credit-transfer conditions. Note that participation does not replace operating permits.

Climate litigation raises duty, causation, attribution and jurisdiction issues. Environmental procedures include citizen suits, protection orders and the Writ of Kalikasan for qualifying damage affecting inhabitants of at least two cities or provinces. Individual damages require separate proceedings. The precautionary principle can address scientific uncertainty while, human-rights inquiry findings are not a judicial damages award.

Safety and Industry Licensing

National occupational safety legislation and Department of Labor and Employment (DOLE) rules require hazard assessment, free protective equipment and training, safety programmes and personnel, and incident reporting. DOLE can inspect, penalise and order qualifying work stoppages. Local building, fire and sanitation requirements supplement national rules.

Energy, finance and pharmaceuticals require their respective regulator's authorisations. Cannabis remains controlled, with limited medical access rather than general commercial licensing. Deals should address licence transfer, nationality and control-change approvals as conditions affecting closing and operational continuity.

9.4 Artificial Intelligence

Current Regulatory Framework

The Philippines has no comprehensive generally applicable AI statute. Privacy, IP, consumer, employment, civil, criminal and sector laws apply according to the use case. An organisation should therefore assess the proposed activity and its impacts before deployment, even where no AI-specific licence is required.

Privacy Transparency and Bias

AI involving personal data requires a lawful processing basis, transparency, legitimate purpose, proportionality, security and respect for individual rights. These requirements can apply to training data, inputs and deployment; sensitive data attracts stricter conditions. National Privacy Commission (NPC) Advisory No 2024-04 explains the application of privacy principles across AI development and use, including fairness, bias mitigation and accountability. Applicable officer and processing-system registration and automated-decision notifications remain separate obligations.

Organisations should explain purposes, relevant inputs, anticipated outputs, risks and significant individual impacts in accessible notices. They should assess bias, document safeguards and provide meaningful human intervention and avenues to contest consequential automated decisions where applicable. Outsourcing does not remove the controller's accountability. Vendor contracts should address data use, security, access, incident reporting and restrictions on further training.

NPC Advisory No 2026-01 confirms that scraping publicly available personal data remains subject to privacy requirements. Public availability alone does not authorise collection or reuse. Education-specific rules, including DepEd's February 2026 guidelines, apply within their sector rather than establishing a universal business regime.

Proposed Regulation and Practical Preparation

Proposals include Senate Bill No 25 in the 20th Congress, the Artificial Intelligence Regulation Act. Pending legislation and national policy initiatives seek a broader framework but are distinct from enacted obligations. IPOPHL's September 2026 proposed copy-

right-registration guidance focuses on human creative contribution.

Businesses should maintain an inventory of AI uses, identify accountable owners, assess consequential decisions and monitor sector guidance and legislative progress. Contracts and deployment controls should be capable of adaptation as binding requirements develop.

9.5 Other Regulatory Compliance Requirements

General and Sector Compliance

Corporate, tax, beneficial ownership and employer obligations are addressed in **1.2 Incorporation and Ongoing Compliance**, **1.5 Control Person Reporting** and **10.1 Employment Standards and Workplace Regulation**. Businesses also need current local permits and applicable invoicing, withholding and tax records. Employer contributions include the Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth) and Home Development Mutual Fund (Pag-IBIG).

Additional licences and reports depend on activity, location and ownership. Financial services, telecommunications, transport, energy, health products, tourism and resource activities each have their own regulators. Corporate registration alone does not authorise a regulated business. The compliance calendar should include approvals for ownership and operational changes.

Incentivised projects separately register and meet continuing performance and reporting conditions. Breaches may cause withdrawal of incentives or cancellation of registration. See **8.2 Foreign Investment Restrictions and Sector-Specific Rules**.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment Framework

Employment relations are principally governed by the Labor Code of the Philippines (P.D. No 442, as amended and renumbered), together with DOLE regulations, regional wage orders, and Supreme Court jurisprudence. These laws and regulations reflect the policy of protecting labour, safeguarding security of tenure and resolving legal doubts in favour of workers, in accordance with the constitutional mandate to afford full protection to labour and guarantee security of tenure. The Labor Code regulates minimum employment standards, wages, working hours, leave and holiday benefits, occupational safety and health, labour relations, collective bargaining, unfair labour practices, termination of employment and retirement. Employers must also comply with various special statutes concerning social security, 13th-month pay, maternity and paternity benefits, occupational safety and health, sexual harassment, gender-based harassment, and other employment protections.

A key consideration for employers with respect to termination of employment is security of tenure. Regular employees cannot be dismissed except for a just cause or an authorised cause under the Labor Code. Just causes include serious misconduct, gross and habitual neglect of duties, fraud or breach of trust, and commission of a crime against the employer. Authorised causes pertain to business or physical necessity, including labor-saving devices, redundancy, retrenchment to prevent losses, closure of operations, or disease.

Termination for Just Cause and Authorised Cause

For just-cause termination, employers generally must comply with the two-notice rule: a first written notice specifying the charges and providing an opportunity to explain, an opportunity to be heard, and a second written notice communicating the dismissal decision. For authorised-cause termination, written notice must generally be given to both the affected employee and the DOLE at least 30 days before termination, and applicable separation pay must be paid.

Illegal and Constructive Dismissal

A dismissal may constitute illegal or wrongful dismissal if the employer fails to establish a valid just or authorised cause or fails to comply with applicable legal requirements. The employer bears the burden of proving the validity of the dismissal. An unjustly dismissed employee is generally entitled to reinstatement and full backwages, subject to applicable law and jurisprudence.

Constructive dismissal may arise even without an express termination where an employer makes continued employment impossible, unreasonable or unlikely, or imposes a demotion, reduction in pay or benefits, or other prejudicial change that effectively forces the employee to leave. Employers contemplating material changes to an employee's role, compensation, location or working conditions should therefore assess whether the change is supported by a legitimate business reason and falls within the proper exercise of management prerogative.

Claims and Remedies

Labour arbiters generally exercise original and exclusive jurisdiction over termination disputes, unfair labour practice cases and qualifying money claims, subject to applicable mandatory conciliation-mediation procedures. Employers should therefore document both the substantive basis for termination and compliance with the required process.

10.2 Executive Compensation and Restrictive Covenants

Executive Compensation

Executive compensation in private corporations may include salary, performance bonuses, allowances, retirement benefits, equity-based incentives and transaction or retention awards. Although compensation generally falls within management prerogative, arrangements should be consistent with the executive's employment contract, applicable corporate approvals, company policies and Philippine labour law.

Particular care is required where a benefit has become a contractual entitlement or an established company practice. An employer may be restricted from unilaterally withdrawing or reducing a benefit that has become protected under the principle against diminution of benefits. Compensation documents should therefore distinguish, where appropriate, fixed contractual entitlements from discretionary or performance-based awards and clearly state the applicable conditions.

Equity Incentive Plans

Equity incentive arrangements may take the form of share awards, options or other rights linked to company equity. Their terms should clearly address eligibility, vesting, exercise conditions, transfer restrictions, treatment on resignation or termination, and the consequences of corporate transactions or changes in control.

Where the arrangement involves the issuance or transfer of shares, the company should also consider the requirements of its articles of incorporation, share-class rights, authorised and unissued capital, necessary corporate approvals, foreign ownership restrictions and applicable securities regulation. For multinational groups, the Philippine terms should be reviewed together with the group plan rather than assuming that a foreign parent's standard plan can be implemented locally without modification.

Change-of-Control Arrangements

Executive arrangements may provide for accelerated vesting, retention or transaction bonuses, severance or other benefits following a change in control. The triggering event should be defined carefully, including whether benefits arise upon the transaction itself or only if the executive is subsequently terminated or materially disadvantaged.

Transaction parties should identify these arrangements during due diligence because they may affect transaction costs, employee retention and post-closing integration. The treatment of outstanding equity awards and other executive benefits should also be addressed expressly in the transaction documents where material.

Tax Considerations

Compensation structures should be reviewed for their Philippine tax consequences to both the executive and the employer. Cash compensation, bonuses, benefits and equity-based awards may have different tax, withholding and reporting consequences depending on their structure and the time at which income is recognised.

Cross-border plans require particular attention where the employing entity, issuing company and executive are located in different jurisdictions. The tax treatment of share options, share awards and change-of-control payments should therefore be confirmed when the particular compensation structure is designed rather than assumed from the treatment of ordinary salary.

Non-Competition and Non-Solicitation Covenants

Philippine courts assess post-employment restraints according to their reasonableness and the legitimate interests they seek to protect. A non-compete covenant is more likely to be enforceable where its duration, geographic scope, restricted activities and protected business interest are no broader than reasonably necessary and the restraint is not contrary to law, morals, public order or public policy.

Non-solicitation provisions concerning customers or employees are similarly better framed around identifiable legitimate business interests and reasonable restrictions rather than broad prohibitions on competition. Employers should therefore tailor restrictive covenants to the executive's role, access to customers, confidential information and influence over personnel instead of relying on uniform restrictions for all employees.

Confidentiality

Confidentiality obligations protect different interests from non-compete restrictions and may continue after employment where they concern genuine confidential or proprietary information. Agreements should identify the categories of protected information with sufficient clarity and address permitted use, disclosure, return or destruction of information and continuing obligations after termination.

Confidentiality provisions should also operate consistently with applicable data privacy, intellectual property and trade-secret protections. Employers should avoid drafting them so broadly that they purport to prevent an employee from using general skills, knowledge or experience acquired during employment.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Land Ownership and Registration

The Constitution, Civil Code, Public Land Act and Property Registration Decree govern landholding. Public land includes agricultural, forest, mineral land and national parks. Note that only agricultural public land may be declared alienable and disposable. Qualified Filipinos may acquire it through prescribed procedures. Private corporations cannot acquire public land outright and may lease alienable agricultural public land only within constitutional limits.

Private land may be registered under the Torrens system through an Original or Transfer Certificate of Title. Registration does not validate an unlawful acquisition. Agricultural land can carry agrarian reform, retention, tenancy and transfer restrictions. Department of Agrarian Reform (DAR) conversion approval, where required, is distinct from local reclassification.

Foreign Ownership Restrictions

Private land generally belongs to Filipino citizens or qualified corporations with at least 60% Filipino ownership. Voting, beneficial ownership and anti-dummy requirements apply. Foreign individuals have limited exceptions, including qualifying hereditary succession and acquisitions by former natural-born Filipinos within statutory limits. Residence or a business licence does not itself confer landholding eligibility.

Foreigners may own buildings separately from land and condominium units subject to the applicable nationality limits. Where the project's land is held by a condominium corporation, foreign interests must remain within the 40% limit; direct co-ownership follows ordinary landholding rules. Purchasers should check the project's ownership structure and remaining foreign allocation.

Ordinary transfer taxes and registration costs depend on the property, seller and transaction; there is no general additional land-purchase levy solely because the purchaser is non-resident. Tax treatment does not override purchaser eligibility.

Long-Term Leasing

Foreigners outside the qualifying investment regime generally may lease private land for 25 years, renewable for another 25. Republic Act (RA) No 12252 permits qualifying foreign investors an aggregate lease term of up to 99 years. It requires an approved and registered investment, an area reasonably needed for the project, use for the approved purpose, and registration and annotation of the lease.

Tourism projects require at least USD5 million investment, with 70% infused within three years of signing. Leasing provides use rights and does not transfer land ownership.

11.2 Commercial Real Estate Transactions

Acquisitions and Registration

The Civil Code, nationality limits, registration, tax, land-use and environmental rules govern commercial property transactions. Registered land uses the Torrens system. A transfer requires a notarised conveyance, the owner's duplicate title, BIR electronic Certificate Authorising Registration, tax clearances and payment evidence. Recording an unregistered-land instrument does not provide Torrens protection or defeat superior rights.

Structure should reflect purchaser eligibility, intended use, tax, financing and whether property or company shares are acquired. The conduct of due diligence should examine certified titles, annotations, mortgages, leases, litigation, possession and surveys. Corporate approvals, spousal consent and agents' specific authority must also be checked.

Review zoning, legal access, building and occupancy permits, unpaid property taxes and agrarian restrictions, including any required DAR conversion. Warranties, indemnities, escrow and closing conditions should address residual risks. Note that contractual protection does not cure defective title.

Environmental Considerations

Review historic use, contamination, waste, permits and remediation obligations. Covered projects require an Environmental Compliance Certificate (ECC), with separate operating permits where applicable. An ECC does not eliminate cleanup duties or regulatory and civil liability. Indemnities allocate costs between the parties but cannot bind regulators.

Mortgage Financing and Enforcement

Real estate mortgages should be annotated on title to bind third parties. Priority generally follows registration, subject to statutory liens and other exceptions. Lenders should check title, authority, existing encumbrances and restrictions on their eligibility to acquire the property through foreclosure.

Enforcement is judicial or, where authorised by a special power of sale, extrajudicial under Act No 3135. Notice, publication and auction requirements apply. Note that redemption depends on the governing law and borrower status, including special bank rules for corporate borrowers. Deficiencies may ordinarily be recovered, but automatic appropriation on default is prohibited.

Commercial Leasing

Leases should address permitted use, rent escalation, deposits, repairs, improvements, insurance, renewal, assignment, subletting and default. Renewal generally requires agreement, although continued occupation with the landlord's acquiescence may create an implied lease. Assignment ordinarily needs consent unless otherwise agreed. Subletting is generally allowed in the absence of a prohibition but does not release the tenant.

Default may support termination, unpaid rent, damages and judicial ejectment, subject to notice and procedure. Registration helps protect the lease against third parties and should be considered where long-term occupation or financing is material.

Recent Developments

RA No 12252 permits qualifying 99-year leases and transfer or security use of leasehold rights subject to conditions. Qualifying subleases require consent and prescribed registration. Investment withdrawal or unauthorised use may trigger automatic termination, so lenders and tenants should monitor project compliance.

RA No 12001 reforms valuation through approved Schedules of Market Values. Section 29 limits first-year increases in each type of real property tax to 6% of the taxes assessed before the Act's effectivity. Note that it is not a permanent annual cap. Local implementation and subsequent ordinances should be checked when modelling ownership and lease costs.

Trends and Developments

Contributed by:
Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga
Cruz Marcelo & Tenefrancia

Cruz Marcelo & Tenefrancia (CMT) was established in 2013, and is a leading Philippine full-service law firm with 75 lawyers. Its core strengths span corporate and M&A, dispute resolution, intellectual property, mining, natural resources, and energy, supported by practices in capital markets, infrastructure, taxation, labour, telecommunications, data privacy, competition, fintech, and family law. CMT advises on domestic and cross-border acquisitions, joint ventures, restructurings, and financing across key industries. Notable engagements include the privatisation of a hydroelectric power complex, a major group's agribusiness expansion, the acquisition of a substantial equity interest in an e-commerce platform, and a PHP1 billion sustainability-linked financing for a property developer. The firm provides comprehensive support in transaction structuring, due diligence, negotiation, documentation, and regulatory approvals, addressing complex foreign ownership, competition, land use, and governance issues.

Authors



Patricia A. O. Bunye is the managing partner of CMT, the head of its Mining & Natural Resources Department and the Energy practice group, and is also a senior partner in the Intellectual Property Department. Her Intellectual Property practice is focused on trade marks and IP commercialisation, including licensing and franchising, and regulatory matters relating to food, cosmetics, and pharmaceutical products. She is recognised among the foremost mining lawyers in the Philippines. She is a Fellow of the Institute of Corporate Directors and the Chairman of the Good Governance Committee of the Makati Business Club.



Aida Araceli G. Roxas-Rivera is a senior partner in CMT's Corporate and Commercial Law Group and heads the firm's Retainer, Corporate Governance & Regulation, and Gaming practice groups. She advises domestic and foreign clients on investments in the Philippines. Her practice involves dealing with the Securities and Exchange Commission, Department of Trade and Industry, Board of Investments, Philippine Economic Zone Authority, Bangko Sentral ng Pilipinas, and Philippine Amusement and Gaming Corporation, and negotiation and implementation. Ms Rivera obtained her Bachelor of Laws degree from the University of the Philippines in 1995.



Rogelio D. Torres, Jr. is a partner in CMT's Litigation and Dispute Resolution Department. His practice includes dispute prevention and resolution, labour and employment, corporate governance and regulation, rehabilitation and reorganisation, banking, energy and mining disputes, and anti-money laundering compliance. He regularly advises employers on labour standards, workplace policies, collective bargaining and termination matters and represents clients before courts and quasi-judicial agencies. He has served as an Investigating Commissioner of the Integrated Bar of the Philippines Commission on Bar Discipline since 2019.



Christianne Grace F. Salonga is a partner in CMT's Corporate and Commercial Law Group. Her practice focuses on capital markets, securities regulation, competition, and corporate and commercial law. She has advised on IPOs and follow-on offerings involving companies in the food production, technology retail, semiconductor manufacturing and consumer goods sectors. Her regulatory practice includes cross-border financial products, ISDA documentation and derivatives transactions. She holds a Juris Doctor degree from Ateneo de Manila University and a Master of Laws degree from the University of Sydney.

Contributed by: Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga, **Cruz Marcelo & Tenefrancia**

Cruz Marcelo & Tenefrancia

9th, 10th, 11th & 12th Floors
One Orion
11th Avenue corner University Parkway
Bonifacio Global City
Taguig 1634 Metro Manila
Philippines

Tel: +632 8810 5858
Email: info@cruzmarcelo.com
Web: www.cruzmarcelo.com



Foreign Investment Trends and Developments in the Philippines

A broader investment agenda

The Philippine investment agenda in 2026 is increasingly connecting manufacturing, digital infrastructure and energy, while tourism offers further opportunities in hospitality and supporting services. Expansion plans in established industrial estates sit alongside proposals for pharmaceutical production, artificial intelligence infrastructure and domestic mineral processing. For foreign investors, the opportunity extends beyond entering a single emerging industry to providing the facilities, services and supply chains these businesses need.

Recent reforms to investment incentives and long-term land leasing can improve the economics and predictability of a Philippine project. At the same time, power availability, workforce capability, regulatory co-ordination and community rights remain central to deciding where and how to invest. The strongest investment case combines a realistic market opportunity with a site and operating structure capable of meeting those requirements.

This article considers recent developments and their implications for businesses entering or expanding in the Philippines. Pax Silica forms part of this landscape, alongside projects in other industrial estates and sectors. Investors should distinguish completed reforms and available capacity from negotiations, announced projects and expressions of interest when setting budgets and implementation schedules.

Manufacturing expansion and industrial estates

Semiconductors remain an important starting point for higher-value manufacturing investment. The Philippines has an established base in assembly, testing and packaging, creating opportunities for suppliers, specialised production and engineering services. Expansion within that ecosystem may offer a more practical route to market than immediately pursuing a large commercial wafer fabrication plant, which has substantially greater technical and infrastructure requirements.

According to Aboitiz Economic Estates, a major Japanese semiconductor company plans to expand into a 20-hectare facility at LIMA Estate in Batangas, with groundbreaking expected in November 2026. A foreign food company also plans a 12-hectare facility at TARI Estate in Tarlac. These announcements suggest demand across electronics and consumer-related manufacturing, although planned facilities should be distinguished from operating capacity.

For investors, the choice of estate can affect the time required to establish production as much as the availability of land. A site with usable utility connections, established logistics and experienced operational support may reduce commissioning risk. Those advantages should be tested against the requirements of the particular production process, including water quality, wastewater treatment, equipment access and room for expansion.

Workforce planning should begin alongside site selection. More sophisticated production requires technical

supervisors, equipment specialists and quality-control personnel, supported by training and reliable recruitment channels. Contracts with overseas technology providers and local training partners should clearly allocate rights to existing technology, newly developed intellectual property and confidential manufacturing information.

Pharmaceuticals and biotechnology widen the opportunity

Interest in pharmaceutical and biotechnology investment broadens the industrial agenda beyond semiconductors. The Philippine Economic Zone Authority (PEZA) has reported Indian firms' interest in Victoria Industrial Park in Tarlac and the potential development of a dedicated economic zone for pharmaceutical, biotechnology and related investments. Discussions also covered joint ventures, manufacturing and supply-chain partnerships, indicating several possible routes to participation.

These discussions point to opportunities to expand domestic pharmaceutical supply and establish regional business partnerships. They remain investment promotion rather than evidence of a completed dedicated zone or committed production capacity. Investors should determine whether their model centres on local manufacturing, contract production, importation or distribution, because each involves different facilities, approvals and commercial relationships.

Pharmaceutical businesses must account for the Food and Drug Administration's licensing and applicable product-registration requirements, together with relevant manufacturing and quality standards. Economic-zone registration does not replace health-product regulation. Facility design, product documentation and regulatory preparation should therefore proceed together, rather than leaving approval work until construction is complete.

Commercial agreements should also identify responsibility for product approvals, quality assurance, recalls and intellectual property. For temperature-sensitive products, storage and transport arrangements can determine whether a technically compliant facility can actually serve its customers. A proposed trade agreement or dedicated zone may improve future opportunities, but market-access assumptions should rest on arrangements currently in force.

Digital infrastructure and energy converge

Demand for AI and cloud services is creating opportunities in data centres, computing equipment, connectivity and supporting utilities. The emerging business models increasingly combine digital infrastructure with access to reliable and competitively priced energy. This creates potential roles for foreign equipment suppliers, infrastructure operators, financiers and energy developers, as well as companies purchasing computing services.

A memorandum of understanding between Meralco PowerGen Corp. and PLDT's VITRO REIT Inc. covers a joint feasibility study for potential renewable-energy-powered data centres. The proposed work includes site selection, power arrangements, data-centre design and connectivity planning. It illustrates closer co-ordination between the energy and digital sectors, while remaining a study ahead of possible project development.

Separately, YCO Cloud and Singapore-based Aolani announced an AI infrastructure partnership, with deployment targeted for the first quarter of 2027. Their proposed responsibilities combine computing infrastructure and financing capabilities with local facilities and infrastructure expertise. Equipment volumes and deployment dates should be tested against procurement, construction and power-delivery commitments before being incorporated into investment assumptions.

For a data-centre project, installed generation capacity alone does not establish the availability of uninterrupted power at the site. Investors need to assess grid access, backup systems, storage, cooling and the timing of utility connections. Renewable-energy procurement should address both the sustainability of supply and the operational measures needed to maintain service when generation varies.

Contracts should allocate construction interfaces and specify capacity, service quality, commissioning dates and remedies for interruption. Connectivity should be assessed for redundancy and resilience, while water

demand should reflect the proposed cooling technology and local resource conditions. A project combining power generation, digital services and regulated network activities also requires separate analysis of the ownership and licensing rules applicable to each business activity.

Energy diversification and the nuclear programme

In October 2026, President Ferdinand Marcos Jr. linked the government's interest in nuclear energy to expected growth in electricity demand from AI and data centres. He also emphasised renewable energy and referred to exploratory discussions on hydrogen. These statements underline the importance of energy security to the digital investment agenda, while hydrogen exploration remains at an early stage.

The Department of Energy's September proposals for nuclear capacity tenders provide a more concrete indication of the programme's direction. They envisage an initial 1,200 megawatts entering the generation mix from 2032 and address delivery schedules, grid readiness, pricing and regulatory approvals. The tender guidelines remain proposed measures, and a capacity award would not itself authorise construction or operation of a nuclear facility.

For energy developers and specialist suppliers, this creates a programme to monitor for future participation. Opportunities will depend on the final procurement arrangements, technology requirements, financing and nuclear safety approvals. Manufacturers and data-centre operators planning earlier launches should secure power on a deliverable timetable, with future nuclear or hydrogen supply treated as a longer-term possibility.

Data protection becomes part of the investment case

The expansion of AI infrastructure also raises questions about how businesses obtain, use and secure data. A Synology survey reported in October 2026 found that seven out of ten respondents identified data security and privacy among the challenges to AI adoption. This suggests a commercial opportunity for secure infrastructure and services, although the reported survey should not be treated as a comprehensive measure of the Philippine market.

The National Privacy Commission's AI guidelines confirm that the Data Privacy Act applies where personal data are processed in developing or deploying AI systems, including training and testing. Businesses must identify a lawful basis for processing and observe transparency, legitimate purpose and proportionality. Privacy and security requirements should consequently shape system design, vendor selection and customer arrangements from the outset.

An investor acquiring a digital business should examine the provenance and permitted uses of its datasets, rather than assuming that possession establishes a right to train an AI model. Service agreements should address security responsibilities, subcontractors, retention, deletion and incident response. Where data move across borders, the parties should identify the relevant responsibilities and safeguards instead of relying on a general assurance that the platform is secure.

These considerations affect revenue as well as compliance. Customers may require evidence of security controls, data governance and continuity arrangements before adopting a service. Investment in those capabilities can therefore support customer confidence and procurement eligibility, particularly where a business handles sensitive commercial or personal information.

Tourism and hospitality investment

Tourism provides a further investment channel beyond industrial and digital projects. According to Department of Tourism figures reported on 12 October 2026, international arrivals reached 4.42 million from January to August, slightly above 4.38 million a year earlier. The department expects stronger fourth-quarter demand to support its 6.4 million arrivals target for 2026, despite high fuel prices and airfares.

These figures support consideration of hotels, resorts and visitor services, but national arrivals alone cannot establish demand for a particular property. Investors should examine destination-level occupancy, room rates, seasonality, airline connections and competing accommodation. Financial models should allow for changes in travel costs and visitor spending, espe-

cially where a project relies heavily on one overseas market.

The department is also seeking to extend the geographic coverage of relaxed entry arrangements for Chinese tourists beyond Manila and Cebu. That proposal could support additional destinations, but should be distinguished from a visa change already approved and implemented. Investors should confirm the rules applicable to their intended customers before assuming that easier entry will increase bookings.

For hospitality projects, site access, dependable utilities and environmental constraints require attention alongside the commercial concept. Where ownership and management are separated, agreements should clearly allocate refurbishment costs, operating standards and termination rights. Long-term land arrangements should also be checked against the investment conditions applicable to tourism projects.

Critical minerals and domestic processing

Minerals policy is moving towards retaining more value through domestic processing and downstream production. The Department of Finance's discussion of Executive Order No 122, issued in August 2026, identifies a national framework for the critical-minerals industry and support for associated energy, water, transport and logistics activities. This creates a wider investment proposition than extraction alone, including processing technology, recovery, recycling and supporting infrastructure.

The commercial challenge is to connect mineral resources with a technically workable process and dependable customers. Ore quality, recovery rates, energy consumption, waste management and transport costs can materially alter project returns. Policy support cannot substitute for laboratory testing, engineering studies and enforceable supply and sales agreements.

The investment structure must distinguish extraction from processing. Extraction is governed by the constitutional natural-resources framework and the Mining Act, which provides different contractual arrangements, including financial or technical assistance agreements for qualifying large-scale projects. A processing investment requires its own assessment of ownership, permits and sourcing, rather than automatically adopting either a mining structure or the structure of an ordinary factory.

Investors should establish which implementing measures and incentives actually apply to their proposed activity. Any policy concerning priority access to ore should be examined alongside enforceable arrangements for volume, grade, delivery and pricing. Environmental requirements, community rights and buyers' traceability standards remain important to whether processed products can reach their intended markets.

Pax Silica within the wider investment landscape

The Philippines joined the United States-led Pax Silica initiative on 16 April 2026, linking its industrial goals with international co-operation on strategic technology supply chains. The announced Philippine plans include an approximately 4,000-acre industrial hub in the Luzon Economic Corridor. The proposed Clark Advanced Manufacturing Park in New Clark City is its most visible local component and could support advanced manufacturing and related infrastructure.

For investors, Pax Silica may help attract partners, technology and customers, but the commercial arrangements still require scrutiny. The Bases Conversion and Development Authority (BCDA) has identified November 2026 as a target for finalising a framework agreement. That target should be distinguished from an executed lease, a registered investment or a facility ready for construction.

Companies considering the park should examine the final counterparty, governing law, dispute resolution, utility obligations and rights available under individual leases. Descriptions such as an economic security zone do not themselves establish tax benefits or regulatory exemptions. Land access, environmental approvals and applicable community processes must be resolved through the relevant legal instruments and procedures.

The wider investment strategy need not depend on the park's timetable. Existing estates, engineering businesses, processing facilities and utility projects may offer opportunities on their own commercial mer-

its. Pax Silica is best assessed as one possible catalyst within that broader ecosystem.

Incentives and regulatory co-ordination

The Corporate Recovery and Tax Incentives for Enterprises to Maximize Opportunities for Reinvigorating the Economy (CREATE MORE) Act, or Republic Act No 12066, remains important to the investment proposition. It provides a 20% income-tax rate on income from registered projects or activities under the enhanced deductions regime, alongside qualifying additional deductions, including for power expenses. Registered export enterprises may qualify for a different package involving the 5% special corporate income tax on gross income earned, subject to statutory conditions and election rules.

These alternatives require financial modelling rather than a comparison of percentages. Investors should assess their expected costs, margins, export profile and timing, and confirm the registered activity's eligibility under the applicable Strategic Investment Priority Plan. Treatment of VAT, customs duties and domestic sales must be established separately, because an income-tax incentive does not settle those questions.

Joint Memorandum Circular No 01-2026, issued by the Department of Finance (DOF), Department of the Interior and Local Government and Department of Trade and Industry, clarifies local-tax treatment relevant to location decisions. It addresses the registered business enterprise local tax for enterprises using an income-tax holiday or enhanced deductions in economic zones. Where imposed through the relevant local ordinance, the tax may not exceed 2% of the registered project's gross income and replaces the covered local taxes, fees and charges.

Regulatory co-ordination is improving, although the extent of digital processing should be checked for each application. PEZA is expanding permit automation, while Aboitiz Economic Estates is adapting its EaseBiz locator assistance to PEZA's portal. Such support can help businesses organise registrations, but estate developers, investment-promotion agencies and sector regulators perform different functions. Before fixing a launch date, investors should map the approvals needed for incorporation, construction, incentive registration, imports and operations. The project team should identify documents and approvals that depend on earlier steps, and allocate responsibility for obtaining them. Written confirmation from the competent authority is more useful to a financing decision than a general indication that the project will receive expedited treatment.

Ownership and long-term land access

Foreign ownership should be assessed by activity rather than by the overall description of a project. The Foreign Investments Act permits full foreign participation where constitutional or statutory restrictions do not apply, subject to applicable capital and other requirements. A manufacturing subsidiary, a mining operation and a regulated utility can therefore require different structures even when they form part of the same investment.

The separation of activities into different entities may help allocate operational and financing risks. However, related-party leases, services, technology arrangements and financing must have a defensible commercial and tax basis. Investors should also consider whether strategic-industry review or sector-specific rules apply to the transaction, particularly where cyber infrastructure or sensitive assets are involved.

Republic Act No 12252 amended the Investors' Lease Act to allow qualifying foreign-investor leases of private land for an aggregate period of up to 99 years. The reform can improve planning for capital-intensive facilities by allowing a longer period to use and recover investment in the site. Qualification, investment-use conditions and registration requirements remain relevant, and the statutory maximum does not itself secure a particular lease term.

Tourism projects face a specific condition under the Investors' Lease Act: qualifying private-land leases require investment of at least USD5 million, with 70% infused within three years of signing. A hospitality investor should therefore align its lease, funding and development schedule. The longer lease period does not remove these investment commitments.

The reform should not automatically be applied to every government-controlled industrial site. For BCDA or other public land, investors must examine the property's status, the lessor's authority and the governing legal and contractual framework. In any location, title, boundaries, encumbrances and access rights should be checked before committing to construction.

Lease negotiations should cover assignment, financing security, lender intervention, renewal or expiry, termination and ownership of improvements. Where a tenant's rights depend on a master lease, the consequences of its termination require particular attention. These provisions determine whether the investor and its lenders can rely on continued use of the facility throughout the project's operating life.

Community rights and environmental readiness

Community and environmental issues can determine whether an otherwise attractive project proceeds on schedule. The Indigenous Peoples' Rights Act, or Republic Act No 8371, makes the relevant National Commission on Indigenous Peoples certification processes and free, prior and informed consent requirements material to project due diligence. The absence of an issued ancestral-domain title should not be treated as conclusive evidence that no protected rights or pending claims affect the land.

Investors should obtain site-specific records and assess the position of Indigenous communities, farmers and other occupants. Environmental review should reflect actual industrial processes, water sources, emissions and waste streams, including applicable environmental impact assessment and environmental compliance certificate requirements. Estate-level approvals should be examined to determine which obligations they cover and which remain with the individual business.

Early engagement can inform site design, access arrangements and mitigation before commitments become expensive to change. Livelihood measures and grievance processes should have identified responsibilities and sufficient resources. Clear documentation of these matters also helps lenders and customers assess a project's compliance and continuity risks.

Financing and supply chain resilience

Data from the Bangko Sentral ng Pilipinas (BSP) placed Philippine financial-system resources at PHP38.09 trillion in July 2026, approximately 9.8% above the previous year's level. This provides context for the domestic financing market rather than a measure of credit available to a particular foreign investment. Access to funding will still depend on the borrower, the project's cash flows and the quality of its contracts and security.

For long-term projects, investors should address foreign-exchange exposure, refinancing and the relationship between construction spending and the start of revenue. Lenders may require dependable power supply, complete land due diligence and committed customer demand before financing is released. Milestones in construction, supply and financing documents should be aligned so that a delay under one agreement does not create avoidable default under another.

Technology-related projects must also account for restrictions affecting equipment, software and know-how. The Strategic Trade Management Act or Republic Act No 10697 may apply to controlled transactions, while foreign export-control rules may be relevant depending on the technology, counterparties and destination. Contracts should allocate licensing responsibilities and address the consequences of a refusal, delay or change in controls.

Cross-border tax planning

Tax-treaty modernisation is another development to monitor. In October 2026, the DOF announced the conclusion of negotiations for an updated Philippines-Singapore double taxation agreement following talks in September. This is relevant to regional investment structures and cross-border income, but the announcement does not itself establish that new treaty provisions have entered into force or become applicable.

Investors should continue to plan under the rules currently applicable to the relevant payment and income period. A proposed structure should be tested for commercial substance, withholding taxes, permanent-establishment exposure and the conditions for

Contributed by: Patricia A. O. Bunye, Aida Araceli G. Roxas-Rivera, Rogelio D. Torres, Jr. and Christianne Grace F. Salonga, **Cruz Marcelo & Tenefrancia**

claiming available treaty relief. New provisions should be incorporated into forecasts only after their final text, entry into force and effective dates are established.

The outlook

The Philippines offers opportunities across manufacturing, technology, tourism and supporting services. Making the most of them starts with choosing the right location, understanding the rules and working with reliable partners. With careful preparation and a practical plan, investors can build businesses that serve their customers, create local jobs and grow over the long term.

PORTUGAL



Law and Practice

Contributed by:
João Gil Figueira, Rodrigue Devillet Lima and Catarina Andrade Miranda
Gil Figueira & Devillet Lima

Contents

1. Business Entities P.579
1.1 Business Organisations p.579
1.2 Incorporation and Ongoing Compliance p.579
1.3 Share Issuances p.580
1.4 Distributions and Return of Capital p.580
1.5 Control Person Reporting p.581

2. Corporate Governance P.581
2.1 Legal Framework p.581
2.2 Directors' Duties and Liabilities p.582
2.3 Board Composition and Independence p.582
2.4 ESG and Disclosure Obligations p.583
2.5 Conflicts of Interest and Related-Party Transactions p.583

3. Shareholder Rights and Agreements P.584
3.1 Shareholder Rights p.584
3.2 Shareholder Agreements p.584

4. Mergers and Acquisitions P.585
4.1 Legal Framework p.585

5. Capital Markets P.586
5.1 Securities Regulation and Public Offerings p.586
5.2 Continuous Disclosure p.587
5.3 Insider Trading p.587
5.4 Shareholder Disclosure p.587
5.5 Internal Controls and Whistle-Blower Regimes p.588

6. Secured Transactions P.588
6.1 Transaction Financing and Security Interests p.588

7. Commercial Contracts P.589
7.1 Contract Formation and Enforceability p.589
7.2 Termination and Remedies p.590
7.3 Intellectual Property in Commercial Transactions p.591
7.4 Consumer Protection p.591

8. Foreign Investment P.592
8.1 Competition and Merger Control p.592
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.593

9. Regulatory Compliance P.594
9.1 Privacy and Data Protection p.594
9.2 Anti-Money Laundering, Sanctions and Corruption p.594
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.595
9.4 Artificial Intelligence p.596
9.5 Other Regulatory Compliance Requirements p.596

10. Employment and Labour P.596
10.1 Employment Standards and Workplace Regulation p.596
10.2 Executive Compensation and Restrictive Covenants p.597

11. Real Property and Commercial Leasing P.598
11.1 Requirements for Land Ownership p.598
11.2 Commercial Real Estate Transactions p.598

Gil Figueira & Devillet Lima is an independent law firm advising companies, family offices, investors and founders on corporate and commercial matters with a cross-border dimension. The corporate practice covers M&A and private equity, venture capital and early-stage financing, joint ventures and shareholder arrangements, commercial contracts, corporate governance and shareholder disputes, with international tax structuring handled in-house. The firm also works in litigation, public law, capital markets, intellectual property and employment. Clients come from media and entertainment, mining and manufacturing, IT and blockchain, fintech, real estate and hospitality.

Authors



João Gil Figueira is a partner at Gil Figueira & Devillet Lima, where he heads the tax, corporate and private client practices. For more than 18 years he has advised Portuguese and multinational businesses on the cross-border aspects of acquisitions, investment structures, offerings and shareholder disputes, and he acts as ongoing counsel to boards and management teams. He focuses on transactions that cannot be resolved inside a single discipline. He has held in-house roles and lectures on commercial law, regulation, taxation and foreign investment at several Portuguese universities.



Rodrigue Devillet Lima is a partner at Gil Figueira & Devillet Lima, where he heads the litigation practice and leads the firm's dealings with regulators. He advises private and public entities on administrative and regulatory law, securities offerings, banking and payments, anti-money laundering and know-your-customer compliance, licensing and permits, and real estate zoning and development. He acts in white-collar crime, bet-the-company disputes, administrative and regulatory litigation and international commercial disputes, negotiates the acquisition of distressed assets, and represents shareholders strategically in corporate litigation. Rodrigue focuses on private initiatives that run into a public law constraint.



Catarina Andrade Miranda is an associate at Gil Figueira & Devillet Lima, working across the corporate and dispute resolution teams. She acts on acquisitions and disposals, from due diligence and transaction documents through to closing and post-completion matters, and on shareholder arrangements, joint ventures and commercial contracts. Her contentious practice concentrates on shareholder disputes, including challenges to corporate resolutions and claims against directors, alongside commercial litigation and regulatory matters. She also advises on insolvency proceedings, distressed asset acquisitions, and asset tracing and recovery.

Gil Figueira & Devillet Lima

Rua Rodrigues Sampaio, No 97, 1st floor
1150-279
Lisboa
Portugal

Tel: +351 210 997 356
Email: hello@gfdl.legal
Web: gfdl.legal



1. Business Entities

1.1 Business Organisations

The Portuguese Companies Code (CSC) sets out the various types of commercial company recognised under Portuguese law:

- general partnerships (*sociedade em nome coletivo*);
- private limited companies (*sociedade por quotas*, or Lda.);
- joint stock companies (*sociedade anónima*, or S.A.); and
- limited partnerships, simple or by shares.

Of these, the most common in Portugal are Lda.s and S.A.s. Business is also carried on through:

- branches of foreign companies (*sucursais*), which have no separate legal personality;
- sole traders and co-operatives; and
- the complementary grouping of undertakings (ACE).

In an Lda., the share capital is divided into quotas, and the company will generally have at least two shareholders. There is no statutory minimum capital, which is freely fixed in the articles subject to each quota having a nominal value of at least EUR1, and the company may have a single quotaholder (*sociedade unipessoal por quotas*).

Shareholders are jointly and severally liable for the agreed contributions, but creditors may look only to the company's assets. This makes the Lda. the preferred vehicle for small and medium-sized businesses.

In an S.A., the capital is divided into shares, each shareholder's liability is limited to the shares subscribed, and shares are freely transferable subject to legal or statutory restrictions. Except in specific cases provided for by law, S.A.s must have at least five shareholders and a minimum share capital of EUR50,000.

Portugal does not recognise trusts as a domestic legal institution and is not a party to the 1985 Hague Convention on the Law Applicable to Trusts. A foreign trust is not void in Portugal, but it will generally be looked through for Portuguese tax purposes and cannot be registered as the owner of Portuguese assets. A comparable result is usually reached through a holding company or a foreign law fiduciary arrangement.

Choice of form is driven as much by governance requirements, tax and disclosure as by liability.

1.2 Incorporation and Ongoing Compliance

In Portugal, a company may be incorporated either through an online procedure or in person at a Commercial Registry office. Incorporation may also be carried out via *Empresa na Hora* (incorporation within an hour), which allows the shareholders to have the company incorporated on the same day, using pre-approved template articles of association issued by the Commercial Registry. Where the articles are bespoke, or where powers of attorney, apostilles or an auditor's report on a contribution in kind are required, three business days is more usual.

The company name may be chosen from a list pre-approved by the Commercial Registry. The share capital may be deposited before incorporation or, in

circumstances permitted by law, within five business days thereafter, or by the end of the company's first financial year.

The online procedure is now the most commonly used method of incorporation. Where a pre-approved template of articles of association is used, the cost is EUR220 for standard applications, with urgent applications charged at double that fee. Further costs may arise on name reservation, bespoke articles, notarial authentication and activity licences.

Following incorporation, companies must comply with a range of corporate, accounting, tax and registration obligations. A beneficial ownership declaration is also required, as described in **1.5 Control Person Reporting**. The annual accounts and the management report must be approved within three months of the financial year end, or within five months where consolidated accounts are prepared. Before trading begins, the company must also open a bank account, enrol with the Tax Authority and with Social Security, and appoint a certified accountant, together with obtaining any licence specific to its activity. Every shareholder, director and attorney must hold a Portuguese taxpayer number in advance, and a person resident outside the EU or EEA must appoint a tax representative, unless he or she adheres to the Tax Authority's electronic notification channels.

Companies must maintain organised accounting records under the Corporate Income Tax Code and the accounting standards, overseen by a certified accountant, and must submit annual income statements with the relevant accounting and tax information. These filing obligations include:

- the annual accounts, once approved by the shareholders;
- the Simplified Business Information return (IES);
- corporate income tax returns; and
- periodic VAT returns.

1.3 Share Issuances

Share capital rules are set out in the Companies Code. The articles must state the capital in euros, each shareholder's contribution and the payment deadlines, and contributions in kind require appraisal by an auditor. Lda. capital is freely fixed and divided into quotas, subject to a minimum of EUR1 per quota. An S.A. requires at least EUR50,000, represented by par value or no par value shares, never both, with a floor of EUR0.01 per share and 30% of cash contributions paid up at incorporation.

A capital increase requires a shareholders' resolution specifying the type, amount, contributions, premium and deadlines. An authorised capital clause allows the board to increase capital without a fresh shareholder vote, subject to a ceiling, a term capped at five years and the rights of the shares issued. Reductions require creditor notice protections. Portuguese law has no concept of stated capital accounts – their protective function is performed by the single registered share capital figure, the distribution limits and the mandatory legal reserve.

The distinctions drawn are between subscribed, paid-in and unpaid-in capital, reserves including a mandatory legal reserve of 5% of profits up to 20% of capital, share premium and other equity items. The premium may not be deferred, and contributions in services are not admissible.

A joint stock company may issue preference shares, including non-voting shares, trading voting power for a priority dividend. The total nominal value of non-voting preference shares may not exceed one half of the share capital. Dividend, redemption and liquidation terms are set in the articles and typically require qualified majority and class consent.

The right to appoint a director may not be attached to a category of shares, although a veto may be, and special rights attach to a category and never to a named shareholder.

An Lda. has much less flexibility, since quotas are not shares, although bespoke quota rights remain negotiable.

1.4 Distributions and Return of Capital

Portuguese law governs distributions through a balance sheet test applied to formally approved accounts. A Portuguese company may not distribute assets to shareholders where its equity, including the result for

the year, is lower than the sum of share capital and non-distributable reserves, or would become so as a result of the distribution. Profits needed to cover losses carried forward or to build mandatory reserves may not be distributed.

There is no separate cash flow or solvency test, and no directors' solvency statement is required. Unless the articles or a shareholders' resolution passed by the majority required to amend the articles provide otherwise, at least half of the distributable profits of each financial year must be distributed. Interim dividends are of limited practical use.

A return of capital requires a formal capital reduction, including a qualified shareholders' resolution and registration with the Commercial Registry, with creditors generally entitled to object where the reduction is not made to cover losses, and capital may not fall below the statutory minimum.

An S.A. may repurchase its own shares up to 10% of capital, funded only from distributable reserves; such treasury shares carry no voting rights. Redeemable preference shares may be redeemed on terms set in the articles, funded from distributable profits or reserves or accompanied by a capital reduction; comparable rules apply to an Lda.'s own quotas.

Financial assistance is prohibited: a company and its subsidiaries may not provide loans, funds or security to enable a third party to acquire the company's own shares, subject only to narrow exceptions for ordinary banking transactions and employee share acquisitions.

1.5 Control Person Reporting

The principal control person disclosure regime for private companies in Portugal is the Central Register of Beneficial Owners (RCBE), which transposes the EU anti-money laundering framework. It applies to all Portuguese legal entities, including private companies, in contrast to the qualifying holding notification regime under the Portuguese Securities Code, which applies only to listed and public interest entities. A beneficial owner is any natural person who ultimately owns, controls or benefits from the company, assessed by reference to a holding of more than 25% of shares, voting rights or capital, although control may also arise through the power to appoint senior management or through contractual decision-making authority.

The statement must be filed within 30 days of the company's incorporation, updated within 30 days of any change, and confirmed annually by December 31st. Non-compliance carries fines together with practical restrictions, including the inability to open a bank account, distribute profits, bid for public contracts or complete securities and real estate transactions until the position is regularised. The register is not freely accessible: a third party seeking access must demonstrate a specific and substantiated legitimate interest, typically tied to anti-money laundering compliance or to a transaction, and every consultation is logged.

On the tax side, companies must report related-party transactions annually and indicate whether transfer pricing documentation has been prepared. Entities whose total annual income reaches EUR10 million must maintain a master file and a local file, although transactions below EUR100,000 per counterparty and EUR500,000 in aggregate are exempt, and smaller enterprises may use a simplified file. Neither exemption applies to counterparties in a clearly more favourable tax regime, and neither displaces the arm's length principle.

2. Corporate Governance

2.1 Legal Framework

Corporate governance in Portugal is based mainly on the Portuguese Companies Code, which sets out the governing bodies, duties and liability for all commercial companies, supplemented for listed companies by the Portuguese Securities Code. It is overseen by the Portuguese Securities Market Commission (CMVM), and further complemented by the Legal Framework for Audit Supervision, the Statute of the Order of Statutory Auditors, and the CMVM regulation on the governance of listed companies.

The Companies Code governs the various types of company set out in Article 1 thereof, whereas the Securities Code imposes heightened transparency and governance obligations on issuers whose secu-

rities are admitted to trading in regulated markets. Corporate governance codes – in particular the Corporate Governance Code issued by the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance*) (the IPCG Code) – provide recommendations and best practice guidance that complement this statutory framework, on a "comply or explain" basis, rather than substituting for it. A listed company must adopt the IPCG Code or another recognised code and disclose its compliance annually in the corporate governance report. Unlisted companies are under no such obligation but are increasingly adopting such a code voluntarily.

The Shareholders' Rights Directive and the Audit Directive have both been transposed, and the Bank of Portugal and the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões* – ASF) impose heightened governance standards in the sectors they supervise.

2.2 Directors' Duties and Liabilities

Directors owe duties of care and loyalty, and duties to manage the company in its best interests, avoid conflicts of interest and refrain from appropriating business opportunities or competing without authorisation. Directors are liable to the company for breach of their legal, contractual and fiduciary duties. Fault is presumed, with the burden of proof resting on the director.

The Companies Code provides a business judgement rule protecting directors who act on an informed basis, free of personal interest and by rational business criteria, albeit not in cases of fraud, conflict of interest or a clear lack of diligence, which makes the documentation of decisions essential.

Liability is joint and several, subject to a right of recourse between directors by degree of fault. A company may claim damages to its own assets, and creditors may claim where a breach of protective rules leaves the company unable to satisfy its creditor claims. Shareholders or third parties may claim for direct harm. Common grounds include decapitalising the company, self-dealing, unlawful distributions and misleading financial information.

Directors of an S.A. must provide security against their potential liability, in the amount of EUR250,000 for a listed company and EUR50,000 for other companies, which the shareholders may waive. Directors' and officers' liability insurance is widely used and the company may bear the premium, except where the policy is intended to substitute for that statutory security. Indemnification by the company is not regulated in the Companies Code and is generally accepted, but an indemnity purporting to relieve a director of liability for breach of a fiduciary duty is void.

Because disputes of this kind are commonly referred to arbitration, as described in **4.1 Legal Framework**, the documentary record of a decision rather than judicial authority determines whether the business judgement rule is available.

The criminal liability of a legal person is excluded where the perpetrator acted against the express instructions of a person in a leadership position, which is what gives the compliance programme described in **5.5 Internal Controls and Whistle-Blower Regimes** its defensive value.

2.3 Board Composition and Independence

The regime varies by legal form and listing status. Private companies face no general independence or diversity requirements, while a joint stock company may adopt one of three governance models:

- a board with a supervisory board or sole auditor;
- a board with an audit committee and statutory auditor; or
- a two-tier structure with an executive board and a general and supervisory board.

An Lda. may be managed by one or more managers. In an S.A., board size is set in the articles, subject to a minimum of two directors, although a company with capital not exceeding EUR200,000 may appoint a sole director.

Directors are appointed for a term fixed in the articles, not exceeding four years, and may be re-elected. The general meeting may remove a director at any time without cause, with compensation being payable up

to the remuneration due to the end of the term. A listed company must also appoint a company secretary.

Supervision is exercised as follows:

- by a sole auditor or a supervisory board of at least three members including a statutory auditor;
- under the audit committee model, by at least three non-executive directors; and
- under the two-tier model, by a general and supervisory board larger than the management body.

Listed and large companies must adopt a reinforced structure with an independent member of recognised expertise and a statutory auditor outside the supervisory board.

There is generally no residence requirement for directors.

Listed companies are also governed by CMVM regulations and by the IPCG Code on a comply-or-explain basis.

Independence is assessed substantively and is precluded by, among other things, a shareholding of 2% or more, re-election for more than two terms, or close family ties to a person subject to the same preclusion, and requires a documented individual assessment.

Diversity requires disclosed policies and justified deviations from them, with binding gender thresholds for listed companies and state-owned enterprises. The operative threshold is 33.3% of each gender in the governing bodies. Non-compliance results in a declaration of non-compliance by the regulator and renders the appointment provisional; the company has 90 days to remedy the position.

The IPCG Code recommends that independent directors make up at least one third of the non-executive members. There is no maximum number of terms; re-election beyond two terms bears on independence rather than eligibility. A legal person may be a director provided it designates a natural person to exercise the office, and directors need not be shareholders.

2.4 ESG and Disclosure Obligations

ESG obligations in Portugal are essentially of EU origin and are largely limited to large undertakings. All companies face a light, materiality-gated duty to include non-financial performance information in the management report, while large public interest entities with more than 500 employees must present a fuller non-financial statement (under the non-financial reporting regime), alongside the already-in-force EU Taxonomy Regulation.

Climate risk must already be factored into ordinary financial reporting where it could materially affect assets, results or going-concern status, and the Sustainable Finance Disclosure Regulation imposes parallel obligations on financial sector product disclosures.

There is no freestanding "ESG duty" for directors, but the Companies Code requires directors to consider stakeholders relevant to the company's sustainability, such as employees, customers and creditors, alongside shareholders' long-term interests. The Climate Framework Law, in force since 2022, goes further, requiring companies to take climate change into account in their governance and to build climate risk analysis into their decision-making.

Best practice, per the IPCG Corporate Governance Code, includes:

- clear board-level ownership of ESG oversight;
- integrating ESG into risk management;
- board oversight of sustainability reporting and assurance;
- linking remuneration to sustainability metrics;
- stakeholder engagement; and
- ensuring the board itself has adequate ESG competence.

The IPCG Code was revised in 2023 to add a dedicated chapter on sustainability.

2.5 Conflicts of Interest and Related-Party Transactions

Conflicts of interest and related-party transactions are governed by the Portuguese Companies Code, the Portuguese Securities Code, applicable CMVM rules,

the Market Abuse Regulation (MAR) and the applicable accounting standards.

Directors and managers must act in the company's interest, in compliance with their duties of care and loyalty. In a joint stock company, transactions between the company and a director are subject to the authorisation and conflict management safeguards of the Companies Code, which extend to transactions with entities in a control or group relationship with the director. Shareholders are barred from voting in the circumstances of conflict of interest expressly provided for by the Companies Code.

For issuers whose shares are admitted to trading on a regulated market, the Portuguese Securities Code requires an annual corporate governance report, as described in **5.2 Continuous Disclosure**. Related-party transactions may also require disclosure under the MAR where the relevant information constitutes inside information.

Following the transposition of the Shareholders' Rights Directive II, the Portuguese Securities Code establishes a specific regime for related-party transactions by listed issuers. The regime requires an internal procedure approved by the management body and a prior binding opinion from the supervisory body. Transactions outside the issuer's ordinary course of business or not concluded on normal market terms may require management approval and public disclosure.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

The shareholders' basic rights are:

- to share in profits;
- to participate in resolutions;
- to obtain information; and
- to be eligible for the governing bodies.

Voting generally follows one-share-one-vote, and ordinary decisions are taken by simple majority. Fundamental changes, such as amendments to the articles, mergers, demergers and dissolution, require a qualified majority: two thirds of the votes cast in a joint stock company, and three quarters of the votes corresponding to the share capital in a private limited company.

In a joint stock company, an amendment to the articles may be resolved at first call only if at least one third of the share capital is present or represented, and at second call irrespective of the capital present. Shareholders may resolve in writing only where the resolution is adopted unanimously. Retroactive effects need unanimous consent, and no amendment can increase a shareholder's obligations without their agreement.

Information rights scale with company type. An Lda. shareholder has broad access regardless of holding, while in a joint stock company 1% of capital is needed to consult accounts, minutes and remuneration data, preparatory documents are available 15 days before meetings, and clarification may be requested during the meeting. Shareholders holding 10% together may demand written answers outside the meeting, with unjustified refusal being challengeable by judicial inquiry. Notice convening a general meeting must be published at least one month in advance for a non-listed company and 21 days in advance for a listed company.

Shareholders holding 5% of the share capital, or 2% in a listed company, may require the board to call a general meeting and may propose agenda items. Resolutions may be challenged as void, or as voidable within 30 days, and shareholders meeting the same thresholds may bring a derivative action against directors where the company does not act.

Minority shareholders also have a direct route onto the board. The articles may reserve the appointment of up to one third of the directors to shareholders holding between 10% and 20% of the capital, or give a minority of 10% or more that voted against the successful proposal the right to appoint one director. A listed company must adopt one of the two schemes.

3.2 Shareholder Agreements

Shareholders' agreements are commonly used to layer bespoke governance rights on the statutory framework: board appointment rights, veto powers and exit mechanics such as tag-along, options and

pre-emption. Such an agreement takes effect only between the parties; acts of the company or of shareholders towards the company cannot be challenged on the basis of it. It may govern the exercise of voting rights but not the conduct of directors or supervisory board members, and a clause obliging a shareholder to vote as the company instructs, or to vote or abstain in return for special advantages, is void.

In a listed company, an agreement for the concerted exercise of voting rights causes those rights to be attributed to each party under the Securities Code, so that the aggregate may cross a qualifying holding threshold or trigger a mandatory bid. An agreement aimed at acquiring or reinforcing a qualifying holding, or at affecting the outcome of a bid, must be notified to the CMVM, which may order its disclosure.

Transfer restrictions differ by corporate form. The articles of a joint stock company may condition transfers on the company's consent or on a pre-emption right, provided this serves a genuine company interest. Quota transfers must be in writing and generally require the company's consent; further conditions may not be arbitrary, and an outright prohibition gives a right of withdrawal after a period fixed by law.

On disputes, Portugal has no direct equivalent to the unfair prejudice petition. The closest tool is the annulment of a resolution that is illegal, contrary to the articles or an abuse of majority voting power, which is available to any shareholder who did not vote in favour. A derivative action allows qualifying shareholders to pursue directors; a disruptive shareholder may be judicially excluded from a private limited company with a mandatory buyout; and deadlock may be resolved through judicial dissolution.

4. Mergers and Acquisitions

4.1 Legal Framework

M&A are governed mainly by:

- the Companies Code for private deals;
- the Portuguese Securities Code and CMVM regulations for public transactions;
- the Competition Act for merger control; and
- the relevant EU rules.

Sectoral clearances may be needed from the Competition Authority (AdC), the Bank of Portugal, the ASF or the energy and communications regulators, and foreign direct investment screening applies to strategic sectors. The EU Foreign Subsidies Regulation adds a further clearance layer.

Portugal does not have a court-sanctioned scheme of arrangement. The closest analogue is the *Processo Especial de Revitalização*, a court-confirmed restructuring procedure under the Insolvency Code.

Private deals follow a standard path: confidentiality agreement, letter of intent, due diligence, promissory contract, share purchase agreement and closing. Statutory mergers are registry-based, requiring a merger project and shareholder resolutions, with registration triggering universal transmission of assets by operation of law.

Listed company acquisitions proceed by voluntary, mandatory or potestative bid: mandatory once voting rights reach one third or exceed one half, and potestative once an offeror controls 90% of the voting rights and of the share capital, all under CMVM supervision. Outside the capital markets, a holder of at least 90% of the share capital may offer to acquire the remaining shares, within six months of crossing that threshold, with the minority having a corresponding sell-out right.

A share purchase agreement remains the most common structure, with mergers, carve-outs and demergers also used, often alongside warranty and indemnity insurance.

Reported case law is a limited guide, since disputes are commonly referred to arbitration and awards are not published.

Employee involvement is procedural but drives timing. In a merger or demerger, the project must be registered and published, and employee representatives have at least 30 days in which to give an opinion. In an asset deal, the transfer of undertakings regime applies, as described in **10.1 Employment Standards**

and Workplace Regulation, but not to a pure share deal.

A seller has no general statutory disclosure duty. The courts read a duty of good faith into the Civil Code, so that circumstances material to the buyer's decision should be disclosed and information given must be accurate. Breaking off negotiations without justification may give rise to liability for culpa in contrahendo, as described in **7.1 Contract Formation and Enforceability**.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Portuguese capital markets regulation rests on the Portuguese Securities Code, read with EU law at two levels. The Prospectus Regulation, the MAR and MiFIR apply directly, as amended by the EU Listing Act; MiFID II, the Transparency Directive and the Takeover Bids Directive take effect through the Code.

The CMVM approves prospectuses and supervises market conduct, and Euronext Lisbon operates the only regulated market on which shares are admitted to trading. Where banks or insurers raise capital, the Bank of Portugal and the ASF are involved in their prudential capacity.

Offering Process and Approval

Public offers follow a disclosure path built around an announcement and a prospectus submitted to the CMVM for approval, with the scrutiny period being shorter where the issuer already has securities admitted to trading. Where new shares are issued for cash, existing shareholders have a statutory pre-emption right, which may be limited or disapplied only where the corporate interest justifies it, by a separate resolution passed by the majority required for the capital increase. That mechanic usually drives the timetable more than the prospectus does.

Listing and Continuing Obligations

Listing is a separate track, as Euronext Lisbon reviews eligibility on its own timetable. Admission requires a minimum free float of 10%, reduced from 25% by the transposition of the Listing Act; the market operator may accept less where orderly functioning of the market is assured.

Once admitted, companies face the continuing obligations described in **5.2 Continuous Disclosure**. Euronext Lisbon also operates Euronext Access and Euronext Growth as multilateral trading facilities, admission to which does not of itself trigger the regulated market obligations.

Exemptions and Resale

Portugal no longer maintains a separate category of private placement, so the question is answered entirely by the EU exemptions. There is likewise no domestic accredited investor concept; the relevant category is the qualified investor, meaning a professional client or eligible counterparty under MiFID II, with other investors able to opt up.

The exemptions are the EU-wide ones:

- offers only to qualified investors;
- offers to fewer than 150 persons per member state;
- a minimum denomination of EUR100,000;
- employee share schemes;
- merger-related offers; and
- securities fungible with securities already admitted to trading representing less than 30% over a 12-month period.

A further exemption applies to offers below EUR12 million per issuer or offeror in the European Union over a rolling 12-month period. Member states may set that lower, at EUR5 million, and Portugal has not done so.

An exemption relieves the issuer of the prospectus requirement and of nothing else: market abuse, marketing communication and equal treatment rules continue to apply.

A resale is assessed as a fresh offer. Reliance on an existing prospectus requires the issuer's written consent, which will not be available where the securities were placed under an exemption, so the resale needs its own prospectus or exemption. There is no statutory holding period, so any lock-up is contractual.

Breach of the offering rules is an administrative offence carrying significant fines and allowing the CMVM to suspend or prohibit the offer, with civil liability to investors.

5.2 Continuous Disclosure

Issuers admitted to trading on a regulated market are subject to the transparency duties set out in the Securities Code, MAR and CMVM regulations. Information disclosed must be complete, true, current, clear, objective and lawful, communicated to the CMVM in advance of publication and made available to investors promptly and without discrimination. Dissemination takes place through the CMVM information system, and mandatory information must remain available on the issuer's website for a minimum period.

The annual report and accounts must be published within four months of the financial year end and kept available for ten years, accompanied by an annual corporate governance report. Half-yearly information must be disclosed within three months of the end of the first half-year.

Inside information – ie, precise, non-public information that is likely to have a significant effect on price – must be disclosed as soon as possible. Disclosure may be delayed only where the issuer has a legitimate interest, the delay is not likely to mislead the market and confidentiality is maintained, with the CMVM being notified once disclosure takes place. Issuers must keep insider lists, and dealings by directors, senior managers and their close associates above the applicable annual threshold must be notified and made public. Material related-party transactions are subject to similar disclosure duties.

Shareholders must also notify the CMVM and the issuer when their voting rights cross the thresholds set out in **5.4 Shareholder Disclosure**.

Non-compliance is treated as an administrative offence enforceable by the CMVM.

5.3 Insider Trading

Market abuse in Portugal is governed by MAR and the Portuguese Securities Code, with prohibitions following those of the Regulation:

- dealing on inside information;
- recommending or inducing another to deal on it;
- unlawful disclosure; and
- market manipulation by transaction, by order or by the spreading of information.

Issuers must disclose inside information promptly. Disclosure may be delayed only on the conditions set by MAR, and the CMVM must be given a written explanation of any delay. Issuers must also keep insider lists and tell the persons on them, in writing, what their obligations are. Firms that professionally arrange or execute transactions must report suspicious orders and transactions.

Two criminal offences apply, insider dealing and market manipulation, each punishable by imprisonment or a fine. A further offence covers the use of false or misleading information to obtain investment or financing, and carries a heavier sentence, with an aggravated form.

The CMVM supervises these matters and may demand information and inspect, investigate and restrict the marketing of financial instruments or the taking of positions. Legal persons are liable for administrative offences, with that liability being excluded only where the agent acted against specific written instructions given beforehand.

Conduct not prosecuted as a crime is sanctioned by the CMVM as an administrative offence. The highest fine bands attach to the use or transmission of inside information and to manipulation, and a fine may be increased by reference to the economic benefit obtained. The CMVM may also cancel registrations and revoke authorisations, and may reduce a fine where the person confesses or co-operates. Please see **5.5 Internal Controls and Whistle-Blower Regimes** regarding whistle-blowing channels and the protection of whistle-blowers.

5.4 Shareholder Disclosure

The disclosure of qualifying shareholdings is governed by the Portuguese Securities Code, which implements the EU Transparency Directive framework and is supervised by the CMVM. The regime applies to companies whose shares are admitted to trading on a

regulated market. It captures voting rights held directly and those attributed through controlled companies, voting agreements or related-party arrangements, and certain financial instruments settled physically or in cash.

The duty to report arises whenever a person's participation reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, one third, 50%, two thirds or 90% of voting rights. The communication must be made as soon as possible, and no later than four trading days after the triggering event or after the holder becomes aware of it, and must be sent to the company concerned and to the CMVM at the same time. The obligation applies to individuals and legal entities alike, and to parent companies in respect of the voting rights held by their subsidiaries.

Where a communication is missing or ownership is unclear, the CMVM may first notify the interested parties and the company, and inform the market. If the situation remains unresolved, the CMVM may formally declare a lack of transparency, triggering the immediate and automatic suspension of the voting rights and patrimonial (equity) rights attached to the participation, with the exception of pre-emption rights on capital increases, until transparency is restored. Separately, a failure to comply with the disclosure duty can also expose the holder to the CMVM's general administrative offence regime.

5.5 Internal Controls and Whistle-Blower Regimes

Entities (including public entities) with 50 or more employees are required to maintain an internal reporting channel, along with certain sector-specific entities (financial services, AML) regardless of size, and specified public bodies. The whistle-blowing channel's required features are:

- secure submission;
- confidentiality or anonymity;
- independence; and
- freedom from conflicts of interest.

A parallel channel obligation exists under the General Regime for the Prevention of Corruption (RGPC) at the same 50-employee threshold, usually run as a single combined channel.

There is no single statute mandating internal control systems generally. The legal basis is the directors' duty of care, reinforced for listed companies and the soft law IPCG Corporate Governance Code's recommendations. The RGPC is the most prescriptive general instrument.

Sector-specific regimes add further requirements, such as the anti-money laundering legislation for obliged entities and Bank of Portugal regulations for credit institutions. The RGPC requires entities established in Portugal with 50 or more employees, including Portuguese branches of foreign companies, to adopt five instruments:

- a corruption and related offences prevention plan;
- a code of conduct;
- prior assessment procedures;
- a training programme; and
- an internal reporting channel.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Secured transactions are governed principally by the Civil Code, the Land Registry Code, the Insolvency and Corporate Recovery Code (CIRE) and the Code of Civil Procedure, supplemented by the financial collateral and commercial pledge regimes.

The recognised forms are:

- mortgages;
- pledges;
- financial collateral arrangements;
- assignments of receivables by way of security;
- retention of title; and
- personal guarantees.

Mortgages are used over registrable assets and pledges over movables, quotas, shares, receivables and bank accounts, and both may secure future obligations.

A mortgage must be registered; it is ineffective without registration, even between the parties. A possessory pledge requires delivery of the asset, or of a document conferring exclusive control, to the creditor or a third party. For pledges over rights, the formalities follow those for a transfer of the right, and for receivables effectiveness requires notice to or acceptance by the debtor, unless the pledge is registrable.

Priority follows the statutory regime and, for registrable security, the rank of registration, with a mortgage taking preference over creditors without a special privilege or earlier registration. Registration does not settle ranking on its own: preferential claims for tax and employment credits compete with registered security, and certain of them prevail over it even where the security was constituted first.

Enforcement is generally judicial, although an extrajudicial sale of pledged assets may be agreed.

Direct appropriation of the encumbered asset on default is prohibited under the general ban on the *pacto comissório*. The exceptions that matter are the financial collateral regime, which allows appropriation or sale outside court and survives a declaration of insolvency, and the commercial pledge regime. The financing documentation should also provide a suitable enforcement title, since a mortgage deed that merely creates security may not suffice.

In acquisition financings, the senior facility is advanced to a Portuguese acquisition vehicle, secured by a pledge over the target's shares or quotas and over the vehicle's accounts and receivables. Security over target assets is considered after closing and remains subject to corporate benefit and to the financial assistance restrictions.

There is no statutory intercreditor regime. Ranking is addressed by contractual subordination, standstills and a security agent structure, all operating inter partes only. Security granted shortly before insolvency may be exposed to resolution for the benefit of the estate.

Shareholder and vendor loans are frequently subordinated by contract, and claims of persons specially related to the debtor are subordinated by operation of law. *Prestações suplementares* are equity-like contributions available only in a private limited company and are not equivalent to shareholder debt.

Stamp duty on credit is a first-order structuring consideration. Shareholder advances are exempt where the term is not less than one year and the lender holds at least 10% of the capital, with early repayment causing the exemption to fall away, whereas group treasury arrangements are exempt only where the term does not exceed one year.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

The general framework for commercial contracts comprises the Civil Code, the Commercial Code and the General Contractual Clauses Regime.

The parties are free to fix the content of their contract, within the limits of the law, departing from or combining the statutory contract types, subject throughout to good faith. A contract is formed by a serious offer and a matching acceptance; there is no doctrine of consideration, and no form is required unless the law prescribes one, as for real estate and certain intellectual property transfers.

The parties must have capacity, which for companies means verifying the signatory's powers of representation and the corporate approvals required, and the object must be lawful, possible and at least definable. Interpretation proceeds from the meaning that could be deduced from the declaration by a normal addressee, placed in the position of the actual addressee.

A serious defect makes the contract null, as with an unlawful or impossible object, breach of a mandatory rule or a missing formality. Nullity may be raised at any time by any interested party, and declared by the court of its own motion. Annullability, the lesser category, applies to error, fraud, duress and usury. The contract produces its effects until annulled and only the protected party may invoke it, within one year of the cessation of the defect.

The general contract terms regime applies between businesses and also to consumers wherever terms are not individually negotiated. The party imposing them must communicate and explain them, and bears the burden of proof.

Good faith is required in the formation of a contract, and a party that breaks off negotiations without justification may be liable for culpa in contrahendo, with recovery being limited to the negative contractual interest.

A court may reduce a manifestly excessive penalty, and that power cannot be excluded by agreement. Where a penalty is stipulated, the innocent party may not claim damages beyond it unless the contract expressly preserves that right, so a penalty intended as a floor operates as a cap unless drafted otherwise.

Liability for wilful misconduct or gross negligence cannot be validly excluded in advance. Case law generally accepts carefully drafted limitation clauses for ordinary negligence in business-to-business contracts, and a cap may be enforceable even where a complete exclusion would not. Consumer standard terms are stricter, as described in **7.4 Consumer Protection**.

The ordinary limitation period runs to 20 years, but interest and other periodic obligations prescribe in five years and non-contractual liability in three.

7.2 Termination and Remedies

Portuguese law does not treat force majeure, frustration of purpose or hardship as autonomous doctrines in the common law sense. Their closest counterparts in the Civil Code are supervening impossibility, loss of interest in performance following delay, and abnormal change of circumstances.

A debtor who culpably fails to perform is liable for the creditor's loss, with fault being presumed subject to proof that the breach was not attributable to said loss. The creditor may seek performance, damages for loss suffered and lost profits, and may rely on agreed remedies such as a penalty clause.

Where breach consists only of delay, termination is not immediately available. The creditor must serve an admonitory notice fixing a reasonable final period for performance and stating that failure to perform within said period will be treated as definitive non-performance. Termination is available without such notice where the creditor has objectively lost its interest in performance.

Termination is a unilateral potestative remedy requiring a statutory or contractual basis:

- impossibility through the debtor's fault;
- delay converted into definitive non-performance;
- an objectively justified loss of interest; or
- a valid express termination clause.

It is effected by notice.

A purported termination without a valid basis is ineffective. The terminating party is itself in breach, and the counterparty may elect between specific performance and termination, in either case with damages.

The effects of a valid termination are assimilated to those of nullity, normally with retroactive effect, save that in continuing contracts performance already rendered is unaffected.

Force majeure is addressed through supervening impossibility. If performance becomes objectively impossible due to a cause not attributable to the debtor, the obligation is extinguished, and the other party is released from its counter-performance and may recover what it has provided. Contractual force majeure clauses remain important to define covered events, notification duties and risk allocation.

Hardship is addressed by the rule on abnormal change of circumstances. A party may seek termination or equitable adjustment where:

- the circumstances on which the decision to contract was based have changed abnormally;
- performance would seriously offend good faith; and
- the change falls outside the contractual risk assumed.

A party already in delay cannot rely on the provision. The courts apply the remedy restrictively: economic difficulty or a general reference to an event such as the COVID-19 pandemic will not suffice without proof of an abnormal and serious disturbance of the contractual equilibrium.

7.3 Intellectual Property in Commercial Transactions

IP transaction documents should distinguish between an assignment and a licence, and define the rights concerned, the territory, the duration and the remuneration. Quality control is a matter of commercial choice rather than of validity.

For industrial property, a transfer inter vivos need only be proved by written document, but transfers, licences and security interests are subject to registration before the INPI and produce erga omnes effects only from the date of recordal.

For copyright the requirement is stricter. A total and definitive transfer of the economic content of copyright can be effected only by public deed identifying the work and stating the price, failing which it is void. A partial transfer requires a written document with notarised signatures; where no duration is stated, it is presumed to be 25 years, or ten for photographs and works of applied art.

Copyright belongs initially to the intellectual creator. In commissioned works, ownership follows the parties' agreement and, failing agreement, is presumed to remain with the creator, except where the creator's name does not appear in the work.

Authorisation to use a work is distinct from an assignment and transfers no copyright, even where exclusive. It must be granted in writing, is presumed to be non-exclusive, and is valid only for the specified form of exploitation.

Software is governed by its own regime and the default runs the other way: rights in a program created by an employee in the exercise of their functions belong to the employer unless otherwise agreed.

Patents follow a third pattern. The right belongs to the inventor, but where the invention is made under an employment contract providing for inventive activity it belongs to the employer. Consultants retain ownership unless otherwise agreed.

Trade secrets are protected for as long as the information remains secret, has commercial value because it is secret and has been the subject of reasonable steps to keep it so. Protection therefore depends on the holder's own conduct.

Unregistered marks are not protected as such but may be enforced through unfair competition, and a company name may be asserted against a later mark on proof of likelihood of confusion.

The holder of an infringed right may seek interim measures and, at trial, damages, together with recall and destruction of infringing goods, before the Intellectual Property Court.

Where the loss cannot be quantified, the court may fix an equitable sum, with a floor set by the royalty the infringer would have paid had it sought authorisation. Compensation may be claimed only for acts within three years of the injured party becoming aware of the harm.

For AI-generated content, copyright is anchored in the human intellectual creator, so contracts should regulate the human contribution and the tool's terms.

7.4 Consumer Protection

Consumer protection is anchored in the Consumer Protection Law, reinforced by the regimes on:

- distance and off-premises contracts;
- unfair commercial practices;
- general contractual terms;
- advertising;
- electronic commerce; and
- conformity of goods and digital content.

Before contracting, the supplier must give clear information on the essential characteristics of the goods or services, the total price, any ancillary charges and the legal guarantees. Where that information is not

intelligible, the consumer acquires a withdrawal right of seven business days.

Two cooling-off periods therefore operate side by side. The seven-day right arises from defective information; in distance and off-premises contracts, a separate right of withdrawal runs for 14 days and needs no reason. A term imposing a charge for withdrawal is invalid, and withdrawal takes effect on an unequivocal communication rather than on return of the goods.

Advertising statements that are concrete and objective become part of the contract and prevail over inconsistent terms. Express consent is required for any additional payment, so pre-ticked boxes that generate charges entitle the consumer to restitution.

Standard terms face a fairness review: they must be clear and compatible with good faith, and may not create a significant imbalance against the consumer. Any provision excluding rights conferred by the Consumer Protection Law is void.

Regulators bring administrative offence proceedings and impose fines. For the most serious offences, the fine reaches EUR90,000, rising to 4% of annual turnover in the member states concerned where the infringement is widespread and pursued through co-ordinated action at EU level.

The Economic and Food Safety Authority (*Autoridade de Segurança Alimentar e Económica*, or ASAE) is the principal authority, with sectoral supervision falling to the Directorate-General for Consumer Affairs.

Consumers may seek performance, invalidity, withdrawal, restitution, price reduction, repair or damages. Injunction actions lie to stop prohibited standard terms and unlawful practices, and are exempt from court fees; a final condemnatory judgment is published at the infringer's expense.

Alongside these sit mediation, the consumer arbitration centres and the complaints book. In low-value disputes, the consumer may refer the matter to an arbitration centre and the trader is obliged to take part, so participation is not a matter of consent.

Collective redress is available through popular actions and through claims brought by designated entities.

The test for misleading and aggressive practices is whether the practice, including an omission of material information, is liable to cause the average consumer to take a transactional decision that would not otherwise have been taken.

For online contracts, traders must disclose the stages of contract formation and how input errors may be corrected, and must acknowledge electronic orders.

Recent reforms transposing the EU Omnibus Directive have tightened the rules on announced price reductions, on online marketplaces and on dual quality of goods.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control is governed principally by the Competition Act and by the Portuguese Competition Authority (AdC) regulation setting out the notification forms. Prior notification is mandatory where any of the following thresholds is met:

- a market share of 50% or more in Portugal or in a substantial part of it;
- a market share of 30% or more but below 50%, provided at least two undertakings each generated Portuguese turnover exceeding EUR5 million in the preceding financial year; or
- aggregate Portuguese turnover exceeding EUR100 million in the preceding financial year, provided at least two undertakings each exceeded EUR5 million.

Notification must be made after conclusion of the agreement and before implementation, with no fixed deadline following signing. Early voluntary notification is possible where the parties show a serious intention to conclude the transaction.

The AdC's review is conducted in two stages.

- Phase I: 30 working days from the date on which the notification becomes effective.
- Phase II: up to 90 working days from that same effective notification date, rather than an additional 90 working days after Phase I, extendable by up to 20 working days at the notifying party's request.

The deadlines are suspended where the AdC requests information or the parties submit commitments, and failure to decide within the applicable deadline is deemed a non-opposition decision.

The substantive test is whether the transaction is liable to create significant impediments to effective competition in Portugal or in a substantial part of it, particularly through the creation or strengthening of a dominant position. The AdC considers market structure, the parties' positions, barriers to entry and efficiencies benefiting consumers.

Implementation before notification and clearance is gun-jumping, which is an administrative offence giving rise to fines; legal acts carried out in breach of the standstill obligation are ineffective. Where a transaction has been implemented and is subsequently prohibited, the AdC may impose restorative measures, including reversal of the transaction.

The Competition Act also prohibits anti-competitive agreements, abuse of dominance and abuse of economic dependence as administrative offences carrying substantial fines, and a prohibited agreement is null and void unless the conditions for exemption are met.

Where a transaction has an EU dimension, the European Commission generally has exclusive competence, subject to the referral mechanisms.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Foreign investment is generally treated on the same basis as domestic investment. The principal exception is the National Strategic Assets Regime, which applies where a person from outside the EU or EEA acquires control over strategic assets. Control means decisive influence, and an investor counts as coming from outside the EU or EEA where its domicile, registered office or effective place of management lies outside those territories.

The assets are the main infrastructure connected with national defence and security, or with essential services in energy, transport and communications. There is no financial threshold: the trigger is the acquisition of control, and whether an asset is strategic is assessed on a case-by-case basis.

Portugal has no dedicated foreign investment authority. The government member responsible for the sector opens the assessment and the Council of Ministers decides. Opposition is available where the transaction gives rise to a real and sufficiently serious threat to national defence or security, or to the security of supply of essential services.

Seriousness is assessed against the security of the assets, their availability, the continuity of the services provided and the confidentiality of data. A threat is presumed where the acquirer has established links with third countries that do not observe the fundamental principles of the democratic rule of law, and any decision to oppose must be proportionate.

The regime is not a general pre-closing filing system, and two routes are open. An investor may seek confirmation of non-opposition, before or after completion; if no review is opened within 30 working days of the request, non-opposition is deemed. Otherwise, the transaction may be completed and left to review on the government's own motion, opened within 30 working days of completion or of the transaction becoming public knowledge, whichever falls later. Once an assessment is opened, the acquirer has ten working days to submit information and the Council of Ministers has 60 working days from receipt of complete information in which to decide, with silence again operating as non-opposition, so that the procedure runs to roughly 90 working days. Where the Council of Ministers opposes, the relevant acts may be rendered null and void, and because no pre-closing filing is mandatory nothing else sanctions completion without clearance. The regime has been in force since 2014 but has been little used, with no opposition decision having been publicly reported.

Sector-specific approvals may apply. Acquisitions of qualifying holdings in credit institutions require prior notification to the Banco de Portugal where the holding reaches 10%, 20%, one third or 50% of the capital or voting rights. The Banco de Portugal examines suitability, financial soundness and money laundering risk, and may oppose the acquisition or restrict voting rights.

Foreign and domestic investors have access to the same incentives, including the contractual tax incentives for productive investment in the Investment Tax Code.

The principal recent development is the new EU screening regulation, taking effect from 17 January 2028. What matters is its mandatory common minimum scope, under which investments falling within it will need authorisation before closing. Portugal will therefore have to broaden the sectoral reach of its regime and introduce a standstill obligation.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Portugal's data protection framework is built on the GDPR and the national implementing law, with the National Data Protection Commission (CNPD) as supervisory authority. The GDPR provides for administrative fines of up to EUR20 million or 4% of worldwide annual turnover, whichever is higher, for the most serious infringements.

Sector-specific layers apply to:

- employment, with strict limits on consent, biometrics and video surveillance used for discipline;
- healthcare, with heightened special-category protections including mandatory impact assessments where processing is likely to result in a high risk; and
- electronic communications, with opt-in marketing and cookie consent.

The GDPR requirements as to legal basis, transparency and data subject rights apply without national variation. Compliance in practice means records of processing, retention policies, impact assessments, incident management and a Data Protection Officer where required. Breaches must be assessed and documented, with CNPD notification within 72 hours where there is a risk to individuals, and direct notification to data subjects where the risk is high.

Cross-border transfers outside the EEA follow the standard GDPR mechanisms. There is no general data localisation requirement in Portugal, but remote access from a third country can itself count as a transfer even without data moving, so businesses should map their processing and vendors, and verify system locations.

Workplace monitoring is the issue that arises most often in a corporate context. Portuguese case law affords reinforced protection to employees' personal or non-professional messages, including where stored on corporate systems. Access to the content of such communications may be unlawful, and evidence so obtained may be unusable, particularly where there are no clear, prior rules governing the use of corporate email. Personal data collected for anti-money laundering or anti-corruption purposes remains subject to purpose limitation and to the applicable legal basis for any further processing.

9.2 Anti-Money Laundering, Sanctions and Corruption

The AML/CFT regime is principally set out in the anti-money laundering and counter-terrorist financing statute. It follows a risk-based approach and applies to a broad range of obliged entities, including credit institutions, payment institutions, investment firms, fund managers and crypto-asset service providers, as well as casinos, real estate businesses, auditors, lawyers, notaries and other designated businesses.

Obliged entities must implement proportionate policies to assess and mitigate risk, identify customers and beneficial owners, and apply enhanced measures in higher-risk cases, including politically exposed persons. They must report immediately to the Central Department of Criminal Investigation and Prosecution (DCIAP) and the Financial Intelligence Unit whenever they suspect that funds derive from criminal activity or terrorist financing.

Portugal does not operate a separate national sanctions list. UN and EU restrictive measures apply directly, and obliged entities must maintain the systems necessary for their immediate implementation.

Money laundering is punishable by imprisonment of up to 12 years under the Penal Code, and terrorist financing by up to 15 years.

The supervisory authorities include the Bank of Portugal, the CMVM, the ASF and the ASAE, which may inspect, bring administrative offence proceedings and impose sanctions. On the anti-corruption side, the dedicated body is the National Anti-Corruption Mechanism.

The Penal Code criminalises active corruption, where an undue advantage is offered or promised, and passive corruption, where one is solicited or accepted, with the passive form being the more serious. A separate statute applies the same structure to holders of political office, and another criminalises corruption in the private sector, which is the limb that most concerns commercial organisations. A further offence covers active corruption in international trade, irrespective of where the conduct occurred. A company may be criminally liable where the offence was committed by persons in leadership positions acting on its behalf and in its interest, and is punished by fine, with ancillary penalties including exclusion from public procurement.

The general regime for the prevention of corruption applies to legal persons established in Portugal, and to Portuguese branches of foreign legal persons, employing 50 or more workers. Those entities must adopt a compliance programme containing, as a minimum, a corruption risk prevention plan, a code of conduct, a training programme and an internal reporting channel, and must designate a person responsible for compliance. Failure to do so is itself sanctioned.

Bribes are non-deductible for tax purposes, and facilitation payments are treated as bribery whatever their size. Corporate hospitality is not regulated as such, but only offers made in accordance with local custom fall outside the improper advantage offence. Political parties may not accept corporate or anonymous donations.

Portugal operates no plea bargaining and no deferred prosecution agreements, but a decisive contribution to establishing the facts at the investigation stage may facilitate mitigation or exemption from punishment, the latter also where the offence is reported before proceedings begin and the advantage is returned.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental due diligence centres on the validity of environmental titles, on historical contamination liability and on whether an environmental impact assessment was required before licensing, with permits being consolidated into a Single Environmental Permit. There is no dedicated contaminated land statute, so liability for historical contamination falls on the polluter under the environmental liability regime, which makes buyer-side technical assessments standard practice on any site with an industrial history. Carbon exposure runs on two tracks: EU Emissions Trading System (ETS) reporting and allowances for covered installations, and a national carbon tax for activities outside the ETS, indexed to the prevailing ETS price.

Civil liability for pollution damage sits alongside that public remediation duty and is distinct from it. The Framework Law on the Environment enshrines the polluter-pays principle and preserves an injured party's right to compensation alongside any administrative sanction, including the right to demand cessation of the polluting activity and restitution of the prior situation. In the absence of a bespoke pollution liability statute, such claims fall back on the general tort regime of the Civil Code, with fault-based liability as the default and strict liability for operations that are dangerous by their nature or by the means employed, which is the basis most often invoked against polluting industry. A single event may therefore give rise both to an administrative remediation obligation towards the State and to a separate civil claim.

Occupational health and safety is set at national level, with the Azores and Madeira operating their own regional labour inspectorates. Employers must prevent occupational risks, operate an occupational

health and safety service, assess risks, inform and train workers, and carry compulsory work accident insurance. The Authority for Working Conditions (ACT) enforces the framework.

General licensing runs through the *Balcão do Empreendedor*, with industrial activity under the risk-tiered Responsible Industry regime (SIR). Sector rules then drive deal timing:

- energy requires production and grid titles from the Directorate-General for Energy and Geology (DGEG);
- financial services requires prudential authorisation with qualifying holdings and AML checks; and
- pharmaceuticals and medical cannabis require authorisation from INFARMED, with good manufacturing and distribution practice compliance. Recreational cannabis remains decriminalised for personal use but is not licensed commercially.

9.4 Artificial Intelligence

Portugal has no dedicated AI law and relies on the EU AI Act, supported by the National Artificial Intelligence Agenda and by the existing laws on data protection, cybersecurity, consumer protection and labour. ANACOM was designated as the national supervisory authority and single point of contact in September 2025, co-ordinating the sectoral regulators, with the CNPD retaining its role regarding personal data.

No national AI statute is planned, with the Regulation applying directly, and Portugal is separately required to establish at least one AI regulatory sandbox.

Obligations depend on an organisation's role under the AI Act, whether as provider, deployer, importer or distributor. Bans on manipulative AI and baseline literacy requirements have applied since early 2025, and obligations for general-purpose AI models since August 2025. Transparency and deepfake-labelling rules took effect in August 2026, and high-risk system obligations, deferred by the Digital Omnibus on AI, now apply from December 2027 and August 2028. Portugal's corporate governance code also expects boards to be transparent about their use of AI.

Portugal also has a domestic transparency duty that pre-dates the AI Act and is easily missed. The Labour Code requires an employer to disclose in writing the parameters, criteria and rules underlying any algorithm or AI system that affects access to or maintenance of employment, employment conditions, the construction of profiles or the monitoring of professional activity, and equivalent disclosure is owed to works councils and union representatives. Any deployment of AI in recruitment or performance management therefore engages employment law as well as the AI Act, and the data protection rules on automated decision-making where there is no human intervention.

The Regulation does not harmonise civil liability, but compliance with its requirements on risk management, documentation, logging and human oversight will bear on how fault and defectiveness are assessed under Portuguese law. The revised EU product liability regime, which Portugal must transpose by 9 December 2026, extends the notion of a product to software and AI systems, and introduces rebuttable presumptions of defectiveness and of causation where a case involves excessive technical complexity.

9.5 Other Regulatory Compliance Requirements

Cybersecurity is now a significant compliance requirement under NIS2 (Directive (EU) 2022/2555), transposed by Decree-Law No 125/2025, of 4 December, and in force since 3 April 2026, which requires substantive risk management, incident response planning, and mandatory notification to authorities when incidents occur, with financial entities being subject to an even stricter regime under the Digital Operational Resilience Act (DORA).

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Portuguese employment law centres on the Labour Code, supplemented by collective bargaining agreements and by the adjacent regimes on social security, health and safety, non-discrimination and data protection. Job security is strongly protected, with indefinite-term contracts being the default, and dismissal

requires just cause or a defined legal process rather than mere notice by the employer.

Termination follows several distinct routes, each with its own requirements:

- disciplinary dismissal for just cause (no notice or compensation required);
- collective dismissal or position elimination;
- dismissal for unsuitability (these "objective grounds" dismissals require written notice, consultation and advance notice, and compensation calculated in layers with variable seniority allowance per year); and
- fixed-term contract expiry and mutual agreement.

Notice periods for objective grounds terminations scale from 15 to 75 days by tenure. A dismissal is unlawful if it is unjustified, procedurally defective or discriminatory, or if it breaches special protections such as those applying during pregnancy, entitling the employee to reinstatement or compensation. Portugal's equivalent of constructive dismissal lets an employee resign immediately for the employer's serious breach, with similar compensation if the claim is upheld. Compensation for unlawful dismissal is a separate measure and the employee may elect reinstatement instead.

10.2 Executive Compensation and Restrictive Covenants

In a joint stock company, directors' remuneration is fixed by the general meeting or by a remuneration committee appointed by it, having regard to the functions performed and to the company's financial position, and may include a share of annual profits if the articles authorise a maximum percentage.

In a private limited company, managers are entitled to remuneration fixed by the shareholders, unless the articles provide otherwise, and such remuneration may not consist of a profit share unless the articles expressly permit it.

Equity incentive arrangements are not governed by any standalone employment law regime, so the documentation has to do the work, covering corporate approvals, vesting, leaver treatment, dilution and change-of-control acceleration. Cash and in-kind benefits may themselves count as remuneration where they are regular or contractually guaranteed.

A change of control does not in itself terminate employment contracts, so severance, acceleration and retention provisions must operate as express contractual entitlements. Directors may be removed at any time, and where removal is without just cause compensation may be due, subject to the statutory cap of the remuneration expected until the end of the term of office.

Cash remuneration and benefits are taxable as employment income, as are gains under equity plans to the extent that they are remuneratory, even where realised after the relationship has ended. Later gains on disposal fall within the capital gains regime, and the chargeable event may fall at grant, at vesting or at exercise.

During employment, employees owe duties of good faith and loyalty, which include not competing with the employer and not disclosing information about its organisation, production methods or business.

A post-contractual non-compete covenant is void if it restricts freedom to work after termination, and is enforceable only where it:

- is in writing;
- protects against an activity capable of causing harm to the employer;
- provides compensation throughout the restricted period; and
- does not exceed two years, extended to three for roles carrying a special relationship of trust or access to particularly sensitive competitive information.

The compensation may be equitably reduced where the employer has borne significant training costs.

There is no distinct statutory regime for non-solicitation covenants, so validity turns on substance and effect: a clause that in practice stops the employee working for a competitor will be measured against the requirements applying to non-competes.

Confidentiality obligations are more readily enforceable, provided they protect identifiable confidential information and do not operate as a disguised restriction on the freedom to work, and no further compensation is payable for maintaining confidentiality.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Portuguese property law recognises full ownership, co-ownership, horizontal property (condominiums), usufruct, surface rights, easements, leasehold as a personal rather than real right, and communal lands (*baldios*), with land classified as public or private domain.

Foreigners can buy, own and sell real estate on the same terms as Portuguese nationals, with no residency or licensing requirement. Buyers must be registered with the Portuguese Tax Authorities and must satisfy AML, beneficial ownership and source-of-funds checks. Acquisitions must be registered with the Land Registry.

Key taxes to factor in are:

- IMT (transfer tax);
- Stamp Duty (on both purchase and financing);
- annual IMI;
- AIMI for high-value holdings;
- tax on rental income; and
- capital gains.

A flat IMT rate of 7.5% applies to non-tax-residents acquiring urban property for residential purposes, disapplying the general progressive rates and the usual reliefs. The difference may be reclaimed where the buyer becomes tax-resident within two years or lets the property at capped rents.

Corporate buyers domiciled in blacklisted jurisdictions, and entities they control, are liable to IMT at a flat rate of 10% on any property, with no reliefs.

11.2 Commercial Real Estate Transactions

The commercial real estate framework rests on the Civil Code and the Land Registry Code, supplemented by the regime governing urbanisation and construction and by the urban lease regime. Ownership, mortgages and encumbrances are recorded at the Land Registry, where priority follows the order of registration, and a separate property tax register must be reconciled against it.

Deals can be structured as asset or share purchases, with due diligence covering:

- title and encumbrances;
- planning and use permits;
- consistency of the tax record;
- leases;
- condominium issues;
- environmental risk;
- litigation; and
- public law restrictions.

A mortgage must be registered in order to take effect, including as between the parties themselves, and mortgages rank by date of registration. Financing frequently layers security over shares, receivables and accounts alongside the mortgage. Enforcement is judicial, through sale of the asset by electronic auction, subject to the exceptions described in **6.1 Transaction Financing and Security Interests**.

Commercial leases give landlords and tenants broad contractual freedom over term, rent, renewal and assignment, with a default five-year renewing term in the absence of agreement. Assignment and subletting generally require the landlord's consent, except under the *trespasse* mechanism, by which a lease transfers automatically alongside the sale of a business, subject to the landlord's right of preference and to a duty to notify.

The most significant recent change is the *Simplex Urbanístico* reform, which simplifies some licensing steps while tightening others. The 2024 framework remains operative.

SAUDI ARABIA

Law and Practice



Contributed by:
Lana Massad and Yasmin Talal A Beheri
Al Akeel and Partners

Contents

1. Business Entities P.601
1.1 Business Organisations p.601
1.2 Incorporation and Ongoing Compliance p.601
1.3 Share Issuances p.603
1.4 Distributions and Return of Capital p.603
1.5 Control Person Reporting p.604

2. Corporate Governance P.605
2.1 Legal Framework p.605
2.2 Directors' Duties and Liabilities p.605
2.3 Board Composition and Independence p.605
2.4 ESG and Disclosure Obligations p.606
2.5 Conflicts of Interest and Related-Party Transactions p.607

3. Shareholder Rights and Agreements P.607
3.1 Shareholder Rights p.607
3.2 Shareholder Agreements p.608

4. Mergers and Acquisitions P.609
4.1 Legal Framework p.609

5. Capital Markets P.610
5.1 Securities Regulation and Public Offerings p.610
5.2 Continuous Disclosure p.612
5.3 Insider Trading p.613
5.4 Shareholder Disclosure p.613
5.5 Internal Controls and Whistle-Blower Regimes p.613

6. Secured Transactions P.614
6.1 Transaction Financing and Security Interests p.614

7. Commercial Contracts P.614
7.1 Contract Formation and Enforceability p.614
7.2 Termination and Remedies p.615
7.3 Intellectual Property in Commercial Transactions p.615
7.4 Consumer Protection p.616

8. Foreign Investment P.616
8.1 Competition and Merger Control p.616
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.617

9. Regulatory Compliance P.617
9.1 Privacy and Data Protection p.617
9.2 Anti-Money Laundering, Sanctions and Corruption p.618
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.618
9.4 Artificial Intelligence p.619
9.5 Other Regulatory Compliance Requirements p.619

10. Employment and Labour P.619
10.1 Employment Standards and Workplace Regulation p.619
10.2 Executive Compensation and Restrictive Covenants p.620

11. Real Property and Commercial Leasing P.621
11.1 Requirements for Land Ownership p.621
11.2 Commercial Real Estate Transactions p.621

Al Akeel and Partners is a Saudi law firm based in Riyadh. The firm advises local, regional and international clients on corporate and commercial matters, combining knowledge of Saudi law with experience in domestic and international transactions. Its practice encompasses mergers and acquisitions, joint ventures, capital markets, banking and Islamic finance, real estate, regulatory matters and dispute resolution. It also advises on foreign investment, employment, intellectual property, franchising, family governance, restructuring and insolvency. The firm supports businesses with both ongoing legal requirements and complex new transactions, and represents clients before Saudi courts, specialist committees and arbitration tribunals. Its team includes lawyers proficient in Arabic, Russian, English and French.

Authors



Lana Massad is a partner at Al Akeel & Partners, advising Saudi and international corporates, financial institutions, investors and project stakeholders on commercial, transactional and regulatory matters. Her practice covers complex commercial contracts, infrastructure and energy projects, cross-border transactions, joint ventures and strategic investments. She advises on structuring, negotiating and reviewing project and commercial agreements, including EPC, supply, maintenance and service arrangements, with particular emphasis on risk allocation, enforceability, liability and remedies. Lana leads complex mandates across infrastructure, energy, logistics, manufacturing and technology, coordinating legal and commercial workstreams and advising on Saudi regulatory requirements and engagement with relevant government authorities.



Yasmin Talal A Beheri is a senior associate at Al Akeel & Partners advising clients across Saudi Arabia and the United Arab Emirates on corporate and commercial transactions, regulated financial services and cross-border contracts. Her experience includes mergers and acquisitions involving CMA-licensed entities, joint ventures, corporate structuring, fund formation, financing, governance and government contracting. She also counsels domestic and multinational clients across financial services, aerospace and defence, real estate, manufacturing and healthcare. Yasmin additionally supports boards and governance frameworks for state-owned portfolio companies. Her work encompasses transaction documentation, security packages and legal opinions, applying civil-law principles and Islamic jurisprudence to contractual interpretation, risk assessment and complex transaction structuring.

Al Akeel and Partners

Al Nakhlah Tower
11th Floor
King Fahad Road
Riyadh 13315
Kingdom of Saudi Arabia

Tel: (966) 11 299 0500
Email: info@alakeellaw.com.sa
Web: www.alakeellaw.com.sa

1. Business Entities

1.1 Business Organisations

The Companies Law recognises five principal company forms:

Limited liability companies (LLCs), whose owners generally bear liability only to the extent of their capital contributions.

- Joint stock companies (JSCs), whose capital is divided into transferable shares and whose shareholders generally bear liability only to the extent of their subscription. JSCs have a more formal governance framework and are the form for businesses seeking an eventual stock exchange listing.
- Simplified joint stock companies (SJSCs), which combine limited shareholder liability with greater flexibility in management and shareholder arrangements.
- General partnerships, comprised of partners who are personally and jointly liable for the company's debts and obligations.
- Limited partnerships, comprised of at least one general partner with unlimited personal liability and at least one limited partner whose liability is generally confined to their capital contribution.

LLCs, JSCs, and SJSCs may each have a single owner. Professional companies may adopt these permitted company forms, subject to professional licensing and ownership requirements. A foreign company may also establish a licensed branch, which does not separate the parent from the branch's liabilities.

Choice of Structure

Structure will largely depend on liability, proposed activities, governance, funding and financing, ownership restrictions and intended exits.

An LLC is a practical option where investors require limited liability and straightforward management arrangements. A JSC offers a more established framework for a wider shareholder base but entails more formal corporate procedures, and an SJSC is the best option for investors wishing to negotiate more bespoke governance and rights.

With regards to capital and financing, a JSC requires minimum issued capital of SAR500,000, with at least one quarter paid on incorporation. This minimum does not apply to SJSCs. An LLC's capital is determined in its constitutional documents and does not have a statutory minimum capital, subject to applicable activity-specific and investment requirements. However, LLCs are commonly established with capital of at least SAR50,000, which is a practice point rather than a statutory threshold. Anticipated fundraising, share transfers, and a future listing should also inform the choice of structure.

Tax treatment depends significantly on ownership and tax residence. Resident capital companies are generally subject to income tax at 20% on taxable profits attributable to non-Saudi ownership, subject to applicable GCC treatment and statutory exceptions. Qualifying Saudi/GCC ownership is generally subject to the *zakat* religious tax and mixed ownership may bring both regimes into engagement.

Foreign investors must satisfy applicable Ministry of Investment (MISA) registration requirements and sector-specific rules may prescribe and statutorily determine legal form, capital, ownership, and onward licensing. There are also restricted activities which may require further approval.

1.2 Incorporation and Ongoing Compliance

Incorporation

Companies are incorporated electronically through the Saudi Business Centre (SBC). The requirements vary according to the company's legal form, proposed activities, and ownership.

Founders should first determine the company form, ownership structure, activities, capital, and management arrangements. They should also identify any activity-specific approvals, ownership restrictions or minimum capital requirements for the proposed activities.

Foreign investors are required to register with the MISA and obtain an investment registration certificate before proceeding with incorporation through the SBC. Foreign corporate applicants ordinarily provide authenticated commercial registration documents and

their latest annual financial statements, together with any activity-specific documents.

Some applicant categories may benefit from exceptions to certain investment requirements. However, these requirements depend on the proposed activities and ownership. For example, wholly foreign-owned wholesale and retail trading businesses require a minimum capital of SAR30 million, presence in at least three regional or global markets, and additional investment and operational commitments.

Following the above, founders should then select and reserve an available trade name through the SBC. Trade names may be in Arabic or English, subject to certain naming restrictions (eg, the proposed name must not be identical or confusingly similar to an existing reserved or registered name, irrespective of the business activity). A trade name may generally be reserved for 60 days pending incorporation.

The articles of association or bylaws should then be prepared according to the company form, setting out matters including its activities, capital, ownership, and management arrangements.

Supporting documents ordinarily include identification documents, incorporation and registration documents for corporate shareholders, authorising resolutions and powers of attorney where representatives act for the founders. Additional financial documentation may be required depending on the activity or regulatory approval concerned.

The incorporation application and constitutional documents are submitted electronically through the SBC. The SBC or Ministry of Commerce (MoC) may request clarification, further documents or amendments to the proposed constitutional documents. Any such comments must be addressed before the application can be finalised, and time should be allowed for this review process.

Following approval, completion of the required signatures and payment of the applicable fees, the company is registered in the Commercial Register and acquires legal personality.

Timelines and Fees

Standard electronic incorporation may be immediate once all requirements are satisfied. MISA's ordinary registration period is ten working days after all registration requirements have been satisfied. Neither period includes document preparation, separate approvals, banking or operational set-up.

Incorporation charges include SAR1,200 for an LLC's registration or SAR1,600 for a JSC's, together with a SAR500 publication fee and applicable value added tax (VAT). These are components of the incorporation cost, and investment-related charges, other licenses, translation, authentication, and professional fees are additional.

Ongoing Compliance

There are principal recurring obligations which companies must observe. These include the following.

- Annual confirmation of registered information. Commercial registrations are subject to annual confirmation rather than periodic renewal. Failure to confirm within 90 days of the due date results in suspension and any continued non-compliance for one year following suspension results in cancellation.
- Annual financial statements, which, under Saudi-adopted account standards, must be prepared and deposited within six months of financial year-end, generally through the Qawaem platform. An auditor must be appointed where required. Qualifying micro and small companies may benefit from exemptions, subject to statutory conditions and exclusions.
- Accounting records, ownership registers, minutes, annual corporate approvals and decisions, which must be completed and marinated as required for the company form. Changes to constitutional documents, management, and registered particulars must be recorded and filed where required.
- Beneficial ownership identification, records, and reporting (see **1.5 Control Person Reporting**).
- Annual updates to MISA, which must be submitted by registered investors.

Companies must also maintain applicable licences and meet their tax, *zakat*, employment and social

insurance obligations. Listed companies and regulated businesses are subject to additional reporting and supervisory requirements.

1.3 Share Issuances

Capital and Issuance

A JSC's issued capital comprises subscribed shares. Its bylaws may also specify authorised capital, and the board may increase issued capital once existing issued capital has been fully paid up. SJSCs may likewise have authorised capital, with their issued and paid-up capital specified in their bylaws. An LLC's capital comprises ownership interests rather than transferable shares.

The Companies Law follows a nominal-value framework rather than a no-par-value share regime. Shares cannot be issued below nominal value and an issue above it requires constitutional authorisation or extraordinary general assembly approval. The premium is recorded separately within equity, and it cannot fund cash dividends but may fund bonus shares or absorb losses after profit-derived reserves have been exhausted. This differs from a no-par-value or stated-capital regime. Accordingly, the distinction is between nominal share capital and the separate premium account.

Capital increases may involve cash or in-kind subscriptions, capitalisation of reserves, or conversion of qualifying debt. Applicable valuation, payment, and approval requirements must be satisfied. Shareholders generally have pre-emption rights on cash issues, and a JSC's extraordinary general assembly may disapply these where its bylaws permit and the company's interests justify doing so. Reductions require corporate approvals and applicable creditor protections (see **1.4 Distributions and Return of Capital**).

Share Classes

The Companies Law permits ordinary, preference, and redeemable shares, with different classes within these types. Shares within the same type and class carry equal rights and obligations, recorded in the bylaws.

Under the Companies Law, preference shares do not ordinarily confer voting rights at general meetings. Preference and redeemable shares must be fully paid on subscription and together cannot exceed 50% of capital. Issuance or conversion requires applicable corporate and affected-class approvals. Listed companies are subject to the applicable rules of the Capital Market Authority (CMA).

When structuring classes, class terms should address:

- economic rights, such as dividend priority, whether preferential entitlements accumulate, participation in additional distributions and priority on liquidation;
- level of control, voting rights, reserved matters and the interaction between class protections and corporate decision-making;
- conversion and redemption triggers, pricing, timing and compliance with mandatory capital-maintenance requirements; and
- future investment and exit, such as dilution, subsequent senior-ranking securities, transfer restrictions and the treatment of each class on a sale or listing.

These provisions should operate consistently across the bylaws, subscription documents, and shareholders' agreement. Negotiated rights must be available for the chosen form and workable in later funding rounds.

1.4 Distributions and Return of Capital

Dividends and Capital Returns

The Companies Law permits JSCs, SJSCs and LLCs to distribute annual or interim dividends from distributable profits, with appropriate corporate approvals and respect for constitutional and class rights. Unlawful distributions are recoverable even from good-faith recipients.

Distributable profits comprise retained earnings and distributable reserves. Interim distributions require constitutional authorisation, annual delegation to management, reasonable liquidity, predictable profits, and sufficient earnings supported by the latest financial statements, after accounting for subsequent distributions and capitalisations.

Returning paid-up capital requires compliance with the capital-reduction procedures. For JSCs, these include extraordinary general assembly approval, a

board statement explaining the reduction and its effect on liabilities, and an auditor's report. Where capital exceeds requirements, creditors must be invited to object at least 45 days before the meeting. Qualifying objections require payment of due debts or adequate security for unmatured debts. LLCs follow separate capital-reduction procedures.

Repurchases and Redemption

Unlisted JSC buybacks require authorisation and extraordinary general assembly approval. The shares must be fully paid up; treasury holdings cannot exceed 10% of the particular class; and their debit balance cannot exceed retained earnings. LLCs may purchase their own interests where their constitutional documents permit, subject to partner approval and waiver of the partners' statutory recovery rights.

Listed buybacks are subject to additional CMA requirements, including:

- sufficient working capital for the 12 months following completion;
- assets at least equal to liabilities, including contingent liabilities, before and immediately after payment; and
- a treasury-share debit balance not exceeding retained earnings.

The purchase price must also remain within distributable profits, even where external financing is used. Additional restrictions govern trading periods, purchase prices, trading volumes, public ownership, and disclosures.

Redemption must follow the authorised terms and applicable approvals. Redeemed shares and purchased preference shares are generally cancelled, with the required capital-reduction procedures completed. Ordinary shares may be retained as treasury shares within the applicable limits, and any company-held shares carry no voting rights.

Financial Assistance

Acquisition financing requires analysis against the particular loan, guarantee or security arrangement, including authority, corporate benefit, directors' duties, conflicts and sector-specific restrictions. The Companies Law generally prohibits JSC loans or guarantees benefiting directors or their relatives, subject to specified exceptions. Financial institutions face further restrictions, including on financing secured by their own shares. These rules should be assessed against the particular support arrangement; see **6.1 Transaction Financing and Security Interests**.

1.5 Control Person Reporting

Beneficial Ownership

Private companies generally fall within the Beneficial Ownership Rules. These tests apply sequentially to identity:

- natural persons owning at least 25% of capital, directly or indirectly;
- where the first test does not identify the beneficial owner, or doubt remains, persons exercising ultimate effective control through other means; and
- if neither test identified a natural person, the applicable members of the company's administrative body.

Companies disclose beneficial ownership information on incorporation and maintain an accurate, register with supporting documents at their Saudi headquarters. Records cover identity, contact details, the nature and extent of ownership or control, and when it arose.

Changes must be reported to the MoC within 15 days, with reasons, and the information must also be confirmed annually on the anniversary of registration. Confirmation may be submitted up to 30 days beforehand. Nominee shareholders must also disclose whom they represent and the relevant beneficial ownership information.

Exemptions and Enforcement

Subsidiaries of listed companies subject to beneficial ownership disclosure requirements qualify for exemption, supported by evidence. The register is available to competent supervisory authorities, rather than being a general public register. Companies must also supply information requested by financial institutions and designated non-financial businesses and professions for due diligence.

Non-disclosure and missed annual confirmations attract graduated sanctions. For example, a first breach attracts a warning and a 30 remedial period, followed by fines ranging from SAR4,000 to SAR80,000 according to company capital. Repeat annual-confirmation breaches may attract increased fines, subject to a SAR500,000 ceiling. Beneficial ownership compliance is separate from maintaining the company's direct ownership register.

2. Corporate Governance

2.1 Legal Framework

The Companies Law and its implementing regulations govern the allocation of powers between shareholders and management, directors' and managers' duties, reporting, and accountability. Requirements differ according to the company's legal form. The MoC administers unlisted-company requirements, whereas the CMA regulates listed JSCs within its statutory remit, including through its separate implementing regulations.

Listed companies also follow the Capital Market Law (CML), the CMA's Corporate Governance Regulations (CGR), Rules on the Offer of Securities and Continuing Obligations ("Offering Rules"), and Saudi Exchange's Listing Rules. The CGR are mandatory for Main Market companies except for expressly guiding provisions. For Nomu, the Parallel Market, specified provisions are mandatory and the remainder are generally guiding, unless another rule or CMA resolution provides otherwise.

Sector requirements supplement this framework also. The Saudi Central Bank (SAMA) governance principles and sector rules address board suitability, risk, compliance and audit in supervised financial institutions. Their application depends on the institution concerned. Other regulated sectors have their own supervisory requirements.

A company's constitutional documents define management powers and decision procedures within statutory limits. Shareholder agreements and family charters supplement them (see **3.2 Shareholder Agreements**).

The MoC's Guiding Charter for Saudi Family Companies provides a voluntary reference for ownership succession, family participation and dispute resolution. Private companies may also draw on the CMA's governance standards when developing board charters and internal policies, although listed-company requirements do not automatically apply to them.

2.2 Directors' Duties and Liabilities

The Companies Law imposes duties of care and loyalty on directors and managers, including LLC managers. These require acting within authority, promoting the company's interests, exercising independent judgement, avoiding conflicts, disclosing interests and refusing improper benefits. Company assets, information and investment opportunities must not be exploited for personal gain.

The standard combines the care expected of a reasonably careful person in the position with the director's actual knowledge and experience. The Companies Law protects good-faith business decisions made without personal interest, on an appropriately informed basis and with a firm, rational belief that they serve the company. The claimant bears the burden of proving otherwise; commercial loss alone does not establish liability.

The Companies Law permits director personal or joint liability for damage caused by legal or constitutional breaches, wrongful acts, negligence or failures in duty, and liability may extend to losses suffered by the company, shareholders, or third parties. Absence alone does not exempt a director from liability, but they may dissent a majority decision. Shareholder discharge does not also prevent statutory liability proceedings.

2.3 Board Composition and Independence

Requirements by Company Type

Board composition depends on primarily on legal form.

An unlisted JSC requires at least three directors, all natural persons, with terms not exceeding four years. The Companies Law imposes no general independent-director quota for such companies.

An LLC may be managed by one or more managers, with a board of managers formed if the partners so resolve. If an LLC has three or more managers, it must form a board. General listed-company requirements on independent and non-executive directors do not apply to an LLC.

SJSCs have flexible management arrangements, which would be specified in its bylaws. The bylaws may provide for a president, managers or a board. A conventional board is not compulsory.

Main Market boards require a non-executive majority and at least two independent directors or one third of the board, whichever is greater. Nomu follows the statutory JSC framework, with CGR composition provisions generally guiding unless separately made mandatory.

Independence and Eligibility

Independence requires objective judgement free from compromising relationships. CGR disqualifications include a holding of at least 5%, specified family connections, recent employment, material business interests and excessive additional remuneration. Independence is assessed annually; non-executive status alone is insufficient.

The Companies Law does not generally require every director to be Saudi or resident. Operational administration may nevertheless require a locally authorised representative, while executive employment engages immigration and work-permit rules. Professional and regulated companies may face additional qualifications, composition requirements, and regulatory non-objections.

Diversity and Best Practice

General best practice is to select a complementary mix of financial, legal, sector and operational expertise, alongside diversity of gender, experience and perspective. Saudi Exchange-supported ESG disclosure initiatives also encourage transparency concerning gender diversity. A skills matrix, transparent nomination criteria, succession planning and periodic board evaluations can help identify gaps. Private and family-owned companies may benefit from independent external directors even where appointments are voluntary.

2.4 ESG and Disclosure Obligations

Binding Obligations and Reporting

ESG obligations arise across the Environmental Law, Labour Law, Companies Law, CMA, and sector rules. Environmental permits, assessments, pollution prevention and remediation depend on the activity and impact. Employment, safety and Saudisation duties apply independently of sustainability reporting. These obligations apply to private and listed companies irrespective of whether they publish sustainability reports.

Article 278 of the Companies Law encourages corporate social responsibility but does not itself impose minimum expenditure. Similarly, CGR Articles 84 and 85 address social responsibility policies and initiatives but are designated as guiding provisions.

Saudi Exchange's ESG Disclosure Guidelines and GCC metrics support voluntary reporting on environmental, social, and governance performance. There is no general requirement for every Saudi company to issue a standalone sustainability report or apply International Financial Reporting Standards (IFRS) S1 and S2. Sector rules and contractual commitments require separate assessment under the framework.

Listed issuers remain subject to mandatory disclosure obligations on material developments under the Offering Rules. A significant environmental incident, regulatory sanction or climate-related disruption may require disclosure even without a dedicated ESG reporting obligation. Applicable board-report requirements also include social contributions, if any.

The CMA's guidelines for green, social, sustainability and sustainability-linked debt took effect on 27 May 2025. Although guiding, departures must be disclosed for covered SAR-denominated domestic public or private issues.

Directors and Board Oversight

The duties in **2.2 Directors' Duties and Liabilities** require attention to ESG matters where they materially affect compliance, operations, financial performance or the company's interests. They do not create

a separate duty owed to every stakeholder. Main Market professional-conduct requirements also address stakeholder rights, while detailed CGR stakeholder-relationship provisions are guiding.

Boards should adopt arrangements proportionate to the company's activities and risk exposure. Recommended practices include:

- assigning clear board/management responsibility;
- incorporating risks and opportunities into strategy and investment decisions;
- assessing physical climate risks;
- approving measurable targets;
- monitoring compliance, incidents, and remedial action; and
- reviewing public sustainability claims.

2.5 Conflicts of Interest and Related-Party Transactions

Conflicts and Authorisation

The Companies Law requires managers and directors to disclose interests and avoid unauthorised conflicts. Interested transactions and competing activities require approval by the partners, shareholders or general assembly, or a duly authorised delegate, subject to statutory exceptions. Company assets, information and opportunities cannot be appropriated for personal benefit.

Exceptions to transaction authorisation include public tenders and ordinary-course transactions meeting personal needs on standard customer terms. Unauthorised transactions may support invalidation and recovery of benefits.

JSCs and LLCs

A JSC director must disclose an interest for recording in the board minutes and abstain from the relevant board and general assembly vote. The board informs the general assembly, supported by a special auditor's report. Approval does not eliminate liability for unfair transactions causing shareholder loss.

For unlisted JSCs, delegated board approval is subject to conditions: the transaction or annual aggregate must be below both 1% of latest annual revenue and SAR10 million, within ordinary activities and without preferential terms. Delegation cannot exceed one year or the board's remaining term. Listed companies follow the corresponding CMA framework.

Under the Companies Law, JSC delegation controls apply to LLC boards unless their articles prescribe different controls. An interested LLC manager may deliberate and vote where the articles expressly permit this.

Listed-Company Disclosure

CMA rules cover a wider related-party category, including substantial shareholders, directors, senior executives and specified connected persons. Main Market companies require a conflicts policy and exclusion of conflicted directors from relevant deliberations and voting. Audit committee review and recommendations on related-party contracts are also mandatory for Nomu under Article 52 of the CGR.

Article 65 of the Offering Rules requires prompt disclosure of related-party transactions and specified joint investment or financing arrangements reaching 1% of latest audited annual gross revenue. Smaller transactions may satisfy the general materiality test. Disclosure thresholds do not replace approval requirements. Applicable annual board-report and disclosure-register obligations also remain relevant.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Voting and Information

Rights depend on company form, constitutional documents, and share class. They generally include participation in decisions, prescribed information, lawful distributions and liquidation proceeds. See **1.3 Share Issuances** and **1.4 Distributions and Return of Capital** for class rights and distributions.

JSC shareholders may attend, discuss and vote at assemblies. The ordinary general assembly elects and removes directors and appoints the auditor where required. In an LLC, each partner has votes corresponding to the number of interests held. The more flexible governance arrangements for SJSCs, discussed in **1.1 Business Organisations**, allow their

articles to determine decision-making procedures, subject to matters reserved by law to shareholders.

Holders of at least 10% of a JSC's voting shares may require an ordinary general assembly; the board must issue the invitation within 30 days. LLC partners holding at least 10% of capital may also request an assembly.

Owners receive prescribed financial statements and management and auditor reports and may question management on agenda matters. JSC shareholders dissatisfied with an answer may refer the matter to the assembly. LLC partners, similarly, may discuss agenda items and question management Under Article 171 of the Companies Law, non-managing LLC partners may inspect records at headquarters, personally or through a representative, twice each financial year. The company must respond within 15 days. Confidentiality and restrictions on harmful use apply.

Fundamental Changes

JSC constitutional amendments generally require two-thirds of voting shares represented at a duly constituted extraordinary general assembly. Article 93 of the Companies Law requires three-quarters for specified changes, including capital alterations, mergers, divisions, term extensions and early dissolution.

LLC constitutional amendments generally require three-quarters of total capital, unless the articles require more; specified matters require unanimity. SJSC bylaws determine thresholds, subject to reserved shareholder matters and applicable unanimity and class-consent rules under Article 145 of the Companies Law.

Statutory Remedies

Available remedies include the following.

- Personal claims for individually suffered loss and derivative claims by holders of at least 5% of capital, or a lower constitutional threshold, where the company fails to act. Derivative claims require valid grounds, good faith, the company's interest and at least 14 days' notice to management.
- Challenges to unlawful JSC or LLC resolutions, generally within 90 days, subject to objection or absence conditions and continued ownership throughout proceedings.
- Judicial inspection sought by JSC shareholders holding at least 5% of capital where management or auditor conduct raises suspicion.
- Judicial removal of LLC management at the request of partners holding at least one quarter of capital.

Underlying duties and conflict remedies are addressed in **2.2 Directors' Duties and Liabilities** and **2.5 Conflicts of Interest and Related-Party Transactions**.

3.2 Shareholder Agreements

Use and Enforceability of Shareholder Agreements

Article 11 of the Companies Law recognises shareholder agreements and family charters, provided they do not conflict with the Law or constitutional documents.

Shareholder agreements commonly supplement the statutory rights described in **3.1 Shareholder Rights** through board nomination rights, reserved matters, enhanced information rights, funding commitments, dividend policies, deadlocks, defaults, and exit. Transfer provisions commonly include rights of first refusal, permitted transfers, lock-in periods, and tag/drag rights.

Key governance and transfer terms should be reflected in the constitutional documents where corporate effect requires. A contractual undertaking between shareholders does not, by itself, replace statutory approval or registration. Incoming shareholders should ordinarily execute an accession agreement and exit provisions should clearly identify their triggers, valuation methodology, payment terms and completion procedures.

Transfer Restrictions

For LLCs, Article 178 of the Companies Law provides notification and recovery rights when interests are transferred to a non-partner. The ordinary exercise period is 30 days; articles may extend it and regulate notification and valuation. Contractual rights of first refusal, permitted transfers, and other restrictions should accommodate this framework.

JSC bylaws may restrict transfers without permanently prohibiting them. Article 113 permits prescribed drag-along and tag-along provisions with approval from holders of at least 90% of voting shares for such placement in its bylaws.

SJSCs have broader flexibility under Articles 151 to 154, including approval requirements, lock-ins of up to ten years, extendable unanimously, and compulsory-transfer provisions. Introducing or amending the specified restrictions requires unanimous approval. All transfers remain subject to ownership and regulatory restrictions.

Dispute and Protection

Commercial Courts ordinarily determine corporate disputes, subject to valid arbitration agreements and specialist jurisdiction, including securities dispute committees. Agreements may provide for negotiation, mediation, expert valuation and arbitration. Arbitration agreements must be written and authorised; SJSC and LLC constitutional documents may include arbitration and alternative dispute resolution under Articles 153 and 173 of the Companies Law, excluding criminal matters.

Breach may justify performance or damages. Article 164 of the Civil Transactions Law (CTL) permits performance in kind where possible, subject to statutory conditions. Saudi enforcement remains subject to Sharia and public policy.

The personal and derivative actions, resolution challenges, judicial inspection and management-removal remedies described in **3.1 Shareholder Rights** are the principal statutory protections. Directors' underlying duties are addressedin **2.2 Directors' Duties and Liabilities** and interested-transaction remedies in **2.5 Conflicts of Interest and Related-Party Transactions**.

The Companies Law does not establish a general unfair-prejudice petition automatically entitling a dissatisfied shareholder to a buyout. A complaint should identify the breached statutory, constitutional or contractual right and the appropriate remedy.

Article 243 of the Companies Law dissolution by final judgment, but disagreement alone does not automatically justify winding up. Article 46 permits judicial dissolution of a general partnership where continuation is infeasible, and removal of a partner on valid grounds. Financial distress engages the Bankruptcy Law; agreed deadlock and exit mechanisms remain particularly useful for otherwise viable companies.

4. Mergers and Acquisitions

4.1 Legal Framework

Framework and Structures

Private M&A are governed principally by the Companies Law and CTL, supplemented by constitutional documents and shareholder agreements. Public transactions also engage the CML, the CMA's Merger and Acquisition Regulations ("M&A Regulations)", Offering Rules and Listing Rules. The M&A Regulations cover specified acquisitions reaching 10% of a listed target's voting shares, including concert-party holdings, rather than only majority acquisitions.

Both public and private deals require competition analysis under the General Authority for Competition (GAC) regime. Foreign investment and sector change-of-control approvals are separate requirements; see **8.1 Competition and Merger Control** and **8.2 Foreign Investment Restrictions and Sector-Specific Rules**.

Common structures include the following.

- Share or interest purchases, preserving the target's identity, contracts and liabilities. Historic exposure, warranties, indemnities and change-of-control consents are central.
- Asset or business transfers, allowing an agreed perimeter but potentially requiring individual conveyances, assignments, employee arrangements and licence approvals. Mandatory liabilities cannot necessarily be excluded.
- Subscriptions, often combined with secondary purchases, to fund growth or establish joint ventures. Capital approvals, pre-emption, dilution and class require consideration under **1.3 Share Issuances** and **3.1 Shareholder Rights**.
- Statutory mergers, producing succession to the absorbed company's assets, rights and obligations.

- Listed-stake acquisitions, takeover offers and securities exchange offers, subject to their respective CMA procedures.

Structuring should address control, cash or share consideration, tax and *zakat*, VAT and real estate transaction tax, financing, security, consents and the sequence of registration steps. Minority veto rights can confer control for merger notification. Capital, conflicts and transfers are addressed in **1.3 Share Issuances**, **2.5 Conflicts of Interest and Related-Party Transactions** and **3.2 Shareholder Agreements**.

Mergers and Court Involvement

Articles 225 to 229 of the Companies Law permit absorption into an existing company or combination into a new company. The proposal must address terms, consideration and debt-servicing capacity, supported by valuation and corporate approvals. Each participant announces the proposal at least 30 days before the decision.

Creditors have statutory objection rights and may seek judicial protection where payment or adequate security is not provided. Under Article 227, the court may suspend or postpone the merger in prescribed circumstances. Registration makes the merger effective and produces statutory succession.

An ordinary Saudi merger does not require routine judicial sanction equivalent to a foreign scheme of arrangement. Court involvement instead arises through creditor objections, corporate disputes or insolvency proceedings. For distressed transactions, the Bankruptcy Law's protective settlement, financial restructuring and liquidation procedures may provide a framework for a restructuring or disposal, with court, creditor and trustee involvement depending on the procedure.

Public Offers

Public deals require prescribed announcements, documents, independent advice and shareholder communications, with restrictions on dealings and frustrating action. Shareholders within the same class must receive equal treatment.

Under Article 23 of the M&A Regulations, reaching 50% or more of a listed voting class in the specified circumstances gives the CMA discretion to require an offer for the remainder. Crossing 50% does not alone impose an automatic offer. A required offer includes cash or a cash alternative under the pricing rules. Acquiring all shares through a securities exchange offer requires CMA and prescribed extraordinary general assembly approval.

Recent Developments

Several developments have materially affected transaction planning, as follows.

- The amendments to the Companies Law expanded structuring flexibility, including through SJSCs, share classes and express transfer and exit mechanisms.
- The GAC's fifth-edition guidelines clarified control, notification thresholds and the local nexus for acquisitions. This affects minority investments, joint ventures and foreign-to-foreign transactions.
- From 1 February 2026, direct Main Market investment opened to all foreign investor categories, removing Qualified Foreign Investor eligibility requirements while retaining applicable ownership restrictions. In April 2026, the CMA also introduced the framework for special purpose acquisition companies on Nomu; see **5.1 Securities Regulation and Public Offerings**.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Framework and Authorities

The CMA regulates securities offers, market conduct, intermediaries and continuing disclosure under the CML and instruments identified in **2.1 Legal Framework.**

Saudi Exchange operates the Main Market and Nomu – Parallel Market and administers admission and continuing listing requirements under CMA-approved rules. Edaa and Muqassa perform the relevant depository, settlement and clearing functions. Securities disputes fall within the specialised securities dispute committees.

Public Offerings and Listing

A Main Market equity IPO ordinarily requires financial and legal advisers, underwriting, corporate and sector approvals, and parallel applications to the CMA and the Exchange. Eligibility generally includes three years of operating and audited financial history and sufficient working capital for the following 12 months.

An Arabic prospectus must provide prescribed business, financial, ownership, governance, risk, litigation, contract and offer information sufficient for an informed decision. Material developments or significant omissions may require a supplementary prospectus and investor withdrawal rights.

Ordinary Main Market admission requires expected market capitalisation of at least SAR300 million, 200 public shareholders and a public holding of 30% of the relevant class, subject to permitted dispensations. Public distribution requirements also continue after admission. CMA offering approval and Exchange listing approval are complementary.

Nomu has a lighter regime, generally restricted to Qualified Investors. Baseline public distribution requirements are 50 public shareholders and 20% of the relevant class or shares worth SAR30 million, whichever is less. A Nomu offer is a separate regulatory category, not simply a private placement.

The 2026 Nomu framework permits special purpose acquisition companies (SPACs), with sponsor, redeemable-share and escrow safeguards and minimum post-offer capital of SAR100 million. A qualifying acquisition or merger ordinarily must complete within 24 months of listing, with a possible 12-month extension subject to the prescribed approval process.

Follow-On Issues and Timing

Follow-on issues include rights issues, issues suspending pre-emption, capitalisation, debt conversion and acquisition consideration shares. The required prospectus or circular depends on the structure. Specified issues benefit from prospectus exemptions, including an increase not exceeding 10% of an already listed class within 12 months and qualifying capitalisation, conversion or acquisition issues. Approval, circular and other disclosure requirements may remain. Public debt offers follow separate provisions.

The CMA's ordinary equity-offer review period is 45 business days after complete submission, subject to enquiries or deferral. An approved prospectus is ordinarily published at least 14 business days before the offer, or the relevant assembly for rights issues and issues suspending pre-emption. These periods exclude preparation, restructuring, due diligence and bookbuilding; the overall process commonly takes several months. Continuing disclosure is addressed in **5.2 Continuous Disclosure**.

Exemptions and Private Placements

The Offering Rules distinguish exempt offers from private placements as follows.

- Institutional/Qualified Client placements are limited to those CMA client categories and do not use the limited-offer numerical and subscription caps.
- Limited placements have no more than 100 offerees, excluding Institutional and Qualified Clients, and a SAR200,000 maximum payable by each other offeree. Same-class repetition is restricted within the prescribed 12-month period.
- Small exempt offers require aggregate subscriptions below SAR10 million, no more than 50 offerees excluding Institutional and Qualified Clients, and a SAR200,000 cap for each other offeree. Risk acknowledgements and restrictions on repetition apply.
- Corporate exemptions cover specified existing-shareholder, affiliate, employee, debt-conversion and insolvency offers, each subject to its conditions. Authorised-platform crowdfunding has separate issuer, fundraising and investor limits.

Institutional Clients include specified governmental and financial bodies, funds and qualifying entities with net assets exceeding SAR50 million. Qualified Clients include eligible entities with net assets from SAR10 million to SAR50 million and individuals meeting wealth, trading, experience or qualification tests. An individual wealth route requires at least SAR5 million net assets. Nomu's Qualified Investor definition is distinct.

Private placements generally require an appropriately licensed arranger, CMA notification ten business days before commencement, prescribed declarations and offering documents. Specified domestic debt offers use a shorter notification route. Completion information is generally due within ten business days. Exempt offers may retain quarterly reporting obligations. Materials must be clear, complete and not misleading and the CMA may prohibit an offer.

Privately placed securities generally must be resold through a capital market institution using a permitted route: a price not exceeding SAR200,000; transfer to an Institutional or Qualified Client; or another prescribed circumstance. Exceptions address appreciation and specified whole-holding disposals. Restrictions follow later transferees until listing of the same class is approved, rather than automatically expiring after a fixed period.

Crowdfunding and other exempt categories have their own conditions. Constitutional and contractual restrictions also apply. Breach can lead to offer or transfer prohibitions, sanctions and investor remedies.

5.2 Continuous Disclosure

Periodic and Event Reporting

Listed issuers must make complete, clear, accurate and non-misleading disclosures under the Offering Rules, Listing Rules and Instructions for Companies' Announcements.

Main Market interim financial statements are generally due within 30 business days of the period-end; annual statements within three months of the year-end and at least 21 calendar days before the annual assembly. The annual board report is also due within three months. This covers the company's operations and factors relative to assessing its financial position, together with the corporate governance disclosures. Nomu has modified requirements, including semi-annual rather than quarterly interim statements.

Non-public developments affecting an issuer or subsidiary must be disclosed without delay where they may reasonably affect securities prices or significantly affect listed-debt commitments. Materiality considers the information's likely importance to a prudent investor.

Specified events independently trigger disclosure, including qualifying asset transactions, borrowing and losses at the applicable 10% of net assets threshold; disputes involving at least 5% of net assets; and entry into or unexpected termination of contracts generating at least 5% of annual gross revenue. Management and auditor changes, capital decisions, dividends, assemblies and insolvency events also require announcements. Related-party disclosure is addressed in **2.5 Conflicts of Interest and Related-Party Transactions**.

Publication and Control

Announcements are published through the Saudi Exchange's designated electronic disclosure system using the applicable announcement templates. Main Market issuers must disclose in Arabic and English and Nomu issuers must disclose in Arabic and may provide an English translation. Arabic prevails in the event of inconsistency.

Publication must follow the applicable trading-window rules and occur as soon as possible before the next trading period. Events during trading are generally announced after closing, with confidentiality maintained; threatened leakage may require a temporary halt request.

Information must remain confidential before publication, with measures to prevent leakage and restrictions on disclosure to persons who are not bound by confidentiality. Where disclosure would be unduly detrimental and omission would not mislead investors, the issuer may apply confidentially to the CMA for permission to delay or waive disclosure. Commercial sensitivity alone does not permit unilateral postponement. Issuers must also assess whether market rumours require a response.

Issuers should maintain designated disclosure contacts, emergency authority, confidentiality controls and procedures for rumours. Responsibility for content remains with the issuer.

5.3 Insider Trading

Prohibited Conduct

Articles 49 and 50 of the CML and the Market Conduct Regulations prohibit manipulation and insider trading. Manipulation includes fictitious trades, matched orders, artificial prices and misleading statements or rumours, including through social media.

Inside information includes non-public securities or order information whose disclosure would materially affect price or value. Restrictions cover insiders, connected persons and recipients who know or should know the nature of the information, as well as direct and indirect trading. Tipping is prohibited where the discloser knows or should know that the recipient may trade. Confidential client orders can therefore engage these rules.

Enforcement

The CMA may investigate, require records, summon witnesses, direct correction, suspend issuance or trading and exercise licensing powers. Its administrative fines may reach SAR5 million per violation. The Saudi Exchange monitors its rules and refers suspected breaches.

Criminal cases may proceed through the Public Prosecution before the securities dispute committees. Available sanctions include fines reaching SAR25 million per intentional violation, payments up to three times gains or avoided losses, compensation, seizure and professional bans. Relevant offences may also attract imprisonment up to five years. Investor compensation claims remain available where statutory conditions are met. A recent financial-reporting enforcement example is provided in **2.2 Directors' Duties and Liabilities**.

5.4 Shareholder Disclosure

Substantial Interests

Under the Offering Rules, a person acquiring ownership of, or an interest in, at least 5% of a class of voting shares or convertible debt instruments must notify the Exchange by the end of the third trading day after the transaction or event. The rule covers individuals and entities, including foreign investors, in Main Market and Nomu issuers.

Specified relatives', controlled companies' and concert parties' interests are aggregated. The notice identifies holders, acquisition details and financing. Changes to the notified list of persons whose interests are included must also be reported within three trading days.

5.5 Internal Controls and Whistle-Blower Regimes

Controls and Reporting

No single prescribed compliance programme applies to every private company. Requirements depend on form, listing and activity, and should support the duties in **2.2 Directors' Duties and Liabilities**.

Main Market companies require board-approved internal controls, risk management, independent internal audit and an annually updated audit plan under CGR Articles 70 to 74. Internal audit is accountable to the audit committee and needs unrestricted access to relevant records. Outsourcing does not remove corporate responsibility. Nomu's differentiated rules are discussed in **2.1 Legal Framework**.

Main Market companies require confidential reporting, investigation and follow-up arrangements and protection for reporting stakeholders. SAMA-supervised institutions have applicable whistle-blowing requirements. Financial institutions and designated non-financial businesses and professions must maintain anti-money laundering controls and report suspicious transactions externally; internal reporting is insufficient.

A proportionate programme should allocate board oversight and operational responsibility, identify legal obligations and risks, maintain policies and training, and test compliance. Priorities include conflicts, bribery, reporting, data protection and sector risks. Reporting channels should support confidential escalation, independent investigation, documented remediation and monitoring. Disclosure controls in **5.2 Continuous Disclosure** should form part of this framework.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Security Framework

The principal laws are the Law on Securing Rights over Movable Assets, Commercial Pledge Law, Registered Real Estate Mortgage Law, Enforcement Law and Bankruptcy Law. The CTL supplements them on obligations, assignments and guarantees.

Security can cover movable assets, shares and interests, receivables, accounts and real estate. The movable-assets regime accommodates present and future assets and collective collateral descriptions. Foreign labels such as floating charge do not independently create effective Saudi security.

Perfection and Priority

Creation, third-party effectiveness and enforcement are distinct. Movable security generally uses the Unified Register for Rights on Movable Assets, with possession or legally recognised constructive possession relevant to specified assets, including accounts. Real estate follows the applicable registry or notarisation regime. Shares require the relevant company or securities procedures; Edaa has separate pledge-registration requirements.

Priority ordinarily follows the applicable perfection method and time, subject to statutory exceptions and effective priority waivers. Searches, collateral descriptions and existing-lender releases are important. Qualifying movable security permits agreed non-judicial enforcement through statutory procedures; other cases may require the Enforcement Court. Bankruptcy stays, avoidance and distribution rules can affect enforcement.

Acquisition Financing

Financing commonly combines buyer equity with bank facilities, including *murabaha*, supported by share pledges, account and receivables security, asset security, guarantees and promissory notes. A promissory note supports debt enforcement but does not create proprietary security.

Target support requires authority, approvals, corporate benefit and conflict analysis, particularly where debt funds the buyer's acquisition. Related restrictions are addressed in **1.4 Distributions and Return of Capital** and **2.2 Directors' Duties and Liabilities**.

Intercreditor terms should allocate enforcement control, waterfalls, standstills, releases and subordination consistently with perfected priorities and mandatory insolvency rules.

The 2020 movable-security reforms established a broader framework for modern collateral and registration and the CTL subsequently clarified general obligations and guarantees. Transaction documents should use the applicable statutory mechanisms rather than assume that imported security concepts achieve the same result, as contractual agreements alone does not cure defective perfection. For example, in real estate mortgages, changes to priority require the relevant recording to bind third parties.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

Formation and Validity

The CTL governs commercial contracts subject to special legislation and applicable Sharia principles. Formation generally requires offer and acceptance, capacity, valid consent and a lawful, sufficiently ascertainable subject matter. Common-law consideration is not a separate universal requirement.

Consent may be oral, written or inferred from conduct unless formalities apply. Corporate signatories need appropriate authority. Electronic contracts and signatures are recognised under the Electronic Transactions Law. Some transactions require writing, notarisation or registration.

Incapacity, material mistake, fraud, duress, unlawful subject matter or purpose, and failures of mandatory form can invalidate a contract or permit avoidance. The consequences differ for void and voidable contracts. Exploitation can justify intervention under statutory conditions, and an unfavourable bargain alone is insufficient.

Interpretation and Enforceability

Performance must accord with good faith. Clear wording generally governs; otherwise, interpretation seeks the parties' common intention, considering context, custom and prior dealings.

Liability limitations are generally permissible, but cannot exclude the debtor's fraud or gross negligence, and liability for harmful acts cannot be contractually excluded. Courts may amend unfair adhesion terms or relieve the adhering party from them. Contractual freedom therefore operates within mandatory law and public policy.

7.2 Termination and Remedies

Breach and Termination

Remedies include performance, compensation and termination. Compensation may cover proven loss and lost profit, subject to causation, foreseeability and avoidable-loss rules. Under CTL Articles 178 and 179, agreed compensation may be reduced if excessive or the obligation partly performed, and is unavailable where no loss occurred. It cannot be predetermined for an obligation to pay money.

After notifying the defaulting party, a party to a bilateral contract may seek performance or termination, with compensation where justified. A court may refuse termination for an insignificant breach. Agreed termination without a court ruling is permitted, but notice remains necessary unless expressly waived.

Termination generally entails restitution, with different treatment for continuing contracts. Termination without a contractual or statutory basis may itself constitute compensable breach.

Force Majeure and Hardship

Article 110 addresses impossibility beyond the debtor's control: the obligation and its counterpart are extinguished, and full impossibility automatically terminates the contract. Article 174 permits contractual allocation of force majeure risk. Partial and temporary impossibility require separate analysis.

Unforeseeable general exceptional events making performance excessively onerous and threatening heavy loss engage Article 97. The affected party may promptly seek negotiations, without suspending performance. If agreement fails, the court may reduce the obligation to a reasonable level. This mandatory protection differs from impossibility; a frustrated commercial expectation alone does not establish either test.

7.3 Intellectual Property in Commercial Transactions

Transactions and Ownership

Intellectual property is governed by patent legislation, the GCC Trademark Law, Copyright Law and confidential commercial information regulations. The new Copyright Law took effect on 12 August 2026.

Due diligence should establish ownership, registrations, licences and encumbrances. Assignments and licences should identify the rights, territory, term, exclusivity, sublicensing, improvements and enforcement, with Saudi Authority for Intellectual Property recordals where required. Trade secrets require contractual and practical protection of secrecy.

Employment-related inventions generally belong to the employer where statutory conditions are met, subject to contrary agreement and inventor remuneration. Under Article 18 of the Copyright Law, works created during employment and relating to the employer's activities generally belong to the employer unless otherwise agreed. For commissioned works outside that rule, economic copyright generally remains with the creator absent agreement. Joint development requires clear allocation of ownership and exploitation rights alongside statutory co-authorship rules.

Ownership of purely artificial intelligence generated content should not be assumed. The conditional exception permitting copying for AI development concerns inputs, not automatic ownership of outputs. Contracts should allocate input permissions, human contributions and infringement responsibility.

Remedies

Depending on the right, remedies include cessation orders, compensation, seizure or destruction and border measures. Copyright compensation may include infringer profits under Article 51 of the new Copyright Law. Specified offences also attract criminal sanctions through the Public Prosecution and competent courts.

7.4 Consumer Protection

Principal Protections

The E-Commerce Law, Anti-Commercial Fraud Law, CTL and product and sector rules provide the principal protections. Online suppliers must disclose identity, contact information, essential characteristics, total charges, payment, delivery and warranties. Advertisements must not mislead and form part of the contractual framework.

Article 13 of the E-Commerce Law generally permits cancellation within seven days of receiving goods or concluding a service contract, provided the consumer has not used or benefited from them. Exceptions cover specified customised products, publications and services. Article 14 provides cancellation and refund rights where delivery or performance is delayed beyond the applicable 15-day period, subject to agreed extensions and force majeure.

Enforcement and Unfair Practices

The MoC may investigate complaints and require corrective action, including withdrawal of misleading advertisements. E-commerce sanctions include warnings, fines of up to SAR1 million, suspension of activity and blocking online stores. Consumers may pursue contractual remedies and compensation before the competent court and defective or counterfeit goods also engage applicable refund and anti-fraud protections.

Courts can apply the good-faith, fraud and unfair adhesion-term protections discussed in **7.1 Contract Formation and Enforceability**. Contractual wording, including blanket "no refunds" policies, cannot displace mandatory consumer rights. Regulatory action and consumers' civil claims may proceed through their respective channels.

8. Foreign Investment

8.1 Competition and Merger Control

Notification Thresholds

The Competition Law and its Implementing Regulations govern economic concentrations, administered by the GAC. Acquisitions of control, mergers and qualifying full-function joint ventures are covered, including foreign transactions with the required Saudi nexus.

Under the April 2025 guidelines, the thresholds apply cumulatively as follows.

- Acquisitions: combined worldwide annual sales exceed SAR200 million; target worldwide sales exceed SAR40 million; combined Saudi sales exceed SAR40 million; and the target generates Saudi sales.
- Mergers and qualifying joint ventures: combined worldwide annual sales exceed SAR200 million; at least two participants each have worldwide sales exceeding SAR40 million; and combined Saudi sales exceed SAR40 million.

Sales must be calculated using the applicable group aggregation rules. A minority investment can be caught if it confers control and an acquisition without a change of control generally falls outside merger notification requirements.

Procedure and Assessment

Notification is required at least 90 days before completion. Review starts when the GAC accepts a complete filing and may be suspended for information requests. Parties must await clearance or expiry of the applicable statutory period without a decision. Filing fees are 0.02% of participating undertakings' annual sales, capped at SAR250,000.

The GAC assesses whether the transaction is likely substantially to lessen competition in a relevant Saudi market, considering market structure, barriers to entry, competitive constraints, consumer effects and substantiated efficiencies. It may approve, prohibit or impose conditions, including structural or behavioural remedies.

Enforcement

Anti-competitive agreements and abuse of dominance are prohibited, including price-fixing, market allocation and bid-rigging. Non-notification, premature completion and substantive infringements may attract fines up to 10% of annual sales subject to the violation, or SAR10 million where those sales cannot be estimated. Alternatively, fines of up to three times

gains may apply. Corrective orders, divestiture, publication and damages claims are also possible; repeat violations attract increased exposure.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Registration and Review

As discussed in **1.2 Incorporation and Ongoing Compliance**, foreign investors must generally register with MISA before investing, with separate approval requirements for excluded or restricted activities. There is no general transaction-value threshold below which these requirements cease to apply.

Establishments, acquisitions and changes to existing investments require registration or amendment of registration. Investment in an excluded activity, and changes in ownership of an investment carrying on a restricted activity, require prior approval as well. Listed securities are principally subject to the separate CMA frameworks.

Sector Restrictions and National Security

Full foreign ownership is available in many activities, subject to the selected activity conditions. Others require Saudi participation, minimum capital, professional qualifications or specific regulatory consent. For example, MISA specifies minimum Saudi participation of 40% for communications activities and 30% for supporting communications activities, subject to the precise activity classification.

Investment Law breaches can lead to warnings, fines up to SAR300,000 and cancellation, alongside sector sanctions. Property ownership follows the separate regime in **11.1 Requirements for Land Ownership**.

The Law also permits suspension on national security grounds. Competent authorities may assess investments before or after implementation, request information and consider mitigation. Decisions require objective grounds and are challengeable. This power is separate from merger control and has no general transaction-value threshold.

Incentives and Recent Developments

Available incentives depend on the activity, location and compliance with programme conditions, as follows.

- With regards to regional headquarters, qualifying headquarters benefit from a 30-year package including 0% corporate income tax on eligible income and withholding tax relief on qualifying payments, subject to substance requirements.
- For entities registered in special economic zones, qualifying businesses may access a 5% corporate income tax rate for up to 20 years, together with specified customs and VAT benefits.
- There are also industrial support, in where qualifying projects may receive grants under designated programmes, including support of up to 35% of initial investment, capped at SAR50 million, subject to eligibility and programme terms.

Recent developments include the registration reforms, expanded property access from January 2026 and broader foreign Main Market access from February 2026. Transaction implications are discussed in **4.1 Legal Framework** and **11.1 Requirements for Land Ownership**.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Framework and Obligations

The Personal Data Protection Law (PDPL), its Implementing Regulations and the Regulation on Personal Data Transfer Outside the Kingdom establish the principal framework, supervised by the Saudi Data and Artificial Intelligence Authority (SDAIA). The PDPL covers domestic processing and overseas processing of personal data concerning Saudi residents. Finance, telecoms, healthcare and government-related activities have additional requirements.

Processing requires consent or another statutory basis, such as performance of an agreement with the individual, legal compliance or qualifying legitimate interests. Legitimate interests cannot justify sensitive-data processing.

Controllers must provide notices, minimise collection, restrict use and disclosure, maintain accuracy and security, and destroy data when retention is unjustified. They must facilitate individual rights, contract appropriately with processors and maintain processing records. Impact assessments and data protection officers are required in specified circumstances.

Breaches and Transfers

Controllers must notify SDAIA within 72 hours of awareness where a breach potentially harms personal data or individuals or conflicts with their rights or interests. Individuals must be notified without undue delay where the statutory test applies. Sector and cybersecurity reporting may also be required.

International transfers require a permitted purpose, minimisation and an applicable mechanism, such as adequacy, standard contractual clauses or approved binding common rules. Transfer risk assessments apply in prescribed cases. The PDPL does not impose blanket localisation, but sector, government-data and cybersecurity rules may restrict offshore hosting or access. Overseas cloud services, group systems and remote access therefore require individual assessment under the framework.

9.2 Anti-Money Laundering, Sanctions and Corruption

Money Laundering and Terrorist Financing

The Anti-Money Laundering Law and terrorism-financing legislation impose preventive duties on financial institutions and designated non-financial businesses and professions, including specified real estate, precious-metals, legal, accounting and corporate-service activities. Criminal prohibitions apply more broadly.

Duties include risk assessment, customer and beneficial-owner identification, enhanced due diligence, monitoring, controls, training and records generally retained for ten years. Suspicious and attempted transactions must be reported promptly to the Saudi Financial Intelligence Unit. Tipping off is prohibited.

Sanctions and Trade Controls

Saudi Arabia implements UN Security Council sanctions and domestic terrorism designations, including asset freezes, restrictions on providing funds or economic resources, and reporting. SAMA rules impose detailed screening and controls on supervised institutions. Foreign sanctions require separate assessment where the transaction has a relevant nexus.

Customs and sector restrictions govern controlled imports and exports, including weapons and hazardous materials. Classification, counterparties, destinations and authorisations require checking. Breaches can attract seizure, fines, licence action or criminal liability.

Bribery and Enforcement

The Anti-Bribery Law covers public-sector and specified private-sector bribery and intermediaries. Certain private personnel are treated as public officials. Benefiting companies may face fines and public-procurement exclusion; individuals face imprisonment, fines and confiscation.

Controls should cover intermediaries, gifts, hospitality, payments, records, training and confidential reporting. Regulators inspect and direct remediation; the financial intelligence unit analyses reports and Nazaha investigates corruption within its remit. Competent prosecutors and courts pursue offences. Ordinary money laundering attracts two to ten years' imprisonment and/or fines up to SAR5 million, with higher aggravated penalties.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environment and Transaction

As discussed in **2.4 ESG and Disclosure Obligations**, the Environment Law and implementing rules govern permits, assessments, pollution and rehabilitation. Projects require construction and operating permissions appropriate to their classification, plus emissions, wastewater, waste and monitoring compliance.

The contaminated-site regime applies the polluter-pays principle: responsible persons must stop pollution, undertake remediation and bear applicable rehabilitation and compensation costs. Transaction due diligence should examine historic uses, contamination, permit compliance and outstanding orders. Contractual indemnities allocate costs between parties but do not displace regulatory obligations.

Saudi Arabia's carbon-credit initiatives principally operate through voluntary mechanisms; these should not be described as a general mandatory carbon tax or economy-wide emissions trading scheme. Climate-specific litigation remains relatively undeveloped. Potential claims must establish an available legal basis, causation and compensable harm; national climate commitments should not automatically be treated as directly enforceable corporate obligations. Environmental enforcement and ordinary civil liability remain more established sources of exposure.

Safety and Licensing

Saudi Arabia has a national occupational-safety system, not separate federal and provincial regimes. Employers must provide safe workplaces, explain hazards and supply protective equipment and training without charging workers. Injury reporting, Civil Defence rules, sector requirements and seasonal heat restrictions also apply.

Businesses commonly require commercial registration, municipal and premises approvals, fire-safety permissions and activity licences. Finance, energy, mining, pharmaceutical and healthcare businesses face additional regulators and change-of-control requirements. Cannabis is not a generally permitted commercial industry; controlled-substance activities require specific lawful authorisation.

Transaction planning should identify licence-transfer restrictions and essential approvals before signing and make necessary consents completion conditions.

9.4 Artificial Intelligence

Saudi Arabia regulates artificial intelligence principally through data protection, cybersecurity, IP, consumer and sector laws, supplemented by SDAIA's AI Ethics Principles and responsible-adoption guidance. Guidance and proposals should be distinguished from binding legislation.

Organisations should allocate accountability, assess risks, test bias, maintain human oversight and explain systems appropriately. Binding duties arise where AI processes personal data, supports regulated decisions or produces misleading commercial claims. Assessments and supplier controls should cover training, deployment, security and lawful inputs. Data and IP are addressed in **9.1 Privacy and Data Protection** and **7.3 Intellectual Property in Commercial Transactions**.

9.5 Other Regulatory Compliance Requirements

Other applicable regimes include tax and *zakat*, VAT, withholding tax, transfer pricing, electronic invoicing and customs. Activities may also engage anti-concealment rules, commercial agency and franchise law, product conformity, cybersecurity, public procurement and local-content conditions. These supplement the corporate, ownership, competition and sector requirements described above. Companies should maintain a compliance register identifying licences, deadlines, responsible personnel and transaction-triggered approvals.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment Standards

The Labour Law and Implementing Regulations govern most private-sector employment, supplemented by social insurance, immigration, wage protection, Saudisation, health insurance and safety rules. Major Labour Law amendments took effect on 19 February 2025.

Contracts should specify remuneration, duties, location, duration and termination, observing Qiwa documentation requirements. Non-Saudi contracts must be written and fixed-term. Where no term is stated, Article 37 provides one year from commencement, renewable for a similar period if employment continues. Expressly agreed probation cannot exceed 180 days, subject to calculation rules.

Ordinary limits are eight hours daily or 48 weekly, reduced for Muslims during Ramadan to six daily or 36 weekly, subject to exceptions. Overtime generally attracts the hourly wage plus 50% of the basic hourly wage; paid compensatory leave may be agreed under the rules.

Annual leave is at least 21 days, increasing to 30 after five consecutive years. Sick leave generally comprises 30 days at full pay, 60 at three-quarter pay and 30 unpaid within the relevant year. Maternity leave is 12 weeks at full pay. Public holidays and other statutory leave also apply.

Employers must maintain work authorisations, applicable social insurance and health insurance, and comply with Saudisation and reserved occupations. Non-compliance may restrict recruitment and work-permit services. Safety is addressed in **9.3 Environmental, Health and Safety, and Industry-Specific Regulation**.

Termination and Resignation

For indefinite-term monthly paid contracts, Article 75 requires a legitimate reason and written notice of at least 60 days from the employer or 30 from the employee. For non-monthly pay, both ordinarily give 30 days. Insufficient notice attracts payment in lieu.

Fixed-term contracts expire according to their terms and renewal arrangements. Early termination is different: notice alone does not eliminate premature-termination liability.

Unless the contract specifies compensation for unlawful termination, Article 77 provides 15 days' wages per service year for indefinite contracts or remaining-term wages for fixed-term contracts, with a minimum of two months' wages. Notice pay and accrued rights are separate.

Article 80 permits dismissal without notice, compensation or end-of-service benefits only on listed grounds, subject to applicable warnings, procedures and an opportunity to object. Article 81 allows workers to leave without notice while retaining statutory rights for specified employer wrongdoing, including conduct forcing an apparent resignation. This provides protection relevant to constructive-dismissal situations.

Under the amended fixed-term resignation procedure, a request is deemed accepted after 30 days without response. For work-related reasons, acceptance may be postponed up to 60 days, calculated from the written explanation delivered before the initial period expires. The employee may withdraw within seven days unless already accepted. Obligations continue while the request is pending.

Final Settlement

Settlement should separately identify wages, accrued leave, notice pay, termination compensation and end-of-service benefits. Article 84 generally awards half a month's final wage for each of the first five years and one month for each later year, proportionately for partial years.

Ordinary resignation generally gives no award before two years, one-third for two to five years, two-thirds for more than five but less than ten, and full entitlement from ten years, subject to exceptions. Article 88 ordinarily requires settlement within one week after employer termination or two weeks where the employee terminates. Contractual entitlements more favourable to the worker must also be honoured.

10.2 Executive Compensation and Restrictive Covenants

Compensation

Salary, allowances, bonuses and equity awards should be clearly distinguished. Contractual or customary bonuses may form part of statutory wages despite a discretionary label. Article 86 permits agreed exclusion of specified fluctuating commissions and similar elements from end-of-service calculations.

Equity plans should address approvals, vesting, performance, leavers and change-of-control acceleration, alongside **1.3 Share Issuances** and **5.1 Securities Regulation and Public Offerings**. Share acquisitions ordinarily preserve the employer's identity. Where Labour Law Article 18 applies to a business transfer or reorganisation, employment continuity and accrued-rights liabilities must be addressed.

Employment earnings generally attract no Saudi personal income tax. Cross-border plans nevertheless require assessment of overseas taxes, social insurance, employer deductions and group recharges.

Restrictive Covenants

Under Article 83, a non-compete must protect a legitimate interest arising from access to customers, be

written and specify duration, geography and activity. It cannot exceed two years after termination.

Confidentiality obligations protecting business secrets must also be written and sufficiently specific. Non-solicitation terms should identify protected relationships and conduct and an indiscriminate employment ban is generally vulnerable to risk.

Enforcement requires evidence of the protected interest and breach and compensation additionally requires actual loss and proper basis for the claimed loss. Proceedings under Article 83 may be brought within one year after discovery of the breach.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Recognised interests include full ownership, co-ownership, separately registered units, usufruct and easements. Leases confer contractual occupation rights and state-owned property are subject to special regimes.

The Law of Real Estate Ownership by Non-Saudis took effect on 22 January 2026. Foreign ownership depends on designated areas, ownership limits and investor categories. Lawful residents may additionally own one residence outside those areas, excluding Makkah and Madinah. Individual ownership in those cities is limited to Muslims. Saudi companies with foreign participation, listed companies and funds have separate rules. More favourable GCC and Premium Residency rights are preserved.

Implementing regulations published on 3 July 2026 require non-resident individuals to obtain a digital identity, Saudi bank account and linked Saudi telephone number. Foreign companies register with MISA, disclose ownership and establish a Saudi account. Applications use the designated portal and ownership is completed through the Real Estate Registry. Specified foreign-company ownership or control changes must be reported within 15 days.

Real estate transaction tax generally applies at 5%, subject to exemptions. A separate 2% non-Saudi disposal fee applies to relevant dispositions in Riyadh, Makkah, Madinah and Jeddah, with zero-rate cases.

11.2 Commercial Real Estate Transactions

The CTL, Real Estate Registration Law, Registered Real Estate Mortgage Law and development, brokerage and leasing rules govern commercial property transactions. Title registration is being introduced by geographical area and the relevant registry or Ministry of Justice procedure must be identified for each property.

Due diligence covers title, boundaries, authority, mortgages, restrictions, planning, permitted use, access, occupation, building approvals, disputes, environmental condition and taxes or land fees. A corporate acquisition also requires review of the property-owning company's liabilities. Available title insurance supplements these checks. See **9.3 Environmental, Health and Safety, and Industry-Specific Regulation** and **6.1 Transaction Financing and Security Interests** for information on environmental allocation and mortgage perfection, priority and enforcement.

Leases should regulate use, rent and VAT, service charges, maintenance, fit-out, insurance, assignment, subletting, renewal and reinstatement. Ejar's mandatory terms and registration requirements apply. Default remedies depend on the contract, notice and enforcement rules; qualifying registered leases may be directly enforceable, but unrestricted self-help eviction should not be assumed.

From 25 September 2025, residential and commercial rents within Riyadh's urban boundaries are frozen for five years. Lease-renewal rules apply nationally: contracts generally renew automatically unless the prescribed notice is given at least 60 days before expiry, subject to exceptions and applicable model terms. Riyadh landlords also require a permitted non-renewal ground where tenants wish to remain. Personal occupation relates to residential units, not a general commercial redevelopment right.

Leases should address permitted use, rent and VAT, service charges, maintenance, fit-out, insurance,

assignment, subletting, renewal and reinstatement. Ejar's mandatory provisions and registration requirements must be observed. Assignment and subletting should be expressly addressed, including any landlord consent requirements.

Default remedies depend on the contract, statutory notice requirements and the applicable enforcement route. Qualifying registered leases may support direct enforcement, but landlords should not assume unrestricted self-help eviction rights.

The foreign-ownership reforms in **11.1 Requirements for Land Ownership**, expanding title registration and revised land-fee rules, also affect transactions. Acquisition models should test rent growth, vacancy and redevelopment assumptions against these requirements.

Trends and Developments

Contributed by:
Hanadi Jamjoom, Abdulmajeed Alhogbani, Lama Abumansour and Lojain Rozi
Khalid Nassar & Partners

Khalid Nassar & Partners is a Saudi law firm established in 2017, with over 25 legal professionals across its Jeddah and Riyadh offices. The firm advises on corporate and M&A, capital markets, investment funds, real estate, regulatory and governance, projects and public-private partnerships, employment, intellectual property, and arbitration & litigation. Its corporate and M&A practice has acted on public and private transactions, corporate structuring, acquisitions, disposals, joint ventures and strategic investments, handling high-value transactions involving listed companies, multi-party negotiations and regulatory approvals across the healthcare, education, real estate, aviation, technology, and financial service industries. KN&P's corporate and M&A work spans the entire transaction life cycle, with recent matters including advising GASCO on a SAR125 million strategic investment, leading Kingdom School's acquisition of Knowledge Tower for over SAR130 million, and advising Jahez on its strategic investment in Doos.

Authors



Hanadi Jamjoom is a partner at KN&P and leads the firm's corporate & M&A practice, certified by the Saudi Ministry of Justice. She advises on high-value acquisitions, disposals, joint ventures and restructuring-driven transactions across various sectors, and is known for complex mandates involving listed-company affiliates, multi-party negotiations and transactions executed in parallel with restructuring processes, navigating governance, disclosure and approval considerations with a strong focus on execution and commercial outcomes. Hanadi handles transactions end to end, from structuring and negotiation to closing. She joined the firm in 2017 after practising at DLA Piper, and holds an LL.M. from University College London.



Abdulmajeed Alhogbani is an associate director at KN&P in Riyadh. He advises clients on capital markets, corporate mergers and acquisitions, banking and finance, and fund structuring, acting for issuers, financial institutions, sponsors and investors on transactions across the Kingdom of Saudi Arabia and the wider region. Before joining the firm, he spent six years at law firms in New York City and Washington, DC, where he represented major financial institutions and publicly listed companies. A Georgetown graduate, Abdulmajeed holds a J.D. and an LL.M. and is admitted to practice law in the State of New York.



Lama Abumansour is a senior associate at KNP, with experience in corporate, commercial, data protection and intellectual property matters. She holds an LL.M. from UC Berkeley School of Law, where she obtained a dual degree in Business Law and Law and Technology. Lama has worked at international law firms in Jeddah, advising local and international clients on data protection compliance, technology transactions, intellectual property licensing, commercial agreements and regulatory matters. Her experience includes drafting and negotiating commercial and data processing agreements, conducting legal due diligence, advising on privacy, cybersecurity and intellectual property matters, as well as corporate transactions and contracts.



Lojain Rozi is a junior associate in the corporate/commercial and capital market practices at KN&P, advising on corporate and commercial matters, capital markets, mergers and acquisitions, real estate, and providing board secretary services. Lojain holds a Bachelor of Laws from Prince Sultan University, where she graduated with distinction, and works in both Arabic and English. Since joining the firm in 2025, she has supported clients across the media, aviation, sports, and real estate sectors, as well as general corporate clients, including foreign companies, on transactional and advisory matters, building a practice grounded in her earlier experience at law firms.

Khalid Nassar & Partners

The Headquarters Business Park
36th Floor
Unit 3602
Kurnaysh Road
Al-Shatea District
Kingdom of Saudi Arabia

Tel: (+966) 12 611 1012
Email: info@knp.legal
Web: www.knp.legal

AI in Saudi Business: Navigating Legal Risks Across Employment, IP, Data and Disputes

Artificial intelligence has moved quickly from pilot projects to embedded infrastructure across Saudi businesses. Employers now use AI platforms in recruitment and workforce management; companies deploy generative AI in drafting, data analysis and content production; and investors are backing AI-driven ventures as part of the Kingdom of Saudi Arabia's wider economic diversification agenda under Vision 2030. This pace of adoption has outstripped regulation, leaving businesses operating in or investing into the Kingdom to navigate these questions within a still-developing framework.

Five areas illustrate this most clearly. The first is employee data, where the use of AI platforms and third-party service providers engages the Personal Data Protection Law (PDPL) and its requirements around processing, disclosure and cross-border transfer. The second is ownership of AI-generated content, where the existing Copyright Law predates generative AI and a Draft IP Law addressing the question directly has yet to be enacted, leaving the position to be inferred rather than settled. The third is the commercialisation of data as a business asset, where Saudi law does not treat data as conventional property and entitlement instead depends on the nature of the data, the relationship between the parties and contractual allocation. The fourth is the evidential status of AI-generated material, which Saudi courts and arbitral tribunals are beginning to assess under the existing Law of Evidence and Electronic Transactions Law, by reference to authenticity, reliability and integrity rather than the involvement of AI as such. Finally, the fifth is dependence on third-party AI platforms, where Saudi businesses building on infrastructure supplied by external providers face standard terms that limit provider liability and leave the business exposed if access is restricted, withdrawn or changed.

These questions are no longer hypothetical. They are arising in live transactions, employment matters and disputes, frequently without direct statutory guidance to resolve them. The sections that follow examine each in turn, drawing on current advisory experience to set out where the position remains unsettled and what businesses should do to protect themselves in the meantime.

Protecting employee data under the PDPL: employer use of AI platforms and third-party service providers

Saudi employers are adopting artificial intelligence tools at speed. Human resources teams use them to screen candidates, transcribe interviews and draft appraisals, and many businesses have licensed enterprise AI assistants for their workforce. Almost every one of these uses involves employee personal data, and involves a third party. That combination is what brings data protection law into the picture.

The PDPL is administered by the Saudi Data and Artificial Intelligence Authority(SDAIA). It applies to any processing of personal data in the Kingdom, and employee data is not carved out. Salary records, identity documents, performance reviews and medical certificates are all personal data, and some of it is sensitive data that attracts stricter rules.

Where the risk sits

An employer that uploads employee information into an AI platform is disclosing that information to the platform provider, and disclosure is a regulated act. Article 15 of the PDPL permits disclosure only on limited grounds, with the two most relevant to employers being consent and the employer's legitimate interest. Consent is a weaker basis than it looks. Article 7 prevents consent from being made a condition of a service or benefit, and the Implementing Regulation requires that it be freely given, documented and easy to withdraw, which is hard to demonstrate where the employee may feel unable to refuse.

Legitimate interest is often the more realistic basis, but it carries conditions. Article 16 of the Implementing Regulation requires the processing to fall within the reasonable expectations of the employee, excludes sensitive data altogether, and requires the employer to carry out and document an assessment before it starts. Article 10 of the PDPL adds a second constraint, because data collected to run payroll cannot be re-purposed for an AI tool without a fresh basis and fresh notice.

The provider is a processor, and the contract matters

Where the AI provider handles employee data on the employer's instructions it is a processor, and the employer remains the controller with full responsibility. Article 8 of the PDPL and Article 17 of the Implementing Regulation require the employer to select only providers offering sufficient guarantees, to put in place an agreement covering purpose, data categories, duration, breach notification, subcontractors and whether the provider is subject to foreign laws, and to assess compliance periodically. Click-through terms for consumer AI products do not meet this standard. Many reserve the right to use inputs for model training, which would make the provider a controller in its own right and the employer the author of an unlawful disclosure.

Cross-border transfer

Most major AI platforms are hosted outside the Kingdom of Saudi Arabia, so using them will usually amount to a transfer of personal data abroad. Article 29 of the PDPL allows transfers only for defined purposes, and only where the destination offers adequate protection the data is kept to the minimum and national security is not prejudiced. The Regulation on Personal Data Transfer Outside the Kingdom, revised in August 2024, makes this workable. It recognises central processing of human resources operations as a permitted purpose, and it allows an employer to rely on standard contractual clauses issued by SDAIA, binding common rules within a group or a certification from a licensed body where the destination is not on SDAIA's adequacy list. A documented risk assessment is required before relying on any of these safeguards, and the transfer must be entered in the employer's record of processing activities.

Security, notice and the cost of getting it wrong

Article 19 of the PDPL and Article 23 of the Implementing Regulation require organisational and technical security measures, which, for most private businesses, means either the controls of the National Cybersecurity Authority or a recognised international standard. A breach that may harm employees must be reported to SDAIA within 72 hours and to the affected employees without undue delay. Employees must also be told, before their data is collected, to whom it will be disclosed and whether it will leave the Kingdom, so privacy notices written before AI adoption are now frequently inaccurate.

The penalties are real. Fines can reach SAR5 million per violation and double on repetition; disclosure of sensitive data with intent to harm carries up to two years' imprisonment; and an affected employee may claim compensation before the courts. Banning these tools rarely works, since employees will use them anyway on personal accounts outside any controls. Employers that are managing this well have instead identified which tools in the business receive employee data, replaced free consumer versions with enterprise contracts that contain proper processor terms and exclude use of the data for training, and decided which transfer mechanism they are relying on before the tool is rolled out.

Intellectual property ownership of AI-generated content in the Kingdom of Saudi Arabia

The use of generative artificial intelligence systems (AI) to produce text, images, code and other output (AI Generated Content) has become increasingly widespread across personal, commercial and professional activity. This raises the legal question of who, if anyone, owns the rights in AI Generated Content. In the Kingdom of Saudi Arabia, no law or regulation currently in force expressly addresses this question; the position is instead inferred from the Copyright Law and supplemented by a Draft IP Law that has not yet been enacted.

The existing statutory framework

The Copyright Law issued by the Saudi Authority for Intellectual Property (SAIP) does not refer to the ownership or protection of AI Generated Content. It defines an author as the person who creates a work. These provisions are generally understood to be limited to a natural person and an act of creation attributable to that person, although neither the definition of author nor the scope of protection specifies the degree of human involvement required for a work to qualify, while expressly excluding ideas, procedures and methods from the scope of protection.

The Copyright Law's treatment of collective works offers a point of comparison, where several contribu-

tors participate in producing a single work under the direction of another person, ownership of the copyright is vested in the natural or corporate person who directed and organised the work as a whole. Commentary has sometimes pointed to this provision as a possible model for attributing ownership of AI Generated Content to the person who directs the use of the AI, on the reasoning that both scenarios involve a coordinating party overseeing input that is not entirely their own.

The Draft IP Law

The Draft IP Law was released for public consultation in April 2023, and addressed the treatment of AI Generated Content directly. The Draft IP Law proposed that intellectual property generated through the use of AI would be eligible for protection where the contribution of a natural person to that output is prominent, and in the absence of such a prominent human contribution, the output would fall into the public domain. Nevertheless, where protection is available, ownership would vest in the first person who made the arrangements necessary to obtain and register that protection, with a fast-track examination procedure in these cases. The Draft IP Law has yet to be enacted, and its final form will likely differ from the version published for consultation to reflect feedback from industry professionals and developments in other jurisdictions.

The Saudi Data and Artificial Intelligence Authority (SDAIA) regulatory framework

The Generative AI Guidelines and the AI Ethics Principles issued by SDAIA are both non-binding instruments and neither determines the ownership of AI Generated Content. Their relevance to the ownership question is indirect rather than direct. By emphasising human oversight, accountability, transparency and disclosure of AI involvement in generating content, these instruments tend to encourage the kind of documentation, such as prompts, review steps and human revisions, by reference to which a human contribution to AI Generated Content might later be evidenced.

Application and comparative approaches

In the absence of a statutory rule in the Kingdom, the allocation of rights in AI Generated Content is largely governed by contract and by the terms of use of the relevant AI platform, which vary in the rights they grant to the user. In practice, the relative degree of human and AI input varies by content type and platform, and can be difficult to prove.

Legal issues and risks in data ownership and commercialisation in Saudi Arabia

Data is a valuable economic asset, but its ownership, use, transfer, and commercialisation raise legal issues. Saudi law does not treat data as conventional property with an absolute ownership right. Rights arise under the Personal Data Protection Law (PDPL, Royal Decree No M/19, as amended by Royal Decree No M/148), the Copyright Law (Royal Decree No M/41), the Confidential Commercial Information Regulations, and the Civil Transactions Law (Royal Decree No M/191), of which Article 19 subjects intangible things capable of financial rights to specific statutory regimes. Data must be assessed under privacy, IP, confidentiality, and sectoral rules, not as unrestricted property.

PDPL obligations constrain commercialisation. Article 5, as amended, prohibits processing or repurposing personal data without the data subject's express consent, subject to exceptions. Articles 10 and 11 require purpose limitation and data minimisation, including 1444H amendments adding public-interest and legitimate-interest grounds. Commercialisation needs a lawful basis, particularly for profiling, disclosure, or third-party sharing. Article 29, as amended, restricts cross-border transfers to fulfilling an agreement obligation, serving the Kingdom's interests, or other Regulations-permitted purposes, provided national security is unaffected, protection is adequate, and the transfer is necessary.

Contracts should allocate rights to collect, access, reuse, license, and commercialise data generated by employees, customers, contractors, or users, as ambiguity risks disputes over exploitation. The Confidential Commercial Information Regulations, issued by the Ministry of Commerce, protect qualifying confidential information against use or disclosure inconsistent with honest commercial practices. The Copyright Law protects creative database selection under Article 3 (5) and computer programmes under Article 2 (11); Article 4 (3) excludes ideas, procedures, and facts, so raw data needs another protection theory.

Sector rules may restrict commercialisation involving government entities, critical infrastructure, financial services, healthcare, or national security. NDMO, under SDAIA, issues classification and governance requirements through its National Data Governance Policies (the Council of Ministers Resolution No 292).

Commercialisation creates cybersecurity and liability exposure. PDPL Article 20, as amended, requires controllers to notify the Competent Authority on becoming aware of leakage, damage, or unauthorised access, and to notify the data subject where harm or a rights impact results. The National Cybersecurity Authority's data cybersecurity controls also apply, and SAMA requires financial institutions to implement applicable NCA controls.

Businesses should treat data commercialisation as a regulated activity, requiring clear contractual rights, PDPL-compliant processing, appropriate security, and review of sectoral and cross-border requirements, under the PDPL, Copyright Law, the Confidential Information Regulations, the Civil Transactions Law, SAMA regulations, and NDMO governance requirements.

The legal status of AI-generated evidence in Saudi disputes

As artificial intelligence becomes embedded in business communications, document review and financial analysis, AI-generated or AI-assisted material will increasingly find its way into Saudi disputes. Saudi law does not currently establish a separate evidential category for AI-generated material. Its admissibility and evidential value must therefore be considered within the Kingdom's existing framework for digital evidence.

Admissibility and evidential weight

According to Article 53 from the Saudi Law of Evidence, issued pursuant to Royal Decree No (M/43) dated 26/05/1443H, it defines digital evidence broadly as evidence derived from data created, issued, received, stored or communicated digitally and capable of being retrieved in an understandable form. Moreover, Article 54 expressly includes digital records, documents, correspondence, communications and media, as well as other forms of digital evidence. Digital evidence is generally given the same evidential treatment as written evidence under Article 55.

This framework is broad enough to accommodate material produced or assisted by AI, but admissibility should not be confused with evidential weight. An AI-generated summary of correspondence, for example, does not necessarily establish the accuracy of the underlying correspondence or the conclusions drawn from it. Where AI has processed, reconstructed or interpreted primary material, the reliability of the output may become central to the court's assessment.

Authenticity, reliability and integrity

The principal challenge is establishing how the material was produced and whether it has remained reliable. Under the Electronic Transactions Law, which was issued pursuant to Royal Decree No (M/18) dated 08/03/1428H, it stipulates that the reliability of electronic evidence is assessed by reference to the method used to create, store or communicate the electronic record, the possibility of alteration, the measures used to preserve the integrity of the information and the method used to identify its originator.

These considerations are especially relevant to generative AI because the outputs may vary depending on the source material, prompt, and system or model used. An output presented without its underlying records may therefore be challenged if its provenance or accuracy cannot be established. Parties relying on material produced with significant AI assistance should preserve the original records, relevant prompts and outputs, and information showing how the material was generated and whether it was later altered.

AI-generated evidence in arbitration

Similar considerations arise in Saudi arbitration. Under the SCCA Arbitration Rules, a tribunal determines the admissibility, relevance, materiality and weight of evidence, giving it flexibility to consider AI-assisted material while scrutinising its reliability.

Although Saudi law does not specifically regulate AI-generated evidence, such evidence can be assessed under the existing rules governing digital evidence. As its use in litigation and arbitration increases, questions of authenticity, integrity and evidential weight are likely to become increasingly significant. The key issue will not necessarily be whether AI was involved in producing the evidence, but whether the party rely-

ing on it can establish where it came from, how it was produced and that it remains an accurate and reliable representation of the underlying information.

The hidden liability in AI investments: dependence on third-party AI platforms

A Saudi startup may appear to own a valuable AI product, while the technology that makes it work is supplied by a provider such as OpenAI, Anthropic, Google or Meta. The startup may own its application, brand and customer contracts, but not the underlying AI model. Its business may therefore depend on continuing access to someone else's platform.

This creates a practical risk for investors. The provider may change its prices, technical interface or acceptable-use policies, restrict particular activities or countries, or suspend the service. Even a temporary interruption could prevent the startup from serving customers, and rebuilding around another model if access is withdrawn may be expensive, slow or technically difficult.

Contractual protection may also be limited. AI platforms are commonly provided under standard terms that give the provider considerable flexibility to modify or discontinue features, restrict access, and disclaim guarantees regarding service availability or output accuracy. Those terms may also exclude certain categories of loss and cap the provider's total liability, often by reference to the fees paid by the customer. Accordingly, a service interruption could cause the startup losses far exceeding any compensation recoverable from the provider. Where Saudi law applies, Article 173 of the Civil Transactions Law generally permits contractual limitations of liability but prevents a party from excluding liability for its fraud or gross negligence. Article 180 further provides that, in the absence of fraud or gross negligence, contractual compensation is generally limited to harm that was foreseeable when the contract was entered into. The startup should therefore reduce its exposure through service-level commitments, continuity arrangements and alternative providers, rather than assume that a damages claim will adequately protect the business.

Personal data creates an additional risk. If customer or employee information is included in prompts, uploaded documents or AI-generated outputs, the Saudi company may remain the "Controller" responsible for PDPL compliance, while the platform acts as its processor. Article 8 therefore requires the company to assess the provider's safeguards, impose appropriate contractual obligations and monitor its compliance, not merely accept standard platform terms. The company must also limit the data submitted, maintain appropriate security and ensure prompt reporting of breaches under Articles 19 and 20. If the provider processes data abroad, the company must also satisfy Article 29 and the Personal Data Transfer Regulations, including assessing the transfer and implementing the required safeguards.

Ownership also requires examination. A contractual right to use AI-generated output does not necessarily mean that the output is unique, legally protectable or free from third-party intellectual-property claims.

Investors should therefore ask: could the business continue if this provider became unavailable tomorrow? Due diligence should examine service levels, suspension and change rights, confidentiality, data use and deletion, intellectual-property protection, liability caps and data-export rights. The company should also maintain backups, a migration plan and, where practical, an alternative provider. Dependence on one AI platform is therefore not merely a technology issue; it is a business-continuity, compliance and valuation risk.

Conclusion

The five areas examined in this chapter share a common feature: existing Saudi law was not written with AI in mind, and each is being applied to AI by analogy, inference or extension rather than by direct rule. The PDPL addresses employee data without contemplating third-party AI processors, the Copyright Law addresses authorship without contemplating machine-generated output, the general law of evidence addresses authenticity without contemplating outputs that vary by prompt, and standard contract law addresses limitation of liability without contemplating dependence on a single external platform. In each case, businesses are not without a legal framework, but the framework requires careful, sometimes creative, application.

This has practical consequences for AI adoption in the Kingdom. Compliance cannot be achieved simply by identifying the relevant law and checking a box; it requires assessing how that law's underlying principles – consent, authorship, reliability, foreseeability – map onto a technology those principles did not anticipate. Contracts, internal governance and documentation therefore carry more weight than they would in a more settled area of law, because they are often what determines the outcome where the statute itself is silent.

The direction of travel is towards greater clarity. The Draft IP Law, if enacted, would settle the ownership question that currently depends on inference. SDAIA's guidelines, though non-binding, are shaping how AI use is documented and evidenced. Saudi courts and arbitral tribunals are beginning to develop a body of practice on digital and AI-assisted evidence. Businesses that build sound practices now, rather than waiting for the law to catch up, will be better placed both to take advantage of AI and to withstand scrutiny as the regulatory picture becomes more defined.

For businesses operating in or investing into the Kingdom of Saudi Arabia, the practical task in the meantime is less about avoiding AI and more about using it in a way that can be explained, evidenced and defended if it is ever tested.

SERBIA

Law and Practice

Contributed by:
Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka,
Katarina Živković, Miloš Gledović, Ana Arambašić and Jelena Zelenbaba
Kinstellar

Contents

1. Business Entities P.634
1.1 Business Organisations p.634
1.2 Incorporation and Ongoing Compliance p.634
1.3 Share Issuances p.635
1.4 Distributions and Return of Capital p.635
1.5 Control Person Reporting p.636

2. Corporate Governance P.636
2.1 Legal Framework p.636
2.2 Directors' Duties and Liabilities p.636
2.3 Board Composition and Independence p.636
2.4 ESG and Disclosure Obligations p.637
2.5 Conflicts of Interest and Related-Party Transactions p.637

3. Shareholder Rights and Agreements P.638
3.1 Shareholder Rights p.638
3.2 Shareholder Agreements p.639

4. Mergers and Acquisitions P.639
4.1 Legal Framework p.639

5. Capital Markets P.640
5.1 Securities Regulation and Public Offerings p.640
5.2 Continuous Disclosure p.641
5.3 Insider Trading p.641
5.4 Shareholder Disclosure p.642
5.5 Internal Controls and Whistle-Blower Regimes p.642

6. Secured Transactions P.642
6.1 Transaction Financing and Security Interests p.642

7. Commercial Contracts P.643
7.1 Contract Formation and Enforceability p.643
7.2 Termination and Remedies p.643
7.3 Intellectual Property in Commercial Transactions p.643
7.4 Consumer Protection p.644

8. Foreign Investment P.644
8.1 Competition and Merger Control p.644
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.645

9. Regulatory Compliance P.645
9.1 Privacy and Data Protection p.645
9.2 Anti-Money Laundering, Sanctions and Corruption p.646
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.646
9.4 Artificial Intelligence p.647
9.5 Other Regulatory Compliance Requirements p.647

10. Employment and Labour P.647
10.1 Employment Standards and Workplace Regulation p.647
10.2 Executive Compensation and Restrictive Covenants p.649

11. Real Property and Commercial Leasing P.650
11.1 Requirements for Land Ownership p.650
11.2 Commercial Real Estate Transactions p.650

Contributed by: Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Katarina Živković, Miloš Gledović, Ana Arambašić and Jelena Zelenbaba, **Kinstellar**

Kinstellar is a leading independent law firm in Central and Eastern Europe, South-East Europe and Central Asia, with over 400 lawyers across 15 jurisdictions and offices in Almaty, Astana, Belgrade, Bratislava, Bucharest, Budapest, Istanbul, Kyiv, Prague, Sofia, Tashkent, Vienna and Zagreb. In Serbia, Kinstellar operates through its affiliate law firm SOG, whose four partners and 25 lawyers are recognised for their corporate and commercial work. The team advises local and international clients on M&A, corporate governance, restructurings, joint ventures, commercial contracts and day-to-day corporate matters. Supported by expertise in employment, tax, compliance, competition, real estate, finance, regulatory and dispute resolution matters. Kinstellar has also developed the Western Balkans Hub, combining the expertise of its Belgrade and Zagreb offices to provide co-ordinated legal support and seamless cross-border advice to investors and businesses across Slovenia, Croatia, Serbia, Bosnia & Herzegovina, Montenegro, North Macedonia, Albania and Kosovo.

Authors



Miloš Velimirović is managing partner of Kinstellar's Belgrade office and co-head of the firm-wide Financial Institutions and Technology sectors and Telecommunications service line. With over 15 years of experience, he advises companies, financial institutions and investors on M&A, joint ventures, banking and finance, and project development. He has participated in complex financing transactions exceeding EUR2 billion involving corporate clients, public authorities and state-owned entities, and is recognised for his expertise in financial regulatory matters, fintech, data protection and GDPR compliance. He is a member of the General Assembly of Serbia's Central Depository and Clearing House.



Milan Samardžić is a partner in the Belgrade office of Kinstellar, leading the Corporate and Commercial practice and advising on complex transactions. With over 20 years of experience, he advises international and domestic clients on M&A, joint ventures, employment matters, and market entry into Serbia and Montenegro. Milan has been involved in some of largest privatisations and M&A transactions, as well as major regional investment projects. Combining deep legal expertise with practical business insight, he delivers solutions tailored to complex regulatory environments. He serves on the Board of Governors of AmCham Serbia and is a member of the American Bar Association.



Radovan Grbović is a partner in the Belgrade office and co-head of Kinstellar's Dispute Resolution practice. With over 20 years of experience across the Western Balkans market, he advises on disputes, energy, real estate, infrastructure projects, and risk and investigations. He represents clients in domestic and international litigation, as well as arbitration proceedings under leading institutional rules, including those of the ICC and UNCITRAL. Previously, he served as an adviser to the Vice President of the Parliament of Serbia and Montenegro. He also completed specialist studies at the Diplomatic Academy of the Ministry of Foreign Affairs of Serbia and Montenegro.



Olga Šipka is a partner in the Belgrade office of Kinstellar and co-head of its Competition and State Aid practice. She advises leading domestic and international clients on competition and antitrust, regulatory, compliance and data protection matters across the Western Balkans region. Olga has extensive experience supporting clients in highly regulated sectors, including pharmaceuticals, energy, banking, consumer/retail, telecommunications, IT and healthcare. She is also recognised for designing and delivering compliance training programmes covering competition, anti-bribery, white-collar crime, regulatory and data protection issues. In addition, Olga regularly advises international institutions and public bodies

on policy development and stakeholder engagement initiatives.



Katarina Živković is a counsel in the Belgrade office of Kinstellar with more than ten years of experience in dispute resolution and arbitration. She advises domestic and international clients on complex litigation, commercial disputes, and international and investment arbitration proceedings, and has represented multinational and local companies in a number of high-profile cases. Katarina is a member of the Arbitration Association and the Arbitration Council of the German Chambers of Commerce Abroad (AHK Serbia). She is also a recognised data privacy specialist, advising clients on GDPR and local data protection compliance, and is a Certified Personal Data Protection Manager.



Miloš Gledović is of counsel in the Belgrade office of Kinstellar, focusing on tax, real estate, energy and infrastructure. With over 15 years of international experience, he advises developers, investors, financial institutions and corporates on transaction structuring, tax planning, acquisitions, project development and regulatory compliance. He combines legal, tax and commercial expertise, having previously managed one of the Balkans' largest real estate portfolios for a leading international retailer and served on the board of a major South-East European real estate developer. He holds specialist qualifications in Tax Advisory from the University of Belgrade Faculty of Law and speaks Serbian, English, Dutch and German.



Ana Arambašić is a managing associate in the Belgrade office of Kinstellar, specialising in corporate and commercial law, with expertise in corporate governance, company incorporations, regulatory compliance and employment matters. She advises domestic and international clients on commercial contracts, investment structuring and the employment aspects of complex corporate transactions, including M&A and restructurings. Ana has extensive experience supporting foreign investors entering the Serbian market and has handled more than 300 labour disputes involving employment termination, non-compete agreements, trade secrets, unfair competition and workplace claims. Her advisory work spans a range of industries, including banking and finance, insurance, consumer goods, energy and automotive.



Jelena Zelenbaba is a managing associate in the Belgrade office of Kinstellar with ten years' experience advising domestic and international clients on M&A, corporate governance and cross-border transactions. She guides clients through the full transaction lifecycle, including legal due diligence, transaction structuring, SPA and SHA negotiations, closing and post-acquisition integration. Jelena has advised on a wide range of complex transactions, including share and asset acquisitions, joint ventures, demergers, spin-offs, capital increases and intra-group restructurings. She also provides corporate advisory support on governance, shareholder relations, directors' duties, compliance and corporate reorganisations. Her sector experience includes FMCG, technology, manufacturing, automotive, retail, healthcare and gaming.

Contributed by: Miloš Velimirović, Milan Samardžić, Radovan Grbović, Olga Šipka, Katarina Živković, Miloš Gledović, Ana Arambašić and Jelena Zelenbaba, **Kinstellar**

Kinstellar

Bulevar Mihajla Pupina 6/4, Ušće Tower 1,
11070 Belgrade,
Republic of Serbia

Tel: +38111 3210 200
Email: office@sog.rs
Web: www.kinstellar.com

1. Business Entities

1.1 Business Organisations

The Serbian Companies Act recognises several forms of business organisations:

- limited liability companies (LLCs);
- joint-stock companies (JSCs);
- general partnerships;
- limited partnerships; and
- entrepreneurs.

Foreign companies may also establish branches or representative offices, which are not separate legal entities. Representative offices are limited to preparatory and market research activities and cannot perform commercial activities generating revenue.

The choice of legal structure in Serbia is influenced by several factors, including the extent of liability, regulatory and corporate requirements, capital requirements and tax considerations. In a general partnership, partners have unlimited liability, while in a limited partnership, general partners have unlimited liability and limited partners are generally liable only up to the amount of their agreed contribution. Shareholders of LLCs and JSCs generally have limited liability and are not personally liable for company obligations.

The choice may also depend on regulatory and corporate requirements, including registration with the Serbian Business Registers Agency (SBRA), sector-specific licences or approvals, and structure-specific capital requirements, such as EUR1 for an LLC and EUR25,000 for a JSC.

Taxation is another consideration: corporate entities are generally subject to corporate income tax at rates prescribed by the Corporate Income Tax Act, while distributions to shareholders may also be subject to withholding tax, subject to applicable exemptions.

1.2 Incorporation and Ongoing Compliance

The following summary describes the incorporation procedure for an LLC, the corporate form most commonly used in Serbia:

- the registration process, which is conducted through the SBRA. Registration is largely electronic and is completed within five business days from the submission of complete documentation. Typical incorporation documents include:
  - (a) the founding act, namely, a resolution for a single founder or an agreement for two or more founders;
  - (b) a corporate excerpt from the founder's country of origin, a passport if the founder is a foreign national, or a Serbian identity document for a Serbian citizen;
  - (c) appointment of the LLC's legal representative ("director", under Serbian law);
  - (d) a completed registration application form with all required information; and
  - (e) proof of payment of registration fees (RSD8,000, approx. EUR70);
- other necessary approvals/licences/certificates in accordance with planned activities, company size or other relevant parameters;
- tax filings;
- obtaining a qualified electronic signature (e-signature) for the company's legal representative, which requires the personal presence in Belgrade of the

LLC's director (approx. EUR60 for individuals and approx. EUR100 for legal entities);
- registration of its ultimate beneficial owners (UBOs) with the SBRA; and
- opening a bank account, for which the director's e-signature is required. The account should be opened within 30 days of registration. The LLC cannot commence business activity until its bank account is operational.

Companies are generally required to maintain prescribed corporate records, keep their registration details with the SBRA up to date, and comply with annual financial and other reporting obligations under the applicable tax and sector-specific legislation. Companies must also annually review and verify their UBO information.

1.3 Share Issuances

Serbian law distinguishes between LLCs and JSCs when regulating capital structure. LLCs have quotas (ownership interests), while JSCs issue shares.

LLCs must have a minimum share capital of RSD100 (approx. EUR1), while JSCs must have a minimum share capital of RSD3 million (approx. EUR25,500). Serbian law generally follows a fixed-capital concept, with registered share capital recorded with the SBRA.

The share capital is increased based on a resolution of the Shareholders' Meeting, and such resolution must be registered with the SBRA in accordance with the applicable registration laws within six months of its adoption; otherwise, it will cease to have legal effect and will be deemed null and void. The resolution becomes effective upon registration with the SBRA.

The Companies Act regulates the creation, maintenance and alteration of the share capital of JSCs and permits authorised increases of share capital subject to statutory requirements. A Shareholders' Meeting resolution may authorise the board to increase the share capital by issuing new shares, subject to the statutory amount and time limitations. Shares may be issued either with or without par value, provided that all shares of the company follow the same approach. No-par-value shares have an accounting value determined by dividing the company's share capital by the total number of shares. Increases and reductions of share capital are subject to the applicable corporate approval and registration requirements. The Companies Act does not use a separate "stated capital account" concept; it regulates registered share capital and, separately, share premium where applicable.

A JSC may issue ordinary and preference shares. Ordinary shares constitute a single class, while several classes of preference shares may be issued. The rights attached to preference shares may include preferential dividend and liquidation rights, conversion rights and redemption rights. When structuring different classes, particular attention should therefore be paid to the economic and voting rights attached to each class, transfer restrictions, pre-emption rights and statutory class consent requirements. The aggregate nominal value of issued and authorised preference shares may not exceed 50% of the company's share capital.

In an LLC, share capital is divided into ownership interests rather than shares, and shareholders hold participation interests expressed as a percentage of the company's share capital. The share capital is increased based on resolution of the Shareholders' Meeting, typically through additional contributions of the shareholders and not by issuing shares, as shares are not securities.

1.4 Distributions and Return of Capital

Distributions, including dividends, are subject to statutory capital maintenance rules. A company may not make a distribution if, following the distribution, its net assets would fall below the amount of its registered share capital and non-distributable reserves prescribed by law or the company's constitutional documents. The amount available for distribution may not exceed the profit for the relevant financial year, increased by retained earnings and distributable reserves and reduced by accumulated losses and amounts required to be allocated to reserves.

Shareholders that receive unlawful distributions may be required to return the amounts received if they knew or should have known that the distribution was contrary to the Companies Act.

A JSC may acquire its own shares subject to statutory requirements, including shareholder authorisation, compliance with capital maintenance rules, and quantitative limitations prescribed by the Companies Act. As a general rule, the aggregate number of treasury shares may not exceed 10% of the share capital, subject to statutory exceptions.

Own shares generally must be disposed of within the statutory deadlines or cancelled in accordance with the applicable statutory requirements. While held by the company, own shares do not carry voting or dividend rights and are not counted for quorum purposes. The acquisition and disposal of own shares must be reported in the company's financial statements and registered with the SBRA.

A JSC is subject to statutory restrictions on providing financial assistance, including loans, guarantees, or security for the acquisition of its own shares. Certain exceptions apply, including transactions undertaken by financial institutions in the ordinary course of business and employee share schemes.

An LLC may acquire its own participation interests from one or more shareholder subject to the conditions and approval requirements set out in the Companies Act. Such acquisitions may generally be financed only from distributable reserves and are subject to creditor-protection and capital-maintenance rules.

1.5 Control Person Reporting

Serbia maintains a central register of UBOs administered by the SBRA. Companies are required to identify and register their UBOs and keep such information up to date. The regime is broadly aligned with international anti-money laundering (AML) standards and applies to most corporate entities.

2. Corporate Governance

2.1 Legal Framework

The principal laws and regulations governing corporate governance in Serbia are:

- the Companies Act;
- the Act on Registration of Business and Other Entities;
- the Capital Markets Act;
- the Audit Act;
- the Bankruptcy Act;
- tax legislation relevant to corporate governance and reporting obligations;
- the Accounting Act; and
- the Corporate Governance Code.

In the case of regulated business activities, such as banking, insurance, energy, telecommunications, healthcare and pharmaceuticals, payment services and capital markets, private security, leasing of employees, etc, the relevant special legal framework also applies.

2.2 Directors' Duties and Liabilities

The principal fiduciary duties of directors include the duty to act with due care and in the best interests of the company, the duty to disclose personal interests and avoid conflicts of interest, the duty of confidentiality, and the duty to comply with non-compete restrictions. Although published case law is relatively limited, breaches of duty-of-care, loyalty and conflict-management obligations may give rise to liability.

Directors are required to act with the care of a prudent businessperson and in the reasonable belief that they are acting in the company's best interests. A breach of their fiduciary duties may give rise to personal liability for any resulting damage suffered by the company.

2.3 Board Composition and Independence

Private companies enjoy significant flexibility regarding governance. LLCs are generally managed by one or more directors, while supervisory boards are optional. There are generally no nationality or residency requirements for directors, making Serbia attractive for foreign investment structures.

Both LLCs and JSCs may adopt a one-tier or two-tier management system, in addition to having a Shareholders' Meeting, In a one-tier structure, management is entrusted to one or more directors, whereas in a two-tier structure, management and supervision are separated between executive directors and a supervisory board.

A public JSC must have a board of directors with at least three directors. In a one-tier governance structure, the majority of board members must be non-executive directors. Public JSCs must have at least one non-executive director who is independent from the JSC. In addition, public JSCs are subject to specific requirements regarding audit committees, disclosure obligations and corporate governance reporting.

Only natural persons with full legal capacity may serve as directors. Individuals convicted of certain criminal offences, the company's auditor, and persons subject to a statutory prohibition on performing the company's principal business activity may not serve as directors. In the one-tier management system, executive directors may be members of the board of directors, provided that they do not constitute a majority of its members.

2.4 ESG and Disclosure Obligations

Serbia does not have a single comprehensive ESG law. The ESG framework is derived from various regulations, including the Environmental Protection Act, the Climate Change Act, the Companies Act, the Accounting Act, and legislation concerning greenhouse gas emissions and carbon-border measures, including obligations relating to the EU Carbon Border Adjustment Mechanism (CBAM). These rules may create financial, regulatory and transition risks that companies should consider as part of their ESG risk management.

The principal ESG disclosure requirements arise under the Accounting Act. Certain large public-interest entities with more than 500 employees must provide non-financial disclosures covering environmental, social and employee matters, human rights, anti-corruption issues and principal business risks. Medium-sized and large companies are also required to include relevant non-financial performance indicators in their annual reports, while listed companies must provide additional corporate governance disclosures, including information on diversity policies, internal controls and risk management.

Serbian law does not currently impose a general, standardised obligation on all companies to disclose climate-related financial risks. However, material climate, carbon-pricing and CBAM-related risks may need to be addressed where they constitute significant business risks or uncertainties.

The Companies Act does not impose express ESG-specific duties on directors. Nevertheless, directors must act conscientiously, with the care of a prudent businessperson and in the best interests of the company. This requires consideration of material environmental, climate, social, employee, human rights, regulatory, reputational and financial risks that may affect the company's operations and long-term sustainability. Directors may be liable for losses resulting from breaches of these duties.

Although ESG governance requirements are not comprehensively prescribed by law, boards should integrate ESG considerations into the company's strategy and risk management framework. In practice, this includes:

- identifying and assessing material ESG and climate-related risks;
- considering ESG-related business opportunities;
- ensuring regular ESG reporting and reliable ESG data collection;
- maintaining appropriate ESG expertise and training at board level;
- overseeing the accuracy of ESG disclosures;
- engaging with key stakeholders; and
- monitoring regulatory developments and adapting business strategy accordingly.

2.5 Conflicts of Interest and Related-Party Transactions

The Companies Act regulates transactions involving directors, controlling shareholders and other related parties. Individuals owing duties to the company must disclose in advance the existence and nature of any personal interest in a proposed transaction.

Material related-party transactions generally require approval by the competent corporate body, depending on the company's governance structure and the nature of the transaction. The notification must include, among other things, the nature and extent of the personal interest, a description and value of the transaction, the proposed date of the transaction, and

other information necessary to assess whether the transaction is fair and reasonable from the perspective of the company and the shareholders that have no personal interest. Failure to comply may result in annulment of the transaction and liability for damages.

The above-mentioned approval is not required in the following cases:

- where the value of the subject matter of the legal transaction or legal act is less than 10% of the book value of the company's total assets as shown in its latest annual balance sheet;
- where the sole shareholder has a personal interest in the transaction;
- where all shareholders have a personal interest in the transaction;
- subscriptions for, or acquisitions of, interests or shares pursuant to the shareholders' pre-emptive subscription rights or rights of first refusal;
- acquisitions by the company of its own interests, reserved treasury interests or shares, provided that such acquisition is carried out in accordance with the provisions of the Companies Act governing treasury interests or shares, or in accordance with the law governing the capital market;
- where the shareholder holding a significant participation in the company's share capital, or the controlling shareholder within the meaning of the Companies Act, is the Republic of Serbia, an autonomous province or a local self-government unit; and
- the conclusion of an employment agreement or another appropriate engagement agreement with a director or a member of the supervisory board.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Shareholders are entitled to certain proprietary and non-proprietary rights, including the right to:

- participate in the distribution of profits through dividends;
- receive a share of the company's remaining assets following liquidation;
- receive shares free of charge in the case of a share capital increase from the company's own funds;
- exercise pre-emption rights in connection with new issues of shares and convertible securities, subject to statutory exceptions;
- dispose of their shares;
- attend and vote at the Shareholders' Meeting;
- access certain corporate and financial information and documents;
- appoint an expert to examine the company's business operations or accounts, subject to the applicable statutory requirements;
- ask questions in connection with matters considered at the Shareholders' Meeting; and
- exercise appraisal (buyout) rights in connection with certain fundamental corporate decisions.

Statutory remedies available to shareholders include:

- a claim for damages suffered personally by the shareholder due to the breach of owed responsibility;
- a derivative claim brought in the shareholder's own name but on behalf of the company against directors, officers or other persons who have caused damage to the company through a breach of their duties;
- a claim for protection of pre-emption rights where a share/interest transfer has been effected in breach of a shareholder's statutory or contractual right of first refusal;
- a claim for the repayment of additional contributions where the company fails to return additional contributions to shareholders in accordance with the Companies Act;
- a claim for withdrawal from the company on justified grounds and payment of compensation for the shareholder's interest where the Shareholders' Meeting rejects or fails to decide on the shareholder's withdrawal request within the statutory deadline, as well as a claim by an excluded shareholder seeking compensation for the value of its interest;
- a claim to challenge a Shareholders' Meeting's resolution and seek damages where the resolution was adopted in breach of applicable law, the company's Articles of Association or meeting procedures, where the shareholder was improperly prevented from participating, or where the resolu-

tion constitutes an abuse of voting rights to the detriment of the company or other shareholders;
- a claim in connection with transactions involving assets of significant value, as provided under the Companies Act;
- a claim regarding the buyout rights of dissenting shareholders in connection with certain fundamental corporate decisions;
- court protection of information rights where a shareholder has been unjustifiably denied an answer to a question raised at a Shareholders' Meeting; and
- a claim for additional cash compensation by a shareholder that considers the share exchange ratio in a merger or division to be unfair and prejudicial to its interests.

3.2 Shareholder Agreements

Shareholder agreements are commonly used to regulate matters that are not fully addressed by the statutory framework or constitutional documents, including transfer restrictions, pre-emption rights, tag-along and drag-along rights, voting arrangements, deadlock resolution mechanisms and exit rights. Such agreements operate as contractual arrangements between the parties and are generally enforceable provided that they do not conflict with mandatory corporate law provisions.

Any provisions specifically agreed in a shareholder agreement should be reflected in the company's constitutional documents to ensure their enforceability vis-à-vis third parties, provided that they follow statutory provisions.

Shareholder and partnership disputes may be resolved through court proceedings, arbitration (where agreed) and statutory shareholder remedies. Available remedies include challenging corporate resolutions, derivative actions, appraisal rights in specified circumstances and claims for damages. Serbian law does not provide for a general statutory winding-up remedy for shareholder disputes, but shareholders may regulate deadlock resolution mechanisms and the circumstances for initiating the company's dissolution in a shareholder agreement.

4. Mergers and Acquisitions

4.1 Legal Framework

General Legal Framework

The Companies Act is the primary legislation governing M&A transactions in Serbia, including share transfers, mergers and other corporate reorganisations. Acquisition agreements are generally governed by the Law on Obligations, while share transfers are implemented through registration with the SBRA.

Public M&A transactions are additionally regulated by the Takeover Act, the Capital Markets Act, and rules issued by the Securities Commission, the Central Securities Depository and Clearing House, and the Belgrade Stock Exchange.

Other relevant regulations include merger control rules under the Competition Act, sector-specific approval requirements and applicable labour, tax, foreign exchange, AML and beneficial ownership regulations. Privatisations and distressed acquisitions are subject to the Privatisation Act and Bankruptcy Act.

Private Acquisitions

The main structuring choice is between a share deal and an asset deal. Share acquisitions preserve the target's legal identity and business continuity but transfer historical liabilities with the company. Asset acquisitions allow the buyer to select specific assets and liabilities, although transferring contracts, licences, permits and employees may require additional steps.

Key considerations include:

- change-of-control provisions in key contracts and licences;
- ownership structure, encumbrances, pre-emption rights and corporate approvals;
- tax, financing and foreign exchange implications; and
- employee matters and ownership of key intellectual property.

For transfers of shares in Serbian LLCs, signatures on the transfer agreement must be notarised, and ownership passes only upon registration with the SBRA.

Transaction documents should therefore carefully coordinate payment, document delivery and registration.

Serbian foreign exchange rules should be reviewed when structuring acquisition financing, security packages, guarantees and deferred consideration. In addition, the Companies Act prohibits a target company from providing financial assistance for the acquisition of its own shares.

Public Acquisitions

Under the Serbian takeover regime, the acquisition of more than 25% of voting rights generally triggers a mandatory takeover offer, subject to statutory exemptions. Holdings of persons acting in concert are aggregated for this purpose.

The offer must be approved by the Securities Commission and comply with funding, pricing and equal-treatment requirements. Buyers seeking full ownership should also consider that a squeeze-out generally requires at least 90% of both voting rights and share capital.

Mergers, Reorganisations and Regulatory Approvals

Statutory mergers and divisions involve prescribed documentation, shareholder approvals, creditor protection procedures, publication requirements and registration. Serbia does not have an equivalent of the English scheme of arrangement outside insolvency proceedings.

Merger control clearance and sector-specific approvals often drive transaction timing. Serbian merger control rules may apply even to international transactions based on turnover thresholds, making an early regulatory assessment important.

Predominance of Share Deals

Share acquisitions, and particularly acquisitions of ownership interests in LLCs, remain the most common M&A structure in Serbia. Asset deals, mergers and other reorganisations are generally used only where commercial, tax or operational considerations justify the additional complexity.

Beneficial Ownership Requirements

The Law on the Central Register of Beneficial Owners, effective from 1 October 2025, introduced enhanced documentation and annual verification obligations. Beneficial ownership changes generally must be registered within 30 days, together with supporting evidence.

Buyers should therefore collect ownership documentation early and assess the target's compliance with the beneficial ownership regime during due diligence.

Forthcoming Developments

Amendments to the Companies Act adopted in March 2025 introduce a new framework for cross-border mergers between Serbian companies and companies established in EU and EEA jurisdictions. These provisions will apply from 1 January 2027.

In addition, a draft new Takeover Act was subject to public consultation in 2026 and remains a development worth monitoring for future public transactions.

Limited Judicial Guidance

As a civil-law jurisdiction, Serbia does not recognise court decisions as binding precedent. Publicly available case law on international M&A concepts remains limited, particularly regarding warranties, indemnities and purchase price adjustment mechanisms.

These concepts are generally governed by principles of contract law and the parties' freedom to contract. As a result, careful drafting is particularly important, with agreements clearly defining the operation of key protections, liability triggers and available remedies rather than relying solely on international M&A terminology.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The primary regulatory bodies overseeing Serbia's capital markets include:

- the Securities Commission, which is responsible for authorisation, supervision and enforcement across the securities market; and

- the National Bank of Serbia, which has a complementary role where banks provide investment services.

The Serbian capital markets regulatory framework is primarily governed by the Capital Markets Act and the secondary legislation adopted by the Securities Commission.

Public offerings and admissions to trading require a prospectus approved by the Securities Commission, subject to statutory exemptions and ongoing disclosure obligations. Approval of the prospectus takes ten working days from the submission of a complete application, or 20 working days in the case of an issuer whose securities neither are admitted to trading on a regulated market nor have been previously offered to the public.

Admission to the Belgrade Stock Exchange requires compliance with both the Capital Markets Act and the Exchange rules applicable to the relevant listing segment.

The main prospectus exemptions cover:

- offers addressed exclusively to qualified investors;
- offers addressed to fewer than 150 non-qualified investors in Serbia;
- securities with a denomination of at least EUR100,000;
- offers requiring an investment of at least EUR100,000 per investor for each separate offer;
- certain non-equity securities issued on a continuous or repeated basis by credit institutions, where the total consideration for such securities in Serbia is below EUR75 million (calculated over a period of 12 months per credit institution), provided that such securities are not subordinated, convertible or exchangeable, do not confer rights to subscribe for or acquire other types of securities, and are not linked to derivative instruments;
- shares issued in substitution for shares of the same class already issued, provided that the issuance of such shares does not involve an increase of the share capital;
- certain securities offered in connection with takeover bids and corporate restructurings;
- certain share dividends;
- securities offered or allotted to current or former directors or employees; and
- certain non-equity securities issued by credit institutions, subject to the applicable statutory conditions.

Securities distributed under a prospectus exemption are not subject to a general statutory holding period. However, any resale is treated as a separate offer and must itself qualify for an exemption or be made under an approved prospectus; otherwise, the offer is void and may be suspended or prohibited by the Securities Commission.

5.2 Continuous Disclosure

Key legal requirements for listed entities include annual and half-yearly financial reporting, quarterly reporting where applicable, and disclosure of significant changes in voting rights and rights attached to listed securities. Required information must be submitted to the Securities Commission and the relevant regulated market and made publicly available.

Material events are disclosed through the prompt publication of inside information directly concerning the issuer, including through the prescribed information system and the issuer's website. Disclosure may be delayed only in limited circumstances where the issuer's legitimate interests would otherwise be prejudiced, confidentiality is maintained and the delay would not mislead the public.

5.3 Insider Trading

Market abuse is primarily regulated by the Capital Markets Act and related Securities Commission regulations, which prohibit insider dealing, unlawful disclosure of inside information and market manipulation and require suspicious transactions to be reported. Examples of market abuse include trading while in possession of inside information, disclosing inside information to unauthorised persons, disseminating false or misleading information regarding an issuer or financial instrument, and engaging in transactions or placing orders that give false or misleading signals as to the supply, demand or price of financial instruments.

Issuers whose securities are admitted to trading on a regulated market are generally required to disclose inside information that directly concerns them as soon as possible, subject to limited circumstances in which disclosure may be delayed if the statutory conditions are satisfied.

The Securities Commission may investigate suspected breaches, request records and information, conduct inspections, suspend trading, impose supervisory measures, and refer suspected offences to the competent authorities. More specifically, the Commission may request documents, records and information from regulated entities and other relevant persons, order corrective measures, issue warnings and other supervisory measures, and suspend trading in financial instruments where required to protect investors or ensure orderly markets.

In cases involving suspected market abuse, insider dealing or market manipulation, the Securities Commission may investigate the matter and may initiate misdemeanour proceedings or refer suspected criminal offences to the competent prosecutorial and law enforcement authorities.

5.4 Shareholder Disclosure

Serbian capital market rules require significant voting interest and certain related financial instruments to be disclosed once the prescribed thresholds are reached or crossed, including in cases of indirect control over voting rights.

The reporting thresholds are 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% for issuers whose shares are traded on a regulated market or multilateral trading facility, with disclosure generally due within four trading days.

Failure to report may lead to suspension of voting rights, financial penalties, and other supervisory measures imposed by the Securities Commission. Nevertheless, non-compliance with these disclosure requirements does not result in the nullity of the transaction underlying the acquisition of the relevant shares.

5.5 Internal Controls and Whistle-Blower Regimes

It is important to note that Serbian law does not impose a uniform compliance programme on all companies, although public JSCs are subject to internal supervision, audit and risk-management requirements.

As regards whistle-blowing, employers are required to establish an internal whistle-blowing procedure, inform employees of their rights, and designate a person authorised to receive whistle-blowing reports and conduct the relevant procedure. Employers with more than ten employees must additionally regulate the internal whistle-blowing procedure by a general act. The mandatory whistle-blower protection rules exist under the Law on the Protection of Whistle-Blowers. Employers meeting the statutory thresholds are required to adopt internal whistle-blowing procedures and designate persons responsible for receiving and handling whistle-blower reports. Reports may be submitted through internal, external and, in certain circumstances, public disclosure channels. Whistle-blowers are afforded statutory protection against retaliatory measures.

Compliance governance therefore depends on the type of company, with additional requirements applying to regulated entities such as banks and AML-obliged entities.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

The security interests available in the Serbian jurisdiction are mortgages over real estate, registered pledges over movable assets and rights, pledges over financial instruments, and pledges over receivables.

The requirements for their creation, perfection and enforcement depend on the type of security. Mortgages and registered pledges are subject to registration in the relevant public registers, and the applicable priority rules generally depend on the type of security and the relevant registration or perfection requirements.

In acquisition financings, security packages typically combine pledges over shares, receivables and movable assets with mortgages, while intercreditor arrangements regulate enforcement and distribution among lenders. A key limitation is the prohibition on a target company providing financial assistance for the acquisition of its own shares or quotas.

Amendments to the Capital Markets Act in 2025 have strengthened enforcement of security over financial instruments, including by allowing a first-ranking pledgee, where agreed, to acquire ownership of the pledged instruments upon default provided that the statutory valuation and surplus distribution requirements are satisfied.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

The key principles of contract formation include freedom of contract, equality of the parties, good faith and the binding force of contractual obligations, with contracts formed by an agreement on essential terms, interpreted by reference to their wording and the parties' common intention, and enforced through claims for performance, damages or, where applicable, termination.

A valid contract requires parties with legal capacity and authority, a lawful and sufficiently certain subject matter, and a valid expression of intent. Certain types of contracts must also satisfy specific statutory form requirements.

A contract may be invalid if it violates mandatory law, public policy or good customs, lacks an essential element or was concluded under defects of consent, such as mistake, fraud, duress or lack of capacity.

The laws and rules affecting the interpretation and enforcement of commercial contracts are primarily set out in the Contracts and Torts Act, including the principles of freedom of contract and good faith and the rules governing interpretation of contracts, performance and non-performance, damages, contractual penalties, termination and contractual limitations of liability.

7.2 Termination and Remedies

Key legal remedies available for breach of contract include damages, specific performance, contract termination, price reduction, and the recovery of losses resulting from the breach. Parties may also agree on contractual penalties.

A party may terminate a contract in the event of non-performance or another material breach, subject to any applicable notice or cure requirements, while wrongful termination may give rise to liability for damages suffered by other party. A contract may also be terminated due to changed circumstances in accordance with the applicable law governing contracts and torts.

The Contracts and Torts Act provides the principal framework for impossibility of performance and hardship, including rules on exemption from liability and the amendment or termination of contracts due to changed circumstances. For international sales of goods, the UN Convention on Contracts for the International Sale of Goods may also apply, which provides exemption from liability where non-performance results from an impediment beyond a party's control.

7.3 Intellectual Property in Commercial Transactions

Patents, trade marks and copyrights may be assigned or licensed in accordance with the applicable intellectual property (IP) legislation, while registration of the transfer or licence may be relevant for its effectiveness against third parties in the case of registered IP rights. Trade secret protection depends on the information meeting the applicable statutory requirements and on appropriate measures being taken to preserve its confidentiality.

In terms of IP ownership, Serbian law contains specific rules governing employee-created IP, jointly created works and commissioned works, with the allocation of rights depending on the type of IP and the relevant contractual arrangements. In relation to AI-generated content, the existing copyright framework remains based on human authorship, and there are no specific statutory ownership rules for AI-generated works as such.

In the event of infringement, IP rights holders may seek civil remedies including cessation of the infringement, damages, removal or destruction of infringing goods and, where applicable, publication of the judgment and interim measures.

7.4 Consumer Protection

Consumer protection is primarily regulated by the Consumer Protection Act, together with sector-specific legislation governing advertising, e-commerce, financial services and product safety. The legal framework imposes extensive pre-contractual information obligations, withdrawal rights for distance and off-premises contracts, warranty protections, restrictions on unfair commercial practices and unfair contract terms, complaint-handling procedures and alternative consumer dispute resolution mechanisms.

Regulatory oversight is exercised primarily by market inspection authorities and other competent regulators. These authorities may conduct inspections, order corrective measures, prohibit unlawful practices and initiate misdemeanour proceedings against traders that fail to comply with consumer protection requirements.

The Consumer Protection Act provides detailed rules on what constitute unfair or unconscionable business practices, misleading advertising (all regulated as unfair business practices) and e-commerce consumer protection violations, including a prescribed list of acts and omissions that may amount to each of these infringements.

When determining whether a violation has occurred, both the courts and the competent regulatory authorities assess whether the statutory conditions and criteria established by the Consumer Protection Act have been met.

Any complaint alleging a breach of these rules may trigger a consumer protection inspection procedure. Where there are reasonable grounds to suspect that a trader is engaging in an unfair commercial practice, the competent market inspector will collect evidence and establish the relevant facts. If the infringement is confirmed, the inspector will issue a decision prohibiting the trader from continuing the unfair commercial practice.

In the case of other consumer protection infringements, including breaches of e-commerce consumer protection requirements, the inspector will order the trader to remedy the identified irregularity within a prescribed deadline. If the trader fails to comply, the inspector may issue a formal corrective measure. Should the trader fail to comply with that measure within the specified period (which may not exceed two months), the inspector may impose a temporary prohibition on the sale of goods or the provision of services.

In all cases, the inspector may also initiate misdemeanour proceedings before the competent court. If a court determines that a trader has engaged in an unfair commercial practice, the trader, if a legal entity, may be fined between approx. EUR2,550 and EUR17,000. For certain breaches of e-commerce consumer protection requirements, a legal entity may be fined approx. EUR1,700.

8. Foreign Investment

8.1 Competition and Merger Control

Merger control is governed by the Law on Protection of Competition, supplemented by secondary legislation regulating merger notification requirements and relevant market definition.

Merger control filing to the Commission for Protection of Competition (CPC) is required if either of the following thresholds is met in the preceding financial year:

- the parties' combined worldwide turnover exceeds EUR100 million and at least one party generates more than EUR10 million in Serbia; or
- the parties' combined Serbian turnover exceeds EUR20 million and at least two parties each generate more than EUR1 million in Serbia.

Turnover is assessed at group level, excluding intra-group sales.

The filing deadline is 15 days from the relevant triggering event, which is usually the signing of a binding transaction agreement. Closing must await clearance. The CPC has one month from receipt of a complete filing to clear the transaction or open a Phase II inves-

tigation. If Phase II is opened, the statutory deadline for a decision is four months from its opening.

The CPC assesses whether the transaction would significantly restrict competition.

Late filing may result in daily penalties of between EUR500 and EUR5,000, capped at 10% of the undertaking's total annual turnover. If the transaction is also implemented without clearance, the CPC may impose a fine of up to 10% of annual Serbian turnover and order its unwinding.

Prohibited restrictive agreements and abuse of dominance may result in fines of up to 10% of annual Serbian turnover and behavioural or structural remedies. Prohibited agreements are void, and injured parties may seek damages. Individuals who conclude prohibited agreements fixing prices, restricting production or sales, or sharing markets may also face criminal fines and imprisonment of six months to five years.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Serbia has no general FDI screening regime. However, foreign investments in the production of arms and military equipment require prior government approval. No minimum investment value or minimum shareholding threshold triggers this approval. The investor submits an application along with an investment study to the Ministry of Defence, and the government decides within 120 days of receipt. The Ministry of Defence obtains opinions from the relevant ministries and security services and assesses the investment's impact on national defence, national and public security, public health and the environment.

Separately, investments in regulated sectors may require sector-specific approvals, which generally apply irrespective of the investor's nationality.

Foreign ownership is generally permitted in Serbia, but restrictions apply in certain sectors and asset classes.

In the defence industry, foreign investors may hold up to 49% collectively and 15% individually in companies belonging to the statutory Defence Industry of Serbia group.

Foreign persons are generally prohibited from acquiring agricultural land, subject to narrow statutory exceptions. Air carriers holding a Serbian operating licence must be majority-owned and effectively controlled by Serbia or Serbian nationals, unless an international treaty provides otherwise. Foreign legal entities carrying out business in Serbia may acquire real estate necessary for their business, while foreign individuals may acquire apartments or residential buildings, in both cases subject to reciprocity.

Banking, insurance, telecommunications and electronic media are mainly subject to licensing and regulatory approvals rather than general foreign ownership caps.

Foreign investors are generally eligible for the same incentives as domestic investors, subject to the applicable eligibility criteria and state-aid rules. The main incentives include cash grants for eligible investment projects, and certain customs and VAT exemptions in Serbia's free zones.

In 2026, amendments to the Corporate Income Tax Law phased out the ten-year investment tax holiday and certain incentives for newly established innovative companies.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The Serbian privacy and data protection framework is primarily governed by the Personal Data Protection Act, which incorporates many of the key concepts and principles of the GDPR. In addition to the general framework established by the Act, privacy-related obligations also arise under sector-specific legislation, particularly in the areas of electronic communications, information security, healthcare, banking and financial services, insurance and employment.

Organisations must ensure that personal data is processed on one of the legal grounds prescribed by the Personal Data Protection Act, including consent, the performance of a contract or of steps taken prior to entering into a contract, compliance with a legal obligation, or legitimate interests. Personal data must be

processed in accordance with the principles of lawfulness, transparency, purpose limitation and data minimisation. In the event of a personal data breach likely to result in a risk to individuals' rights and freedoms, the controller must notify the Commissioner for Information of Public Importance and Personal Data Protection without undue delay and, where feasible, within 72 hours after becoming aware of the breach. Affected individuals must also be notified without undue delay where the breach is likely to result in a high risk.

Cross-border data transfer requirements and data localisation considerations do not impose major restrictions on the transfer of personal data outside Serbia, provided that the applicable legal requirements are satisfied. Businesses must establish a lawful basis for processing and ensure that international transfers are made either to countries providing an adequate level of protection or, where this is not the case, subject to appropriate safeguards and, where required, authorisation from the Commissioner. As a general rule, Serbia does not impose a blanket data localisation requirement for personal data, allowing businesses to use foreign-based servers, subject to compliance with the applicable data transfer requirements.

9.2 Anti-Money Laundering, Sanctions and Corruption

The principal AML/counter-terrorist financing (CTF) obligations in Serbia apply to banks, other financial institutions and designated non-financial business and professionals and therefore include customer due diligence, beneficial ownership checks, transaction monitoring and suspicious transaction reporting.

Laws and regulations on sanctions, trade restrictions and export controls require businesses to comply with restrictive measures and licensing rules for military and dual-use goods, with fines and business restrictions available for non-compliance.

Anti-corruption and anti-bribery obligations prohibit bribery in both the public and private sectors, while legal entities may also incur liability. Companies generally mitigate these risks through approval procedures.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Environmental Regulation

The principal environmental requirements affecting commercial and corporate transactions in Serbia arise from the Environmental Protection Act, the Environmental Impact Assessment Act, the Integrated Pollution Prevention and Control Act and the Climate Change Act.

Certain projects and facilities require environmental impact assessments and the relevant approvals before implementation. These requirements may apply to both new projects and significant modifications of existing facilities.

Environmental liability is based on the "polluter pays" principle, under which the polluter is responsible for preventing and remedying environmental damage. Certain environmental liabilities may transfer to a legal successor, making environmental compliance and due diligence important aspects of corporate transactions. Serbia has also established a framework for monitoring greenhouse gas emissions, including permitting requirements for certain emitters and a greenhouse gas emissions tax applicable to specific sectors.

Climate-Related Litigation and Environmental Liability

Climate-related litigation remains relatively limited in Serbia. However, companies may face civil, administrative and criminal liability for environmental damage resulting from pollution or non-compliance with environmental regulations.

A key challenge in climate-related claims is establishing a direct causal link between a company's greenhouse gas emissions and specific damage allegedly caused by climate change. In addition, non-compliance with environmental requirements, including emissions and environmental permitting obligations, may lead to regulatory sanctions and increased exposure to damages claims.

Health and Safety

Occupational health and safety obligations in Serbia are primarily governed by the Occupational Safety and Health Act and the Labour Act.

Employers must provide safe and healthy working conditions, conduct risk assessments, implement preventive measures, provide employee training and personal protective equipment, organise mandatory medical examinations where required, and appoint a qualified occupational health and safety officer or engage a licensed service provider.

Serbia does not have separate federal or provincial occupational health and safety regimes. The relevant legislation applies uniformly throughout the country and is enforced by the competent national authorities.

Licensing and Permitting

Licensing and permitting requirements depend on the sector in which a company operates. Specific regulatory regimes apply, among others, to the energy, banking, financial services, telecommunications, pharmaceutical and environmental sectors.

Corporate transactions in regulated industries frequently require prior approvals, consents, or notifications to the relevant authorities. For example, certain energy activities require a licence, while the acquisition of a qualifying holding in a bank requires the prior approval of the National Bank of Serbia.

In addition, certain industrial facilities are subject to integrated environmental permits and other environmental approvals. Accordingly, regulatory compliance and verification of the status of all relevant licences and permits are important aspects of legal due diligence and transaction planning.

9.4 Artificial Intelligence

Serbia does not currently have a comprehensive AI-specific law. The existing framework consists of general legislation applicable to AI, including data protection and other sector-specific laws, together with the Strategy for the Development of Artificial Intelligence in the Republic of Serbia for 2025–2030 and the non-binding Ethical Guidelines for the Development, Application and Use of Reliable and Responsible Artificial Intelligence. A dedicated AI law is currently under development, with Serbia's regulatory approach being aligned with the EU framework.

Pending the adoption of specific AI legislation, organisations remain subject to existing applicable laws, particularly data protection requirements where AI systems process personal data. The Ethical Guidelines promote principles including transparency, accountability, non-discrimination and responsible use of AI, although they are not legally binding as such.

9.5 Other Regulatory Compliance Requirements

In addition to corporate, consumer protection, tax and sector-specific requirements, businesses operating in Serbia may be subject to a broad range of regulatory compliance obligations depending on the nature of their activities.

These may include AML/CTF requirements, personal data protection, cybersecurity and information security obligations, competition law compliance, sanctions compliance, accounting and financial reporting requirements, environmental protection obligations, occupational health and safety requirements, foreign exchange regulations, electronic commerce rules, product safety requirements, export control regulations, and industry-specific licensing and reporting obligations.

Companies operating in regulated industries, such as banking, insurance, energy, telecommunications, healthcare and pharmaceuticals, payment services and capital markets, private security, leasing of employees, etc, are subject to additional licensing, reporting and supervisory requirements imposed by sector regulators.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment relationships in Serbia are primarily governed by the Labour Act, which sets out the general framework for employment relationships and regulates the rights and obligations arising from employment relationships. A number of other laws regulate specific areas of employment and labour relations, including:

- the Public Servants Act;
- the Employment of Foreigners Act;
- the Professional Rehabilitation and Employment of Persons with Disabilities Act;
- the Occupational Safety and Health Act;
- the Act on Amicable Settlement of Labour Disputes;
- the Strike Act;
- the Act on Prevention of Harassment at Work;
- the Whistle-Blower Protection Act;
- the Act on Employment and Unemployment Insurance;
- the Health Insurance Act;
- the Act on Central Records of Mandatory Social Insurance;
- the Pension and Disability Insurance Act;
- the Act on Conditions for the Posting of Employees to Temporary Work Abroad and their Protection;
- the Act on Records in the Field of Labour;
- the Gender Equality Act;
- the Anti-Discrimination Act;
- the Personal Data Protection Act;
- the Companies Act; and
- special collective bargaining agreements applicable to specific industries or sectors.

In addition to statutory provisions, employment relationships are also governed by collective agreements, employer rulebooks and individual employment agreements, which must comply with the mandatory requirements of Serbian employment legislation.

Termination of employment (dismissal by the employer) in Serbia is subject to strict statutory requirements, and employers must comply with both substantive and procedural rules. The Labour Act recognises several grounds for an employee's dismissal by their employer: (i) breach of work obligations, (ii) non-compliance with work discipline, (iii) lack of work performance, (iv) a criminal offence committed at work or in connection with work, (v) failure to return to work within 15 days following the expiry of the standstill of employment rights and obligations or a period of unpaid leave, (vi) redundancy and (vii) refusal to execute an amendment to the employment agreement in circumstances expressly provided by the Labour Act.

Employers must strictly comply with procedural requirements for termination and carefully and fully document the reasons for termination. Failure to comply with these requirements may expose the employer to labour disputes.

Notice requirements depend on the ground for termination:

- In the case of dismissal due to lack of performance, the employer must provide a notice period between eight and 30 days as prescribed by the employment rulebook, collective agreement or employment agreement. In addition, prior to terminating employment on the grounds of lack of performance, the employer is required to conduct a performance improvement procedure and provide the employee with an opportunity to improve their performance, a process which in practice typically takes approximately two months before termination may be effected.
- In other cases, such as termination due to an employee's breach of work duties, non-compliance with work discipline, or redundancy, the employer must comply with specific statutory procedures which generally require certain procedural steps to be completed before the employment may be terminated.
- An employee who terminates the employment agreement by resignation must generally give at least 15 days' notice. The employment rulebook, collective agreement or employment agreement may provide for a longer period, but not exceeding 30 days.

An employee who considers that their employer terminated their employment unlawfully may bring proceedings before the competent court within 60 days from the date of delivery of the decision or knowledge of the violation of the right. Where a dismissal is found to be unlawful, the available remedies may include reinstatement and compensation, depending on the circumstances of the case and the employee's claim.

Employers should therefore ensure that the termination decision is based on a valid statutory ground, properly reasoned and supported by appropriate doc-

umentation, and that all applicable procedural requirements have been followed.

Serbian labour legislation does not expressly recognise constructive dismissal. However, certain serious breaches of the employer's obligations, such as non-payment of salary or workplace harassment, may give the employee grounds to terminate the employment or pursue other remedies available under employment legislation, such as filing a claim with the competent court seeking a declaration of the violation of employment rights and compensation for damages or submitting a complaint to the Labour Inspectorate and requesting protection of rights arising from the employment relationship.

10.2 Executive Compensation and Restrictive Covenants

Executive compensation in Serbia is typically agreed in the employment or management agreement and is often confirmed by a shareholders' resolution. It usually consists of fixed remuneration, performance-based bonuses, and executive benefits such as company cars or private health insurance.

Equity-based incentive plans are more common in multinational groups than in domestic companies. These may include stock options, share plans, or other incentives linked to group performance and value, granted by either the Serbian employer or a foreign parent company. In practice, executive compensation more commonly includes bonuses and other forms of variable remuneration. Employers must consider applicable corporate and tax rules, particularly when incentives are granted by a foreign group company.

Employee share option plans offered by foreign companies to employees resident in Serbia are primarily governed by the Capital Markets Act and the Foreign Exchange Operations Act. To minimise regulatory risks, such plans should generally be structured as employee-driven arrangements, with limited involvement of the Serbian employer and direct participation and payments by employees.

Serbian law does not specifically regulate change-of-control arrangements for executives. However, parties may contractually agree on rights triggered by mergers, acquisitions or other ownership changes, including severance payments, bonuses and other protections.

The tax treatment of executive compensation depends on the type of remuneration. Salaries, bonuses and most employment-related benefits are subject to personal income tax and mandatory social security contributions, while share-based incentives may be subject to different tax rules, particularly when granted by a foreign group company.

Employers commonly use non-compete, non-solicitation and confidentiality clauses to protect business interests, confidential information and client relationships. Non-compete clauses are specifically regulated under the Labour Act and may remain in force for up to two years after termination, provided that the employer pays compensation during the restricted period. Courts assess whether such restrictions are justified, proportionate, and necessary to protect legitimate business interests.

Non-solicitation covenants are not specifically regulated by Serbian law. Their enforceability is assessed under general contract law principles, but there is currently no published Serbian case law directly addressing the breach of non-solicitation obligations. As a result, their enforceability remains somewhat uncertain.

Confidentiality obligations are generally enforceable and are commonly included in employment and management agreements. Courts assess whether the information was genuinely confidential and whether it was disclosed or used without authorisation. Employers are therefore advised to clearly define confidential information and its permitted use. In addition to contractual protection, trade secrets are protected under the Trade Secrets Act.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Forms of Land Ownership

Forms of real estate ownership in Serbia include individual ownership, co-ownership, joint ownership (ownership with undivided shares) and ownership of separate parts of buildings (apartments, business premises, garages, parking spaces).

Serbian law also recognises a specific right of permanent use of an outdoor parking space within a residential complex, which, in substance, has the principal characteristics of ownership.

Restrictions on Ownership by Foreign Persons

Foreign persons carrying out business activities in Serbia may, subject to reciprocity and exclusions in protected or restricted zones, acquire real estate necessary for the conduct of such activities. Foreign individuals who do not carry out business activities in Serbia may, subject to reciprocity, acquire residential real estate in Serbia.

Further restrictions apply to the ownership of agricultural land. Foreign persons may not own agricultural land in Serbia.

Given that there are no restrictions on indirect ownership, the restrictions applicable to ownership by foreign persons can generally be overcome by establishing a local LLC through which the relevant assets are held.

11.2 Commercial Real Estate Transactions

Key Legal Framework

Commercial real estate transactions in Serbia are primarily governed by the Law on Basic Property Relations, the Law on Real Estate Transfer, the Law on Obligations, and legislation governing the Real Estate Cadastre. These regulate property rights, transfers, contractual matters and registration. Real estate transfer agreements must be executed in notarised form.

Additional regulations may apply depending on the property, particularly planning and construction, agricultural land, environmental protection and cultural heritage rules. Planning and construction legislation is especially relevant when assessing permitted use, development potential and the legal status of existing buildings.

Land Registration System

The Real Estate Cadastre is Serbia's central public register of real estate, containing information on properties, ownership, encumbrances and other registered rights. Basic information is publicly accessible through the eKatastar platform, while registration procedures are increasingly digitalised.

As a general rule, ownership and other proprietary rights acquired by contract arise upon registration in the Cadastre rather than upon execution of the underlying agreement. The system is based on principles of publicity, reliance and priority, allowing third parties acting in good faith to rely on registered information and determining priority according to the timing of registration filings.

In practice, cadastral records are the primary source for verifying ownership, encumbrances, and restrictions affecting a property.

Structuring Commercial Real Estate Transactions

Commercial real estate acquisitions are typically structured as either:

- asset deals, involving direct acquisition of the property; or
- share deals, involving acquisition of the property-owning company.

The preferred structure depends on commercial, legal and tax considerations.

Legal due diligence is critical in both cases. Asset deal reviews typically focus on title, cadastral status, encumbrances, third-party rights, planning and construction compliance, permits, utilities and lease arrangements. Particular attention should be given to discrepancies between the property's actual status and cadastral or permitting records, which remain common in practice.

In share deals, due diligence is broader because historical liabilities remain within the acquired company, requiring review of corporate, financing, tax, contractual and regulatory matters in addition to real estate issues.

Title insurance is uncommon in Serbia. Risk allocation is primarily achieved through due diligence, cadastral verification, and contractual representations and warranties.

Environmental issues should be carefully assessed, particularly for industrial, logistics and brownfield sites. While acquisition of a property does not automatically transfer historical polluter liability, contamination may result in remediation obligations or restrictions affecting the current owner or user. Serbian law also requires environmental assessments and allocation of responsibility for historical pollution in certain transfers involving pollution-intensive facilities or potentially contaminated sites.

Mortgage Financing

Real estate financing is typically secured by a mortgage governed by the Law on Mortgage. Larger financings often include additional security over shares, receivables, bank accounts and other assets related to the property.

Mortgages may secure existing, future or conditional claims and can be created over various categories of real estate, including buildings under construction. A mortgage becomes effective upon registration in the Real Estate Cadastre and requires compliance with prescribed notarial formalities.

Mortgage priority is determined by registration. Following default, the secured creditor is entitled to satisfy its claim from the mortgaged property ahead of unsecured creditors and lower-ranking mortgagees, regardless of any subsequent transfer of ownership.

Mortgage Enforcement

Serbian law allows both judicial and, where statutory requirements are met, out-of-court enforcement of mortgages. Properly drafted mortgage documentation may constitute a directly enforceable instrument.

A practical issue may arise where land and buildings have historically been registered separately and are subject to separate mortgages. In such cases, enforcement may be more complex and negatively affect the value and marketability of the security.

Commercial Leases

Commercial leases are primarily governed by the Law on Obligations and are largely contract-driven. Parties generally enjoy broad freedom to determine their contractual rights and obligations.

Key negotiated issues typically include:

- lease term and renewal;
- rent, indexation and operating costs;
- deposits and guarantees;
- fit-out obligations;
- maintenance and repairs;
- permitted use;
- insurance;
- termination rights; and
- change-of-control provisions.

Renewal, Assignment and Subletting

Commercial tenants do not have a statutory right to lease renewal. Renewal and extension rights are therefore typically regulated by contract.

Lease assignment requires the other party's consent. If ownership of the property changes, the lease remains in force and the new owner assumes the landlord's position, although the tenant may terminate the lease. The previous owner remains jointly liable for lease obligations.

Subletting is generally permitted unless restricted by the lease, and any required landlord consent should not be unreasonably withheld.

Remedies on Default

Default provisions are typically heavily negotiated. Common triggers include non-payment of rent, unauthorised use and other material breaches.

Available remedies generally include:

- termination;

- recovery of unpaid rent;
- damages claims;
- enforcement of security; and
- recovery of possession.

Where a lease is notarised and contains the necessary enforcement provisions, it may constitute a directly enforceable instrument for eviction, eliminating the need for prior court proceedings.

Recent Developments

Recent reforms have focused on digitalisation of property records, resolution of historical cadastral and permitting issues, and environmental regulation.

A significant development is the Law on Special Conditions for Recording and Registration of Rights over Real Estate, adopted in 2025 and amended in 2026. The law creates a special framework for regularising ownership and registration issues affecting certain properties, including buildings constructed without all required permits. This may be highly relevant in due diligence and financing exercises.

Environmental regulation has also evolved with the adoption of new Environmental Impact Assessment and Strategic Environmental Assessment laws in 2024. These reforms are particularly relevant for developers and investors involved in greenfield, industrial and other development-intensive projects.

SINGAPORE



Trends and Developments

Contributed by:
Lee Woon Shiu and Catherine Cheung
DBS Bank Limited

DBS Bank Limited is the third-largest private bank in Asia and the bank of choice for wealthy clients all over the world given its bespoke, comprehensive solutions. With a presence in 19 markets globally, the firm is recognised for providing the world's best in wealth management and connecting clients with opportunities in Asia through its dual booking centres in Singapore and Hong Kong. As Singapore's leading family office practice, the firm offers a comprehensive suite of bespoke wealth management solutions, which includes investment advisory, portfolio management, trust, liquidity and estate planning, and family office solutions. In 2023, the firm launched the DBS Multi Family Office Foundry Variable Capital Company, the first bank-backed multi-family office leveraging Singapore's VCC structure, as an attractive alternative for affluent families to manage their wealth without having to establish their own single-family office. It also leverages the strengths of the broader DBS Group to service the full spectrum of clients' wealth management and business needs.

Authors



Lee Woon Shiu is group head of Wealth Planning Family Office & Insurance Solutions at DBS Group and has more than 25 years' experience in advisory, client development and professional training in family office, trusts, high-net worth life insurance and estate planning in Asia-Pacific. Woon Shiu attended Yale University and the National University of Singapore, where he was a Law Society of Singapore Book Prize winner. A dual-qualified lawyer in the UK and Singapore with a STEP certification, Woon Shiu is also an adjunct associate professor at Nanyang Technological University, where he regularly lectures on wealth structuring and estate succession. He is also a board member of the DBS Foundation.



Catherine Cheung is head of DBS' Wealth Planning Solutions Hub and provides advice, training and transactional support on many legal, regulatory and tax issues for bespoke structuring, product guides and trustee manuals. Before crossing into wealth management, Catherine was a practising lawyer for six years in Singapore and Hong Kong. She has over 20 years' experience, with key roles in trust, wealth planning advisory, legal, compliance and fiduciary functions. A triple-qualified lawyer in Singapore, Hong Kong and the UK, Catherine is also a barrister (Middle Temple Inns of Courts, England and Wales) and a qualified trust and estate practitioner (TEP) who holds a Masters (LLM) in Commercial & Corporate Law from King's College London.

DBS Bank Limited

12 Marina Boulevard
Level 6, DBS Asia Central
Marina Bay Financial Centre Tower 3
Singapore 018982

Tel: +65 9021 5130
Email: catherineks@dbs.com
Web: www.dbs.com.sg

DBS PRIVATE BANK

Introduction

Singapore, Asia's leading global hub for business, investment and private wealth management, consistently ranks near the top of global ease-of-doing-business indices and competitiveness rankings, and is a preferred regional headquarters (RHQ) for multinational corporations (MNCs) looking to access Association of Southeast Asian Nations (ASEAN) markets. It acts as a premier cross-border wealth hub, with a strong inflow of investments and a vast concentration of single-family offices and ultra high net worth individuals.

The city state's business-friendly environment, robust regulatory framework, political stability, skilled workforce, global connectivity, and evolving governance frameworks for sustainability and artificial intelligence (AI) help it to continue to attract businesses and private wealth.

As corporate regulation gets more complex and private capital becomes increasingly important to growth and succession, families owning businesses must consider corporate, personal wealth and succession issues holistically. Corporate and wealth planning are therefore becoming increasingly interconnected.

Singapore RHQ and International Headquarters (IHQ) Incentives

Singapore offers concessionary corporate tax rates (ranging from 5% to 15%) to encourage MNCs to set up or expand their regional or IHQ activities in Singapore to manage, co-ordinate and control business activities for a group of companies. While these headquarters awards can lower the tax burden on qualifying income, they require substantive commitments relating to minimum thresholds for local employment, total expenditure and high-value operational activities.

In practice, RHQ and IHQ incentives are not granted to corporations that merely maintain a registered address. These incentives are economic-development measures designed to attract substantive business activities, skilled employment, regional decision-making, treasury functions and value creation to Singapore. Multinational groups should therefore first determine the commercial rationale and operational substance of their Singapore presence before structuring the associated tax model. The incentives are best viewed as supporting a genuine headquarters or regional management strategy rather than as standalone tax-planning tools.

The Development and Expansion Incentive (DEI) is the main framework for headquarters entities performing regional management and co-ordination functions. Approved companies may receive concessionary tax rates of 5%, 10% or 15% on qualifying income for fixed, renewable periods. The concessionary rate and duration depend on employment creation, business spending and the strategic importance of regional decision-making in Singapore.

The Pioneer Certificate Incentive (PCI) supports high-value, innovation-led activities that advance Singapore's economy, including capability-driven regional leadership and advanced co-ordination functions. Approved entities may receive full or partial tax exemption on qualifying income for up to 15 years. Traditional headquarters structures are less likely to qualify and typically are required to have significant investment, technology transfer or capability development in Singapore.

The Finance and Treasury Centre (FTC) regime supports centralised treasury functions, including intercompany financing, cash pooling and foreign exchange risk management. Qualifying income may be taxed at 8% or 10% for fixed periods, subject to operational commitments such as dedicated treasury staff and minimum business spending.

The Global Trader Programme (GTP) is intended to reinforce Singapore's position as a leading global trading hub, with an expansion of qualifying commodities to include environmental attribute certificates, with effect from 13 February 2026.

In the Budget 2026, the FTC and GTP incentives were extended to 31 December 2031, providing greater certainty for multinational groups planning long-term regional operations. The FTC regime was also enhanced through expanded withholding tax exemptions on certain borrowing costs, while the GTP was broadened to support emerging trading activities, including selected sustainability-related commodities.

Together with Singapore's extensive treaty network, political stability, strong legal framework and deep talent pool, these incentives reinforce Singapore's attractiveness as a location for RHQ, treasury centres, trading platforms, supply-chain co-ordination and strategic decision-making across ASEAN and the wider Asia-Pacific region.

Accelerating ASEAN's Next Decade of Growth

As global operations span multiple markets, regional co-ordination, capital flows and risk boundaries need a clear centre of gravity. Singapore connects ASEAN markets while supporting cross-border operations and long-term planning. Among these, the Johor–Singapore Special Economic Zone (JS-SEZ) stands out as a leading example of how targeted economic corridors are reshaping ASEAN's investment landscape. By pairing Singapore's global financial ecosystem with Johor's scale and resource capacity, the JS-SEZ provides a practical model of cross-border integration, particularly for decision-makers evaluating where and how to expand within ASEAN.

The China plus one strategy continues to shape investment flows as companies seek stable, future-ready locations across Southeast Asia. Site selection now extends beyond cost to power reliability, access to green energy and efficient cross-border logistics. For supply chain–dependent sectors, dependable connectivity and lower border risk are essential.

Increased Vibrancy in Singapore's Capital Markets and Funds Sector

The city state has continued to strengthen its position as a regional capital-markets hub. A key development is the Global Listing Board (GLB), the Singapore Exchange (SGX)-Nasdaq dual-listing framework that became operational in June 2026. The framework provides eligible companies with a streamlined pathway to list concurrently in Singapore and the United States, including the use of a single set of offering documents and a simplified Singapore review process. This is intended to reduce regulatory duplication while giving growth companies access to both Asian and US capital markets.

The GLB forms part of a broader effort to deepen Singapore's equity markets. Measures include:

- expansion of the Equity Market Development Programme, which is a major SGD6.5 billion initiative launched by the Monetary Authority of Singapore (MAS) and the Financial Sector Development Fund (FSDF) to revitalise Singapore's public equity market;
- additional support for the Anchor Fund, a co-investment fund established to support high-growth enterprises and market leaders in their public fundraising and listing journeys in Singapore; and
- initiatives aimed at increasing institutional participation, liquidity and the pipeline of companies seeking public-market financing.

Taken together, these measures seek to strengthen the pathway from private growth capital to public fundraising and secondary-market participation.

For companies and their controlling shareholders, broader access to capital also brings greater governance and operational expectations. Businesses considering a dual listing will need to assess their readiness for enhanced disclosure, financial reporting, internal controls, cybersecurity and investor relations. A listing may also have wider implications for ownership concentration, shareholder governance and succession. The GLB should therefore be viewed not simply as a new listing route, but as part of Singapore's broader strategy to connect private capital, public markets and international growth opportunities.

Singapore's Mergers and Acquisitions (M&A) Landscape

Singapore's M&A landscape saw two significant regulatory developments in 2026. Firstly, the revised Singapore Code on Take-overs and Mergers (the "Takeover Code"), which took effect on 16 July 2026, introduced measures aimed at improving deal certainty, enhancing shareholder disclosures and preserving competitive bidding processes. Notably, the revisions impose greater discipline on deal protection measures, including requiring the aggregate value of multiple break fees to remain within the existing 1% cap and requiring boards and financial advisers to justify why any break fee is in shareholders' interests. For schemes of arrangement, the revised Takeover Code introduces greater execution certainty by requiring shareholder meetings to be

convened within six months of the scheme announcement and obliging parties to take prompt steps to implement an approved scheme. The reforms also strengthen disclosure standards, including requirements relating to offeror statements and information provided to shareholders, reflecting a broader regulatory objective of ensuring that shareholders are able to make informed decisions on takeover proposals.

Secondly, the revised Competition and Consumer Commission of Singapore (CCCS) Merger Guidelines, which took effect on 1 May 2026, seek to make merger control reviews more efficient and commercially predictable. The revisions streamline the assessment of transactions that present limited competition concerns, allowing routine transactions to progress more quickly, while signalling increased scrutiny of transactions involving sensitive sectors, strategic assets or broader public-interest considerations.

Both the Takeover Code and CCCS reforms demonstrate a regulatory preference for facilitating legitimate deal activity through greater certainty, clearer procedural expectations and improved timelines, while maintaining robust safeguards for shareholders, competition and market integrity. For acquirers and investors, this places greater emphasis on early transaction planning, disclosure strategy and regulatory assessment when structuring acquisitions, privatisations and strategic investments.

Evolution of Family Offices in Singapore

The family-office market in Singapore is entering a more mature phase, moving beyond rapid expansion towards greater institutionalisation and operational substance. Family offices are increasingly expected to operate as genuine platforms with sound investment governance, local capabilities, banking relationships and compliance frameworks, rather than merely as vehicles for holding and managing family assets.

A key development is the revised licensing exemption framework for single family offices, effective from 15 June 2026. Its structure-neutral approach provides a straight-through class exemption from licensing for qualifying single-family offices held through either a trust, foundation or other legal structure, so long as the funding originates exclusively from members of the same family, whether directly or indirectly, and key employees are permitted to own a non-controlling stake of up to 10%. The licensing exemption remains separate from the Section 13O and 13U fund tax incentive schemes, which impose their own requirements, including in relation to assets under management, investment professionals and local business spending.

The broader ecosystem is also expanding beyond standalone single-family offices. Depending on the desired level of control and operational infrastructure, families may adopt structures and service models involving variable capital companies (VCCs), multi-family offices, external asset managers, private banks and trustees. This reflects the family office's evolution from an investment vehicle into a platform for investment management, governance, succession, philanthropy and intergenerational wealth stewardship. The key commercial question is therefore not simply whether to establish a family office, but how its structure, governance and operating model can support the family's long-term objectives.

Corporate Governance: From Compliance to Stewardship

Corporate governance standards continue to strengthen across the city state without compromising its business-friendly environment. The 2026 corporate law reforms enhance directors' accountability, shareholder protection and safeguards against the misuse of corporate structures, reinforcing the broader shift from procedural compliance towards responsible stewardship. This direction reflects Singapore's emphasis on maintaining confidence in its corporate ecosystem as businesses become more complex – and capital flows more international – and as investors place greater weight on transparency, internal controls and effective board oversight. Governance is therefore increasingly viewed not merely as a legal obligation, but as part of the infrastructure that supports credible management, sustainable growth and market integrity.

A significant recent development is the phased implementation of mandatory corporate sustainability and climate-related disclosure reports that are to be prepared in accordance with the standards issued by the International Sustainability Standards Board (ISSB).

Starting in FY 2025, all companies listed on the SGX are required to measure and report their direct and indirect carbon emissions (Scopes 1 and 2).

For larger companies, such as those on the Straits Times Index (STI), more comprehensive reporting, including wider supply chain emissions (Scope 3), is required starting in FY 2026. These detailed environmental disclosure standards will then be gradually extended to all other listed companies, phased in for larger issuers by FY 2028 and smaller issuers by FY 2030.

These developments illustrate a broader shift towards integrating sustainability, climate-related risks and operational resilience into corporate reporting and board oversight frameworks. The incorporation of ISSB standards into SGX's reporting regime from FY 2025 also moves Singapore closer to internationally comparable sustainability reporting standards.

From a corporate and commercial perspective, these changes are increasingly relevant to financing, capital raising and transaction activity. Investors, lenders and strategic counterparties are placing greater scrutiny on sustainability disclosures, governance frameworks and risk-management processes during due diligence exercises, particularly in M&A transactions, joint ventures and public listings. As a result, companies are increasingly required to consider disclosure readiness, internal controls and board oversight as part of broader commercial planning rather than as standalone compliance matters.

Singapore's Position as a Regional Hub for Insurance Innovation

In July 2026, the MAS issued a consultation paper proposing a protected cell company (PCC) framework for captive insurance, insurance-linked securities (ILS) and sovereign risk pools. The proposed structure would introduce a new corporate structure allowing multiple insurance programmes to operate within a single legal entity while maintaining legal segregation of assets and liabilities between individual cells.

The initiative seeks to eliminate the administrative and financial friction of establishing individual entities or special purpose vehicles for every separate risk or issuance, thereby lowering structuring, operating costs and improving flexibility, and supporting growth of captive insurance and ILS activity in Singapore.

The PCC framework would seek to reinforce Singapore's position as a premier, highly competitive regional hub for alternative risk transfer and advanced risk-financing solutions.

AI and Technology: From Experimentation to Accountable Deployment

AI has emerged as a strategic priority in Singapore's digital economy. The 2026 refresh of the National AI Strategy reaffirmed the focus on accelerating adoption across key sectors, including financial services, advanced manufacturing, connectivity and healthcare, while promoting trusted and responsible deployment. This direction is relevant across the corporate life cycle. Established businesses are incorporating AI into customer service, compliance, forecasting, supply-chain management and product development, while start-ups and technology providers are building new commercial models around data, automation and AI-enabled services. As adoption broadens, decisions concerning technology investment, procurement and deployment are increasingly becoming core commercial matters rather than standalone information-technology projects.

For corporates, the conversation has moved beyond experimentation to implementation, governance and risk allocation. As organisations embed AI into business operations, greater attention is being paid to cybersecurity, confidentiality, intellectual property ownership, data governance, model reliability and oversight of third-party technology providers. Singapore's evolving AI governance frameworks, including guidance on agentic AI systems, signal increasing expectations around accountability, human oversight and the management of AI-related risks. These expectations have direct implications for commercial contracting: agreements with developers, cloud providers, data vendors and implementation partners may need to address permitted data use, ownership of inputs and outputs, service standards, audit and monitoring rights, regulatory co-operation, incident response, liability and termination support. Businesses will also need internal approval processes that distinguish lower-risk productivity tools from systems

used in customer-facing, employment, credit, investment or other consequential decisions.

The trend also affects corporate transactions and long-term value creation. In mergers, acquisitions, joint ventures and technology investments, due diligence increasingly needs to examine the provenance and quality of training data, rights to use third-party content, ownership and transferability of models and outputs, dependencies on key technology providers, cybersecurity controls and potential regulatory exposure. Representations, warranties, indemnities and post-completion integration plans may need to be calibrated to these risks.

Boards and senior management should also assess whether AI use aligns with directors' oversight responsibilities, internal policies and the organisation's risk appetite, and whether employees receive adequate guidance on confidentiality, accuracy and human review. These considerations also apply to family businesses and family offices using AI for research, analytics and operational efficiency. As data, software and digitally generated assets increasingly drive enterprise value, their ownership, control, valuation and succession require closer scrutiny. AI governance is therefore becoming integral not only to operational resilience and regulatory compliance, but also to commercial strategy, transaction readiness, business continuity and the preservation of long-term family wealth.

Talent and Workforce: Selective Openness

Access to senior and specialist talent remains a key factor in Singapore's appeal as an RHQ, innovation and investment hub. Its policy of selective openness welcomes global expertise that complements the local workforce, builds capabilities and supports productivity-led growth. Accordingly, the work-pass framework provides a targeted pathway for exceptional leaders and technical specialists while progressively raising qualifying thresholds for mainstream professional and skilled roles. Businesses must therefore align international recruitment with local workforce development and sustained operational substance.

From January 2027, the new ONE Pass (AI and Tech) track will replace the Tech Pass and provide a dedicated pathway for leading AI and technology founders, C-suite executives and senior technical specialists. Applicants must generally have earned at least SGD30,000 a month for 12 consecutive months before applying, including a fixed monthly salary of at least SGD22,500; importantly, vested non-cash remuneration, such as employee stock options and employee share ownership awards, may count towards the balance. This is a significant change because it better reflects compensation practices in start-ups and high-growth technology companies, where equity may form a substantial part of senior remuneration.

Applicants must also have at least five cumulative years of relevant founder, C-suite or technical experience within the preceding ten years, and their current or most recent employer must satisfy prescribed technology-sector and scale criteria. As part of the broader ONE Pass framework, the new track offers validity of up to five years and greater employment flexibility than an employer-specific pass, enabling holders to work across businesses, establish or operate companies and contribute to multiple ventures, subject to the applicable conditions.

The change has wider corporate and commercial significance. By making it easier for qualifying technology businesses to structure senior remuneration through a combination of cash and vested equity, the new track can support the recruitment of founders, product leaders, engineers and other specialists needed to establish regional technology teams, commercialise intellectual property, scale digital products and lead AI transformation. Its longer duration and individual mobility may also encourage experienced talent to undertake entrepreneurial, advisory and investment activities across the ecosystem, strengthening connections among corporates, start-ups, venture-capital firms, research institutions and family offices.

Businesses may therefore factor the regime into broader decisions on headquarters location, research and development, acquisitions, joint ventures and regional expansion. Employers will, however, need robust evidence of remuneration, equity vesting, relevant experience and qualifying corporate metrics, supported by careful planning of tax, employment, intellectual-property and incentive arrangements.

Sustainability, ESG and the Development of Carbon Markets

The sustainability agenda is moving from policy commitments towards market-based implementation, with carbon pricing, climate disclosure and transition finance increasingly influencing corporate decisions. The carbon tax rose to SGD45 per tonne of carbon dioxide equivalent for 2026 and 2027, strengthening incentives to reduce emissions. Tax-liable facilities may also offset up to 5% of taxable emissions using eligible international carbon credits, subject to Singapore's requirements. Together, these measures encourage businesses to embed emissions management and climate considerations into their wider business and investment strategies.

At the same time, Singapore is developing as a regional hub for carbon services and transition finance, supported by an ecosystem spanning carbon project development, financing, trading and eligible international carbon credits. For businesses, increased carbon-market activity also brings greater scrutiny of environmental claims. Rigorous due diligence on carbon credits, reliable emissions data and clear climate disclosures is becoming essential as investors and regulators focus more closely on greenwashing and the credibility of sustainability claims.

For private investors and family offices, these developments are broadening opportunities beyond conventional sustainable investment products to include transition infrastructure, energy efficiency, carbon services and nature-based solutions. This wider opportunity also heightens the need to distinguish financial returns from environmental impact. As private capital plays a greater role in financing Asia's transition, clear sustainability mandates, robust due diligence and credible impact measurement will be essential.

Conclusion

Singapore's corporate and commercial landscape continues to evolve through a model of selective openness that combines a business-friendly environment with stronger expectations of economic substance, accountability and long-term value creation.

The developments from headquarters incentives and ASEAN connectivity to capital-market reform, AI governance, skilled immigration and sustainability point to a consistent policy direction. Singapore continues to welcome international businesses, capital and talent, while increasingly expecting companies to establish substantive functions, local decision-making capabilities and skilled employment. The emphasis is therefore shifting from the volume of inward investment to the quality, resilience and economic contribution of activities conducted in Singapore.

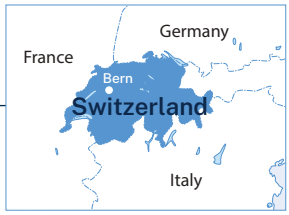
Companies establishing, expanding or managing regional operations from Singapore should address these developments through an integrated commercial strategy rather than separate regulatory workstreams:

- corporate structure and governance should support operational substance;
- workforce and immigration planning should strengthen local capabilities;
- technology adoption requires effective oversight of data, cybersecurity and intellectual property; and
- capital-raising plans must reflect evolving sustainability and disclosure expectations.

The increasing institutionalisation of family offices and family-owned businesses further highlights the connections among corporate governance, succession and private capital. Boards and senior management should therefore engage legal, tax, finance, human resources, technology and sustainability teams early in strategic planning. Decisions on RHQ, treasury operations, financing, talent deployment and digital transformation are interdependent and may affect regulatory exposure, operating costs, governance obligations and organisational reputation.

Businesses that combine sound governance with substantive operations will be best placed to manage regulatory change and capture opportunities across the ASEAN region. By aligning commercial objectives with local capabilities, responsible innovation and long-term value creation, they can strengthen resilience and maintain the confidence of regulators, investors and business partners. Singapore would therefore remain a credible and enduring platform for sustainable growth, innovation and capital deployment across Asia.

SWITZERLAND



Trends and Developments

Contributed by:
Andreas Binder, Roman Gutzwiller and Nicola Rütsche
Binder Legal

Binder Legal is a business law firm with offices in Zurich and Baden. As trusted advisers, the firm delivers pragmatic, solution-driven legal advice tailored to its clients' goals. It combines top-tier expertise, both in-house and through a strong partner network, with fresh perspectives and agility. Whether advising corporations, start-ups, public authorities or private individuals, the lawyers focus on what truly matters: clear, smart and effective solutions. Driven by personal commitment and a practical mindset, they work alongside their clients as dedicated partners – approachable, responsive and grounded in a tradition of excellence dating back to 1953.

Authors



Andreas Binder is a partner at Binder Legal and advises companies and entrepreneurs in the areas of mergers and acquisitions, corporate law and corporate governance. He holds a doctorate in law (PhD) and a degree in economics. Since 1984, he has been working as a business lawyer. In 2004, he was appointed Honorary Professor at the University of St.Gallen. In his capacity as chair and member of various boards of directors of industrial, commercial and financial companies, Andreas Binder has acquired extensive experience and expertise from a corporate perspective. Since 2013, he has been a member of the Conference Board's European Council on Corporate Governance.



Nicola Rütsche is an associate at Binder Legal and advises and represents his clients in commercial law issues and disputes, predominantly in the areas of company law, corporate governance, mergers and acquisitions, and contract law. Thanks to his interdisciplinary education in law and economics, Nicola Rütsche combines his legal knowledge with an expertise in economics, which enables him to approach problems in a holistic and multidisciplinary manner.



Roman Gutzwiller is counsel at Binder Legal and advises companies, boards of directors, executive management, shareholders and public-sector owners on corporate governance and corporate law. He is also a lecturer and postdoctoral researcher at the University of St.Gallen (HSG) and a Research Fellow at its Corporate Governance Competence Centre. His research, including a habilitation project on how shareholders can influence corporate strategy ("say on strategy"), focuses on corporate governance and strategic management. A former entrepreneur, he also brings hands-on leadership experience. He holds a doctorate in law (PhD) from HSG and an MBA from HEC Paris (specialisation in Advanced Management).

Contributed by: Andreas Binder, Roman Gutzwiller and Nicola Rütsche, **Binder Legal**

Binder Legal

Sihlstrasse 24
8001 Zurich
Switzerland

Tel: +41 58 404 40 00
Email: mail@binderlegal.ch
Web: www.binderlegal.ch



Foreign Direct Investment: Switzerland's New Investment Screening Act

Introduction

For many years, Switzerland has been one of the few advanced economies without a general mechanism for screening foreign direct investment (FDI). While most OECD member states have introduced cross-sector screening regimes, Switzerland has relied on its open investment policy, on sector-specific legislation and on the extensive public ownership of its critical infrastructure.

This is about to change. On 19 December 2025, the Swiss Parliament adopted the Federal Act on the Screening of Foreign Investments (Investment Screening Act, ISA). The ISA subjects acquisitions of control over Swiss companies active in particularly critical sectors by foreign state investors, including state-controlled companies, to prior approval. By international standards, the Swiss regime is deliberately narrow: private foreign investors are not caught.

The ISA is currently expected to enter into force in 2027.

Legislative history

The ISA goes back to a 2018 parliamentary motion (Motion 18.3021), which both chambers adopted in 2019 and 2020 against the Federal Council's opposition.

The Federal Council's consultation draft of 2022 was comparatively broad, covering acquisitions by foreign state investors in all sectors and by any foreign investor in particularly critical sectors.

Following predominantly critical responses, the Federal Council's draft of December 2023 narrowed the scope to acquisitions by foreign state investors in particularly critical sectors. Remarkably, the Federal Council did not recommend adopting its own draft, considering the cost-benefit ratio unfavourable.

In Parliament, the National Council initially extended the scope to private foreign investors and added the supply of essential goods and services as a protected interest, whereas the Council of States reverted to the Federal Council's narrow approach.

In December 2025, the National Council aligned itself with the Council of States and both chambers adopted the ISA.

Scope of application

The ISA applies to acquisitions of Swiss companies active in particularly critical sectors by foreign state investors.

Foreign state investors

A foreign state investor is defined broadly and comprises: (1) foreign state bodies at any level of government; (2) companies with their central administration outside Switzerland that are directly or indirectly controlled by a foreign state body; (3) entities with legal capacity to hold assets that are directly or indirectly controlled by a foreign state body; and (4) natural or legal persons acting on behalf of a foreign state body.

The rationale for limiting the scope to foreign state investors is that risks to public order or security are primarily associated with politically motivated transactions.

Acquisition of control

The ISA covers any transaction by which one or more foreign state investors directly or indirectly acquire control over one or more previously independent companies or parts thereof, in particular by way of merger, acquisition of a shareholding or conclusion of a contract. The concept of control follows Swiss merger control practice. There is no fixed shareholding threshold; control may also be acquired with less than 50% of the voting rights, for instance in listed companies with a widely dispersed shareholder base.

Domestic companies

All companies registered in the Swiss commercial register are caught by the ISA, irrespective of their legal form and of whether they are governed by private or public law. This includes Swiss subsidiaries of foreign groups of companies.

Critical sectors and thresholds

Approval is required only for acquisitions of companies active in the exhaustively listed sectors that reach the following thresholds (worldwide average of the two financial years preceding the application):

- *At least 50 full-time positions or annual turnover of at least CHF10 million*: manufacturers of military and dual-use goods of decisive importance for the Swiss Armed Forces, other federal security institutions or international space programmes in which Switzerland participates; operators of the electricity transmission grid, of major distribution networks and of power plants of 100 MW or more; operators of high-pressure gas pipelines; water suppliers serving more than 100,000 inhabitants; and suppliers of central security-relevant IT systems or services to Swiss authorities.
- *Annual turnover* (*or*, *for banks*, *gross income*) *of at least CHF100 million*: university hospitals and general hospitals providing centralised care; companies active in medicinal products, medical devices, vaccines or personal protective equipment; operators of significant transport hubs; operators of railway infrastructure; operators of significant food distribution centres; telecommunications network operators; and systemically important financial market infrastructures and banks.

The Federal Council may temporarily extend the approval requirement to further categories of companies (for up to 12 months, extendable once) and may exempt investors from states with which there is sufficient co-operation, with reciprocal exemptions to be sought. The preliminary draft of the implementing ordinance proposes to exempt investors from the EU and EFTA member states.

Substantive test

An acquisition must be approved unless there is reason to assume that it endangers or threatens public order or security. Relevant factors include whether:

- the foreign state investor has been involved in activities adversely affecting public order or security, or in espionage;
- the foreign state investor is directly or indirectly subject to sanctions under the Swiss Embargo Act;
- the Swiss target company's services, products or infrastructure can be replaced within a reasonable period; and
- the foreign state investor would gain access to significant security-relevant information or to particularly sensitive personal data.

Approval may be granted subject to conditions or obligations that remove the threat.

Procedure

The Swiss target company may request a binding preliminary ruling from the State Secretariat for Economic Affairs (SECO) on whether its acquisition would be subject to approval. SECO issues the preliminary ruling, as a rule, within two months of receipt of a complete request.

If approval is required, the foreign state investor must apply to SECO before closing.

The review proceeds in one or two phases:

- *Phase 1*: SECO decides within one month of receipt of the complete application whether the acquisition can be approved directly or whether an in-depth review must be opened. This decision is taken in agreement with the co-interested federal administrative units and after consulting

the Federal Intelligence Service. If no agreement is reached, an in-depth review is opened.
- *Phase 2*: SECO decides within three months, again in agreement with the co-interested federal administrative units, whether the acquisition is approved. The Federal Council decides in lieu of SECO if (a) SECO or a co-interested federal administrative unit opposes approval or (b) the decision is of significant political importance.

If no decision is taken within these deadlines, the acquisition is deemed approved. SECO may extend the deadlines in certain cases. In urgent cases, the Federal Council may approve an acquisition directly.

Only the foreign state investor and the Swiss target company have the right to appeal. Decisions of SECO and, by way of exception, of the Federal Council can be challenged before the Federal Administrative Court.

Until approval is granted, the civil-law effectiveness of the acquisition requiring approval remains suspended. If an acquisition requiring approval is completed without approval or on the basis of false information or in breach of conditions, this may result in measures to restore compliance, in particular divestment, and in administrative sanctions of up to 10% of the Swiss target company's average worldwide turnover.

Practical implications for M&A transactions

While only a small number of acquisitions are expected to fall within the scope of the ISA, its practical implications will go well beyond these cases:

- The ISA introduces an approval requirement that must be factored into transaction planning whenever a state-linked buyer is directly or indirectly involved. Sovereign wealth funds as well as state-owned or state-controlled companies will typically qualify as foreign state investors. Where such investors participate in an acquisition structure, a careful control analysis along the investment chain will be required.
- Swiss companies whose activities are close to the sectors listed in the ISA can apply for a binding preliminary ruling to obtain certainty before starting a sales process.
- Where the ISA applies or might apply, FDI approval must or should be made a condition precedent in the transaction agreement; in critical cases, mitigation measures may be offered to obtain conditional approval. Public tender offers may be made subject to the condition that no authority prohibits the transaction.
- Long-stop dates should take into account that the entire screening process can take up to four months from the filing of the complete application or – in the event of deadline extensions – even longer.
- Since screening under the ISA is independent of merger control, takeover law and other regulatory proceedings (eg, with FINMA), it can be conducted in parallel with or sequentially to those proceedings, which requires careful planning.

Outlook

With the ISA, Switzerland is abandoning its long-standing reluctance towards general FDI screening; however, it is doing so with restraint. The focus on foreign state investors, the exhaustive list of sectors and the short deadlines set the Swiss regime apart from the far broader regimes in other jurisdictions. How the ISA will operate in practice will depend to a large extent on the implementing ordinance, in particular on the list of exempted states. Foreign state investors and Swiss companies in the sectors concerned are well advised to assess now whether future transactions may fall within the scope of the ISA.

Transparency of Beneficial Ownership: The New Federal Transparency Register

Introduction

From 1 July 2015, shareholders of Swiss corporations (*Aktiengesellschaften*) and members of limited liability companies (*Gesellschaften mit beschränkter Haftung*) were required to report their beneficial owners to the company, which had to keep an internal register.

With effect from 1 October 2026, these provisions of the Swiss Code of Obligations (CO) were repealed and replaced by the Federal Act of 26 September 2025 on the Transparency of Legal Entities and the Identification of Beneficial Owners (LETA) and the Federal Council's implementing Ordinance of 12 June 2026 (LETO). The LETA introduces a central, non-public

federal register of beneficial owners (the Transparency Register), maintained by the Federal Office of Justice. The reform implements the standards of the Financial Action Task Force and aims to give authorities rapid access to accurate, complete and up-to-date information on who ultimately stands behind a legal entity, in particular to combat money laundering and terrorist financing.

Scope and exceptions

The LETA applies to Swiss corporations, partnerships limited by shares, limited liability companies, co-operatives and certain collective investment vehicles (SICAVs, SICAFs and limited partnerships for collective investment), but not to associations and foundations. It also applies to legal entities under foreign law that have a branch registered in Switzerland, have their effective place of management in Switzerland, or own or acquire Swiss real estate. Trustees with residence or registered office in Switzerland are subject to specific identification and documentation obligations, unless they are subject to the Anti-Money Laundering Act (AMLA).

Listed companies and subsidiaries in which listed companies, directly or indirectly, hold a participation of more than 75% are exempt. The exemption of such subsidiaries marks a departure from the previous law, which provided for reduced reporting obligations in this respect.

Beneficial owner

A beneficial owner is any natural person who ultimately controls a company, either by holding, directly or indirectly, alone or in concert with third parties, at least 25% of its capital or voting rights, or by controlling it by other means. If no such person exists, the most senior member of the managing body – ie, the chair of the executive management (typically the CEO) or, in the absence of a separate executive management, the chair of the board of directors – is deemed, on a subsidiary basis, to be the beneficial owner. Special rules apply where a legal entity is controlled by a trust, a Swiss foundation or a Swiss association.

Control may be exercised through a participation or by other means, in each case directly or indirectly and alone or in concert with third parties. Indirect control through a participation requires a holding of more than 50% in one or more intermediary entities which, in turn, hold at least 25% of the legal entity. Control by other means exists, in particular, where a person can appoint or remove the majority of the board, veto key decisions (eg, on the purpose, strategy, budget or financing) or bring about profit distributions; it may be based on shareholders' agreements, capital instruments such as options or convertible loans, the articles of association, representation or fiduciary relationships, or relationships between related parties.

The definition is thus considerably broader than under the previous law. In practice, consent requirements and veto rights in shareholders' agreements or in the articles of association of limited liability companies may qualify as control by other means. Similarly, voting arrangements in shareholders' agreements may constitute acting in concert; in that case, the 25% threshold applies to the jointly held participation, and each person acting in concert must be reported individually.

Obligations

Beneficial owners

Under the LETA, obligations are now imposed not only on the direct participation holder and the entity concerned, but also on the beneficial owners themselves. Specifically, if a person becomes a beneficial owner, he or she must report this to the holder of the participation through which he or she exercises control, and, where control is exercised by other means or through a chain of control, directly to the entity concerned. Beneficial owners, as well as third parties in the chain of control, must co-operate in the verification. In addition, beneficial owners have an ongoing obligation to report any change within one month.

Holders of participations in legal entities

Holders of participations who, alone or in concert with third parties, hold participations enabling control over a legal entity must report the beneficial owner to that entity within one month and co-operate in the verification. They must also report any change within one month.

Entity concerned

Many obligations fall on the entity itself. It must identify its beneficial owners, verify their identity and status with the diligence required by the circumstances, document the information, keep it accessible in Switzerland and retain it for ten years after a person has ceased to be a beneficial owner. It must report its beneficial owners to the Transparency Register within one month of its entry in the commercial register (or, for foreign entities, of becoming subject to the LETA). Furthermore, the entity must report any change within one month of becoming aware of it. The most senior member of the managing body (as defined above) is responsible for the notifications; this task may be delegated, but the responsibility remains. Subject to certain conditions, simplified procedures are available for limited liability companies held exclusively by natural persons and for single-shareholder corporations. Entities whose beneficial owners are all entered in the commercial register as holders of participations, directors or officers may report via the commercial register office.

Legal entities under foreign law

The rules apply by analogy to legal entities under foreign law, which must designate a representative or an address for service in Switzerland.

Transparency Register

Notifications must be made electronically via the federal EasyGov.swiss platform and are free of charge. Entries are declaratory and have no constitutive effect.

The Transparency Register is not public. Law enforcement authorities, the Money Laundering Reporting Office at the Federal Office of Police and the authorities responsible for administrative assistance in tax matters, among others, have full online access, while numerous other authorities, such as land registry offices, may access all data except deleted data. Financial intermediaries and advisers subject to the AMLA may consult the register for their due diligence with the use of this data being limited to this purpose. Entities may request a confirmation of their entry or an extract.

The Control Body (*Kontrollstelle*), a unit of the Federal Department of Finance, verifies, using a risk-based approach and by random sampling, whether the registered information is accurate, complete and up to date. The entity, its holders of participations, its beneficial owners and contracting third parties must provide the Control Body with the required information.

Transitional provisions

Transitional periods

Swiss entities whose beneficial owners are all entered in the commercial register as holders of participations, directors or officers must report by 1 October 2028. All other entities must report by the following deadlines:

- corporations subject to ordinary audit: 1 January 2027;
- other companies subject to ordinary audit: 1 February 2027;
- corporations not subject to ordinary audit: 1 March 2027; and
- all other companies and legal entities, including legal entities under foreign law: 1 April 2027.

Please note that if the commercial register entry is amended before the applicable deadline, the notification is due within one month of the first such amendment.

Notifications under the previous law

Notifications made by holders of participations under the previous law remain valid, provided that the persons reported also qualify as beneficial owners under the LETA. Corporations and limited liability companies must retain their previous registers of beneficial owners until 1 October 2036.

Sanctions

Measures

If information in the Transparency Register is inaccurate, incomplete or outdated, the Control Body takes the necessary measures. In the case of repeated or unremedied breaches, it may suspend the shareholder's membership and dividend rights and, where the entity evidently has no business activity or realisable assets, order its liquidation under the rules on bankruptcy. This is a marked relaxation compared with the previous law, under which membership rights were suspended by law for as long as the participation holder failed to report the beneficial owner to the company, and dividend rights were even forfeited.

Criminal sanctions

Wilful breaches of the reporting obligations and false statements to the Control Body are punishable by fines of up to CHF500,000, and wilful non-compliance with a final order of the Control Body by fines of up to CHF100,000.

Practical implications

With the first deadline expiring one month after even a minor amendment to the commercial register entry, legal entities should map their ownership and control structures, review shareholders' agreements and financing instruments for control by other means, and set up their EasyGov.swiss access early.

Gender Benchmarks for the Board of Directors: Large Swiss Listed Companies Face Their First Reporting Cycle

Article 734f of the Swiss Code of Obligations (CO) sets gender representation benchmarks for large listed companies. These are companies whose shares are listed on a stock exchange and which, in two consecutive financial years, exceed two of the following three thresholds: a balance sheet total of CHF20 million, revenue of CHF40 million and an annual average of 250 full-time positions. In these companies, each gender should make up at least 30% of the board of directors and 20% of the executive management.

Falling short of these benchmarks triggers no sanctions and does not affect the validity of board elections. Instead, the law provides for a "comply or explain" mechanism: a company that misses a benchmark must state in its remuneration report (1) the reasons for the shortfall and (2) the measures being taken to increase representation of the under-represented gender.

Transitional periods of five years for the board of directors and ten years for the executive management, both running from the entry into force of Article 734f CO on 1 January 2021, have so far deferred the practical effect of the rule. For the board of directors, the disclosure obligation applies from the financial year beginning on or after 1 January 2026. The first explanations at board level will therefore appear in the 2026 remuneration reports published in spring 2027 by companies whose financial year matches the calendar year.

Recent data suggest that the obligation will affect a significant number of Swiss listed companies. The schillingreport 2026, which examined the 100 largest employers in Switzerland as of 31 December 2025, found that the share of women on boards of directors has largely stagnated, edging up from 33% to 34% across the sample as a whole. Twenty-eight companies in the sample still fell short of the 30% board benchmark. Sixteen of these are listed companies, including one Swiss Market Index (SMI) constituent. At the executive management level, the share of women has plateaued at 22%, and 24 listed companies, six of them in the SMI, missed the 20% benchmark as of the cut-off date – a shortfall that would need to be explained only from financial year 2031.

Although the legal consequences for companies that miss the benchmarks are confined to disclosure, the practical implications may be significant. Institutional investors and proxy advisers analyse remuneration reports closely; many have adopted voting policies on board diversity. Companies offering merely generic explanations (such as a shortage of suitable candidates) might face critical questions at the general meeting and, potentially, opposition to the re-election of individual board members, in particular the chair of the nomination committee. The explanations will also be read alongside the company's non-financial reporting under Articles 964a–964c CO, where applicable.

Boards of directors that have not yet reached the benchmark should therefore treat the explanation as a governance statement rather than a compliance formality. In practice, this means linking the disclosure to a documented succession plan, a skills and diversity matrix, and concrete, time-bound measures. The real test of Article 734f CO will be whether the first reporting cycle produces meaningful explanations or standardised wording – and how shareholders respond.

USA



Law and Practice

Contributed by:
David T. Azrin, Jake Brown, Rowena Dungca, Christophe Durrer, Orla McCabe, Janet R. Murtha, Marco E. Palmese and Amy E. Peterson
Wuersch & Gering LLP

Contents

1. Business Entities P.670
1.1 Business Organisations p.670
1.2 Incorporation and Ongoing Compliance p.670
1.3 Share Issuances p.671
1.4 Distributions and Return of Capital p.671
1.5 Control Person Reporting p.672

2. Corporate Governance P.672
2.1 Legal Framework p.672
2.2 Directors' Duties and Liabilities p.672
2.3 Board Composition and Independence p.673
2.4 ESG and Disclosure Obligations p.673
2.5 Conflicts of Interest and Related-Party Transactions p.673

3. Shareholder Rights and Agreements P.674
3.1 Shareholder Rights p.674
3.2 Shareholder Agreements p.674

4. Mergers and Acquisitions P.674
4.1 Legal Framework p.674

5. Capital Markets P.675
5.1 Securities Regulation and Public Offerings p.675
5.2 Continuous Disclosure p.677
5.3 Insider Trading p.677
5.4 Shareholder Disclosure p.677
5.5 Internal Controls and Whistle-Blower Regimes p.678

6. Secured Transactions P.678
6.1 Transaction Financing and Security Interests p.678

7. Commercial Contracts P.679
7.1 Contract Formation and Enforceability p.679
7.2 Termination and Remedies p.680
7.3 Intellectual Property in Commercial Transactions p.680
7.4 Consumer Protection p.681

8. Foreign Investment P.682
8.1 Competition and Merger Control p.682
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.683

9. Regulatory Compliance P.683
9.1 Privacy and Data Protection p.683
9.2 Anti-Money Laundering, Sanctions and Corruption p.684
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.684
9.4 Artificial Intelligence p.685
9.5 Other Regulatory Compliance Requirements p.685

10. Employment and Labour P.685
10.1 Employment Standards and Workplace Regulation p.685
10.2 Executive Compensation and Restrictive Covenants p.686

11. Real Property and Commercial Leasing P.686
11.1 Requirements for Land Ownership p.686
11.2 Commercial Real Estate Transactions p.687

Contributed by: David T. Azrin, Jake Brown, Rowena Dungca, Christophe Durrer, Orla McCabe, Janet R. Murtha, Marco E. Palmese and Amy E. Peterson, **Wuersch & Gering LLP**

Wuersch & Gering LLP is an international boutique law firm providing legal services to domestic and international clients seeking practical solutions to their legal challenges in the United States. The firm is distinguished by its expertise in cross-border legal matters. By focusing on core competencies, maintaining a lean organisation and relying on technology, including AI, Wuersch Gering is able to advise clients efficiently with a level of sophistication typically only found at larger firms. The firm practices in several areas of law, including corporate and securities law, investment management, commercial transactions, data privacy, intellectual property, litigation and arbitration, labour and employment, executive benefits, immigration, real estate and tax law. Clients include institutional, strategic and private investors, financial institutions and companies ranging from small start-ups to multinational corporations. Wuersch Gering serves clients in numerous sectors, including finance, information technology, engineering, biotechnology, medical technology, specialty chemicals, consumer products, luxury goods, fine arts and more.

Authors



David T. Azrin is a partner in Wuersch Gering's Corporate & Securities and Litigation & Arbitration practices. He has extensive experience in franchising, licensing and distribution. He advises domestic and international franchisors on franchise agreements, disclosure documents, registrations, trade mark protection and disputes, and also handles related intellectual property, employment and commercial litigation matters. David is admitted in New York, New Jersey and Florida and is the immediate past chair of the New York State Bar Association Committee on Franchising, Licensing and Distribution, and a member of the ABA Forum on Franchising.



Jake Brown is a partner in Wuersch Gering's Corporate & Securities, Investment Management and International Business practices. He advises corporations, entrepreneurs, investment firms and investors on mergers and acquisitions, venture capital, investment management, securities laws and general corporate matters. His career has included senior in-house legal and general counsel roles at investment management firms, including Goldman Sachs, Soros, Atticus Capital and Hoplite Capital. Jake is a graduate of West Point Military Academy and a former US Army Infantry officer. He is admitted in New York.



Rowena Dungca is a partner in Wuersch Gering's Corporate & Securities, International Business and Data Privacy practices. She advises start-ups and established companies on domestic and cross-border transactions, US investments, corporate governance matters, commercial agreements, the establishment and operation of US subsidiaries, and US data privacy compliance. Rowena has a diverse cultural and educational background spanning Asia, Europe and the US. She is admitted in New York and was as an adjunct professor at Fordham University School of Law. Rowena is a frequent speaker and panellist on various legal topics in her areas of expertise.



Christophe Durrer is a partner in Wuersch Gering's Corporate & Securities and International Business practices. His practice focuses on mergers and acquisitions, commercial transactions and corporate matters, including cross-border transactions, strategic alliances, technology agreements and US business formation. He advises US and non-US companies and individuals, from start-ups to multinational corporations. Christophe is admitted in New York and Switzerland and is a member of the International Bar Association, the New York State Bar Association, the New York City Bar Association and the Swiss American Chamber of Commerce.



Orla McCabe is senior counsel in Wuersch Gering's Labor & Employment practice. She advises employers and executives on employment agreements, separation agreements, restrictive covenants, workplace policies, employment law compliance and employment-related claims, including discrimination, harassment, and wage and hour matters. She also conducts workplace training and performs employment law due diligence in corporate transactions. Orla is admitted in New York, the S.D.N.Y. and the E.D.N.Y., and is a member of the International Bar Association.



Janet R. Murtha is a partner in Wuersch Gering's Corporate & Securities and Investment Management practices. She advises investment advisers, financial institutions and commodity trading advisers on securities and commodities regulation, including SEC and CFTC registration and compliance, and broker-dealer regulation. Janet also structures and forms private equity and hedge funds and advises on corporate matters related to investment management activities, including lending activities. Janet is admitted in New York.



Marco E. Palmese is a partner in Wuersch Gering's Corporate & Securities and International Business practices. He focuses primarily on mergers and acquisitions and has extensive experience handling buy- and sell-side strategic and private equity transactions. Marco also regularly advises his non-US clients on their other US investment activity, including financings, securities, corporate restructurings and complex commercial matters. Marco is admitted in New York and is a member of the International Bar Association.



Amy E. Peterson is a partner in Wuersch Gering's Immigration practice. Her practice focuses on US immigration and naturalisation law, with particular experience in employment-based non-immigrant visas, employment-based immigration, permanent residence applications, immigration counselling and I-9 compliance. She also advises individuals on family-based immigration and US citizenship matters. Amy is admitted in New York and New Jersey and is a member of the American Immigration Lawyers Association and its New York Chapter.

Wuersch & Gering LLP

Wall Street Plaza
88 Pine Street, 20th Floor
New York, NY 10005
USA

Tel: +1 212 509 5050
Fax: +1 212 509 9559
Email: info@wg-law.com
Web: www.wg-law.com

Contributed by: David T. Azrin, Jake Brown, Rowena Dungca, Christophe Durrer, Orla McCabe, Janet R. Murtha, Marco E. Palmese and Amy E. Peterson, **Wuersch & Gering LLP**

1. Business Entities

1.1 Business Organisations

The principal types of business entities in the US are corporations, limited liability companies (LLCs), general partnerships (GPs) and limited partnerships (LPs). Entity formation in the US occurs at the state level and is governed by state law, not federal law. Among the 50 US states, Delaware is the jurisdiction of choice.

Delaware has earned this reputation by developing a deep, sophisticated and predictable body of corporate law that provides guidance on many areas of corporate governance and transactions. Delaware corporate law clearly delineates management's fiduciary duties and offers significant options to limit or exclude them.

Corporations

This is the common form of entity structure for businesses that seek a formal management structure, limited liability, perpetual existence and a path to becoming public. Corporations have three levels of authority: stockholders (ie, the owners); the board of directors, who exercise a supervisory role and have ultimate responsibility for managing the corporation's business and affairs and setting its strategic direction; and officers (such as the CEO or president, the CFO or treasurer, and the secretary), who carry out the day-to-day operations of the corporation pursuant to the directives of the board of directors.

- Corporations with a limited number of stockholders or which are wholly owned by a single stockholder (often a parent company) typically have a single class of common stock. In Delaware, it is customary for such corporations to be authorised to issue no more than 5,000 shares of common stock.
- Venture capital-backed corporations have founders who receive common stock in exchange for technology contributions and services (colloquially referred to as sweat equity) and outside investors who receive preferred stock in exchange for their cash investments. In Delaware, it is customary for such corporations to be authorised to issue up to 10 million shares (or more) of a mix of common and preferred stock. Venture capital-backed corporations are designed to raise capital in multiple equity financing rounds.
- Corporations are generally taxed both at the entity level and again at the stockholder level upon payment of a dividend. Corporations often function as a US tax blocker for foreign investors.

LLCs

While corporations are created by statute and have a rigid organisational structure and a fixed capital stock, LLCs are flexible creatures of contract. LLCs evolved from limited partnerships but extended the element of limited liability to all owners. LLCs are the entity of choice for small businesses, service firms, private real estate investment or project-specific special purpose vehicles. LLCs have members (ie, the owners) and managers. LLCs can be member-managed or manager-managed. Unless they have elected to be taxed as a corporation, LLCs are treated as pass-through entities for income tax purposes (ie, their income is only taxed at the member level). A key feature of LLCs is that they have a flexible capital structure that permits disproportionate allocations of income and losses among the members.

GPs

GPs are unincorporated business entities where two or more people agree to operate a business and share in the profits and losses. GPs have unlimited liability and are treated as pass-through entities for income tax purposes.

LPs

LPs are the preferred type of entity for private funds (private equity, venture capital and hedge funds), although sometimes they are replaced with LLCs. LPs have one or more general partners, who manage the business and have unlimited liability, and limited partners, who are passive investors with limited liability. The general partners of LPs are typically limited liability entities, oftentimes LLCs. LPs are also considered pass-through entities for income tax purposes.

1.2 Incorporation and Ongoing Compliance

Entity formation in Delaware is a simple, fast and inexpensive process. Corporations are formed by filing a Certificate of Incorporation with the Delaware Secretary of State. LLCs are formed by filing a Certificate

of Formation with the Delaware Secretary of State, and LPs are formed by filing a Certificate of Limited Partnership with the Delaware Secretary of State.

All entities formed in Delaware must maintain a registered agent in Delaware for receipt of service of process but may have their principal place of business in any other jurisdiction. Owners, directors and officers, and managers of Delaware entities need not be US residents. All other formation steps are internal matters, including organising the entity and causing it to issue shares or other ownership interests. A Delaware entity can therefore be formed within days or, if need be, within hours.

Filing expenses are generally in the hundreds, not thousands, of dollars, and there are no minimum capitalisation requirements for any type of entity. Delaware corporations must file an annual report and pay franchise tax each year, which is a de minimis amount relative to the assets of the corporation. LLCs and LPs do not have to file an annual report but pay an annual tax of USD400. A Delaware entity that does not have any business activity in Delaware is not subject to any other tax in Delaware.

1.3 Share Issuances

Corporations

While the issuance of shares is reserved for the board of directors, in the certificate of incorporation, the stockholders determine the various classes and maximum number of shares that the board of directors is authorised to issue. Once issued, shares are either issued and outstanding and held by a stockholder or issued and not outstanding because they have been repurchased by the corporation and held by it in its treasury.

While Delaware corporations do not have minimum capitalisation requirements, shares in Delaware corporations do have a par value or no par value per share. A common par value for corporations with few stockholders is USD0.01. A common par value for venture capital-backed corporations is USD0.00001. The sum of the par values of all issued shares of capital stock establishes the stated capital of a Delaware corporation (see **1.4 Distributions and Return of Capital**). Capital that an investor contributes to a corporation in excess of the stated capital is referred to as additional paid-in capital. Shares in Delaware corporations can either be certificated or uncertificated.

In the venture capital context, outside investors receive preferred stock that converts to common stock upon the occurrence of certain specified events (eg, a trade sale, an IPO or upon the election of the investor), allowing the investor to participate in the upside potential of the business. The designations, powers, preferences and rights of preferred stock include liquidation preferences, conversion rights, special voting rights (including director designation rights and veto rights), dividend rights, anti-dilution protections for down rounds and information rights.

LLCs and LPs

LLCs issue membership interests to their members and LPs issue partnership interests to their partners. They are typically denominated as percentage interests in the operating agreement in the case of LLCs or the limited partnership agreement in the case of LPs. LLCs and LPs with multiple owners have distribution waterfalls for profits generated by the business. Members of LLCs and partners of LPs may have profits interests that are disproportionate to their capital contributions.

1.4 Distributions and Return of Capital

Corporations

The board of directors of a Delaware corporation may declare dividends based on the so-called surplus test. Surplus is defined as the net assets of a corporation (ie, total assets minus total liabilities) that exceed the corporation's stated capital. Alternatively, the board of directors may declare dividends out of a corporation's net profits for the fiscal year in which the dividends are declared and/or the prior year. Unlike the surplus test, the net profits test does not require balance sheet solvency; it only requires cash flow solvency. While the concept of a mandatory insolvency declaration does not exist in the US as it does in some other jurisdictions, directors authorising a dividend must ensure that the corporation has sufficient funds to operate its business and pay its debts as they come due following the payment of a dividend.

LLCs and LPs

The authority to make a distribution to members of an LLC or partners in an LP is set forth in the operating agreement of an LLC and the limited partnership agreement of an LP. These are typically bespoke provisions that are specific to the business and ownership structure.

1.5 Control Person Reporting

Unlike public companies, which are subject to comprehensive SEC periodic reporting and the disclosure of insider information, private companies in the US are generally not subject to control person reporting and beneficial ownership disclosures. However, disclosure may arise in specific circumstances, including the following.

- When conducting certain exempt securities offerings under the federal securities laws (eg, issuers relying on Regulation D are generally required to file a Form D with the SEC within 15 calendar days after the first sale of securities, containing information concerning the issuer, its executive officers, directors, promoters and the offering).
- Certain other exemptions for securities offerings may involve additional disclosure requirements (eg, issuers relying on Regulation A (the so-called mini IPO) are subject to more extensive disclosure requirements regarding beneficial owners, board members and executive officers).
- Periodic reports filed by companies at the state level often require disclosure of the company's directors and officers, but not owners.

The Corporate Transparency Act (CTA), which entered into effect on 1 January 2024, sought to establish a nationwide beneficial ownership reporting regime for private companies. Reports had to be submitted to the US Treasury Department's Financial Crimes Enforcement Network (FinCEN) and were not available to the general public. Upon entering into office, the second Trump Administration suspended the reporting regime for US companies and limited it to foreign companies operating directly in the US (ie, foreign companies operating through a branch rather than a subsidiary). The final rule terminating the reporting regime for domestic companies entered into effect on 11 August 2026.

2. Corporate Governance

2.1 Legal Framework

For Delaware corporations (whether public or private), the Delaware General Corporation Law (DGCL) is the primary source of authority on corporate governance matters. A corporation's certificate of incorporation and its by-laws must comply with the DGCL. Case law regarding the fiduciary duties of directors and officers is another important source of law for corporate governance matters.

Public companies are subject to an additional federal regulatory overlay consisting of the Securities Exchange Act of 1934 (the "'34 Act"); the SEC's rules and regulations, including Regulation S-K (regarding qualitative and non-financial disclosures) and Regulation S-X (regarding financial disclosures); the Sarbanes-Oxley Act of 2002; the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; and the applicable listing standards of the New York Stock Exchange (NYSE), Nasdaq or another securities market.

2.2 Directors' Duties and Liabilities

In Delaware, directors owe fiduciary duties to the corporation and its stockholders. The principal fiduciary duties are the duty of care and the duty of loyalty.

- The duty of care requires directors to use the same measure of care when managing a corporation's business and affairs that an ordinarily prudent person would use under the same or similar circumstances. If a director acted on an informed basis, in good faith and in the honest belief that the action taken was taken in the best interests of the corporation and its stockholders, the courts will not review the board's decisions and instead defer to them under the so-called business judgement rule. The duty of care includes the subsidiary duty of oversight.
- The duty of loyalty requires directors to always act in good faith and in the best interests of the corporation and its stockholders. The corporation's interests must take precedence over the director's interests, and directors must avoid conflicts of interest, including conflicted transactions where the director sits, directly or indirectly, on both sides of

the transaction. Directors may not engage in self-dealing, take business opportunities that belong to the corporation, compete with the corporation, or misuse corporate assets absent informed consent from a majority of the disinterested directors or the stockholders (see **2.5 Conflicts of Interest and Related-Party Transactions**). The duty of loyalty includes the subsidiary duty of good faith.

Breaches of fiduciary duties can result in personal liability for directors. Corporations often purchase and maintain directors' and officers' (D&O) liability insurance to provide coverage against claims of alleged breaches of fiduciary duties (including to cover defence costs). Breach of fiduciary duties claims are derivative claims. A derivative claim is a claim brought by one or more stockholders on behalf of a corporation seeking restitution for a wrong done to the corporation.

Delaware corporations may include an exculpation provision in their certificate of incorporation that eliminates a director's personal monetary liability for breaches of the duty of care, but not for breaches of the duty of loyalty.

The fiduciary duties of members or managers of Delaware LLCs and general partners of Delaware LPs can be waived in the operating agreement or limited partnership agreement almost entirely.

2.3 Board Composition and Independence

Under the DGCL, a private corporation's board must have at least one director, and every director must be a natural person. The board size is usually established in the by-laws or otherwise determined by the stockholders from time to time. Moreover, except as it relates to the duty of loyalty, the DGCL does not require boards of private corporations to meet any independence standards. Nor are there any diversity requirements. US residency is not required for directors of a Delaware corporation.

Board composition rules for public companies are materially different because the listing standards of the NYSE and Nasdaq require a majority of the directors to be independent. Moreover, they require public companies to maintain a fully independent audit committee and compensation committee. Public companies and large private companies have standing audit, compensation, and nominating and corporate governance committees that assist with oversight and governance functions.

2.4 ESG and Disclosure Obligations

Unlike the EU, the US currently does not have a comprehensive federal law requiring corporations to make ESG (Environmental, Social and Governance) disclosures. There was an SEC Climate Disclosure Rule proposed in 2022 and finalised in 2024, but it is in the process of being rescinded after legal challenges and political shifts. Public companies must nonetheless disclose material issues that could be characterised as ESG matters even in the absence of an ESG-specific disclosure obligation.

2.5 Conflicts of Interest and Related-Party Transactions

In Delaware, transactions involving a director, officer or controlling stockholder who is conflicted (ie, not disinterested) are not prohibited, but are subject to the entire fairness test that requires the economics of the transaction (ie, the price) and the process to be fair to the corporation and its stockholders.

DGCL Section 144 (a) provides a safe harbour for transactions between the corporation and one or more of its directors or officers who are conflicted. To receive the benefit of this safe harbour, the transaction must be approved either by the affirmative vote of a majority of the disinterested members of the board or by an affirmative vote of a majority of the disinterested stockholders.

DGCL Section 144 (b) provides a safe harbour for transactions involving the corporation and a controlling stockholder that do not qualify as a going private transaction. To receive the benefit of this safe harbour, the transaction must be approved either by the affirmative vote of a board committee comprised of two or more disinterested directors or by an affirmative vote of a majority of the disinterested stockholders.

DGCL Section 144 (c) provides a safe harbour for transactions involving the corporation and a controlling stockholder that qualify as a going private trans-

action. To receive the benefit of this safe harbour, the transaction must be approved by an affirmative vote of a board committee comprised of two or more disinterested directors and by an affirmative vote of a majority of the disinterested stockholders.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Under the DGCL, stockholders of Delaware corporations have statutory rights to vote for the election of directors, access information (subject to a proper purpose limitation), approve fundamental transactions and compel an annual meeting if none has been held for 13 months.

Stockholder approval is also required for major corporate actions, including (i) amendments to the certificate of incorporation pursuant to Section 242 of the DGCL, (ii) mergers pursuant to Section 251 of the DGCL and (iii) a sale of all or substantially all of the corporation's assets pursuant to Section 271 of the DGCL. These approvals require the affirmative vote of a majority of the outstanding shares, unless the governing documents or applicable law impose a higher threshold. In connection with a merger, stockholders have appraisal rights. If they do not vote in favour of the merger, they can petition Delaware courts to compel the surviving entity to pay them fair value for their shares (as determined by the court). Appraisal rights are subject to strict procedural requirements.

3.2 Shareholder Agreements

Stockholder agreements are frequently used in private and closely held corporations to supplement statutory rights and allocate rights and obligations among the stockholders relating to governance, economic matters and an exit of all or individual stockholders. Typical provisions include voting agreements, designation of directors or board observers, veto or consent rights for significant matters, pre-emptive rights, transfer restrictions, rights of first refusal or first offer, drag-along and tag-along rights, call and put options, and expanded information and inspection rights.

In venture capital equity financing rounds, the National Venture Capital Association (NVCA) model documents are commonly used as the market-standard transaction documents to regulate the rights and obligations of founders and investors.

4. Mergers and Acquisitions

4.1 Legal Framework

In the US, M&A transactions are primarily in the form of stock purchases, asset sales or statutory mergers. The consideration for mergers can be stock, cash or a combination of both. Statutory mergers are particularly prevalent in the public company context where there are many shareholders and holding a shareholder meeting that yields a vote is a more efficient process than collecting signatures from disparate shareholders to a single stock purchase agreement.

State corporate law as well as the applicable common law provide the principal statutory basis for stock purchases, asset sales and mergers. State common law also primarily governs the duties owed by boards of directors and officers to their companies and their shareholders. The federal securities laws, and for listed companies, the listing rules of the applicable securities markets, such as the NYSE and Nasdaq, also apply to public and private M&A transactions. The principal securities laws that apply to M&A transactions involving public companies are the Securities Act of 1933 (the "'33 Act") and the '34 Act and the SEC rules and regulations promulgated under these laws, including the tender offer and proxy solicitation rules under the '34 Act. Private M&A transactions must comply with the '33 Act and the SEC rules and regulations promulgated under this law, primarily the resale restrictions for shares not issued in a public offering (restricted securities) and possibly the rules governing private placements or offshore transactions.

As in any jurisdiction, tax laws also impact M&A transactions. In general, an analysis of federal tax efficiency arises early in any potential transaction, and federal and state tax compliance are significant concerns in any due diligence review.

As the M&A landscape is vast, the following sets out a selection of practice points that often differ from practice in other jurisdictions.

- US acquisition agreements contain a detailed set of representations and warranties regarding the condition of the target qualified only by exceptions that the seller sets forth in detail on disclosure schedules. Documents provided in the data room or available in public records typically do not qualify the representations and warranties. Careful attention to the representations and warranties and the disclosure schedules is critical to ensure the indemnification expectations of the parties are consistent with the terms of the agreement. Moreover, state law varies on whether a buyer should be entitled to indemnification if the buyer has actual knowledge prior to closing of the seller's breach of a representation (so-called sandbagging) if the purchase agreement is silent on this point.
- M&A transactions are typically valued on a cash-free, debt-free basis. In order to determine the value of the target at closing, parties in the US typically rely on a working-capital adjustment of the purchase price up or down based on the difference between the expected amount of closing working capital and net debt established at signing and the closing working capital and net debt that actually exists at closing. This requires preparation of closing accounts after the closing along with a related dispute resolution mechanism. The locked-box approach prevalent in many other jurisdictions is not commonly used in the US.
- US law firms will ordinarily resist sharing diligence reports prepared for a buyer with financing sources and will seldom if at all permit financing sources to rely on such diligence reports. US law firms will, however, share diligence reports if the recipient explicitly agrees not to rely on the report in a non-reliance letter.
- An important element in any private equity M&A transaction is certainty on termination mechanics and limitations on potential liability for such termination. These matters are primarily dealt with in the interaction between the purchase agreement termination provisions, the equity commitment letter and the limited guarantee as well as, to a more limited extent, the debt commitment letters of financing sources. Even if the acquisition document for a non-US target is governed by its local laws, US private equity funds will insist that the limited guarantee and equity commitment letter be governed by US laws.
- Finally, many non-US practitioners wonder whether it is necessary to engage a lawyer qualified in the state of organisation of the relevant transaction party. Given the prevalence of Delaware corporations and the influence of Delaware corporate law, the corporate laws of the various states tend to be substantially consistent with Delaware corporate law. For this reason, US corporate lawyers are generally well-versed in Delaware corporate law and are familiar with how to navigate issues that may arise if parties to a transaction are not Delaware corporations. Practitioners will, however, pay special attention to state-specific rules that apply to employment and will generally seek local counsel assistance on matters related to real property transfers. Moreover, the choice of governing law requires practitioners to consider divergent ways in which various jurisdictions approach certain aspects of M&A transactions.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

Public Offerings

Pursuant to Section 5 of the '33 Act, any offer or sale of a security made within the US must either be registered with the US Securities and Exchange Commission (SEC) or benefit from an exemption to registration. Otherwise, the offer or sale is illegal. Absent fraud, an illegal offer or sale generally creates a right of rescission in the investor permitting the investor to put its investment to the issuer and recover its purchase price (plus interest) from the issuer.

In connection with an IPO, an issuer registers the offer and sale by filing a registration statement with the SEC on Form S-1. If the registration is being made in connection with a business combination (ie, a merger), Form S-4 is used. The registration statement is comprised of a prospectus and the registration statement wrapper. The SEC's initial review period is approximately 30 days and is typically extended by several weeks in connection with the SEC staff's issuance of one or more comment letters and the issuer's amendment of its registration statement in response to such

comments. Once the review is complete, the SEC declares the registration statement effective. SEC review does not immunise the issuer and the directors and officers who have signed the registration statement from liability for material misstatements or omissions contained in the registration statement. Filings made with the SEC can be found on the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system.

For follow-on public offerings, an eligible public company (essentially, one that is current and timely in its periodic reports for the 12-month period preceding the offering) can use a short-form registration statement on Form S-3 that incorporates information from the issuer's periodic public filings to register the sale of additional securities.

Foreign private issuers (ie, companies incorporated outside the US with securities listed on a US exchange with 50% or less US ownership) must follow the same registration procedures as US issuers but benefit from accommodations to their home-country rules by using registration statements on Form F-1 (in the place of Form S-1) and Form F-3 (in the place of Form S-3).

Private Offerings

Although the once-strict rules have been relaxed for private offerings that meet certain conditions in Rule 506 (c), a critical element of a typical private offering of securities in the US is the avoidance of general solicitations. A general solicitation is any solicitation or communication that conditions the market for a securities transaction or capital-raising or arouses public interest in a security (ie, a public offering). To avoid general solicitations, issuers may only conduct private offerings (also referred to as private placements) with investors with whom they have a substantive pre-existing relationship. The relationship must pre-exist the offer or sale and the relationship must be of sufficient depth to permit the issuer to evaluate, and the issuer does evaluate, the investor's status as an accredited (or sophisticated) investor.

The two primary exemptions to the registration requirement that issuers rely on for private placements are Regulation D and Section 4 (a)(2), the statutory exemption for private sales of securities set forth in the '33 Act. Regulation D is a regulatory safe harbour for private placements in reliance on Section 4 (a)(2). Most issuers that rely on Regulation D for their private placements rely on its Rule 506 (b). These exemptions do not limit the offering size and are available to issuers for an unlimited number of accredited investors with respect to Rule 506 (b) (individuals with at least USD200,000 in annual earnings (or USD300,000 with a spouse) or USD1 million in investments) or sophisticated investors with respect to Section 4 (a)(2) (a case law-based facts and circumstances analysis). Only Rule 506 (b) requires a public filing on Form D. In addition to complying with the requirements of the federal securities laws for private placements, issuers also have to comply with state securities laws, so-called "blue sky laws". These laws typically provide for an exemption for Regulation D offerings.

Private placements are ubiquitous in the venture capital, private fund and institutional private debt markets. Securities issued in private placements are subject to limitations on resale by investors who are deemed statutory underwriters (so called restricted securities) under SEC Rules 144 or 145, and, for issuers in the institutional private debt market, Rule 144A.

SEC Regulation S provides safe harbours for sales of securities to investors that are not US persons from the registration requirements of the '33 Act (both in the primary and secondary markets), if they are conducted in an offshore transaction. The conditions for these safe harbours vary depending on the type of security and the type of offer or sale.

A special regulatory regime applies to investment companies, such as mutual funds or ETFs. These issuers are subject to the registration, governance and reporting requirements of the Investment Company Act of 1940. Private funds (private equity funds, venture capital funds, hedge funds) are typically not investment companies subject to the Investment Company Act. Rather, they rely on the exceptions from the definition of an investment company provided by Section 3 (c)(1) or Section 3 (c)(7) of the Investment Company Act. Section 3 (c)(1) is available for private funds with not more than 100 investors, and Section 3 (c)(7) is available for private funds offered exclusively to "qualified purchasers", defined as individuals with at least USD5

million in investments or entities with USD25 million in investments.

While the funds themselves are exempt, the investment advisers (or managers) to the funds must comply with the registration requirements of the Investment Advisors Act of 1940 or benefit from an exemption thereto. Exemptions include the Private Fund Adviser Exemption and the Venture Capital Fund Exemption (both of which result in Exempt Reporting Advisor status) and the Foreign Private Adviser Exemption.

5.2 Continuous Disclosure

Simultaneously with the registration of the sale of shares in a public offering under the '33 Act, the class of shares issued to the public must be registered under the '34 Act, which regulates the markets for securities issued to the public. Once securities are registered with the SEC under the '34 Act, the issuer becomes subject to the periodic reporting requirements pursuant to Section 13 (a) of the '34 Act. The periodic reporting requirements include annual reports on Form 10-K and quarterly reports on Form 10-Q, and current reports on Form 8-K for specified material events.

Foreign private issuers whose shares have been offered to the public in the US must file annual reports on Form 20-F (in the place of Form 10-K), and interim and current reports on Form 6-K (in the place of Form 10-Q for interim reports and Form 8-K for current reports). Major exchanges such as the NYSE and Nasdaq require foreign private issuers to file semiannual interim financial statements on Form 6-K (although this is not an SEC requirement).

5.3 Insider Trading

While the Section 16 (b) "short swing" profits rules apply to a specified group of insiders irrespective of whether they exploit their position (see **5.4 Shareholder Disclosure**), Rule 10b-5 prohibits trading in securities while in possession of material, non-public information. Insider trading requires (i) a trade in securities, (ii) while in possession of material information (ie, information a reasonable investor would consider important or likely to affect securities prices), (iii) which information is not public (ie, information that has not been broadly disseminated) and (iv) the use of such information is in violation of a duty (eg, as a result of being a director or officer or advisor of the company).

Liability may arise from use or misappropriation of the information in breach of a fiduciary duty or disclosing the information to others who trade on it (so-called "tipping"). Caution is required in the context of tender offers, which do not require the element of violation of a duty to give rise to liability.

Violations can result in civil and criminal penalties, including fines and imprisonment. The SEC is the principal civil enforcement authority, and the US Department of Justice is the principal criminal enforcement authority.

5.4 Shareholder Disclosure

If any person or group owns or acquires beneficial ownership of more than 5% of certain classes of equity securities registered under the '34 Act, Section 13 of the '34 Act requires such person or group to file a beneficial ownership report with the SEC. These filings give the issuer, other stockholders and the market notice of significant acquisitions and potential changes in control. They require disclosure of the identity of the shareholder, the number of shares owned, and in the case of Schedule 13D, the source of funds used to acquire the shares, the stockholder's purpose for owning them and any contacts, arrangements, understandings or relationships with respect to securities of the issuer.

A person crossing the 5% threshold must file Schedule 13D unless the person qualifies for Schedule 13G. Schedule 13G is a shorter form and requires fewer disclosures than Schedule13D. Schedule 13G is available to passive investors (eg, institutional investors and investors that have no intent to seek control of the issuer).

Failure to file a Schedule 13D or 13G can lead the SEC to seek injunctions and monetary penalties.

Directors, executive officers and 10% or greater shareholders of most public companies must make Section 16 filings reporting their ownership stakes and trades in company securities. They must make the initial statement on Form 3, report changes on Form 4

and make any year-end corrections on Form 5. Forms 4 are due within two business days of a change. Since 2026, directors and executive officers (but not 10% or greater shareholders) of non-exempt foreign private issuers must also make Section 16 filings, although they remain exempt from the Section 16 (b) "short-swing" profits disgorgement rules, which require an insider of a US public company to return to the company any profits earned on purchases and sales of company securities during any rolling six-month period regardless of the purpose or intent behind such transaction or whether the insider had knowledge of any information not available to the public.

5.5 Internal Controls and Whistle-Blower Regimes

For public companies, the SEC plays a central role in monitoring companies' compliance with internal control over financial reporting (ICFR). The SEC also maintains a Whistleblower Program that enables whistle-blowers to report potential violations of the securities laws directly to the SEC. Large private companies often also maintain an internal whistle-blower program as part of their compliance programs.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

Article 9 of the Uniform Commercial Code (UCC), as supplemented (when adopted) by new Article 12 for certain digital assets, governs secured transactions involving tangible and intangible personal property in the US.

Attachment

For a security interest to be enforceable against the debtor and third parties (ie, to "attach"): (i) the secured party (ie, the lender) must provide value to the debtor (eg, an extension of credit), (ii) the debtor must have power to transfer rights in the collateral to the secured party and (iii) there must be a security agreement.

Perfection

Perfection protects the secured party's claim against third parties, including other creditors. Although the exact steps for perfecting a security interest vary by collateral type and local rules, the general rules are as follows.

- UCC filings – a security interest in "personal property" or "general intangibles" generally is perfected by filing a UCC-1 financing statement in the jurisdiction where the debtor is located (jurisdiction of formation for most entities and residence for individuals).
- Control – a security interest in certain collateral is perfected by control, such as through possession of a physical stock certificate or control of a deposit account (as depository bank or through a deposit account control agreement) or a digital asset (through control of the custody account or the keys that grant control over the digital asset).
- Specialised laws – a security interest in certain collateral – eg, in intellectual property, may require additional state or federal filings. For example, a security interest in intellectual property may be perfected through a filing with the US Patent and Trademark Office.
- Real estate – security interests in real property (mortgages) are not governed by the UCC, but by state property laws and possibly federal and state consumer protection laws and are typically recorded in the county where the property is located.

Priority

Generally, priority of security interests in the same collateral is as follows.

- Perfected security interests have priority over unperfected interests.
- The first security interest that is perfected has priority over later-perfected security interests.
- A purchase money security interest (PMSI) in consumer goods, equipment or inventory has priority over perfected non-PMSI security interests.
- For collateral perfected by possession or control, the party with possession or control has priority over a security interest perfected by another manner (eg, a UCC-1 filing).

Enforcement

Upon default, the secured party generally may repossess and sell the collateral to satisfy the debt without a court proceeding.

Acquisition Financing

Acquisition financing typically is secured by a security interest over substantially all assets of the target and its material subsidiaries (as subsidiary guarantors), including pledges of the equity of the target and any material subsidiary. Material subsidiaries of the target also typically accede to the financing documents as a subsidiary guarantor after the closing. One lender often acts as security agent for all lenders. When there are multiple classes of debt, the parties may enter into an intercreditor agreement to govern how senior and junior lenders share, prioritise and enforce their security interests.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

In the US, contract law is state law. Contract formation requires an offer, acceptance by the counterparty and consideration. Under the common law mirror-image rule, the acceptance must unequivocally match the terms of the offer. Otherwise, the acceptance is considered a counteroffer. Consideration is a bargained-for exchange whereby each party gives the other party something of value (ie, money, goods, a service or forbearance of a legal right). Consideration cannot be based on a pre-existing duty. A promise to make a gift is not a legally enforceable contract.

Contracts for the sale of goods under the Uniform Commercial Code relax the common law mirror-image rule under certain circumstances. When buyers and sellers exchange standard terms and conditions of sale but certain elements conflict, the Uniform Commercial Code's "battle of the forms" procedures kick in to resolve the conflict.

Oral contracts are generally enforceable. However, under state Statutes of Frauds, certain contracts (eg, sale of goods contracts of USD500 or more and contracts related to real estate) must be evidenced by a signed writing, which can be in electronic form. Purported contracts based on an illegal subject matter or that violate public policy, that lack the basic elements of contract formation or that are impossible to perform are void ab initio. Fraudulent misrepresentation, duress, undue influence and lack of capacity are grounds for voiding a contract, creating a right of rescission in the adversely affected party.

In the US, courts typically enforce the plain language of a contract so long as it is clear and unambiguous on its face. This incentivises contracting parties to spell out their rights and obligations clearly and comprehensively. The parole evidence rule prohibits evidence of prior negotiations or agreements to vary, add to or contradict the terms of a fully integrated agreement, so courts only look to extrinsic evidence (including evidence of the parties' intent at the time of contract formation), if they need to resolve an ambiguity in the language of the contract. Commercial contracts include an implied duty of good faith and fair dealing. However, this duty does not extend beyond a prohibition against frustrating the counterparty's ability to perform the contract.

The building blocks of contracts are the following types of promises:

- representations – a statement about a present or past fact that is purported to be true at the time it is made;
- covenants – a promise to do or to refrain from doing something in the future; and
- conditions – a future event or requirement that must be satisfied before a party is required to perform its obligations under the contract.

Limitation of liability provisions are among the most frequently negotiated clauses in commercial contracts. Two distinct mechanisms typically appear together in these provisions. The first is a monetary cap on total liability, either tied to fluctuating fees paid under the agreement or a fixed dollar amount. The second is an exclusion of consequential, indirect, punitive and special damages. Importantly, carve outs for (gross) negligence, willful misconduct and fraud are commonly built into these clauses, meaning the cap and exclusions will not apply if a party's conduct rises to that level. Whether a contractual limitation of liability is enforceable also depends on the governing state law and the particular limitation at issue. In certain jurisdictions, applicable law may render liability limitations unenforceable with respect to specified conduct, regardless of the contractual language.

Indemnification obligations, particularly for third-party claims such as intellectual property infringement or personal injury and property damage, as well as for breaches of confidentiality and data privacy incidents, are another type of frequently negotiated clause in commercial contracts. Under an indemnification clause, one party agrees to cover a specified loss of the other party as a matter of contract (as opposed to the payment of damages following a court proceeding). The obligation to indemnify typically arises at the time the indemnified party suffers the loss.

7.2 Termination and Remedies

Under the common law, the principal remedy for a breach of contract in the US is expectation damages in the form of money damages. The aim of expectation damages is to give the non-breaching party the benefit of the bargain; in other words, to put the non-breaching party in the financial position they would have been in had the breaching party fully performed its obligations under the contract. Expectation damages are not punitive in nature.

The main types of damages are direct damages and consequential damages, and in the goods context, incidental damages. Direct damages are the immediate loss caused by the breach and suffered by the non-breaching party. Consequential damages are secondary losses that are specific to the transaction at issue and that were reasonably foreseeable to the contracting parties at the time of contract formation. Incidental damages are reasonable and additional losses suffered by the non-breaching party in connection with its management of a breach (eg, additional transportation costs or the additional costs of securing replacement goods, so-called cover costs).

Specific performance is an equitable remedy that may be granted in a court's discretion if money damages would be an inadequate remedy for a breach (eg, in the case of a breach of a covenant not to compete). If specific performance is granted, the court orders the breaching party to take an action or to refrain from taking an action. The bar for obtaining an order of specific performance is high. Parties to a contract therefore often include express provisions in the contract authorising the remedy to increase the likelihood that a court will award it.

A minor breach of contract merely entitles the non-breaching party to money damages. A major or material breach of contract entitles the non-breaching party to money damages plus the option to suspend the performance of its obligations under the contract. The non-breaching party generally has the obligation to mitigate damages to the extent possible through the exercise of reasonable efforts. If included in a contract, a force majeure provision permits a party to temporarily suspend the performance of its obligations under the contract in response to a major, unforeseen event that is outside of its control without being in breach of contract (eg, natural disasters, the outbreak of hostilities, wide-reaching government actions).

7.3 Intellectual Property in Commercial Transactions

Types of IP

The main types of intellectual property (IP) rights involved in commercial transactions in the US are patents, trade marks, copyrights and trade secrets.

Patents are issued by the US Patent and Trademark Office (USPTO). The main types of patents are utility patents that have a term of 20 years from the filing date, and design patents that have a term of 15 years from the grant date. Utility patents require the payment of periodic maintenance fees.

Trade marks in the US need not be registered to receive legal protection, but registration is recommended for enforcement. Federally registered trade marks require the filing of a declaration of continued use periodically, and the registrations can remain active as long as use of the trade marks continue.

Multinational registration is available for patents pursuant to the Patent Cooperation Treaty (PCT) system and for trade marks pursuant to the Madrid Protocol.

Copyrights automatically vest upon creation of the work and need not be registered. However, copyrights must be registered to bring an infringement action in court. Copyrights generally last for the duration of the author's life plus 70 years, or for works made for hire, 95 years from first publication or 120 years from creation for unpublished works.

Trade secrets are confidential information with a business or economic value where the proprietor makes reasonable efforts to keep the information confidential and control access to it.

IP Assignment and Licensing

Intellectual property assets must be assigned pursuant to a signed writing. For an effective trade mark assignment, the goodwill of the business associated with the trade mark must also be transferred. Recordation of a patent, copyright or trade mark assignment is not required but puts third parties on notice of the assignment and provides priority with respect to later-in-time good faith purchasers for value. Patents, copyrights and trade marks can be licensed on an exclusive, non-exclusive or sole basis, perpetually or for a limited term, with or without being revocable, with or without payment of royalties, with or without rights of transferability and sublicense, and on a worldwide or more limited basis. Trade secrets are difficult to license due to the requirement to keep them confidential.

Allocation of Ownership of IP

The ownership of IP arising out of a project (whether in connection with a licensing agreement or a joint venture) should be allocated between the contracting parties, and can involve significant negotiation. Background IP is IP owned or developed by one party prior to the start of the project or developed independently by such party outside of the scope of the project. Background IP typically remains with the party that licensed or contributed the IP to the project, but a licence to the Background IP may be necessary for the project to continue. IP developed in connection with the project, can be allocated to one or more parties, and is often licensed back to the individual parties.

An employee inventor is by default the owner of patentable IP, subject to a shop right that grants the employer non-exclusive rights to use the IP. The work-for-hire doctrine vests copyrights in the employer but has limitations. To avoid any adverse consequences, employers often have employees sign inventions assignment agreements to vest any and all IP rights in the employer. Recording such assignments with the USPTO is highly recommended to enable the employer to prosecute patent applications.

Currently, copyright ownership and patentable inventions must be created by humans and not AI, although AI assistance may be permissible.

Remedies for Infringement

Remedies for infringement include injunctive relief and money damages. Enhanced damages and attorneys fees are sometimes available, based on the facts. Contractual indemnification rights provide important substantive and procedural protections for parties to IP transactions against third-party claims alleging infringement.

Franchises

A franchise is a comprehensive business contract between a franchisee and a franchisor that couples a trade mark licence with an operational and logistical framework that allows the franchisor to retain significant control over the operations of the franchisee. Although a franchise transaction does not constitute a securities offering, it reflects a similar regulatory concept. Rather than relying solely on private contractual arrangements, the franchisor (the seller) is subject to a prescribed pre-contractual disclosure regime designed to provide prospective franchisees (the buyers) with standardised information before they enter into a franchise relationship. The disclosure document that must be delivered is called a Franchise Disclosure Document (FDD).

7.4 Consumer Protection

An important intersection between consumer protection laws and commercial agreements are consumer product warranties. The key laws governing such warranties are the Magnuson-Moss Act at the federal level and Article 2 of each state's Uniform Commercial Code.

A warranty is the seller's promise about the quality or certain characteristics of a product or a service. There are two types of warranties: express warranties and implied warranties.

- Express warranties are promises made by the seller voluntarily and explicitly to the consumer,

either orally or in writing. Express warranties must be limited to what the seller can actually deliver. For instance, tying the warranties to agreed specifications is preferable to open-ended language (eg, "free of defects") or incorporating a subjective component ("quality satisfactory to the buyer").
- Implied warranties (eg, the implied warranty of merchantability or the implied warranty of fitness for a particular purpose), on the other hand, are implied by the applicable state Uniform Commercial Code and must be excluded "conspicuously" in a contract (ie, in bold or all cap letters).

Under the Magnuson-Moss Act, if a seller offers a limited express warranty to a consumer, this seller may limit the duration of the implied warranty to the period of the express limited warranty (if certain conditions are met) but may not disclaim the implied warranties entirely. Sellers offering a full express warranty may not disclaim nor modify the implied warranties at all. Conversely, if the product is offered on an "as is" basis (ie, without any written express warranty), most states allow the seller to disclaim the implied warranties in their entirety so long as consumers are informed in writing in a conspicuous manner.

Related to the topic of warranties is deceptive advertising. Under the Federal Trade Commission Act (the "FTC Act"), advertising must be truthful and non-deceptive. There is no private right of action under the FTC Act, but consumers may submit complaints to the US Federal Trade Commission (FTC), which could then initiate an enforcement action. If such misrepresentation (eg, a false claim in the product specification) is embedded in an express warranty, it could be an actionable breach of contract. Moreover, if such breach also constitutes a violation of the Magnuson-Moss Act, the consumer may be able to recover court costs and reasonable attorneys' fees, if successful.

Additional consumer protection regimes exist in specific sectors (eg, the Consumer Financial Protection Bureau (CFPB) regulates mortgages, credit cards and student loans offered to consumers) and at the state level.

8. Foreign Investment

8.1 Competition and Merger Control

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 and its implementing rules (the "HSR Act") require that an "acquiring person" (up to the ultimate parent owner) make a filing and observe a waiting period before closing an acquisition of voting securities or assets which causes the acquiring person to cross specified ownership, voting or dollar value thresholds. An HSR Act filing can be triggered in connection with an original investment, the exercise of warrants or options, the conversion of debt to equity or the consummation of another add-on investment that would result in crossing those thresholds. Failure to make a necessary filing or to satisfy any required waiting period prior to closing an acquisition can result in substantial fines.

Unless an exemption applies, pre-merger notification is required if a transaction meets three tests (numbers are valid for 2026).

- Commerce test – requires that either party be engaged in an activity affecting commerce.
- Size of transaction test:
  (a) USD133.9 million or less – if the transaction is valued at USD133.9 million or less, pre-merger notification is not required;
  (b) more than USD535.5 million – if the transaction is valued at more than USD535.5 million and no exemption applies, pre-merger notification is required; and
  (c) more than USD133.9 million to USD535.5 million – if the transaction is valued in excess of USD133.9 million but not more than USD535.5 million, pre-merger notification is required only if the transaction meets the "size of person test" below.
- Size of person test – this test is satisfied if one party has annual net sales or total assets of at least USD26.8 million (a "USD26.8 million person") and the other party has annual net sales or total assets of at least USD267.8 million (a "USD267.8 million person"). It does not matter which party is the USD26.8 million person and which is the USD267.8 million person.

HSR filings require specified, detailed information regarding the acquiring person and the acquired person, as well as the disclosure of certain documents prepared by the acquirer for evaluating or analysing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets (so-called 4 (c) materials).

8.2 Foreign Investment Restrictions and Sector-Specific Rules

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee responsible for reviewing foreign investments into the US. CFIUS has discretion to determine whether such investments pose national security risks, and the CFIUS process can impact the timing and likelihood of closing a transaction.

CFIUS has broad authority to review "covered transactions", but only some covered transactions require mandatory filings. Filings are required before closing when:

- a foreign person in which a foreign government has a substantial interest (excluding an excepted foreign state) acquires 25% or more of the voting interest in a US business that:
  - (a) produces, designs, tests, manufactures, fabricates or develops "critical technology" in the US;
  - (b) owns, operates, manufactures, supplies or services certain critical infrastructure in the US; or
  - (c) maintains or collects sensitive personal data of US citizens that could be exploited to threaten national security (collectively, a TID US Business); or
- a foreign person (excluding an excepted investor) acquires certain ownership, governance (including a board observer) or information rights in a TID US Business involved with "critical technology".

Failure to make any required filing can result in financial penalties. Parties may voluntarily report covered transactions to gain safe harbour protection against later action by CFIUS.

A CFIUS declaration is a short, expedited filing with a 30-day review period and no filing fee. All mandatory filings require the filing of a declaration or, at the filers' discretion, the filing of a notice (see below). A declaration is often filed if the parties believe the transaction has low national security risk, they want to save costs and time, and they hope to secure a quick safe harbour letter. However, unlike a notice filing, there is no guarantee that CFIUS will provide a definitive clearance or rejection of the transaction. Parties often receive "the shrug", meaning CFIUS allows the transaction to proceed without rejecting it or providing an affirmative safe harbour from future CFIUS action. Sometimes, parties that file a declaration are then requested to submit a full notice.

A CFIUS notice is a detailed, long-form filing with a 45-day review period (plus a potential 45-day investigation period) and has a sliding-scale filing fee based on transaction value. A notice typically is used when the transaction is of likely interest to CFIUS, such as if it clearly involves sensitive technologies, infrastructure or data (ie, a TID US Business), or has complex foreign government ownership elements.

9. Regulatory Compliance

9.1 Privacy and Data Protection

The US does not have comprehensive federal legislation governing consumer privacy protection across all US states. As a result, the US legal landscape remains a layered framework consisting of federal and state statutes, regulations, industry standards and case law with differing scope and focus areas depending on the state and industry. Some are based on the residency of the data subjects, while others regulate the use of certain data categories, activities or triggering events.

The closest to a federal general consumer privacy law is Section 5 of the FTC Act. Consequently, the FTC has become the de facto federal enforcement agency for consumer data protection. Notably, Section 5 of the FTC Act does not address privacy explicitly but rather folds it under the general prohibition on unfair or deceptive trade acts or practices. Hence, rather than enforcing specific privacy requirements, the FTC's enforcement actions have primarily targeted companies' disclosures and representations about their handling of personal information, with the failure to adhere

to their own privacy policy being the most common allegation. Other federal laws impose specific privacy requirements, but they only apply to certain sectors or categories of personal information. These include, among others, the Gramm-Leach Bliley Act concerning consumer financial services, the Health Insurance Portability and Accountability Act (HIPAA) concerning healthcare and the Children's Online Privacy Protection Act.

At the state level, California was the first state to enact its own general consumer privacy law, the California Consumer Privacy Act, amended by the California Privacy Rights Act (the CCPA). The CCPA, together with its implementing regulations, is thus far the most comprehensive among the state consumer privacy laws that have been enacted to date. Further, the state of California is also the only state with a standalone agency that is solely dedicated to enforcing California's privacy laws. Companies that fall under the CCPA must give consumers a so-called "notice at collection" that discloses the categories of personal information being collected and the purposes of such collection. Such notice needs to provide the consumer with a link to opt out from the sale of personal information (if applicable) and another link to the company's full privacy policy. Notably, the CCPA defines "sale" or "sharing" of personal information broadly.

To add to the mix, apart from the general consumer privacy laws, certain states have also enacted laws that govern specific subject matters (eg, biometric data, AI, data security requirements and data breaches).

Given the current fragmented state of US privacy law, emerging technological advancements and evolving legal landscape, compliance can be a daunting task. Rather than attempting absolute compliance, many companies adopt a pragmatic approach that seeks to establish a defensible compliance program aimed at reducing the risk of enforcement and consumer complaints.

9.2 Anti-Money Laundering, Sanctions and Corruption

The principal anti-money laundering and counter-terrorist financing laws in the US are the Bank Secrecy Act, as amended by the USA PATRIOT Act and the Anti-Money Laundering Act of 2020. These are supplemented by the regulations and guidance issued and enforced by the US Treasury Department's Financial Crimes Enforcement Network (FinCEN). The US anti-money laundering regime applies to financial institutions. Covered financial institutions are generally required to maintain a risk-based AML/CTF compliance programme; implement know-your-customer (KYC) procedures; monitor transactions; file suspicious activity reports; maintain prescribed records; and implement sanctions screening and related controls to comply with Office of Foreign Assets Control (OFAC) requirements. Section 314 of the USA PATRIOT Act also requires covered institutions to respond to FinCEN information requests and permits regulated information-sharing concerning suspected money laundering or terrorist financing.

The Foreign Corrupt Practices Act of 1977 (FCPA) is the principal US federal anti-corruption statute. It prohibits bribery of foreign officials and requires issuers to maintain accurate books and records and adequate internal accounting controls. It applies where (i) anything of value is offered, promised or given, (ii) to a foreign official, (iii) with corrupt intent, (iv) for a business purpose. The FCPA applies broadly to issuers, domestic concerns, certain foreign persons acting in US territory and affiliated persons. It can also reach third parties if the payer acts knowingly, including with reckless disregard or wilful blindness. There is no monetary threshold under the FCPA, meaning that even small improper payments can lead to liability. Violations can trigger civil and criminal liability.

The federal domestic Bribery Statute prohibits corrupt exchanges generally. It prohibits directly or indirectly giving, offering or promising anything of value to a federal public official (or the public official demanding or accepting anything of value), in each case, to influence an official act.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Owners and operators of real property are generally liable for environmental contamination caused by them under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Owners can also be held strictly liable for pre-existing contamination caused by a prior owner or operator. To protect against this liability, buyers of real property can conduct "all appropriate inquiries" (including Phase I and Phase II environmental assessments) and comply with certain post-closing procedures that ensure that the contamination does not continue. The US Environmental Protection Agency (EPA) enforces CERCLA.

Health and safety in the workplace is primarily regulated by the Occupational Safety and Health Act of 1970 (the OSH Act). The Occupational Safety and Health Administration (OSHA) enforces the OSH Act. The OSH Act imposes a general duty on employers to provide a hazard-free workplace as well as industry-specific duties. The OSH Act also imposes record-keeping requirements for workplace injuries on covered employers (so-called OSH Form 300 Logs).

9.4 Artificial Intelligence

Unlike the EU, the US currently does not have a single comprehensive federal AI statute comparable to the EU AI Act. Similar to data privacy, states are beginning to introduce regulatory elements and federal agencies may have jurisdiction to regulate AI practices under existing frameworks – eg, the FTC for unfair and deceptive AI trade practices, the EEOC for discriminatory AI-assisted employment decisions and the CFPB for AI-assisted decision-making with respect to consumer financial products.

9.5 Other Regulatory Compliance Requirements

There are no other applicable regulatory compliance requirements or regimes in this jurisdiction, which have not already been mentioned.

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Employment and labour law in the US is governed by a combination of federal, state and local laws. Key federal statutes include:

- the Fair Labor Standards Act (FLSA), which prescribes standards for wages, overtime pay and child labour;
- Title VII of the Civil Rights Act, which prohibits employment discrimination;
- the Americans with Disability Act (ADA), which makes it unlawful to discriminate in employment against qualified individuals with a disability;
- the Age Discrimination in Employment Act (ADEA), which prohibits age discrimination in the workplace;
- the Family and Medical Leave Act (FMLA), which entitles eligible employees to take unpaid, job-protected leave for family and medical reasons; and
- the National Labor Relations Act (NLRA), which provides the right to unionise.

Typically, employment contracts in the US are presumed to be "at will," which means that the employer as well as the employee may terminate the relationship at any time and for any or no reason. However, employers may not terminate employees for unlawful discriminatory or retaliatory reasons, or in violation of public policy.

Most employees in the US receive a short form offer letter that sets forth base pay and bonus entitlements, a basic description of benefits (such as health care coverage and 401 (k) retirement savings plan participation), and vacation and sick leave entitlements.

Large-scale reductions in force require companies to comply with the WARN Act by providing employees with 60 days' advance notice of plant closings or mass layoffs.

For foreigners working in the US, a variety of visa types are available, including E Treaty Trader/Investor Visas, L-1 Intracompany Transfer Visas (both individual and blanket-based), H-1B Specialty Occupation Visas, TN Visas for Canadians and Mexicans under USMCA, J-1 Visas for interns and trainees, O-1 Extraordinary Ability Visas, Family-Based Green Cards and Employment-Based Green Cards (EB-1, EB-2, EB-3).

10.2 Executive Compensation and Restrictive Covenants

Federal securities laws require clear, concise and comprehensive disclosures of compensation paid to executive officers and directors of public companies, in particular, for the executive officers named in periodic SEC filings (ie, the CEO, the CFO and the next three most highly paid executive officers). These disclosures tend to be heavily scrutinised by investors and proxy advisory firms. Compensation paid to executive officers and directors of private companies is generally not subject to public disclosure.

Executive compensation arrangements extend well beyond base salary to include notice periods and severance rights, annual and performance-based bonuses, equity incentive programs, change of control benefits, additional benefits entitlements (including life and disability insurance, relocation expenses and car allowances), confidentiality and inventions assignment obligations and restrictive covenants. These are typically set forth in a negotiated, long-form employment agreement.

The structuring of equity incentive programmes requires navigating complex federal and state tax laws. Section 409A, which must always be reviewed in connection with the implementation of an equity incentive programme, prohibits non-qualified (ie, guaranteed) deferred compensation and subjects violations to a 20% excise tax. If a non-US entity is involved, Section 457A imposes an independent 20% excise tax on prohibited non-qualified deferred compensation. Golden parachute payments made by corporations to executives and other senior employees in connection with a change of control are subject to a 20% excise tax under Section 280G if the payments meet or exceed three times the base amount of pay, calculated as the employee's average annual compensation over the past five years. Various mitigation measures are available (including gross ups and cutback provisions (ie, provisions that limit the payments to USD1 less than the three times limit)) and private corporations can avoid Section 280G penalties by obtaining shareholder approval and meeting prescribed disclosure requirements.

The enforceability of restrictive covenants varies significantly by state. California is the most restrictive state and tends to void all non-compete agreements in the employment context, no matter how narrowly tailored. Most other states (with certain exceptions) tend to enforce non-compete agreements that are reasonable under the circumstances with respect to geographic or industry scope and duration and are necessary to protect the employer's legitimate interests. However, an increasing number of states are enacting limitations on non-compete agreements applicable to low-wage workers. Non-compete agreements in connection with the sale of a business remain widely enforceable. Recent efforts by the FTC during the Biden Administration to ban post-employment non-competes nationwide have been unsuccessful.

Most states (with certain exceptions including California) enforce reasonable employee and customer non-solicitation agreements. However, as with non-compete agreements, an increasing number of states are enacting limitations on their enforcement with respect to low-wage workers. Confidentiality agreements remain widely enforceable.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Land ownership in the US primarily takes one of three forms:

- fee simple ownership – full ownership rights;
- a leasehold – the exclusive right to use and possess real property for a set period of time; and
- an occupancy licence – a contractual right to use and possess real property for a limited purpose during a limited period of time that is often revocable.

Foreign individuals and corporations are generally free (subject to applicable CFIUS and sanctions restrictions, if any) to buy, hold and sell real property in the US. However, in the event of a disposition of a US real property interest (including equity interests in a US real property holding company) by a foreign seller, the buyer must withhold and pay to the IRS 15% of

the purchase price under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) to secure the seller's payment of applicable capital gains taxes.

11.2 Commercial Real Estate Transactions

A contract of sale typically governs the purchase and sale of real property in the US. The property transfer itself is effected by the execution and delivery of a deed at closing and recordation of the deed at the county level shortly thereafter. Real property transfers often require the payment of transfer tax. Buyers frequently purchase title policies to insure against deficiencies in marketable title.

A security interest in owned real property is referred to as a mortgage.

Most business in the US rely on commercial leases for their operating premises (an office, store, warehouse or facility). Many commercial leases are "triple-net" leases. These are long-term arrangements (five to ten years or more) where the tenant pays the landlord monthly rent and covers all maintenance and operating expenses (including taxes). The landlord is only responsible for making structural repairs to the building. Few to no regulations apply to commercial leases, so they often are heavily negotiated.

Zoning regulations enacted by local governments limit the types of activities that business can undertake on given parcels of land.

Trends and Developments

Contributed by:
Daniel A. Wuersch and Claudio A. Guler
Wuersch & Gering LLP

Wuersch & Gering LLP is an international boutique law firm providing legal services to domestic and international clients seeking practical solutions to their legal challenges in the United States. The firm is distinguished by its expertise in cross-border legal matters. By focusing on core competencies, maintaining a lean organisation and relying on technology, including AI, Wuersch Gering is able to advise clients efficiently with a level of sophistication typically only found at larger firms. The firm practices in several areas of law, including corporate and securities law, investment management, commercial transactions, data privacy, intellectual property, litigation and arbitration, labour and employment, executive benefits, immigration, real estate and tax law. Clients include institutional, strategic and private investors, financial institutions and companies ranging from small start-ups to multinational corporations. Wuersch Gering serves clients in numerous sectors, including finance, information technology, engineering, biotechnology, medical technology, specialty chemicals, consumer products, luxury goods, fine arts and more.

Authors



Daniel A. Wuersch is a founding partner of Wuersch Gering. His practice focuses on corporate and securities law, including the representation of foreign companies in the US. He is admitted in New York and Switzerland and holds a Dr. iur. degree from the University of Zurich, Switzerland and an LLM from the Georgetown University Law Center. Prior to founding Wuersch Gering, Daniel practised corporate and securities law with Fried Frank and Morgan Lewis in New York, as well as Homburger in Zurich, Switzerland. Daniel regularly publishes on issues of US and Swiss law and the law of the European Union.



Claudio A. Guler is a partner in Wuersch Gering's corporate and securities, and international business practices. He advises foreign companies on mergers and acquisitions, joint ventures, venture capital and other investment transactions, the formation and operation of US subsidiaries, and corporate and commercial matters. Claudio holds a Master's degree from The Fletcher School of Law and Diplomacy at Tufts University. Claudio is admitted in New York and is recognised as a rising star in business and corporate law in New York.

Wuersch & Gering LLP

Wall Street Plaza
88 Pine Street, 20th Floor
New York, NY 10005
USA

Tel: +1 212 509 5050
Fax: +1 212 509 9559
Email: info@wg-law.com
Web: www.wg-law.com

WUERSCH GERING

Donald Trump won the election for US President in November 2024 and re-entered office with the conviction that the American people gave him a broad mandate to resolve the US's economic issues. The causes, he maintained, originated abroad. The solution would be to withdraw the US from the world's affairs, restrict immigration, reshore and protect its industry, and strengthen its technological leadership while maintaining a favourable tax environment. The pace should be brisk. What followed was the US's first genuine attempt to discontinue its role as the world's geopolitical and financial sponsor since the end of World War II.

The policies and communications of the second Trump Administration have focused in large part on the costs of the US's engagement with the rest of the world and the perceived damage free trade has done to the domestic economy. They have given limited attention to the benefits of engagement and the free trade in goods, services and ideas. Given the relative dimensions of the US and the rest of the world, continuing to play the role of exclusive sponsor in perpetuity is unsustainable. However, one of the risks of withdrawing rapidly and simultaneously upending the rules of commerce is that it can diminish the benefits of engagement faster than it does the costs.

Looking forward, it is reasonable for global investors and trading partners of the US to expect that following the midterm elections, President Trump's ability to implement this mandate will be constrained. Divided government appears to be the most likely outcome of the midterm elections as the political pendulum begins to swing back and the electorate demands a more moderate policy environment.

The US is entering the midterm elections against the backdrop of a long-running affordability crisis for many middle-income households. Moreover, annual inflation is stubbornly high between 3% and 4%, gas is above USD4 per gallon on average and diesel (the economy's workhorse) is above USD6 per gallon on average. The yield on the ten-year Treasury has exceeded 5%, marking its highest levels since the 2000s. The cumulative weight of the Administration's policies has begun to yield the economic landscape that many experts predicted. The effects of these policies have been offset in part by the AI boom. Estimates suggest that the boom is driving US GDP growth by one-third to one half of overall GDP growth. Moreover, it is generating a wealth effect in stock portfolios and Americans' 401 (k) retirement savings accounts.

If the US's ability to fundamentally and rapidly renegotiate its international economic relations is proving limited, Washington may have to start to take domestic adjustments into consideration. However, these imply significant political challenges.

The Debt

The leading indicator that adjustments are needed, whether internationally or domestically, is the US's national debt. It surpassed the USD40 trillion milestone in August 2026, and the bond market took notice. The US debt-to-GDP ratio is expected to surpass its last peak of around 106% shortly after the end of World War II towards the end of this decade (in peacetime). Annual interest payments now exceed USD1 trillion and are the second largest federal outlay after Social Security (the statutory government pension system), ahead of Medicare (health insurance for the elderly) and defence spending. The maturity structure of the debt is weighted heavily towards the short end of the yield curve. This means that approximately 60% of the debt will have to be refinanced in the next two years by the end of 2028, possibly at higher interest rates. For the past five years, interest rates have been reversing their prior 40-year trend and appear to be on a secular path to historic normalisation or a higher interest rate environment. For foreign companies and investors, this means an increase in the cost of capital and tighter lending conditions for their US operations.

With the national debt reaching all-time highs, the second Trump Administration focused its legislative efforts on the One Big Beautiful Bill Act (OBBBA) signed into law on 4 July 2025. The longstanding proposition that lower taxes always stimulate economic growth, thereby offsetting the effects of higher debt, motivated the passage of the OBBBA. The OBBBA permanently fixed the corporate income tax rate and the personal income tax brackets that the Tax Cuts and Jobs Act (TCJA) introduced in 2017 at lower levels. They were set to expire in 2025. The TCJA reduced the corporate income tax rate from 35% to 21%. It reduced

the personal income tax brackets across the board by 1–4%, including the top marginal rate from 39.6% to 37%. The OBBBA also sought to boost cash flows at businesses by permanently restoring the option for businesses to deduct 100% of the expense of purchasing qualifying new business property in the first year of purchase (the option was in process of being phased out). To promote onshoring, the OBBBA introduced the option for businesses to deduct 100% of the expense of constructing a new manufacturing or production facility in the US in the first year of service, provided it is put it into service before 1 January 2031.

The expectation, however, is that the OBBBA will not generate sufficient economic growth to pay for itself. Funding for the OBBBA is instead coming from additions to the national debt of perhaps around USD4 trillion to USD5 trillion over ten years and spending cuts to social programs of around USD1 trillion, including Medicaid (health insurance for low-income individuals and families), subsidies for healthcare plans sold through the Obamacare marketplaces that were expanded during COVID-19 and food stamps (nutritional support for low-income individuals and families). Congress structured the spending cuts so that their effects would mostly only be felt after the midterm elections.

While foreign companies and investors benefit from a favourable tax environment in the US, they should not be surprised if an upward adjustment comes in the not-too-distant future either under a new political leadership or because hope has caught up with reality.

Adjusting the Trade Dial

No policy reflects the second Trump Administration's ambitions to seek adjustments aboard benefiting the US economy more so than its tariff policy intended to onshore businesses to the US and protect domestic manufacturing industries. President Trump introduced the policy in a respectively mild form during his first term in office. President Biden did not substantially reverse the policy but sought to add to it by introducing incentives for specific industries to onshore to the US. COVID-19, meanwhile, exposed the practical limits of global supply chains in a time of crisis.

Upon re-entering office, President Trump exercised the tariff power with far-reaching consequences to the US's core economic partners in Europe, East Asia and North America. He drew few distinctions between traditional allies and adversaries. A common denominator across these partnerships is that they all involve complex, devolved foreign direct investment and/or trade relationships that are difficult to untangle and limit the US's bargaining power.

According to US government statistics (which presumably are conservative figures), the US foreign direct investment position in the EU stood at USD2.9 trillion by the end of 2025. Conversely, the EU's foreign direct investment position in the US stood at USD2.6 trillion by the end of 2025. The mutual foreign direct investment stock between the US and China, meanwhile, is negligible by comparison. US foreign direct investment in China totalled USD121 billion in 2025. Chinese foreign direct investment in the US totalled USD19 billion in 2025. Based on foreign direct investment, one would assume that the US enjoys considerable leverage over China in the economic sphere. However, the trade relationship has a neutralising effect. While it is still less than half the size of that between the US and the EU, it totalled some USD500 billion to USD700 billion per year over the past decade.

Nowhere are the effects of the Trump tariff policy felt more than in the North American economies intertwined under NAFTA and USMCA. By the end of 2025, US foreign direct investment in Canada stood at USD488 billion, while Canadian foreign direct investment in the US amounted to USD747 billion. US foreign direct investment in Mexico is smaller but still significant at USD169 billion, compared with USD49 billion in Mexican foreign direct investment in the US. Meanwhile, trade between each of the US and Canada and the US and Mexico totals some USD900 billion per year, or almost USD2 trillion in total.

Canada has taken the firmest stance. It imposed retaliatory tariffs and turned to the EU for support, going so far as to contemplate becoming an "associate member" of the bloc. For the EU, abundant Canadian natural gas is a welcome substitute for the Russian gas that it cut off because of the Ukraine war in

2022. To this end, Canada and Germany signed the SEFE Agreement in May 2026. Under this agreement, Canada will supply Germany with natural gas for up to 20 years starting in the early 2030s. Given the breadth and depth of the interdependencies, the geographic proximity and the fact that talks were underway before they broke down in August 2026, it is reasonable to assume that neither Canada nor the US likely views a long-term trade war as productive or sustainable.

President Trump announced the initial round of worldwide tariffs on 2 April 2025 (Liberation Day) pursuant to executive orders issued under the purported authority of the International Emergency Economic Powers Act (IEEPA). The US Supreme Court struck these orders down as illegal in late February 2026. In response, the Trump Administration has sought to reimpose analogous tariffs on the basis of other authorities in US law. These include across-the-board tariffs for a limited period of 150 days to address fundamental international payments problems pursuant to Section 122 of the Trade Act of 1974; tariffs to address threats to US national security pursuant to Section 232 of the Trade Expansion Act of 1962; tariffs to address structural excess capacity in manufacturing pursuant to Section 301 of the Trade Act of 1974; and tariffs to address discriminatory treatment of US goods by other countries pursuant to Section 338 of the Tariff Act of 1930.

The Administration sometimes offers businesses opportunities to avoid the economic costs of its policies and maintain the status quo. Pharmaceutical companies, for example, had a limited window in early 2026 to generally reduce Section 232 tariffs by entering into an onshoring agreement and possibly a Most Favoured Nation (MFN) pricing agreement with the US. However, the required contents of these agreements are not specified in a statute (that underwent the legislative process) or regulations (that underwent the notice and comment process), so the Administration has substantial latitude to tailor them to meet its preferences.

Challenging China

President Trump has long expressed the desire to seek trade adjustments with respect to China. Criticising the US–China trade relationship is not without merit, but the situation is complicated and, in many aspects, net positive on balance. On the one hand, the US–China trade relationship has secured outsized benefits for the US and turbo-charged its consumption and investment. On the other hand, it has lifted hundreds of millions of Chinese citizens out of poverty and permitted China to develop its economy through export-led growth to become a superpower to rival the US.

Trade with China (and other economies with much lower costs of labour such as Vietnam and Mexico) helped push American prosperity to ever-increasing heights. However, the gains were not all equitably distributed. The pain was most acutely felt by the American Midwest. The manufacturing heartland of the US lost the competition with manufacturing powerhouses in East Asia, led by China. The resulting economic malaise from the de-industrialisation brought about by globalisation created the political opening for Donald Trump and the MAGA movement.

Yet President Trump's attempts to take on the US's trade imbalance with China have been met with limited success. During the past two years, between bans on Chinese exports of rare earth metals and on Chinese imports of soy beans, China showed that adjusting the US–China trade imbalance will not be simple, easy or fast. The parties currently stand at a truce under the terms of the Busan Agreement.

The situation is further complicated by China's vast holdings of US Treasuries. These holdings provide an important source of financing for the US, complement the goods trade and provide a significant marginal benefit to US households. By buying Chinese-made goods using US dollars, US consumers transfer US dollars to China, which China in turn reinvests in US assets, including US Treasuries. Until recently, this contributed to keeping US borrowing costs artificially low. President Trump's trade war has rattled the creditor–debtor relationship between the US and China, but fundamentally, it remains intact due to structural constraints. By all appearances, China continues to buy and hold US Treasuries notwithstanding almost ten years of increasingly unfavourable US trade policies. Ultimately, Beijing has little interest in disrupting its export-led growth engine before it can reform its economy and power it more through domestic con-

sumption. Beijing also knows that the American consumer's appetite to reduce its consumption patterns is limited.

Energy Security

Another key pillar of the current Administration's economic policy is energy security. This appears to have been a key motivation behind the raid and capture of Venezuelan President Nicolas Maduro in January 2026. Emboldened by the success of this operation, President Trump rattled another key area that provides a significant marginal benefit to US households two months later – only this time, seemingly inadvertently. In late February 2026, President Trump started a war with Iran that the US is unlikely to prevail in at a price it is prepared to pay. The protracted conflict that ensued put the petrodollar system that the US established with Saudi Arabia in the early 1970s at risk. Under this system, Saudi Arabia and the other Gulf states in the region sell their oil and gas to global consumers and have agreed to price their sales in US dollars in exchange for US security guarantees. They reinvest the US dollar proceeds they earn in US assets, including US Treasuries.

As a consequence of the war, Saudi Arabia and the other Gulf states have been the target of damaging Iranian attacks on their territory. They have watched as their regional adversary and a geopolitical proxy of China demonstrated to the world that it had been underestimating the power it has over the Straight of Hormuz and the Middle East more broadly. The scope of these attacks has called into question the value of the US's security guarantees and introduced an element of mistrust into the relationship that is likely to linger. Saudi Arabia and the other Gulf states are unlikely to start bandwagoning with China anytime soon, but they will be giving opportunities to diversify a harder look than they were before. To the extent the diversification takes the form of them earning fewer US dollars, the benefits of the petrodollar financing system for the US would be diminished. More immediately, the costs of another protracted Middle East war are a further aggravating factor for US budget deficits.

The Private Equity Barometer

One industry that has directly and early on in the cycle felt the consequences of climbing interest rates is private equity, where low-cost financing is a crucial part of the business model. Elevated interest rates raise the cost of acquisition debt and reduce the leverage that a given level of EBITDA can support, requiring larger equity contributions from investors and compressing returns. They also heighten refinancing risk for portfolio companies whose debt was raised in the low interest rate years. This has resulted in a bifurcation in the private equity industry. Large, highly profitable funds that can afford to pay more for capital and absorb valuation discounts continue to attract capital, while small and medium-sized funds are struggling. Portfolio company transactions have become harder to close, and where they do close, they close at reduced valuations. This has generated a vast backlog of more than 30,000 unsold companies owned by private equity worth approximately USD4 trillion in the aggregate that private equity is unwilling or unable to exit. Stalled exists have materially limited the industry's ability to make distributions to paid-in capital (DPI) to investors. Many of these portfolio companies were acquired during the lowest interest rate years in 2020–2021.

To the extent the large, highly profitable portfolio companies are late-stage, pre-IPO businesses in the AI-driven tech sector, they may be contributing to a concentration risk in the sector. They risk overlapping with the publicly traded Magnificent Seven that make up 30–40% of the market capitalisation of the S&P 500 and are responsible for the lion's share of the index's gains in recent years.

Continued Interdependence

Two years of charting an ambitious and novel course have shown that the US economy and the world economy remain deeply intertwined. The AI boom is helping to keep adjustments at bay, including at home, and it is possible that AI eventually makes a substantial contribution to improving the economic picture. However, the full transformative effect of AI is still to be seen, and the boom does pose the risk of an economic bubble. This, however, is a global issue should it materialise. So, in many ways, is the growing US national debt.

Against this broader political and economic backdrop, two other developments in the US legal landscape are of interest to foreign investors.

The Reg Flex Agenda

Under the leadership of Commissioner Paul Atkins, the US Securities and Exchange Commission (SEC) is pursuing a less prescriptive and more principles-based regulatory approach aimed at reducing compliance burdens, facilitating capital formation and focusing on core investor protections. To ease the burden on US public companies, the SEC has proposed allowing public companies to opt for semi-annual rather than quarterly financial reporting, has proposed rescinding its 2024 climate-related disclosure rules, and is seeking to shift its enforcement priorities away from maximising the number of cases and penalties toward pursuing the most serious forms of misconduct.

Digital Assets

There are significant legislative developments for digital assets in the US. For starters, a new Article 12 of the Uniform Commercial Code that provides a framework for transactions in digital assets has or is being adopted by a growing number of states. The Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act adopted in 2025 establishes a comprehensive federal regulatory framework for stablecoins. The GENIUS Act requires permitted stablecoin issuers to be US-based financial institutions and stablecoins to be backed up on a one-to-one basis with reserves of highly liquid assets such as cash or short-term US Treasuries.

The Digital Asset Market Clarity (CLARITY) Act of 2025, which is currently stalled in the legislative process, would establish the federal regulatory framework for cryptocurrency digital assets and would regulate market participants in the digital asset space, such as digital exchanges, digital commodity exchanges, brokers and dealers, and other intermediaries. The regulatory responsibility would principally be shared between the SEC and the Commodity Futures Trading Commission (CFTC). The CLARITY Act would also require certain market participants to adopt AML and know-your-customer procedures.

USA – CALIFORNIA



Trends and Developments

Contributed by:
Amanda Paracuellos
Paracuellos Law Group PC

Paracuellos Law Group PC serves as trusted outside transactional counsel to middle-market businesses, family offices, investment platforms, fund sponsors, affordable housing industry participants and international companies entering the US market. Founder Amanda Paracuellos is a former partner of Crowell & Moring and brings more than 30 years of corporate, securities and transactional experience to the firm's work on complex mergers and acquisitions, fund formations, strategic investments, financings, governance matters, restructurings and cross-border transactions.

Author



Amanda Paracuellos is an experienced corporate and transactional lawyer representing companies from start-ups to public companies in M&A, joint ventures, securities offerings, private equity financings, corporate governance, commercial contracts, fund formation and technology licensing across a broad range of industries. She began her career at Arnold & Porter LLP in Washington, DC, and later became a partner in the corporate and transactional practice at Crowell & Moring LLP in Orange County. She also served as general counsel of a Los Angeles media company. Since 2020, Amanda has taught contract drafting at UC Irvine School of Law. She received her JD from University of Iowa College of Law.

Paracuellos Law Group PC

Paracuellos Law Group PC
303 Broadway Street
Suite 104-29
Laguna Beach CA 92651
USA

Tel: +1 949 464 6490
Email: amanda@ajplawgroup.com
Web: www.ajplawgroup.com

California's Lower Middle Market in 2026: Right-Sizing Deal Terms as Institutional Practice Moves to Main Street

Introduction

Commentary on California dealmaking usually focuses on the top of the market: the AI megarounds, the SpaceX IPO and multi-billion dollar media consolidations. That overlooks much of the commercial activity in the state. Small businesses are a significant engine of growth, employment and transactional activity nationally, and particularly in California. The state is home to approximately 838,000 small employer firms (who make up 99% of California's employers). They employ 7.6 million people, which is 47% of the state's private sector workforce. Most (99%) of the state's net job growth comes from small businesses. Transactions involving this section of the market span the full range of corporate work: capital raising, commercial contracting, joint ventures and M&A. That activity is only accelerating in 2026.

Challenges and opportunities as institutional practice migrates downmarket

One consequential structural development in this segment, accelerated in recent years by private equity sponsor, strategic and family office-led acquisitions, is that businesses previously advised by local counsel (or no counsel) now sit inside institutional frameworks. The forms, the diligence expectations, the governance architecture and the choice of counsel are often driven by these new owners.

With this trend, legal documents, benchmarks and structures developed for institutional transactions are increasingly introduced to transactions a fraction of their size. The intent comes from a good place, for example, as institutional forms encode decades of litigated outcomes and disciplined diligence improves businesses that have operated informally for 30 years. Sophisticated legal expertise is often sorely needed to help these businesses avoid risks and level up practices on all fronts as they scale.

However, if these precedents are not right-sized to account for the differences between an institutional transaction and a small business transaction, inefficiencies, frustrations and legal risks abound. At the same time, smaller transactions are not simpler transactions. They are frequently more complex per dollar of value, because the same tax, regulatory and securities frameworks apply without the internal resources, dedicated advisers or transaction budgets that larger parties bring to them. This article will address how these trends are showing up across lower middle market M&A, venture investing, commercial contracting, corporate governance and employment compliance.

Lower middle market M&A

Succession is driving deal supply

A substantial cohort of California businesses formed in the 1980s and 1990s is now owned by proprietors at or beyond retirement age, frequently without a successor generation prepared to take over. Sellers are often transacting once in a lifetime, having limited familiarity with diligence or purchase agreement mechanics.

The buyer pool has diversified accordingly

A lower middle market founder-led business now attracts interest from start-up sponsors whose closing certainty depends on equity not yet committed at signing; individual acquirers and search funds financed with SBA-guaranteed debt; private equity sponsors pursuing buy-and-build strategies; and family offices seeking direct operating investments. Each brings a different capital stack, diligence posture and timeline, so two letters of intent received in the same month may propose fundamentally different architectures and deal risk profiles, despite similar headline valuations. Evaluating them on price alone can be an expensive error.

M&A to key employees present opportunities and risks

A growing share of succession transactions are sales to a long-serving key employee: the operations manager, the lead technician, the second-in-command who has effectively run the business for years. These transactions are attractive for continuity and confidentiality reasons and frequently produce a higher headline price than a third-party sale, because the buyer values the business as an operator rather than as an investor. They also present risks a third-party process does not.

- Buyer inexperience – the buyer typically has no transaction experience and no adviser relationships. Progress depends on the buyer becoming educated during the process, which extends timelines and can create the appearance of bad faith where there is only unfamiliarity.
- Financing capacity – the price the buyer will pay and the price the buyer can finance are frequently different numbers. Where SBA financing is contemplated, the lender's requirements constrain the structure regardless of what the parties have agreed.
- Late-stage withdrawal – key employee buyers are more likely to withdraw close to signing, often once personal guarantee obligations become concrete. The consequences extend beyond the failed transaction: the owner has disclosed an intention to sell to a person who remains employed in a critical role.
- Relationship dynamics – the parties resist adversarial negotiation, which can produce documents that record the transaction without allocating its risks. The absence of disagreement is not evidence that the terms are clear.

Tax structuring deserves early attention

A frequent source of seller regret in this segment is not the purchase price. Instead, it is the difference between the headline price and the after-tax proceeds received at closing. Tax planning is often delayed until deal momentum makes changes much more difficult to agree on.

The questions that determine after-tax outcomes are often built into the basic deal structure, such as the choice between asset and stock sale and the availability of an F reorganisation to reconcile a buyer's preference for asset treatment with an S corporation seller's position; allocation of purchase price under Section 1060 and the ordinary income consequences of allocations to receivables, work in process, consulting arrangements and covenants not to compete; treatment of personal goodwill; availability of qualified small business stock treatment and whether the structure preserves it; instalment sale mechanics and their interaction with seller notes, including notes required to be on standby where an SBA lender is present; and California's conformity, or non-conformity, with the relevant federal tax provisions.

These questions are often best addressed before the letter of intent is signed. Afterwards, the price has been agreed on a pre-tax basis and the structural choices that would have improved the seller's net position have been foreclosed or made expensive to revisit.

The Role of SBA financing

For smaller transactions, particularly those financed through the SBA 7 (a) programme, one of the most consequential influences on deal structure may be regulatory rather than commercial. SBA requirements and lender underwriting can constrain transaction structure as much as the parties' commercial negotiations. Understanding those constraints early can be critical to efficient execution.

SOP 50 10 8, effective 1 June 2025, restored a stricter approach to change-of-ownership transactions. Among other requirements, a change of ownership generally requires a 10% equity injection. A seller note may count toward that injection only under specified conditions, including full standby for the life of the SBA loan, and may fund no more than half of the required injection. Partial changes of ownership must be structured as stock purchases rather than asset purchases, and retained seller ownership can trigger guaranty requirements.

The framework continues to evolve

SOP 50 10 8.1, effective 1 October 2026, again revises 7 (a) underwriting and change-of-ownership requirements. For transaction planning, the broader lesson is less about any single rule than timing: applicable requirements can change during a deal process, lender interpretations and underwriting practices vary, and terms negotiated before the financing structure has been vetted with the lender may prove provisional.

These constraints can alter provisions practitioners otherwise treat as standard. Retained seller equity can carry guaranty consequences, making conventional rollover structures less attractive. Because seller earnouts are unavailable, a customary mechanism for bridging valuation gaps may need to be re-engineered.

A seller note placed on full standby for a ten-year SBA loan is economically very different from an ordinary subordinated note; its present value should be considered when negotiating headline purchase price and interest. In this segment of the market, financing is therefore not simply a source of funds – it can dictate the architecture of the transaction.

Lower middle market investment deals

The migration of institutional practices downmarket is particularly visible in venture financing. The model documents published by the National Venture Capital Association encode decades of experience and are an appropriate starting point for an institutional Series A financing. Increasingly, however, institutional terms appear in much smaller seed rounds and strategic minority investments for which they may be poorly suited.

The complexity of the NCVA form in particular can create substantial delay, cost and distraction to founders and investors alike. The better approach is to consider which provisions address a risk actually present in the transaction and which can be dispensed with as less relevant. Liquidation preferences, anti-dilution protection, pro rata rights and appropriately tailored protective provisions may warrant full negotiation. Registration and redemption rights, public-offering conversion thresholds and audited financial statement covenants often can wait until later rounds. Simplified seed financing forms address much of this by design and appear to be underused.

Even simplified instruments can produce complexity over time. As the interval to priced financings has lengthened, SAFEs often remain outstanding for several years, while companies raise successive tranches on different terms. Recent market data shows larger pre-seed raises commonly comprising ten or more separate instruments. The result can be a capital structure assembled incrementally around individual investor requirements rather than designed as a whole. Differing valuation caps, discounts, most-favoured-nation provisions, pro rata rights and side letters can interact in ways that were not apparent when each instrument was issued. Simplicity at issuance therefore should not substitute for modelling the fully diluted capitalisation and considering how successive instruments will operate together upon conversion or a sale.

Strategic corporate investors present a different right-sizing problem. Their principal objectives, such as commercial access, supply arrangements, preferential pricing or field-of-use rights, are generally better addressed in separate commercial agreements than through equity control rights. At the same time, information or board observation rights granted to an investor operating adjacent to the company's market can create competitive concerns, while preferential commercial rights can make the company appear captive to a prospective acquirer. Those risks should be considered when the investment is structured, not after the next financing or sale process begins.

Lower middle market commercial contracting

Sponsor acquisitions are reshaping commercial contracts

Lengthy and complex commercial contract templates, such as master services agreements and end-user licence agreements, are increasingly introduced to lower middle market businesses as counter-parties are acquired by larger players. Where a customer is acquired by a sponsor, suppliers and service providers can be presented with a demand to replace a functioning and long-lived master services agreement with the sponsor's preferred form. These forms are frequently imported without reference to the commercial relationship they govern, producing provisions disproportionate to the engagement. Such new terms can include uncapped or grossly asymmetric indemnification, increased insurance obligations, broad intellectual property assignment inconsistent with the vendor's delivery model, service level commitments unrelated to the services purchased, and audit and termination rights drafted for a materially larger arrangement.

For a vendor on the receiving end of one of these new forms, particularly a small business with meaningful revenue concentration in that customer, the challenge is commercial rather than purely legal. The productive approach is to identify the small number of provisions genuinely unworkable given the vendor's size, insurance and delivery model, explain the operational reason each is unworkable, and accept the remainder. Blanket acceptance of these new terms is not a

forgone conclusion. Counsel on the sponsor side are typically more receptive to a focused, well-reasoned response and unreceptive to a comprehensive redline.

The corresponding observation on the sponsor side is that this exercise is rarely the highest and best use of institutional resources. A form issued unfiltered to a vendor a fraction of the portfolio company's size generates negotiation cost on both sides and delays the commercial arrangement the portfolio company needs, and the resulting agreement is frequently no more protective than a version better scaled to the relationship would have been. Matching counsel and form to the size of the arrangement is a straightforward efficiency, and one increasingly available given the depth of specialist and boutique practices in the California market.

Restrictive covenants imposed by out-of-state parties

Contracting parties outside California continue to present agreements containing non-competition and broad customer and employee non-solicitation provisions to California residents and businesses, in both commercial and transactional contexts, frequently coupled with a choice of another state's law. California law addresses this directly: such provisions are void regardless of where and when they were signed, and an employee has a private right of action against an employer attempting enforcement. The prevalence of these provisions reflects the same failure of calibration described throughout – a form used without regard to where it will operate.

AI-use provisions

Restrictions on the use of disclosed information for model training have become common in non-disclosure agreements in California and are now among the more frequently negotiated provisions in what was previously treated as a form document paid little attention. Related provisions addressing ownership of AI-generated output, disclosure of AI use in service delivery and indemnification for AI-related claims are appearing in customer and vendor agreements. AI is increasingly being used by both lawyers and clients to aid in drafting and analysis of commercial contracts, with continued mixed results. Benefits of AI use are often highly dependent on the sophistication of the user and can tend to lead to information overload, inefficiencies and new legal risks where sophisticated legal oversight is not included in the process.

Lower middle market corporate governance

Founder-led and family-held companies often lack robust shareholder or operating agreements

Firming up and formalising governance earlier, whether at inception or before a dispute arises, presents a significant opportunity for such companies to reduce legal risk and support growth.

Buy-sell agreements warrant particular review

Many family-held and closely-held companies operate under agreements executed decades ago, with valuation formulas that no longer reflect the business. Governance and succession provisions may be outdated or entirely absent. Small businesses organised as limited liability companies can benefit from the broad flexibility of governance structures available under the California Revised Uniform Limited Liability Company Act while businesses organised as corporations can consider electing close corporation status under the California Corporations Code. However, in both cases, sophisticated counsel will be vital to drafting clear documents that reflect (or properly disclaim) applicable statutes. For example, a California close corporation can elect to be governed by the terms of a shareholders' agreement much like an LLC or partnership, including that it can dispense with a need for a board of directors and certain corporate formalities. Close corporation status is available only to corporations with a stated maximum of 35 holders of record and requires an amendment to the Articles of Incorporation.

Closely held companies can benefit from selected concepts developed in larger institutional settings. For example, thoughtfully drafted drag-along provisions in a shareholders' agreement, which give the majority or controlling owners clear, pre-agreed authority to lead an orderly sale process on consistent terms for all shareholders.

Out-of-state investors and buyers should also consider California

Corporations Code Section 2115, applies a specified list of California governance provisions to corpora-

tions incorporated elsewhere. Section 2115 applies to foreign corporations that conduct more than half of their business activity in California and have over half of their voting securities held by state residents. Application of Section 2115 is measured annually and corporations listed on a major exchange are exempt. Section 2115 can impose California's cumulative voting rules and the requirement that each class vote separately on a merger. This can be managed through a well-drafted shareholders' agreement containing voting covenants, drag-along provisions and transfer restrictions requiring transferees to become party to the agreement. Those protections bind only the holders who have signed, so the analysis is considerably more useful at the time of investment than at the time of exit.

Lower middle market employment compliance

The migration of institutional practices downmarket is also creating employment compliance issues, particularly as smaller companies increasingly use equity to recruit, retain and incentivise key executives. Founders and executives frequently wear multiple hats, but equity ownership and employee status are not mutually exclusive. A substantial owner may legally be an employee when working in the business. California law does not provide a general exemption from employment laws merely because an individual owns an interest in the business. Accordingly, compliance with wage-and-hour, expense reimbursement and other employment requirements must be considered even for founders and other substantial equity holders who work in the business.

The distinction is particularly important with restrictive covenants. Business and Professions Code Section 16600 broadly prohibits employee non-competes, although California recognises exceptions and different standards for certain restrictions involving business owners. Whether those exceptions apply is highly fact-dependent, including the nature and significance of the ownership interest, the transaction and the goodwill involved. Recent decisions, including *Samuelian v Life Generations Healthcare*, *LLC* (2024) and *Smarter HOA Solutions Inc*. *v Peña* (2026), demonstrate that the rules governing restrictive covenants where ownership and employment overlap, continue to develop.

For transactional counsel, the practical lesson is to distinguish carefully among an individual's roles as owner, seller and employee. Institutional equity and transaction structures can be valuable tools for growing businesses, but importing them without accounting for California employment law can create rather than mitigate risk.

Bottom line for 2026 lower middle market corporate and commercial trends

California's lower middle market in 2026 is characterised by strong supply across the range of deal types driven by ownership succession, a broader buyer pool, and the steady arrival of institutional practice in a segment that has not previously operated under it so broadly.

The recurring challenge is the application of sophisticated legal transactional expertise and experience and the documents, benchmarks and structures developed for larger transactions to businesses whose risks differ in kind, combined with an often-dangerous assumption that a smaller transaction requires less specialised advice.

Parties on both sides benefit from carefully assessing, provision by provision, whether a term addresses a risk that actually bears on the deal, and from making sure forms cover risks unique to smaller transactions or the particular industry or type of business involved. In a market where preparation increasingly determines outcomes, that calibration distinguishes transactions that close from those that stall.

****

This chapter is intended for informational purposes only and does not constitute legal advice. Parties engaged in transactions should consult qualified counsel regarding the requirements applicable to their circumstances.

USA – FLORIDA



Trends and Developments

Contributed by:
Jordan Shaw and Matthew Kohen
Shaw Lewenz

Shaw Lewenz is a boutique law firm comprised of highly skilled litigators, sophisticated deal lawyers and specialised paraprofessionals. The firm and its lawyers work with and against some of the largest law firms in the world on some of the most consequential legal matters in the world. The Shaw Lewenz team is consistently revered as a "Powerhouse" trial team with the ability to move quickly, efficiently and aggressively through complex litigation matters, and a deal team with the ability to comprehend, clean up and close complicated transactions. The firm has been touted as being "Shoulder-to-Shoulder with Big Law" and is a consistent Chambers Spotlight firm.

Authors



Jordan Shaw is the managing partner of Shaw Lewenz and chair of the firm's Commercial Litigation Practice Group. Jordan represents clients in high-stakes litigation involving partnership disputes, derivative actions, corporate dissolutions and receiverships, securities and stockholder litigation, fraud and fiduciary litigation, M&A litigation, and real estate and contract litigation. He also represents clients in class action litigation involving state and federal consumer protection laws, deceptive trade practices, healthcare, insurance, securities and financial services. Jordan's clients range from Fortune 500 companies and other large public and private companies, to small and medium-sized businesses, as well as executives, entrepreneurs and individuals.



Matthew Kohen is chair of Shaw Lewenz's Business Transactions Practice Group. He focuses his practice on the representation of companies, investors and funds in complex capital raising, merger, acquisition and investment transactions. Through his experience in a unique variety of transactions, Matthew has represented public and private companies in various industries in transactional matters, including public securities offerings (SPACs, warrant tender offers), debt financings (negotiation of significant credit facilities and corporate debt offerings), private equity transactions (recapitalisations, leveraged buyouts), and various general corporate and capital formation matters for start-up and growth companies (SAFEs, convertible notes, equity financings, joint ventures).

Shaw Lewenz

110 Southeast 6th Street
Suite 2900
Fort Lauderdale, FL 33301
USA

Tel: +1 954 361 3633
Fax: +1 954 989 7781
Email: info@shawlewenz.com
Web: www.shawlewenz.com

Post M&A Ownership Disputes and the Role of Specialist Boutiques

The post-COVID-19 deal boom left behind more than a long list of completed transactions. Money was cheap and deals moved quickly and, at times, recklessly, with rumours of earnest money wires sent pre-LOI circulating the legal industry. Deal documentation reflects the frenzy: disclosure schedules were thin, operating and shareholder agreements defining rights and preferences of rollover equity holders were left as an afterthought, and defined terms were carried over from prior transactions without sufficient review. Many sellers remained involved after closing as executives, directors, landlords, guarantors or minority investors. Several years later, disputes over earn-outs, governance rights and the division of enterprise value are beginning to test those continuing relationships.

The size of that deal cohort is significant. Capstone Partners reported that US middle-market deal volume fell 16.4% in 2020 before rising 34.1% in 2021, its highest level in seven years. In Capstone's description, 2021 compressed roughly three years of deal-making into one.

Deal activity has been uneven since then. Higher interest rates and persistent valuation gaps slowed the market for several years. By the first quarter of 2026, Capstone reported a 10.7% year-on-year increase in overall middle-market volume. The recovery was concentrated at the ends of the market: volume rose 45.8% in the USD10 million–USD100 million segment and 38.2% in the USD250 million–USD500 million segment, while the USD100 million–USD250 million core remained comparatively constrained.

Florida's ownership demographics, however, will keep succession and sale issues active. The US Census Bureau's 2024 Annual Business Survey, using 2023 reference-year data, reports that 52.2% of Florida owners of responding employer firms who reported their age were at least 55 years old. The total includes 22.7% who were 65 or older. McKinsey's 2026 model estimates that approximately six million US businesses with fewer than 500 employees will face an ownership transition by 2035. More than one million may be viable candidates for a sale or an employee-ownership transaction, representing as much as USD5 trillion in potential enterprise value.

While difficult to confirm, the figures suggest that baby boomers are already selling businesses at record rates. Regardless, they certainly demonstrate an unusually large pipeline of founder-owned companies that will need a plan. Some will be sold or recapitalised; others will pass to family or management, and some will wind down. Each path can produce disagreements over price, disclosure and control.

At the same time, the cost of outside counsel has climbed faster than inflation, even as corporate legal departments are being pressed to do more with limited budgets. That combination has opened part of the market to specialist litigation boutiques. A properly staffed boutique can handle a sophisticated dispute for a middle-market company and, where the circumstances fit, for a much larger enterprise.

A sale may leave the ownership relationship intact

An acquisition does not always end the parties' relationship. A seller may roll equity into the buyer, stay on as an executive, retain a board seat or lease essential property to the company. The same seller may also guarantee company debt or hold a contractual right to future earn-out payments. If the seller is still on the cap table, a party to the lease, or potentially entitled to an earn-out, the closing did not end the relationship. It changed the parties' leverage against one another.

When one of those arrangements breaks down, the dispute rarely stays within a single document. An earn-out claim may depend on whether the buyer shifted customers or loaded expenses onto the acquired business. Terminating a founder can affect voting rights, equity vesting and restrictive covenants. A failed integration may also prompt claims that the controlling owner withheld information, diluted the seller's interest or favoured an affiliate. The interplay between the documentation only serves to compound the problem. The purchase agreement, equity documents and employment agreements each contain separate off-ramps. They are not harmonised prior to closing, a clean termination under an employment agreement, for example, can still become a "bad leaver" event under another document with adverse

consequences to the seller such as loss of a board seat or forfeiture of an earn-out payment.

Purchase-price adjustments leave another issue open after closing. SRS Acquiom's proprietary study of more than 1,500 private-target acquisitions found working-capital adjustments in more than 90% of the transactions, up from 50% a decade earlier. Its related deal-terms data found an adjustment mechanism in 93% of deals and an actual adjustment in 89% of the deals that included one.

Earn-outs are a particularly common source of friction. In SRS Acquiom's proprietary lower-middle-market data, 29% of deals with a closing payment of USD50 million or less included an earn-out. The figure rose to 35% for deals at or below USD25 million. Outside life sciences, only slightly more than half of private-target earn-outs produced any payment. Once zero-payment outcomes were counted, sellers received about 21 cents for every earn-out dollar available.

These provisions often serve a legitimate purpose. A true-up can correct for changes between signing and closing, while an earn-out can bridge a valuation gap that might otherwise prevent a deal. The difficulty is that part of the price remains dependent on accounting judgments and business decisions made after closing, often by the buyer that will calculate the payment.

Why disputes surface years after closing

Post-closing claims take time to develop, so the combination of a more strenuous economic environment paired with the passage of time has seen post-COVID-19 boom litigation develop rapidly in 2024 through 2026. Earn-out periods, indemnity provisions and integration plans can run for years. A disputed liability or alleged diversion may not become apparent until an audit, a management change, a customer departure, or allegedly missed earnout hurdle. The contract calendar drives the timing as much as the economy does. Survival periods run out. Escrows are scheduled for release. Earn-out measurement dates arrive. That is often the first time anyone rereads the definitions accepted the night before signing.

Representations-and-warranties insurance data shows the delay. Aon's 2026 Transaction Solutions Global Claims Study found that 51% of claims were notified more than 12 months after closing. Approximately 18% of Aon's North American policies bound from 2019 through 2023 received at least one claim notification. The less mature 2023 and 2024 policy cohorts were trending above 20%.

SRS Acquiom also reported more claims under the no-undisclosed-liabilities representation for transactions completed during the 2021 and early-2022 surge than for pre-2021 deals. It attributed the pattern in part to high valuations, short timetables and the practical limits on diligence during the busiest period. Claims data is not the same as litigation data. Aon reports that the overwhelming majority of its claims are resolved through negotiation; only 1% in the relevant settlement-data subset proceeded to arbitration or litigation.

Court-filing data does not yet support a nationwide claim that post-M&A lawsuits have surged. The post-COVID-19 transaction wave nevertheless created many more relationships from which a dispute could arise, and new ownership transitions continue to add to that pool. In Florida, those cases often combine acquisition agreements with the law governing closely held LLCs, corporations and partnerships.

How post deal disputes take shape

What begins as a complaint about an earn-out or a former partner often expands as the documents and accounting records are reviewed. Common areas of dispute include the following:

- purchase-price disputes – working-capital calculations, debt-like items, transaction expenses, revenue recognition, accounting principles, earn-outs and milestone payments;
- pre-closing disclosure claims – alleged breaches of representations and warranties, undisclosed liabilities, customer or employee losses, and fraud or concealment theories;
- control and information disputes – board or manager rights, reserved decisions, budgets, inspection rights, access to financial systems and the removal of a founder from management, changed

accounting approaches (which may impact earnout considerations);
- minority-owner claims – dilution, withheld distributions or earnout payments, excessive compensation, related-party transactions, diversion of opportunities, and use of company assets for the controller's benefit;
- exit disputes – transfer restrictions, put and call rights, compulsory-sale provisions, valuation, deadlock, buyout and dissolution; and
- continuing-obligation disputes – transition services, employment, restrictive covenants, indemnification, escrow releases, affiliate leases and personal guarantees.

A separate problem sits underneath most of those categories. The purchase agreement, the disclosure schedules, the rollover documents, the operating or shareholders' agreement, the employment agreement and the equity-award paperwork were often negotiated on different time frames and with different terms. "Cause", "Good Reason", "Change of Control", "Confidential Information", "Competing Business", and the ever ambiguous "discretion" are sometimes defined differently throughout the several documents.

Rollover equity is where acquisition disputes most often meet traditional business-divorce law. A seller with a retained minority interest may claim that the buyer breached the purchase agreement and separately that the new controller injured the company. The seller may own the first claim directly, while the second belongs to the entity and must be pursued derivatively.

Getting that distinction right at the outset matters. It affects who receives any recovery, whether the claimant must first make a demand on the company and who has authority to settle. It may also determine whether the company must be joined and how privilege, indemnification and insurance issues are handled. A complaint that treats every loss as personal to the owner may seek the wrong remedy or face dismissal. Deal counsel can reduce that problem at signing. If a right is meant to be personal to the rollover seller – a board seat, a consent right, an information right, a distribution waterfall, an earn-out – put it in the governance document. Do not leave it only in the purchase agreement and hope the two will be read together.

Florida procedure and remedies

Counsel should identify the governing law before choosing a claim or remedy. Florida law governs the internal affairs of a Florida entity, while the law of the formation state ordinarily governs a foreign LLC or corporation, even if the business and its owners are located in Florida. The acquisition agreement, rollover documents, operating or shareholder agreement, employment agreement, equity-award terms and guarantees should be read together. Forum-selection and dispute-resolution clauses often add another layer of complication and consideration.

Section 605.0105, Florida Statutes gives members of a Florida LLC significant freedom to structure their affairs through an operating agreement, subject to statutory limits. The agreement may allocate management authority, reserve specified decisions, regulate transfers and modify certain fiduciary duties. That flexibility is useful when entering the deal. A buyer seeking a controlled-company structure should use clear reserved matters, meaningful affiliate-transaction approvals, information rights that survive any seller employment, and an express statement of what happens to governance rights if the seller founder is terminated. If the entity is a Delaware LLC operating in Florida, the same work must be done under the Delaware LLC Act. Different statutory regimes require deal counsel to use different tools at the front end. Failing to meaningfully prepare in this regard is how partnership disputes – both direct and derivative claims – are made.

Sections 605.0801 and 607.0750 provide the starting point for direct actions by Florida LLC members and corporate shareholders. A claimant must plead and prove an injury that does not arise from harm first caused to the entity or the breach of a separate statutory or contractual duty owed to that claimant. For example, claims based on diversion of company assets belonged to the company irrespective of ultimate harm to shareholders or members and must be brought derivatively, while claims enforcing specific unanimity, earn-out payments, and individual rights

under a shareholder agreement could proceed directly.

Derivative requirements must be analysed before a complaint is filed. Sections 605.0802 and 605.0803, for example, ordinarily require a Florida LLC member to demand that the proper company decision-makers act and to allow the statutory response period. Demand is excused if it would be futile or if waiting would cause irreparable injury to the LLC. Corporate derivative claims are governed by separate standing, verification and particularised demand requirements in Sections 607.0741 and 607.0742. Once again, however, there are dangers. Well-versed litigators may seek to co-op a derivative claim through a special litigation committee or other statutory nuance.

The available remedies also require close attention to the statute. For instance, a Florida LLC may be dissolved for specified grounds that include illegality or fraud, waste or misappropriation, impracticability and a qualifying deadlock that threatens or causes irreparable injury. However, a dissolution action poses its own risks. In an action by a member to dissolve the company, for example, the company or another member may elect under Section 605.0706 to purchase the petitioner's entire interest at fair value. A dissolution petition brought by an upset member can therefore quickly turn into a court-supervised forced buy-out.

The market for dispute counsel

The economics of outside counsel are changing while the post-deal dispute pipeline develops. Thomson Reuters reported that worked law-firm rates rose 7.4% in 2025, against inflation of 2.8%. Over the past decade, those rates have increased at least twice as fast as inflation. A separate 2026 report issued with Georgetown Law placed 2025 worked-rate growth at 7.3% and average law-firm profit growth at 13%.

Demand rose as well. For the third quarter of 2025, Thomson Reuters measured year-on-year growth of 7.6% in M&A demand and 4.9% in litigation demand. The figures capture simultaneous pressure on transactional and litigation practices; they do not establish that deal work caused the increase in litigation.

Corporate law departments have responded by scrutinising both staffing and price. In 2024, Thomson Reuters reported that nearly half of general counsel planned to send more work to lower-cost firms or alternative providers. Nearly 40% were specifically looking for lower-cost litigation counsel. The following year's State of the Corporate Law Department report found that 61% of surveyed general counsel considered greater use of alternative fee arrangements a medium or high priority.

Legal budgets are not necessarily expanding to absorb the additional work. A 2026 benchmarking study by the Association of Corporate Counsel and Major, Lindsey & Africa drew on 576 legal departments in 45 countries. Median total legal spend had fallen to 0.43% of company revenue, the lowest level in six years, while each in-house lawyer supported a median of 367 employees. In-house teams are carrying larger workloads while outside rates continue to rise.

That leaves a practical opening between local generalists and the largest national firms. A middle-market ownership dispute requires the same sophistication and experienced trial counsel, forensic accounting, modern discovery systems, and working knowledge of acquisition and entity law as a larger deal. Middle market deals or smaller dollar investments in the seven or eight figures often have the same or greater complexity as larger dollar deals. At the same time, the amount in dispute may not justify the staffing model and rates of a large national platform.

A good is example is two founding shareholders with differing equity percentages who sell a business. Perhaps Founder A owns 90% and, upon earnout stands to earn USD90 million, while Founder B owns 10% and upon earnout stands to earn USD10 million. An earnout dispute for the two founders would involve the same contract, complexity and conduct – but for Founder B, a multi-million dollar legal spend is simply not doable.

This is where specialist litigation boutiques come in. While at times difficult to find or identify, high-end boutique firms with the right lawyers and infrastructure are often well equipped to handle these sorts of sophisticated matters. That said, smaller size does not

guarantee lower cost, and a premium boutique will not be inexpensive. But overall legal spend is often mitigated not only by more reasonable rates. Total cost is often reduced by leaner, more efficient staffing, more active senior lawyers, quicker decisions and fewer lawyers between client and trial counsel.

The same model can work for an upper-middle-market or large-enterprise client, and as detailed below, trends are showing a transition by larger entities to these sorts of often formidable boutique shops, at least for certain types of matters. A boutique may be retained because a large firm has a conflict, a board or special committee needs independent counsel, or a focused trial team is needed alongside a full-service firm. These smaller firms are often an asset to Big Law, where conflicts or cost are impediments to certain matters and a trusted, temporary referral is needed.

The market data reflects some movement in that direction. Thomson Reuters' 2026 legal-market report found that smaller firms captured the lion's share of the year's demand growth as clients moved work away from the most expensive firms. The report does not measure litigation boutiques separately and cannot establish a specific increase in their market share. It nevertheless confirms that clients are more willing to match a matter with the firm that best fits it instead of treating size as a substitute for capability. Of course, large full-service firms remain the right choice for many matters, especially when a dispute requires coordinated tax, bankruptcy, regulatory or employment advice, money transmission, oil and case, or matters across several jurisdictions.

Practical steps for owners buyers and investors

Many of these disputes can be narrowed through careful drafting. A purchase agreement should identify the accounting principles and order of priority that govern a true-up or earn-out. It should also provide access and audit rights, define the buyer's operating discretion after closing and establish a realistic process for expert determination or litigation. Even a detailed formula can fail if the agreement does not address acquisitions, shared costs, customer transfers or changes in accounting policy.

Rollover governance requires the same care. The acquisition documents and the operating or shareholder agreement should align board rights, consent rights, information access, distribution policy, dilution protection and procedures for affiliate transactions. They should also explain what happens to governance and equity rights if the seller's employment ends. Inconsistencies among the purchase agreement, governance documents and equity-award terms are an invitation to litigation.

On the transactional side, the work is less about new concepts than about finishing the ones already on the table.

- Attach a sample working-capital statement and a sample earn-out calculation. Say which controls if the formula and the example conflict.
- Write the accounting waterfall: historical practice, then the defined principles, then the specified exceptions. If a particular treatment of deferred revenue, customer deposits, accrued bonuses or government credits is intended, put it in the agreement. Do not assume the QoE will be read into the definitions.
- Give the seller information and audit rights that can actually be used in the objection period. A short window against books the seller can no longer open is not a process and invites future disputes.
- Line up the rollover operating/shareholder agreement with the purchase agreement before signing, not in the week after closing. Board composition, removal, budget approval, related-party transactions, pre-emptive rights and transfer restrictions should tell the same story in both documents.
- In the equity documents, decide what termination of employment does to vesting, voting, information rights and any put or call. Good-leaver and bad-leaver mechanics only work if "Cause" and "Good Reason" are consistent.
- If there is a put, call or drag, state the valuation date, the standard of value, whether minority discounts apply and who breaks a deadlock between appraisers. Don't rely on statutory procedures if an alternative can avoid a future dispute entirely.
- Treat affiliate leases, transition services and personal guarantees as part of the deal documents. If a guarantee is supposed to come off at refinancing

or after a period of compliance, say when and on what conditions.
- Co-ordinate restrictive covenants across the purchase agreement and the employment agreement. A sale-of-business covenant and an employment covenant are not interchangeable, and Florida enforceability turns on the statute and the facts. Inconsistent defined terms are a gift to the party that wants out of the restriction.
- Read the RWI binder against the indemnity chapter before the policy is issued. What the insurer carves out still lives in the contract.

After closing, the company should keep written approvals, document conflicts and maintain reliable financial reporting. Company expenses and personal expenses should remain clearly separated. Governance documents and guarantee exposure should be reviewed after an acquisition, recapitalisation, ownership transfer or major management change. Good records discourage misconduct and make a legitimate disagreement easier to resolve.

What comes next

The post-COVID-19 transaction wave will continue to generate disputes as earn-outs mature and integration decisions are tested. Florida's ageing owner population and the uneven recovery in deal activity will add new succession and acquisition matters. Regardless of size, these deals require the right transaction counsel and, in the event of an unfortunate dispute, the right litigation team to handle them.

USA – GEORGIA



Trends and Developments

Contributed by:
Craig Thrift, Todd Bair, Mark Buckland and Will Bennett
Thrift McLemore

Thrift McLemore is an Atlanta-based law firm advising businesses, entrepreneurs, investors and real estate professionals throughout Georgia and the southeastern US, with further offices in Macon and Fort Lauderdale, Florida. The firm is ranked for Corporate/Commercial in Chambers USA: Spotlight 2026 (Georgia). Its team of more than 20 lawyers works across three core areas: corporate services, including entity formation, mergers and acquisitions, franchising, tax planning, succession and employment matters; commercial real estate, including acquisitions, dispositions, leasing, development financing, zoning and joint ventures; and commercial litigation. Clients can therefore address transactional, tax, real estate and ownership transition issues within a single team. The firm's lawyers are admitted in Georgia, Florida and New York. Recent work includes advising owners on the sale of privately held Georgia businesses and structuring founder and investor arrangements.

Authors



Craig Thrift is a founding partner of Thrift McLemore, where he advises business owners, investors and entrepreneurs on mergers and acquisitions, corporate governance, franchising, real estate transactions, commercial contracts and business succession. He previously practised at large national law firms. He has guided more than USD1.6 billion in transactions across the real estate, hospitality, technology, manufacturing and professional services sectors. Craig is a member of the Business Law, Corporate Counsel, Real Property and Franchise and Distribution Sections of the State Bar of Georgia. Craig holds a JD from Washington and Lee University School of Law.



Todd Bair co-heads the corporate and commercial practice at Thrift McLemore and has more than 30 years of experience representing companies and their leadership in corporate and commercial transactions, technology, corporate finance and restructuring, real estate and non-profit matters. His career spans large Atlanta law firms, boutique practice and in-house service as general counsel and head of operations for an early-stage software company. He clerked for Judge H Clyde Pearson, former Chief Judge of the US Bankruptcy Court for the Western District of Virginia. Todd holds a JD and a BA from Emory University and is admitted in Georgia.



Mark Buckland is a lawyer at Thrift McLemore, practising from its Atlanta and Macon offices. He advises businesses and their owners on formation, contracts, corporate governance, and partnership and ownership issues, and handles real estate transactions, commercial leasing, taxation, estate planning and probate matters. His practice combines transactional work with the prevention and resolution of disputes among business owners. Mark holds a JD from Mercer University and is a member of the Business Law and Taxation Law Sections of the State Bar of Georgia and of the Macon Bar Association. He is fluent in English, Spanish and Italian.



Will Bennett is a lawyer at Thrift McLemore focusing on tax, business and estate planning, including entity formation, mergers and acquisitions, tax controversies and audit defence. Before joining the firm, he was a corporate tax lawyer at a New York law firm, advising on major corporate restructurings. Will holds an LLM in Taxation from New York University and a JD, magna cum laude, from Mercer University's Walter F

George School of Law. He is admitted in Georgia and New York and is a member of the Taxation Law and Fiduciary Law Sections of the State Bar of Georgia.

Thrift McLemore

1000 Parkwood Circle SE
Suite 950
Atlanta, Georgia 30339
USA

Tel: +1 678 882 0830
Fax: +1 678 623 5872
Email: info@thriftlegal.com
Web: www.thriftlegal.com

Deal Value, Regulatory Change and the Private Company

Most privately held businesses in Georgia do not look closely at their governing documents, tax structure or employment agreements until a buyer or investor asks to see them. By then, the documents are usually several years old and were written for a company that looked quite different.

This year gives owners good reason to look sooner. The Georgia General Assembly amended the corporate code, cut the state income tax rate below 5% and gave businesses a new way to support independent contractors. At federal level, the 2025 tax legislation changed the economics of owning and selling a company, the Federal Trade Commission abandoned its nationwide non-compete rule in favour of targeted enforcement, and FinCEN ended beneficial ownership reporting for domestic companies.

Taken together, these changes bear on the three questions that matter most in any private company transaction: how much of the price the owners will actually keep, who can approve the deal, and whether the people and relationships behind the valuation will still be there after closing. This article considers developments through September 2026 from the perspective of the founders, family owners, management teams and private equity sponsors who drive Georgia's middle-market deal activity.

The price is not the proceeds

A headline purchase price says little about what a seller will actually receive. Earnouts, rollover equity, seller notes and working capital adjustments can each move real money from one side of the table to the other, and all of them are settled in the drafting.

Earnouts

Earnouts remain a common way to bridge a gap in valuation. Industry data published in 2026 by SRS Acquiom, covering private-target transactions closed through 2025, found earnouts in roughly 29% of lower middle-market deals with closing payments of up to USD50 million, and in about 35% of deals of up to USD25 million.

The difficulty is that the seller gives up control on day one, while the buyer's decisions determine whether the earnout is paid. A well-drafted earnout addresses four points.

- The metric – revenue, gross profit and EBITDA can produce very different results from the same year of trading. The parties should run worked examples covering returns, bad debts, shared overheads,

pricing changes and customers moved between affiliated businesses. A definition that simply refers to "the buyer's accounting practices" leaves too much open.
- Operating covenants – if the buyer changes staffing, discontinues a product line or folds the business into a larger platform, the agreement should say how that affects the calculation.
- Information – the seller needs access to the records behind each calculation.
- Timetable – there should be a clear deadline and procedure for objecting to a calculation, so that questions are resolved while the numbers are fresh.

Rollover equity

Private equity buyers frequently ask founders to reinvest part of their proceeds in the buyer's holding company. Rollover aligns interests, but it also turns the seller into a minority investor in a business they no longer control. The seller should understand how the rollover is valued against the sponsor's own investment, whether it can be structured to defer tax on the rolled portion, and what protections come with it: information rights, tag-along and drag-along terms, pre-emption rights on future issues, and what happens to the equity if the founder's employment ends.

Seller financing and working capital

A seller note is only as good as the buyer's ability to pay it. The seller should look at the buyer's assets, existing debt and cash flow, and negotiate security and guarantees where the credit profile warrants them. The security agreement, lien searches, perfection filings and any subordination agreement with the senior lender belong on the closing checklist, not on a list of things to tidy up later.

Working capital deserves the same early attention. The parties often have different assumptions about how much cash, inventory and receivables stay in the business at closing. Settling the target, the accounting policies and the treatment of aged receivables at the letter of intent stage avoids a renegotiation at the point where the seller has the least leverage.

Tax: structure decisions now carry more weight

Federal changes

The federal legislation enacted on 4 July 2025 made several changes that bear directly on exit planning. The most significant for founders, particularly in Atlanta's technology sector, is the expansion of the qualified small business stock (QSBS) exclusion under Section 1202 of the Internal Revenue Code. For stock issued after 4 July 2025, non-corporate holders may exclude 50% of qualifying gain after three years, 75% after four years and 100% after five. The per-issuer cap has risen from USD10 million to USD15 million, and the gross-asset ceiling for a qualifying corporation from USD50 million to USD75 million, both indexed from 2027.

The benefit is real but conditional. The stock must be acquired at original issue from a C corporation carrying on a qualifying business, and many professional service businesses are excluded altogether. For a new venture, QSBS makes the choice between an LLC and a C corporation a genuine question again. For an established company, converting shortly before a sale rarely works: a change of entity or tax classification can itself trigger tax, and the owners' basis, the company's debt and its historical elections all affect the outcome.

The 2025 legislation also permanently restored 100% bonus depreciation for qualifying property acquired after 19 January 2025, made the 20% deduction for qualified business income under Section 199A permanent, and reinstated immediate expensing of domestic research and experimental costs. Bonus depreciation in particular increases the value of an asset purchase to a buyer at federal level, which gives sellers a stronger basis for asking for a higher price.

Georgia changes

House Bill 463 reduced Georgia's flat income tax rate from 5.19% to 4.99% from 1 January 2026, for individuals and corporations alike, and contemplates further reductions toward 3.99% if revenue conditions are met.

Georgia's annual conformity bill, House Bill 1199, is selective. Georgia follows the enhanced QSBS exclusion, so a qualifying founder can exclude the gain from

state tax as well. It does not follow federal bonus depreciation, which must be added back, and it keeps its own calculation of the business interest limitation. Federal and Georgia tax bases will therefore diverge for the same assets, and any model that assumes a federal deduction produces the same result in Georgia will be wrong. Georgia also has not adopted the higher federal cap on the deduction for state and local taxes, so the state's pass-through entity tax election remains worth reviewing each year.

The letter of intent is the right moment to get legal, tax and accounting advisers in the same room. Purchase price allocation, retained liabilities, rollover equity and contingent consideration can each change the parties' after-tax results significantly, and fixing a tax problem once the price has been agreed usually means reopening the commercial deal.

Real estate and franchise relationships

For many Georgia businesses, much of the value sits in the site and the brand relationship rather than the operating company alone.

Property

Founder-led and family businesses often hold their real estate in a separate entity that leases it to the operating company. That gives the seller a choice at exit: sell the property with the business, keep it and grant the buyer a new lease, or complete a sale-leaseback with a third-party investor. Each produces a different price, tax result and ongoing exposure, and the choice should be made before the letter of intent is signed.

Where the seller keeps the property, the new lease is effectively part of the purchase price. Rent, term, renewal options, repair and capital obligations, and whether the buyer's parent will guarantee the lease deserve the same attention as the acquisition agreement. Where the business leases from a third party, buyers should check assignment and change-of-control provisions, existing defaults and any personal guarantees the seller will expect to have released.

For acquisitions and development projects, title, survey and zoning work should start early. Confirming that the current use is permitted, that certificates of occupancy are in place and that lender consents can be obtained avoids late surprises.

Franchised businesses

Buying or selling a franchised business brings a third party with its own rights into the deal. Most franchise agreements require the franchisor's consent to a transfer, and many add a right of first refusal, a transfer fee and a requirement that the buyer sign the franchisor's current form of agreement, which may carry different fees and territory terms. Cross-default provisions can also link several units. The franchisor's approval process should be built into the closing timetable from the start.

Governance and capital raising

Officer exculpation

House Bill 1185, signed by Governor Brian Kemp on 11 May 2026 and effective from 1 July 2026, is the most significant revision of Georgia's corporate statute in years. For private companies, the change with the widest practical reach is officer exculpation.

Georgia has long allowed a corporation's articles of incorporation to limit directors' personal liability for monetary damages. Under the amended Official Code of Georgia Annotated (OCGA) Section 14-2-202 (b)(4), corporations may now extend the same protection to officers. It is not automatic: the articles must be amended with board and shareholder approval, and there is no protection for intentional misconduct, knowing violations of law, unlawful distributions, improper personal benefits or the appropriation of business opportunities. Georgia's version is broader than Delaware's, covering every officer appointed under the by-laws or by the board, and it should be reviewed together with existing indemnification agreements and directors' and officers' insurance.

Investor rights and approvals

Exculpation also changes the conversation with outside investors. A founder who asks for officer protection should expect an investor to ask for something in return, typically stronger information rights, a documented procedure for approving transactions with insiders, or both. The same review is a good moment to set separate approval thresholds for a sale of substantially all assets, a new class of equity and

transactions with an owner's affiliate. Limited liability companies fall outside the amendment, but the Georgia Limited Liability Company Act gives members wide freedom to address these points in the operating agreement.

Raising capital

Most private capital raises in Georgia rely on federal Regulation D. Georgia requires a notice filing for offerings under Rule 506, made through the North American Securities Administrators Association's electronic filing system, which the Georgia Secretary of State has mandated since April 2025. Smaller in-state raises can use the Invest Georgia Exemption. Missed filings and loosely documented investments from friends, family and early employees are among the most common issues found in later due diligence, and they are far cheaper to fix before a sale process begins.

Regulatory scrutiny: less paperwork, sharper focus

The end of domestic BOI reporting

FinCEN's final rule, published on 14 August 2026 and effective immediately, removes every entity formed in the US from the definition of a "reporting company" under the Corporate Transparency Act. Reporting now applies only to entities formed under the law of another country that register to do business in a US state, and they report only non-US beneficial owners.

The terminology can mislead. A Delaware company registered in Georgia is a "foreign" entity for Georgia registration purposes but a domestic entity for FinCEN, with no reporting obligation. The test is where the entity was formed. Federal relief also leaves state compliance unchanged: Georgia annual registrations are due by 1 April each year, and a failure to file can lead to administrative dissolution. Companies should remove or update Corporate Transparency Act covenants in their governing and loan documents, and keep capitalisation records that reconcile every issued interest with the subscriptions, transfers, options and conversion rights behind it.

Targeted non-compete enforcement

The FTC's 2024 rule, which would have banned most post-employment non-competes nationwide, is gone. The Commission withdrew its appeal in September 2025 and formally removed the rule in February 2026. It has instead moved to case-by-case enforcement, and one of its most prominent actions involves an Atlanta company. In June 2026, the FTC approved a final consent order requiring Rollins, Inc, the pest-control group, to stop enforcing non-competes against more than 18,000 current and former employees nationwide and to tell them they are free to compete. Employers should know which employees are restricted and why, and be able to explain the business interest each covenant protects.

Under the Georgia Restrictive Covenants Act (OCGA Section 13-8-50 et seq), a restraint of two years or less on an employee is presumed reasonable. In connection with the sale of a business, the presumption extends to five years, or to the period of any payments to the seller, if longer. The Supreme Court of Georgia confirmed in 2024 that a covenant does not always need an express geographic term, provided the implied scope is reasonable.

For a business preparing for sale, covenants are part of the value the buyer expects to acquire.

- Covenants signed years ago may no longer match an employee's current role or customer contact.
- Sale-of-business covenants and employment covenants should be kept separate where a selling owner is staying on, so that each benefits from the correct presumption.
- A covenant does not automatically transfer in every deal structure. The buyer should check the parties and the assignment language, and allow time to put new agreements in place where needed.

Independent contractors

House Bill 987, the Voluntary Portable Benefit Plan Act, was signed on 11 May 2026. It allows businesses that engage independent contractors to contribute voluntarily to portable benefit accounts for retirement savings, health insurance, disability cover and life insurance, and provides that those contributions cannot be used as a factor in deciding whether a worker is an employee under Georgia's wage, unemployment insurance, workers' compensation and other employment laws. For construction, healthcare staffing and technology businesses in particular, this is a practical recruitment tool. It does not change the federal tests

applied by the Internal Revenue Service or under the Fair Labor Standards Act.

Technology and AI contracts

Many businesses now rely on software suppliers and artificial intelligence services for customer service, document processing and financial operations. Before signing, a business should know what data the supplier will receive, whether it can use that data to train its models, which subcontractors will have access, and how the data comes back when the contract ends. The liability cap should be tested against a realistic loss. In due diligence, buyers need to know whether key technology can be used after closing, whether third-party consents are required, and whether the target actually owns what it describes as proprietary.

Succession planning

The federal estate and gift tax exemption is USD15 million per individual for 2026, indexed for inflation and with no scheduled sunset. That removes the pressure behind many hurried transfers of business interests in 2024 and 2025, but it does not answer the harder questions: who will run the company, how a departing owner will be paid, and whether the business can get through an unexpected transition.

A useful succession plan starts with the operating business. Someone must have the authority to sign contracts, access bank accounts and run payroll if a key person becomes unavailable, and that authority should be consistent across the bylaws or operating agreement and the owner's estate planning documents. Buyout provisions need a funding mechanism the company can actually afford, and where children or employees will become owners, voting and economic rights should be considered separately. Owners should also check that old buyout obligations, transfer restrictions or consent rights will not get in the way of a later sale to a third party.

Looking ahead

Georgia's 2026 legislation reflects a deliberate effort to make the state a better place to own and run a business: lower tax rates, a more modern corporate statute and more flexibility for companies that rely on independent contractors. Combined with the federal tax changes of 2025 and the end of domestic BOI reporting, the planning environment is meaningfully different from what it was two years ago.

For a Georgia company considering investment, succession or sale, the most valuable preparation is a co-ordinated review: confirm ownership and authority, test the proposed payment terms against realistic trading conditions, settle the tax and real estate structure before the commercial terms harden, and identify the people, contracts and approvals the business needs after closing. A company that can explain clearly who owns it, who can bind it and what supports its value will negotiate faster and close with fewer surprises.

USA – ILLINOIS



Trends and Developments

Contributed by:
Javier Fierro
AnchorPoint Legal Partners PLLC

AnchorPoint Legal Partners PLLC is a Chicago-based boutique law firm founded in 2025, focused on private investment funds and investment management. It provides sophisticated legal services to emerging managers, established sponsors and investors across private equity, venture capital, hedge funds, private credit, real estate and digital assets. Its work includes fund formation, separately managed accounts, independent sponsor transactions, special purpose vehicles, seed and anchor arrangements, and ongoing operational and regulatory matters. The firm combines deep funds experience with direct senior attention, practical commercial advice and flexible pricing. As an AI-enabled firm, it uses technology to improve research, drafting and service delivery, while maintaining responsibility for legal analysis and professional judgement. The team also develops tools to help clients explore investment structures and understand their implications. Its approach makes sophisticated counsel more accessible and efficient, helping clients build investment businesses, evaluate alternatives and manage legal costs as their strategies and investor relationships evolve.

Author



Javier Fierro is the founder and managing member of AnchorPoint, a Chicago-based boutique focused on private investment funds and investment management. He advises sponsors and investors on fund formation, separately managed accounts, seed and anchor arrangements, and secondary transactions. A former Big Law partner who has practised in Chicago and New York, Javier brings nearly two decades of legal experience. He holds a JD from Northwestern University, an MBA from Northwestern's Kellogg School of Management and a degree in chemical engineering from UCLA. His work also includes developing technology tools to support investment structuring and more efficient legal services.

AnchorPoint Legal Partners PLLC

Willis Tower
233 S. Wacker Drive
44th Floor
Chicago, IL 60606
USA

Tel: +1 312 508 3621
Fax: +1 312 267 1764
Email: javier@anchorpointlegalpartners.com
Web: www.anchorpointlegal.ai

Chicago and the wider Midwest reflects a region with a varied investment base. Manufacturing, industrial services, agriculture and distribution sit alongside a large community of family offices, insurance companies and investment managers. AI, crypto-assets and decentralised finance (DeFi) are also part of the discussion about where to invest and how to organise capital. For emerging managers, opportunities range from applying operating experience to established businesses to developing strategies around newer technologies and markets.

The Midwest participates in the same capital cycle as the wider United States. Sponsors compete for investors whose allocation decisions reflect global portfolios, while regional businesses are exposed to financing conditions, trade policy and technology developments extending beyond their local markets. There is a common interest in flexible investment arrangements and careful management of costs, and these priorities create openings for new entrants able to build their strategies and operations around investors' changing needs.

Fundraising Challenges and Opportunities for New Entrants

The fundraising environment remains challenging. Bain & Company's 2026 Global Private Equity Report records a 16% decline in global buyout fundraising to USD395 billion in 2025. It also reports that annual distributions remained below 15% of net asset value for four consecutive years. These are global figures, but they provide useful context for the pressures we encounter locally.

For many investors, funds raised around the COVID-19 pandemic, including the 2019 to 2022 vintages, have been slower to return capital than anticipated. This has sharpened attention on distributions to paid-in capital (DPI), which measures how much a fund has returned to investors relative to their contributions. Reported gains on unsold investments do not replenish the cash available for new commitments. Delayed distributions can therefore limit an investor's ability to support a new manager even when the opportunity is attractive.

For emerging managers, starting afresh can offer flexibility. A new team can design its strategy, investor terms and operating costs around current conditions, including borrowing costs above the lows of the previous decade, disruption from AI and inflationary pressures. Without an existing portfolio or legacy arrangements to accommodate, it may be better placed to pursue opportunities created by those changes. Raising capital remains difficult, but this flexibility gives investors a reason to consider new approaches alongside established relationships.

Research and industry commentary support considering emerging managers, although selection remains critical. Hamilton Lane's October 2023 analysis found wider return dispersion among emerging managers, with top quartile performers often matching or exceeding established managers' returns. More recently, Carta highlighted the outperformance of smaller, newer venture funds relative to larger, established funds. Emerging managers may benefit from greater flexibility and the ability to pursue opportunities that would be too small to materially affect a larger fund's returns. Together, these observations suggest that identifying promising emerging managers early can offer opportunities to outperform large established players.

Specialisation and Operating Value among Emerging Managers

We see younger investment professionals leaving established firms to pursue specialised opportunities and build their own platforms. This is a natural progression that can accelerate when existing funds are not delivering expected results, restricting fresh capital, advancement or the ability to pursue new investments. Independence can give these professionals greater influence over strategy and ownership economics. For investors willing to consider a new team and potentially different commitment sizes, this can provide access to experienced professionals pursuing opportunities that were too small or outside the remit of their former firms.

Among the sponsors advised, pronounced specialisation is a recurring feature. In the Midwest, knowledge of a manufacturing process, industrial niche, distribution network or customer base can inform both the investment case and its execution. Investors want to

understand how that knowledge translates into better decisions and measurable improvements. We believe this creates room for managers who can combine sound financial structuring with practical improvements in the businesses they own.

Flexible Structures Beyond the Conventional Fund

We are seeing demand for SMAs, independent sponsor arrangements and SPVs alongside conventional pooled funds. An SMA gives a manager a mandate for a particular investor, while an SPV can organise participation in an identified investment. An independent sponsor typically identifies an acquisition and then assembles the capital required to complete it. For emerging managers, these arrangements can provide a way to generate revenue, establish relationships and build a track record before seeking a larger pooled fund.

For a sponsor acquiring a Midwestern company, raising capital for a known acquisition may be more achievable than first raising a conventional blind pool fund. For a specialist pursuing an AI or digital asset opportunity, an SPV may accommodate investors seeking that particular exposure. For a manager developing a hedge fund strategy, an SMA can support a longer relationship with an investor seeking tailored investment guidelines and reporting. The choice depends on the intended investor base, the expected pipeline and the resources available to manage the arrangement.

For a new manager, an initial mandate can also be a chance to develop reporting and operating processes with an engaged investor. Agreeing the scope of the relationship early can help both parties understand how it might evolve as the strategy grows. The terms should leave room for that development while giving the investor clarity about the capital and resources committed to its account.

Flexibility brings its own commercial questions. The parties need to understand who makes investment decisions, how additional capital will be provided and how fees and expenses will be allocated. They should also consider what happens if the investment needs more time or one participant wishes to exit. Addressing these questions early can preserve flexibility while keeping the arrangement understandable and economical to operate.

In our experience, the first substantial investor relationship can shape an emerging manager's business for years. An anchor investor may seek preferential economics, participation in future opportunities or influence over the mandate. Those terms should be considered against the manager's ability to attract later investors and sustain its operations. Securing an initial commitment is most valuable when the arrangement also supports the platform the founders intend to build.

Family Offices and Insurance Investors

The Midwest is a source of investment capital as well as operating businesses. Family offices can bring knowledge developed through ownership of businesses, while insurers manage substantial portfolios within a regulated investment framework. Insurers allocate a portion of those portfolios to alternatives, including private equity, hedge funds and real estate, as reflected in the National Association of Insurance Commissioners' reporting on their investments. Insurance SMAs illustrate how specialised managers can serve institutional investors through tailored mandates.

Private credit also forms part of this investment landscape, including financing for acquisitions and the growth of regional businesses. For specialist managers, tailored credit mandates may offer another way to serve investors with particular return, liquidity and portfolio requirements.

Liquidity and Options for Ageing Portfolios

Liquidity remains a central consideration for sponsors and investors. Secondary sales can allow investors to release capital or adjust exposure by selling existing interests. Continuation vehicles can give existing investors an opportunity to sell while allowing a sponsor and participating investors to retain selected assets. For buyers with available capital and relevant expertise, these transactions can also offer access to established businesses and portfolios with an observable operating history.

For an industrial business undergoing an extended improvement programme, additional time may have a sound commercial purpose. The relevant question is whether that time is likely to produce sufficient value to justify the costs and risks of continued ownership. Investors will examine the valuation, transaction expenses and any changes to fees or performance participation. Bain's June 2026 report notes that continuation vehicles are becoming harder to execute as investor scrutiny increases.

We are seeing some activity involving ageing funds and residual portfolios, but believe this work is likely to increase over the coming quarters. Bain's annual report describes a global backlog of approximately 32,000 unsold portfolio companies valued at USD3.8 trillion. That figure does not mean all those investments are impaired or near the end of their funds' lives. We believe that pool of existing investments may also create opportunities for specialist buyers able to bring fresh capital, operating attention or a different ownership timetable.

For funds approaching decisions about extensions or winding up, the remaining assets should be assessed individually. The choices may include an orderly sale, a restructuring or continued ownership supported by a defined plan. Continued operation can be justified where there is a credible opportunity to realise more value. Where that case is less convincing, a sale may offer a route to liquidity and help avoid a "zombie fund" that continues collecting fees without meaningful progress towards an exit.

Commodities and Newer Trading Markets

Chicago has a strong community of commodities traders, trading firms and market infrastructure providers. Its experience spans agricultural and energy markets, financial derivatives and newer markets, including prediction markets and digital assets. For managers developing trading strategies, that concentration of talent and practical market knowledge is a regional strength. We see opportunities for new entrants to draw on this community as trading products and investor demand evolve.

AI, crypto-assets and DeFi also present opportunities for managers with relevant technical and commercial knowledge. These categories should not be treated as interchangeable: investing in an operating company differs from holding a digital asset or participating in a financial protocol. Investors need to understand what the vehicle owns, how assets are held and where the expected return comes from. Familiarity with the technology is only one part of evaluating the investment and its operational risks.

We believe the current administration's approach is moving towards fewer regulatory barriers and greater clarity for digital asset businesses. The Securities and Exchange Commission's March 2026 interpretation and its proposal for Regulation Crypto Assets, announced on 18 August 2026, illustrate that direction. The proposal includes exemptions for certain offerings, but proposed changes should not be treated as rules already in force. The framework is still developing, and greater clarity in one area does not resolve every question affecting crypto, DeFi or prediction markets.

Cost Discipline and the Evolving Delivery of Legal Services

Investor scrutiny of costs extends beyond management fees. It includes fund formation expenses, administration, transaction charges and the cumulative effect of operating multiple vehicles. The Institutional Limited Partners Association's May 2026 guidance calls for clearer formation expense caps, greater transparency around legal fees and budgets, and more equitable sharing of overruns. This is consistent with requests we see from clients for more competitive pricing and clearer accountability for legal spending.

Clients increasingly want speed, accuracy and lower or fixed prices. Some ask how counsel uses AI, which tasks it accelerates and how the savings reach them. Our firm uses AI and offers flat fees, with senior responsibility for analysis, project management and drafting. Defining the scope and expected deliverables at the outset helps connect pricing to the work the client actually needs.

The traditional emphasis on manual document production in sophisticated legal work is changing. As technology reduces repetitive drafting and revision, there is an opportunity to make advice more acces-

sible, including to managers launching their first vehicles. Rigorous analysis and review remain essential, and efficiencies vary by task. Clients can nevertheless expect counsel to consider how those efficiencies should affect delivery times and pricing.

Judgement and ingenuity remain central to legal practice as these tools improve. Less time spent on repetitive drafting can leave more room to explore alternative structures, work through commercial choices and find practical solutions. We have found that shift makes practice more engaging and creates scope to serve emerging managers more efficiently. For sponsors and advisers across the Midwest, the opportunity is to combine the region's operating experience with new ways to organise capital and build investment businesses.

USA – NEW YORK



Trends and Developments

Contributed by:
Charles Wolofsky
Wolofsky PLLC

Wolofsky PLLC is a full-service boutique law practice, delivering high-calibre legal counsel across a spectrum of practice areas. Its team consists of highly experienced attorneys with backgrounds as federal prosecutors, roles at top Am Law 100 firms and prestigious federal clerkships. The firm combines the sophistication of a large firm with the agility and personalised attention of a boutique. Whether navigating cross-border M&A, structuring, nuanced financing arrangements, or protecting proprietary technology, its attorneys deliver tailored legal strategies that align with clients' broader commercial objectives. Its civil litigation practice approaches dispute resolution with a balanced perspective, recognising that while litigation is sometimes necessary, it represents a last resort rather than a first option. Wolofsky PLLC provides sophisticated representation in complex commercial disputes, always with an eye toward achieving client objectives through the most efficient means possible.

Author



Charles Wolofsky is managing partner of Wolofsky PLLC. He advises companies, private equity firms, entrepreneurs and high-net-worth individuals on cross-border M&A transactions, securities offerings, financial and cryptocurrency regulation, and emerging technology matters. He also maintains an active litigation practice, handling contract enforcement, fiduciary duty claims, takings claims against government entities and international arbitration. Charles is a founding member of the Fordham Law Entrepreneurial Advisory Council. His most recent scholarship, "The U.S. Constitution and the Corporate Transparency Act", published in the University of Pennsylvania Journal of Business Law, received the Susan Lorde Martin Best Constitutional Law Paper award from the Academy of Legal Studies in Business.

Wolofsky PLLC

825 Third Avenue, 21st Floor
New York, NY 10022
USA

Tel: (212) 258 0651
Email: info@wololaw.com
Web: www.wololaw.com

Contributed by: Charles Wolofsky, **Wolofsky PLLC**

Introduction

New York's advantages begin with access. The market generates genuine deal opportunity: businesses change hands, capital is raised and redeployed, and assets trade continuously. Capital is available at every stage, from venture through private credit to the public markets. Talent follows capital, and the state holds the largest concentrations in the country of financial, legal, media and advertising professionals, alongside a technology workforce that has expanded substantially over the past decade. Clients and customers are concentrated and decision-makers can be reached directly. Suppliers, distributors, advisers and premises are available in abundance, and transactions of almost every description have observable comparables against which price and terms can be assessed. And the density of the market offers constant opportunity to grow one's network.

The legal framework is built to match. Parties with no other connection to the state routinely choose New York law to govern their contracts and New York courts to resolve their disputes. Its specialist business court and the federal courts sitting here rank among the most experienced commercial benches in the country. A party bargaining for certainty will not easily find a more developed body of commercial law.

None of it comes without cost. New York is expensive: commercial rent, wages across every function, insurance and professional fees, and the cost of goods and services all sit well above the national median. The regulatory environment is dense and enforcement authority is broad. Several statutes reach shareholders and members personally, irrespective of their role in the business. And dispute resolution, whatever the quality of the courts, is often slow and procedurally generous to a defendant with resources to spend.

The practical consequence is that agreements intended to operate in New York are best drafted with enforcement in view from the outset. What follows addresses the framework governing commercial agreements and the limits of the remedies they contain; the forums in which those agreements are enforced; and the costs and regulatory exposures of operating a business in New York.

Contracting Under New York Law

Commercial parties select New York law chiefly for predictability: a deep body of commercial precedent, a judiciary that consistently declines to rewrite bargains struck by sophisticated parties, and statutory assurance under Sections 5-1401 and 5-1402 of the General Obligations Law that a choice of New York law and a New York forum will be honoured. That enforcement has limits, and they fall most heavily on the provisions parties draft to avoid going to court at all. The two subsections below take each in turn.

The legal framework

Parties with no connection to New York may nonetheless contract under its law and litigate in its courts. General Obligations Law Section 5-1401 permits parties to a commercial contract of at least USD250,000 to choose New York law without any requirement of a nexus to the state, and Section 5-1402 permits suit against a foreign party in the New York courts where the contract contains such a choice of New York law, covers not less than USD1 million in the aggregate, and includes that party's agreement to submit to the jurisdiction of the New York courts. Contracts for labour and personal services, and certain consumer transactions, fall outside both provisions.

Where the parties have made a submission under Section 5-1402, Rule 327 (b) of the New York Civil Practice Law and Rules (CPLR) removes the court's discretion to dismiss the action on forum non conveniens grounds. A forum selection clause nonetheless carries a prima facie presumption of enforceability rather than a guarantee, and remains subject to challenge on public policy and comparable grounds, including under statutes in other states that void out-of-state forum provisions in particular categories of contract.

What the choice of law secures is interpretive discipline. New York courts enforce unambiguous commercial agreements according to their terms and are reluctant to admit extrinsic evidence to vary them. Between sophisticated parties, a specific non-reliance clause will ordinarily bar a later fraudulent-inducement claim. In such a clause, a party represents that it has not relied on any statements about an identified subject other than those set out in the agreement, and it cannot later claim it was induced to contract by

statements on that subject. Similarly, under General Obligations Law Section 15-301, a written agreement that prohibits oral modification cannot be changed orally. This overrides the common-law rule, which allowed such clauses to be orally waived. Two exceptions apply: partial performance unequivocally referable to the oral modification, and equitable estoppel. A carefully drafted New York agreement is accordingly difficult to escape, which is the outcome a party bargaining for certainty is paying to achieve.

Limits on contractual remedies

Parties commonly build self-executing remedies into their agreements; however, under New York law, those devices are narrower than their drafting suggests. While not a comprehensive list, the following are among the clauses most commonly relied upon:

- *Confession of judgment* – the confession of judgment, under which a debtor executes an affidavit at the outset and the creditor files it upon default to obtain judgment without commencing an action, was restricted by a 2019 amendment to CPLR 3218 barring entry against any debtor who is not a New York resident or entity.
- *Liquidated damages clause*– provisions that fix the consequences of breach in advance remain subject to penalty analysis, and a clause that overstates probable loss risks invalidation, requiring the claimant to prove actual damages it may never have prepared to prove.
- *Limitation of liability clause* – provisions that cap exposure will not insulate a party from its own gross negligence or intentional wrongdoing, however comprehensively drafted, so that a negotiated cap allocates ordinary commercial risk but not the category of risk that generates the largest claims.

Enforcement

The value of a contract lies in its enforceability and in the cost of enforcing it. Both turn substantially on the forum in which a dispute is heard, and a commercial dispute governed by New York law may be heard in any of three quite different places.

Availability of forums

Commercial Division of the Supreme Court

This is the specialist business court. Its judges hear commercial matters exclusively, filing is electronic, and the Division operates under its own published rules. Those rules limit depositions and interrogatories, impose a framework for electronic discovery, and provide at Rule 9 for an accelerated adjudication procedure under which the parties may consent in advance to complete all pre-trial proceedings within nine months, in exchange for waiving jury trial and interlocutory appeal.

To qualify, a case must be a commercial dispute of a type the Division hears and must meet the monetary threshold for the county where it is filed. The Division hears breach of contract and fiduciary duty claims, business torts, Uniform Commercial Code transactions, commercial real property matters, disputes over the internal affairs of business entities, and applications to compel arbitration or confirm awards in commercial matters, among others. The monetary threshold varies by county, running from USD500,000 in New York County down to USD50,000 in several upstate jurisdictions. Shareholder derivative actions, commercial class actions and dissolution proceedings are eligible irrespective of amount.

Federal district courts

Unlike the state Supreme Court, which is a court of general jurisdiction, the federal courts sitting in New York are courts of limited jurisdiction; a claim proceeds there only if it satisfies the statutory requirements for federal subject matter jurisdiction.

Where the federal forum is available, the Southern District of New York is among the most capable commercial courts in the country. It is one of the oldest federal district courts and has been the principal venue for securities, financial services and international commercial litigation for generations, and both its bench and the bar that appears before it reflect that history. Its judges are experienced in complex commercial matters and manage their dockets actively: individual practice rules govern motion practice, many judges require a pre-motion letter and conference that disposes of unmeritorious applications without full briefing, and scheduling orders are set early and enforced.

The Federal Rules impose presumptive limits on depositions and interrogatories and there is no appeal as of right from an interlocutory order.

General assignment parts of the Supreme Court

A commercial dispute that does not qualify for the Commercial Division is heard in the general assignment parts. There is no subject-matter specialisation. Disclosure proceeds under Article 31 of the CPLR, which entitles a party to all matter material and necessary to the prosecution or defence of the action and is applied liberally. The caps on depositions and interrogatories that the Uniform Rules took from Commercial Division practice in 2021 apply here as well; the Commercial Division's protocol for electronically stored information and its accelerated adjudication procedure do not. And CPLR 5701 (a)(2) permits appeal as of right from a broad class of intermediate orders, so that a discovery ruling or the denial of a dismissal motion may be taken up without anyone's permission, with corresponding effect on the timetable.

Note on the cost of enforcement

In the absence of a contractual or statutory fee provision, New York follows the American rule, under which each party bears its own costs. Each party funding its own litigation means the expense of reaching judgment may exceed the amount in controversy. Set against that, pre-judgment and post-judgment interest on commercial judgments at 9% under CPLR 5004 is one of the few structural features of New York practice that presses parties toward resolution.

Pre-judgment attachment and post-judgment garnishment

Article 52 of the New York Civil Practice Law and Rules permits a judgment creditor to proceed against a garnishee over whom the New York courts have personal jurisdiction, and such a proceeding may reach assets situated outside the state. See *Koehler v*. *Bank of Bermuda Ltd*., 12 N.Y.3d 533 (2009). The same reasoning operates before judgment. An attachment under Article 62 has been upheld over a debtor's membership interests in out-of-state entities, on the ground that the situs of intangible property follows the debtor, who had been served while present in New York and had submitted to the court's jurisdiction. *Hotel 71 Mezz Lender LLC v*. *Falor*, 14 N.Y.3d 303 (2010).

What limits both is personal jurisdiction over the person, rather than over the asset or the place where it sits. Where the court has that jurisdiction, the location of the property is not itself an obstacle. The principal qualification arises in banking. A restraining notice served on a bank's New York branch does not reach assets held at the bank's foreign branches. *Motorola Credit Corp*. *v*. *Standard Chartered Bank*, 24 N.Y.3d 149 (2014). The reason is the "Separate Entity Rule", a common law doctrine under which each branch of a bank is treated as a distinct entity for this purpose. The New York Court of Appeals held that the Separate Entity Rule survives Koehler, resting it on international comity, the risk of competing claims and double liability, and the burden a worldwide branch search would impose. The assets in question in that case were held in the bank's branches in the United Arab Emirates. The Court described the Separate Entity Rule as extending to attachments under Article 62 as well as to restraints and turnover under Article 52.

Operating in New York

The obligations described below attach to a business with a presence in New York. Most are neither negotiated for nor altered by the agreements a company has in place; they follow from occupancy, from hiring, and from transacting with New York residents.

Note on cost of operating

Premises, personnel, and goods and services are all expensive here, and a high cost of living carries through to transportation, meals and other everyday business expenses. Three further features add to that base:

- New York's union membership rate, at 21.3% of employed wage and salary workers in 2025, is the second highest in the country against a national rate of 10.0%, and is concentrated in construction, healthcare, hospitality and transport.
- An active plaintiffs' bar, operating against claimant-favourable liability rules, keeps liability insurance pricing materially above regional norms.
- Local Law 97 imposes greenhouse gas intensity limits on covered New York City buildings, with monetary penalties for exceeding the limits. Most existing net leases do not allocate that liability with any clarity as between landlord and tenant, which

makes it both a diligence item on any acquisition and a live negotiating point on any lease renewal.

Regulatory exposure

Consumer-facing businesses should expect exposure under Sections 349 and 350 of the General Business Law, which reach deceptive acts and false advertising with a low threshold, a statutory damages floor and fee shifting, and are enforced by private claimants as well as by the Attorney General. Distribution arrangements never intended as franchises are frequently caught by the definition in the New York Franchise Act, which brings registration and disclosure obligations and personal exposure for those who control the franchisor and materially aid the violation; companies expanding through dealer or licensee networks should test the characterisation before the first agreement is executed.

Personal liability

Section 630 of the Business Corporation Law imposes liability for unpaid wages on the ten largest shareholders of any corporation whose shares are not publicly traded, and Section 609 of the Limited Liability Company Law does the same for the ten members holding the largest ownership interests. Exposure is measured by the size of the holding alone. Nothing turns on whether a holder participates in management, so a purely financial investor stands in the same position as the founder, and the composition of the cap table determines who carries the liability. Organising elsewhere is not an answer either: since 2016, both provisions have reached entities formed in other states where the services were performed in New York.

One way to limit this exposure is to engage personnel as independent contractors rather than employees, since both provisions reach wages due to employees and a genuine contractor relationship falls outside them. The label, however, does not settle the question. A relationship documented as a contractor engagement will be treated as employment where the facts support that conclusion. The standards by which that determination is made are beyond the scope of this article.

Conclusion

New York offers many benefits to businesses, and its courts enforce commercial contracts according to their terms. Operating here is nonetheless costly, and some of the most significant liabilities attach by operation of law. To reduce liability and ensure enforcement of their contracts, businesses and transactions must be properly structured and documented from the outset. Parties who do so are well positioned to take full advantage of what New York offers.

USA – NORTH CAROLINA



Trends and Developments

Contributed by:
Benjamin D. Hicks and Sean C. Wagner
Wagner Hicks PLLC

Wagner Hicks PLLC is a Charlotte, North Carolina-based business law firm that partners with companies and their owners on corporate transactions, complex commercial litigation and regulatory compliance matters. The firm's team of attorneys advises clients ranging from early-stage companies and family-owned businesses to established enterprises and financial sponsors across industries, including banking, healthcare and technology clients. Wagner Hicks guides clients through a wide variety of mergers and acquisitions, corporate governance, shareholder and LLC member disputes, government investigations and data privacy matters, combining large-firm experience with the continuity and responsiveness of a boutique practice. The firm regularly represents clients in high-stakes proceedings before the North Carolina Business Court and in state and federal courts across the country. Wagner Hicks was recognised in the Chambers USA Spotlight Guide 2026 for North Carolina in both Corporate/Commercial and General Commercial Litigation.

Authors



Benjamin D. Hicks is co-founder of Wagner Hicks PLLC in Charlotte, North Carolina, where he leads the firm's transactional practice, focusing on M&A, fundraising, and general corporate and commercial transactions. Mr Hicks advises businesses in deals across a range of industries and at every stage of their life cycle, with particular experience representing clients in the private equity, technology, financial services and healthcare sectors. Prior to co-founding Wagner Hicks PLLC, Mr Hicks practiced in the New York office of an international law firm before joining a major regional firm in Charlotte.



Sean C. Wagner is co-founder of Wagner Hicks PLLC in Charlotte, North Carolina, where he leads the firm's complex commercial litigation and regulatory compliance practices. In doing so, Mr Wagner regularly represents commercial entities in high-stakes disputes and regulatory matters throughout the country. Prior to co-founding Wagner Hicks PLLC, Mr Wagner began his career as a judicial law clerk for US District Judge James H. Payne before joining a major national law firm as an associate in Charlotte. Mr Wagner is a member of the American Bar Association, the North Carolina Bar Association, and the Mecklenburg County Bar Association.

Wagner Hicks PLLC

831 East Morehead Street, Suite 860
Charlotte, NC, 28202
USA

Tel: +1 704 705 7787
Email: contact@wagnerhicks.law
Web: www.wagnerhicks.law

The North Carolina Business Court's Message to Limited Liability Companies: Draft the Operating Agreement Before the Dispute

Introduction

The 2025–26 cycle of North Carolina appellate and Business Court decisions produced an unusually clear set of messages about governance of closely held limited liability companies (LLCs). Across multiple opinions, from the North Carolina Supreme Court to North Carolina's specialised Business Court bench, the judiciary emphasised contractual formalism, strict statutory interpretation, and the primacy of operating agreement language. For owners, founders, investors and their counsel in North Carolina, these decisions are not merely litigation developments; they provide a practical roadmap for drafting and negotiating LLC governance documents.

The core thesis is straightforward: North Carolina courts treat LLCs as creatures of contract, will generally enforce the governance bargain the owners struck, and are cautious about supplying protections the operating agreement omits. Courts will not rescue owners from incomplete, informal, or poorly implemented governance arrangements. The practical lesson for practitioners, founders, family businesses, investors and managers is equally direct: draft carefully before a dispute arises.

This article addresses three principal themes from recent case law in North Carolina: (i) deadlock and dissolution; (ii) transfer restrictions and operating agreement formalities; and (iii) fiduciary duties and the limits of judicial gap-filling. For each theme, the article identifies the key decisions and the practical drafting guidance they provide.

The legal framework

North Carolina General Statutes Section 57D-2-30 permits operating agreements to supplant most default rules of North Carolina's LLC statute, subject to enumerated non-waivable rights. The practical consequence is that the operating agreement serves as the primary source of governance rights and obligations, not the LLC statute, common law, or the reasonable expectations of individual members.

The North Carolina Supreme Court's December 2025 decision in *Gvest Real Estate, LLC v JS Real Estate Investments, LLC* crystallised this principle. The court held that "a majority interest does not necessarily equate to control in an LLC" because "control depends entirely on what the LLC's members agree to in the operating agreement". Describing LLCs as "primarily a creature of contract", the court explained that ownership percentages carry no inherent governance weight; instead, members are free to structure voting, management, and fiduciary obligations however they choose. The court acknowledged that evolving business practices may eventually warrant recognising fiduciary duties between majority and minority members, but declined to "extend the law in a novel direction". For practitioners, *Gvest* underscores that the corporate model, where majority share ownership typically carries board election rights and statutory protections, does not translate to the LLC context. In an LLC, member rights generally exist only to the extent the operating agreement creates them.

Although operating agreements enjoy broad freedom to modify default rules, North Carolina's LLC statute preserves certain non-waivable rights. These include judicial dissolution under Section 57D-6-02 (2)(i) unless the operating agreement provides an alternative remedy, derivative actions unless the operating agreement supplies an alternative mechanism, and the implied contractual covenant of good faith and fair dealing. Owners who fail to draft carefully will be governed by default statutory rules they never considered and that may not align with their business expectations.

The corporate setting operates differently. The Business Corporation Act and the shareholder-oppression doctrine under N.C.G.S. Section 55-14-30 supply statutory protections that have no functional equivalent in the LLC context. Because LLCs lack this statutory safety net, a well-drafted operating agreement is the LLC member's primary source of protection.

The case law: three themes from 2025–2026

Theme 1: deadlock and dissolution

In *Davis Trust v JHD Properties, LLC*, decided by the North Carolina Supreme Court on 31 January 2025, the court confronted the consequences of a gov-

ernance structure that lacked a deadlock resolution mechanism. The case involved two family trust LLCs that together owned approximately 68 acres of undeveloped land in Wake County. The operating agreements required two co-managers to act unanimously on all material decisions, but the agreements contained no mechanism for breaking a deadlock if the managers could not agree. Over a period of years, the co-managers proved unable to reach agreement on the use, development or sale of the property, leaving the LLCs functionally paralysed.

The Supreme Court held that judicial dissolution was appropriate because it was "not practicable" to conduct the LLCs' business in conformance with the operating agreements. Importantly, the court clarified that "not practicable" means "unfeasible," which is a significant threshold but one that does not require the petitioner to demonstrate impossibility. The distinction matters for practitioners: a member locked in governance paralysis need not wait until the entity's assets have deteriorated completely but must still demonstrate more than mere disagreement or dissatisfaction.

The Business Court's decision in *Davis v McHatton*, decided by Chief Judge Conrad on 12 August 2026, illustrates the other common pathway to dissolution: active usurpation of control by one equal member-manager. Davis and McHatton were equal members and managers of two LLCs operating funeral service businesses, but McHatton allegedly seized unilateral control by changing financial passwords, increasing his own compensation, diverting company assets to other ventures, and using company funds for personal expenses. The court denied the motion to dismiss, holding that these allegations adequately stated a claim for dissolution. As Chief Judge Conrad observed, the Business Court "receives a steady diet" of cases in which one member claims another has wrongfully usurped corporate control – a judicial acknowledgment that reinforces the urgency of drafting governance protections before disputes arise.

The corporate companion, *Mauck v Cherry Oil Co*., decided by the Supreme Court on 17 October 2025, teaches the flipside. There, minority shareholders of a closely held corporation sought dissolution, but the court affirmed dismissal because the parties' 1998 Shareholder Agreement contained put-call buyout provisions at fair market value. This contractual exit mechanism, negotiated years before the dispute, defeated the need for judicial dissolution and preserved the enterprise as a going concern.

The drafting lessons are complementary. Davis Trust teaches that equal control structures and unanimous consent provisions need deadlock-breaking mechanisms before conflict arises. There are a variety of tools that parties may use for this purpose, including buy-sell triggers, so-called "shotgun" provisions, third-party manager appointments, mediation followed by forced sale, and court-supervised sale procedures. The appropriate mechanism depends on the business context: a real estate LLC may be best served by a forced-sale procedure; an operating business may require a staged mediation-to-buyout process. While occurring in the corporate context, *Mauck* teaches that a well-drafted buy-sell provision can pre-empt dissolution entirely and preserve enterprise value. The common thread is that the mechanism must exist in the governing document before the dispute arises.

Theme 2: transfer restrictions and operating agreement formalities

In *Gvest Real Estate, LLC v JS Real Estate Investments, LLC*, the Supreme Court addressed a dispute arising from a Charlotte-area real estate redevelopment venture. The LLC's operating agreement required prior written consent of both managers for any transfer of membership interests. Two members attempted to transfer their interests to newly formed holding companies and then purported to vote to remove the plaintiff as manager. The critical factual issue was whether the formal transfer requirements – specifically, the written consent provision – had ever been satisfied. The court found no evidence of compliance with the transfer provisions and held that the original members retained their interests, rendering the attempted removal of the plaintiff as manager invalid.

The court treated the operating agreement as the exclusive source of rights governing transfer, removal and control. The opinion did not reach for equitable principles or common law concepts to supplement

the contractual framework. For practitioners, the case establishes that transfer restrictions are not boilerplate; rather, they determine voting power, authority to remove managers, ownership continuity and ultimately litigation outcomes. Diligence on historical transfers is critical, particularly in M&A transactions involving closely held LLCs with complex ownership histories.

The Business Court extended these principles in *Hughes v JBS Ventures, LLC*, decided on 9 February 2026. In *Hughes*, the plaintiff claimed a 23% ownership interest in an LLC based on the operating agreement, which was disputed by the majority member and manager of the LLC because the plaintiff allegedly never paid his contemplated capital contribution. The court dismissed claims for breach of fiduciary duty and constructive fraud, applying the economic loss doctrine because the underlying allegations were grounded in the operating agreement rather than in any independent duty. The court further held that a constructive trust claim was subject to the three-year breach of contract statute of limitations, not the ten-year constructive trust period, because the claim arose from the operating agreement. These are somewhat complicated legal principles, but the takeaway is simple – *Hughes* underscores that the operating agreement controls not only the substance of member disputes, but also the available remedies and limitations periods that apply to resolution of those disputes.

These decisions carry a clear drafting message. Transfer mechanics must be precise and consistently followed throughout the life of the entity. Operating agreements should address permitted transfers, consent standards, rights of first refusal, and drag-along and tag-along rights. Companies should maintain written consents, updated member schedules and complete capitalisation records. For M&A diligence counsel, the lesson is to verify not only the current capitalisation table but also the procedural history of every prior transfer.

Theme 3: fiduciary duties and the limits of judicial gap-filling

Recent case law addresses three related questions: When do fiduciary duties arise? Can they be limited or waived? And when will courts decline to supply protections that the parties did not include in their governing documents? The common thread is judicial restraint. Courts will enforce the bargain the parties struck, but they will not rewrite what the parties left out or rescue owners from the consequences of incomplete drafting.

(i) Fiduciary duties under the operating agreement

Fiduciary duties are obligations of loyalty and care that one party owes to another. In the corporate world, majority shareholders typically owe fiduciary duties to minority shareholders by operation of law. However, the North Carolina Supreme Court made clear in *Gvest Real Estate, LLC v JS Real Estate Investments, LLC* that this rule does not automatically apply to LLCs.

In *Gvest*, a 25% member argued that a coalition of minority members who together controlled 75% of the voting power owed fiduciary duties to him as the remaining member. The Supreme Court disagreed. It reasoned that LLCs are "creatures of contract" and that control depends on what the operating agreement says, not on ownership percentages. Because LLC members can negotiate for minority protections through the operating agreement, the court ruled that it was not appropriate to impose fiduciary duties that the parties never agreed to.

The Business Court extended this principle in *Estevez v C&S Commerce, LLC*. There, the operating agreement contained an explicit waiver: the minority members agreed not to bring fiduciary duty claims against the majority owner. When a dispute arose, the minority argued that the waiver was unconscionable. The court disagreed, holding that North Carolina public policy favours freedom of contract and that bargained-for waivers are enforceable.

Together, *Gvest* and *Estevez* function as bookends. Courts will not supply fiduciary duties that the operating agreement omits, and courts will enforce fiduciary duty waivers that the operating agreement includes. However, *Estevez* preserved one residual protection: the implied covenant of good faith and fair dealing, which cannot be waived. This means that even where fiduciary duties are limited, members may still have contract-based claims if the majority acts in bad faith.

But waivers are not the end of the story. The Business Court's decision in *Highlights Healthcare, LLC v Abell* illustrates what happens when a waiver contains exceptions. The operating agreement for Highlights waived fiduciary duty claims against managers and members but preserved liability for "fraud, willful misconduct or intentional and material breach". When minority members alleged that the majority owner had used company funds for a personal apartment, a private jet, vacations and home repairs, the court allowed the claims to proceed.

The court also allowed claims against the company's officers to proceed. Under both North Carolina and Delaware law, officers owe fiduciary duties to the company by virtue of their position, regardless of any member-level waiver. For drafters, *Highlights Healthcare* teaches that fiduciary duty waivers and their exceptions must be read together. A broad waiver may be enforceable, but carveouts for fraud, bad faith or willful misconduct can reopen the door to liability. Drafters should consider not only the scope of any waiver but also the breadth of any exceptions, particularly where a controlling member also serves as an officer or manager.

The Business Court's decision in *Cranford v Hintz* applies this principle in a family-business context. Steele Family Farms, LLC held five parcels of farmland in Rowan County under an operating agreement that required unanimous consent for major decisions. One member allegedly used company land for personal cattle operations without paying rent, while governance gridlock prevented the other members from taking corrective action. Chief Judge Robinson dismissed the plaintiff's individual fiduciary duty claims because the unanimous consent requirement meant the majority members did not actually "control" the LLC. The court allowed derivative claims against the member-managers to proceed because the operating agreement's liability limitation clause preserved liability for "gross negligence or willful misconduct". This case reinforces the lesson from Highlights Healthcare: the scope of a waiver and the breadth of its exceptions determine whether fiduciary claims survive.

(ii) Operating without an agreement

What happens when LLC members never sign an operating agreement at all? The paired decisions in *Lafayette Village Pub, LLC v Burnham* and *Bronson v Burnham* provide the answer. The Bronsons and Kenneth Burnham were members of two North Carolina LLCs, one operating a restaurant and the other an office suites business. Neither company had an operating agreement. The Bronsons alleged that Burnham ran the businesses single-handedly, used company funds for personal purposes, made loans on terms he set himself, and denied them access to financial records.

In the first decision, Judge Davis dismissed the Bronsons' individual claims for breach of fiduciary duty. Because neither LLC had an operating agreement, statutory default rules applied: all three members were co-managers with equal voting power. The court determined that the Bronsons could have outvoted Burnham at any time, but they never called a meeting, voted against his actions or sought a court order. The court declined to create a fiduciary relationship where the complaining members had governance tools available but failed to use them.

The Bronsons' derivative claims, which were brought on behalf of the LLCs themselves, fared better. In a later summary judgment ruling, Judge Davis found genuine disputes of fact about whether Burnham had entered into loans without approval, directed payments to companies he controlled, and moved restaurant property to his home for personal use. The court held that managers owe statutory duties to the LLC to act in good faith and in the company's best interests. The business judgement rule, which normally protects management decisions from second guessing, does not shield self-dealing.

The two decisions draw a critical line. A member may lack a direct claim against a fellow member while the LLC retains a claim against its manager for harm to the business. For North Carolina LLCs operating without an agreement, this is both a warning and a roadmap. Members who fail to negotiate protections in an operating agreement may be left relying solely on derivative claims and statutory duties owed to the entity, not direct claims against fellow members.

(iii) When courts will not fill the gaps

The final dimension of this theme concerns the outer boundaries of judicial intervention. Courts will not impose fiduciary duties on parties who stand outside the governing documents.

The Business Court's decision in *Belmont Korners, LLC v Lynk Investments, LLC* illustrates this limit. The case arose from a failed Charlotte real estate development. After the original developer defaulted on construction loans, the property owners negotiated a restructuring with the lender, Lynk Investments. Under the new arrangement, a Lynk-affiliated entity would hold 70% of a new LLC. But when the operating agreement was signed, that entity had not yet actually been formed with the Secretary of State.

The plaintiffs later sued Lynk for breach of fiduciary duty, arguing that Lynk's employee signed the operating agreement as manager and that Lynk should be held accountable as that employee's employer. Judge Shirley dismissed the claim, ruling that the lender-borrower relationship does not give rise to fiduciary duties under North Carolina law, and further that the operating agreement identified the individual, not Lynk, as manager. Courts will not impose fiduciary duties on an entity that is not a party to the operating agreement and did not assume the role of member or manager.

The Business Court's decision in *Gaston Capital, LLC v Kellar* reinforces this boundary from the investor's perspective. Private equity investors who had loaned over USD10 million to fund biomedical device development sued for breach of fiduciary duty after the borrower allegedly transferred intellectual property rights to separate entities to avoid repayment. Judge Davis dismissed the claim, holding that the debtor-creditor relationship does not give rise to fiduciary duties under North Carolina law, regardless of the size of the investment or the closeness of the business relationship. For investors, the lesson is direct: lending money to an LLC, even in substantial amounts or to facilitate the founding of a venture, does not by itself create the fiduciary protections that come with membership status under an operating agreement.

These cases teach complementary lessons. *Belmont Korners* and *Gaston Capital* confirm that fiduciary duties do not extend to parties whose relationship with the LLC is based on lending or external dealings rather than membership or management under the operating agreement. The common drafting message is that operating agreements should clearly define fiduciary standards and their exceptions. Express waivers are enforceable, as Estevez confirms, but minority members should negotiate carefully, because a blanket waiver forfeits protections that may prove critical when disputes arise. Where fiduciary duties are waived, carve-outs for fraud or willful misconduct can reopen liability, as *Highlights Healthcare* demonstrates. And members who operate without any agreement at all risk losing direct claims entirely, as *Lafayette Village Pub* and *Bronson* illustrate.

Conclusion

North Carolina courts are sending a clear and consistent message: owners of North Carolina LLCs should not expect courts to rescue them from incomplete, informal, or poorly implemented governance arrangements. The operating agreement is not a formation formality to be executed at closing and filed away. It is a business-critical document that allocates control, defines exit rights, limits or preserves fiduciary duties, and establishes the procedural framework that will govern disputes if and when they arise. The paired decisions in *Lafayette Village Pub, LLC v Burnham* and *Bronson v Burnham* illustrate the consequences of operating without a governing document: individual members may lose direct fiduciary duty claims even while derivative claims on behalf of the entity proceed under statutory default duties.

The best time to negotiate governance protections is before capital is committed, before enterprise value increases, before family relationships deteriorate, and before a buyer begins diligence. Governing documents should be revisited as the company grows, admits new investors, or prepares for a sale or recapitalisation.

The 2025–26 decisions have given practitioners an unusually direct roadmap. Courts will enforce the deal as written. The task for counsel is to ensure that the deal as written reflects the parties' actual expecta-

tions, protects minority interests where appropriate, provides workable mechanisms for resolving disputes, and anticipates the life-cycle events, such as death, incapacity, divorce, deadlock, and departure, that inevitably arise. Treated as a litigation-prevention tool rather than a formation artifact, the operating agreement remains the single most important document in any closely held company's governance architecture.

USA – OHIO



Trends and Developments

Contributed by:
Kevin G. Rooney and Eric R. Bartlam
Rooney IP

Rooney IP has an experienced team of five IP legal experts based in Cincinnati, Ohio. Clients rely on its team of IP professionals to protect and enforce their critical intellectual property assets. It also has a wide network of equally experienced IP associates around the world sharing its passion for intellectual property rights. It specialises as a micro-boutique law firm offering quality and depth of Big Law, but at a much lower cost structure and with highly personalised service. The firm's areas of expertise range from patent preparation and prosecution in mechanical, electrical, chemical and pharmaceutical technologies, to trade mark and copyright procurement and counselling, and all forms of intellectual property dispute resolution in patent, trade mark and copyright matters. It represents clients ranging from entrepreneurs to consumer product and medical technology start-ups, to well-established companies with longstanding IP portfolios critical to protecting existing and future revenue streams.

Authors



Kevin G. Rooney focuses on US and worldwide patent and trade mark procurement, enforcement, counselling, IP agreements and strategic planning. Over more than 30 years, Kevin has counselled clients on matters spanning a wide spectrum of intellectual property. In addition to procuring intellectual property rights, he defends the rights of clients against allegations of infringement and enforces IP rights of individuals and organisations of all sizes. Kevin held positions as a Patent Examiner and in the Commissioner's Office at the US Patent and Trademark Office (USPTO). He is admitted to the Ohio Bar, USPTO and the US District Court Southern District of Ohio.



Eric R. Bartlam focuses his expertise on patent and trade mark preparation and prosecution before the USPTO and various international offices. He prepares opinions related to infringement, validity and patentability, as well as licensing, and other legal agreements. Eric has experience in patent and trade mark litigation and dispute resolution, and he provides counsel to clients on various intellectual property issues. Eric's patent practice is directed toward mechanical and electro-mechanical technologies including medical devices, agricultural equipment, high security access devices, outdoor power equipment, industrial machinery, electronic/software controls, and vehicle accessories. Eric is admitted to the Ohio Bar and USPTO.

Rooney IP, LLC

Kevin G. Rooney
8044 Montgomery Road
Suite 410
Cincinnati, OH 45236
USA

Tel: +1 513 274 9664
Email: krooney@rooneyiplaw.com
Web: www.rooneyiplaw.com

Intellectual Property Strategy for Entrepreneurs Launching a Consumer Product

Bringing a novel consumer product to market is one of the most exciting stages in an entrepreneur's journey. You just invented a smart kitchen gadget, an innovative fitness device, a sustainable household item, or another breakthrough product. Your success depends on many aspects of your new product. These include its price, features, quality, manufacturing, sales and marketing. But failing to protect intellectual property (IP) associated with your product until after you have invested in development, branding, and sales may impede critical opportunities.

Patents, trade marks, and trade secrets serve different but complementary purposes. Patents protect inventions and functional innovations, while trade marks protect brand identity and customer goodwill. Trade secrets protect proprietary methods, formulas or other information not readily available to the public. Understanding how these protections work and when to pursue them can help entrepreneurs establish competitive advantages, attract investors, prevent copycats, and build long-term business value.

Understanding Intellectual Property Strategy

Entrepreneurs should view intellectual property as a business asset rather than merely a legal formality. A strong IP portfolio can increase company valuation, strengthen negotiating positions with partners and suppliers, and provide barriers to entry for competitors.

For start-up founders, intellectual property strategy should begin as early as the concept stage. Every new product involves multiple forms of intellectual property. The product's unique technology may be patentable. The company name, product name, logos and slogans may qualify for trade mark protection. Product packaging could be protected by trade marks and/or trade dress. Proprietary manufacturing processes might be protected as trade secrets as opposed to patents.

An entrepreneur should conduct an IP assessment with trusted counsel before publicly disclosing the product. This evaluation can help identify aspects of the product deserving protection and help prioritise investment in IP and appropriate budgeting.

Patent Protection: Safeguarding the Invention

A patent grants the owner exclusive rights to prevent others from making, using, selling or importing the patented invention for a limited period, typically 20 years from the filing date of a utility patent and 15 years from the grant date for a design patent. For many start-ups, including those with innovative consumer products, patents can be among their most valuable assets.

Determining Patent Eligibility

Not every product innovation is patentable. Generally, to obtain a utility patent, an invention must meet three key requirements.

- Novelty – the invention must be new and not previously disclosed.
- Non-obviousness – the invention must represent more than a predictable improvement over existing technology.
- Utility – the invention must have a useful purpose.

While commercial success of a product can provide evidence of patentability, its technical innovation will carry the most weight. A stylish redesign of an existing product may attract consumers without meeting patent requirements. For this reason, founders should evaluate the technical aspects of their inventions and seek professional advice regarding patent eligibility.

Timing Considerations

Entrepreneurs wear many hats in the quest to bring their otherwise patentable products to market. During this critical time, product demonstrations, funding efforts, trade show exhibitions, investor presentations, articles and many other disclosures may bar patent protection altogether.

In many jurisdictions, public disclosure before filing may eliminate patent rights entirely. Consequently, entrepreneurs should develop a filing strategy before launching promotional activities. When discussions with investors, manufacturers or potential partners are necessary, non-disclosure agreements (NDAs)

can provide an additional layer of protection, although NDAs are not substitutes for patent filings.

Utility patents protect functional aspects of an invention, such as:

- mechanical features;
- electronic systems;
- software-related functions;
- manufacturing methods; and
- product processes.

For example, a start-up that creates a self-cleaning water bottle with a novel sterilisation mechanism may seek utility patent protection for the technology that performs the cleaning.

Provisional Patent Applications

A utility patent may start out as a non-provisional patent application that, if allowed by the patent examiner, is issued into a patent. But often, a provisional patent application is filed first.

A provisional patent application is a temporary, one-year placeholder application that allows an inventor to secure an early filing date while continuing to develop, evaluate, market or seek funding for the invention. Provisional patent applications are not examined and will not issue into a patent. To obtain patent protection, the inventor must file a corresponding non-provisional patent application within 12 months of the provisional patent application filing date.

Benefits include:

- lower initial filing costs;
- additional time to refine the product;
- opportunity to test market demand; and
- flexibility while seeking investment.

Entrepreneurs should keep in mind provisional patent applications expire after one year. A non-provisional patent application must be filed within that year to ultimately obtain an issued patent.

Many start-ups use provisional patent applications as an early-stage protection tool. A pending provisional patent application allows the start-up to label or refer to the product as "patent pending". While provisional patent applications are generally lower cost than non-provisional applications, a provisional application should provide a full disclosure of all known aspects of the invention.

Design Patents

Design patents protect the ornamental appearance of a product rather than its function.

Examples include:

- unique shapes;
- decorative surface designs; and
- distinctive product configurations.

A company may obtain both utility and design patents for different aspects of the same product. For consumer products where visual aesthetics affects purchasing decisions, design patents can provide meaningful protection against imitators. A design patent starts out as a design patent application that, if allowed by the patent examiner, issues into a design patent.

The above briefly describes US patent protection and entrepreneurs should also consider foreign patent protection if the product may be sold or otherwise commercialised in any country outside the US.

Working with Patent Professionals

Drafting a patent application requires technical precision and legal expertise. Poorly drafted applications may offer weak protection or fail to secure coverage for key features.

Entrepreneurs should consider working with qualified patent attorneys or agents to:

- identify patentable subject matter;
- draft strong and comprehensive claims;
- respond to examiner objections; and
- co-ordinate international filings.

While professional assistance represents a significant expense for start-ups, it often delivers greater long-term value than attempting to handle complex patent matters independently.

Conducting a Patent Search

Before investing heavily in patent applications, entrepreneurs should conduct a prior art search. Prior art includes existing patents, published applications, scientific publications, products and public disclosures that may affect patentability.

A patent search serves multiple objectives:

- assessing whether the invention appears novel;
- identifying competing technologies;
- reducing the risk of filing for an invention already patented; and
- improving patent application quality.

Although founders can perform preliminary searches using public patent databases, professional patent searches often reveal additional relevant references and provide more reliable guidance.

Freedom-to-Operate Analysis

Obtaining a patent does not automatically grant freedom to commercialise a product. For example, a third-party patent may cover a component, technology or process used within the product.

A freedom-to-operate analysis evaluates whether bringing a product to market may infringe existing patents. This review is particularly important before manufacturing at scale, entering major markets or spending significant funds on other major milestones.

For example, a start-up may develop a patentable innovation in a wearable device but still risk infringing another patent covering wireless communication technology incorporated into the product.

Addressing these risks early helps avoid costly litigation and business disruptions later.

Building a Patent Portfolio

Investors often evaluate not only whether a start-up has patents but also whether it is building a defensible portfolio.

A patent portfolio may include:

- core technology patents;
- improvement patents;
- design patents; and
- international patent filings.

As product development continues, start-ups should identify additional innovations arising from customer feedback, engineering improvements and manufacturing refinements.

A layered portfolio creates stronger barriers against competitors and increases licensing opportunities.

Trade Mark Protection: Safeguarding the Brand

While patents protect innovations, trade marks protect the identity associated with those innovations. A trade mark may include:

- company names;
- product names;
- logos;
- slogans; and
- distinctive packaging elements.

Strong trade marks help consumers identify products and distinguish them from competitors.

Selecting a Strong Trade Mark

The strength of a trade mark significantly influences its legal protection.

Trade mark categories generally range from strongest to weakest:

- fanciful marks;
- arbitrary marks;
- suggestive marks; and
- descriptive marks.

Fanciful marks consist of invented words, such as:

- EXXON;
- KODAK;
- XEROX
- VERIZON; and
- PEPSI.

Arbitrary marks use existing words in unrelated contexts, such as:

- APPLE (computers);
- AMAZON (online retail);
- SHELL (petroleum products);
- DOVE (soap); and
- CAMEL (cigarettes).

Fanciful and arbitrary marks typically receive the strongest protection.

Entrepreneurs might be inclined to choose descriptive words because these communicate product benefits. However, highly descriptive terms are generally more difficult to protect and enforce as trade marks or brands. In such cases, it may take time to educate the consumer such that a descriptive term becomes more distinctive and associated with a brand.

Examples of descriptive marks that have strong protection due to market penetration:

- COPPERTONE (suntan products);
- NETFLIX (internet streaming);
- MICROSOFT (microcomputer software);
- JAGUAR (automobiles); and
- GREYHOUND (bus services).

Strong trade marks typically:

- are unique and memorable;
- do not directly describe the product or service;
- are easy to enforce against competitors;
- have a broad scope of legal protection; and
- distinguish the source of goods or services immediately.

Weak Terms to Avoid

- Merely descriptive marks – QUICK PRINT for printing services, COLD & CREAMY for ice cream.
- Generic terms – COMPUTER for computers, EMAIL for email services.
- Highly laudatory terms – BEST, PREMIUM, SUPERIOR, QUALITY.

A unique and distinctive brand name usually provides stronger long-term value.

Conducting Trade Mark Clearance Searches

Before adopting a company or product name, entrepreneurs should consider conducting a trade mark clearance search. This process helps determine whether similar marks already exist that could create confusion among consumers.

A trade mark clearance search can locate and examine:

- registered trade marks;
- pending applications;
- domain names;
- social media accounts; and
- common-law usage.

Failure to conduct adequate searches can result in rebranding costs, lost marketing investments, and potential infringement claims.

Registering Trade Marks

Trade mark rights may arise through use in commerce in some jurisdictions, but registration offers significant advantages.

Registration can provide:

- public notice of ownership;
- stronger enforcement rights;
- legal presumptions of validity;
- enhanced remedies against infringers; and
- increased business credibility.

Entrepreneurs should consider registering not only their company name but also key product names, logos and slogans that contribute to brand recognition.

International Trade Mark Strategy

Many consumer product start-ups sell globally through e-commerce platforms. As international sales expand, trade mark protection should expand as well.

Entrepreneurs should prioritise countries based on:

- major sales markets;
- distribution partnerships;
- growth opportunities; and
- manufacturing locations.

Failing to secure international trade mark rights may allow third parties to register the brand in foreign markets, creating significant business complications.

Trade Secrets

Trade secrets are protected by maintaining the confidentiality of valuable business information that provides a competitive advantage. Protective measures typically include limiting access to authorised personnel, using NDAs, implementing physical and cybersecurity safeguards, marking confidential materials appropriately, and providing employee training on confidentiality obligations. Unlike patents, trade secrets remain protected as long as the information is not publicly disclosed and reasonable efforts are taken to preserve its secrecy.

Examples of trade secrets include:

- manufacturing processes;
- product formulas and recipes;
- software algorithms and source code;
- customer and supplier lists;
- pricing strategies; and
- business methods and proprietary know-how.

Key Principle: A trade secret derives its value from being secret, and protection is lost if the information becomes publicly available through improper safeguards or unauthorised disclosure.

Integrating Patent, Trade Mark and Trade Secret Strategies

Patents, trade marks, and trade secrets should not be treated as isolated legal tools. Effective start-ups co-ordinate all forms of protection.

Consider a company that develops a revolutionary home appliance:

- patents protect the underlying technology;
- design patents protect product appearance;
- trade marks protect the company name and product branding; and
- trade secrets protect proprietary methods, formulas, or other information not readily available to the public.

Each layer strengthens the start-up's competitive position and reduces vulnerability to imitation.

Intellectual Property and Investor Relations

Investors frequently evaluate intellectual property during due diligence. A well-structured IP portfolio signals professionalism and strategic thinking.

Entrepreneurs should maintain records documenting:

- invention development;
- patent filings;
- trade mark registrations;
- employee IP assignments; and
- contractor agreements.

Investors want confidence that company-owned intellectual property actually belongs to the company. Founders must ensure that employees, consultants, engineers and designers assign relevant intellectual property rights to the business entity.

Without proper ownership documentation, valuable rights may remain with individuals rather than the start-up.

Enforcement and Monitoring

Intellectual property protection is not a one-time activity. Entrepreneurs must actively monitor markets for potential infringement, in addition to continually considering their own innovative efforts.

Monitoring efforts may include:

- tracking competing products;
- watching online marketplaces;
- reviewing patent application filings;
- reviewing trade mark filings; and
- using brand protection services.

When infringement occurs, responses can range from informal communications to cease-and-desist letters, licensing discussions, administrative proceedings or litigation.

Consistent enforcement helps preserve rights and discourages future violations.

Common Start-Up Mistakes

Many start-ups undermine their intellectual property protection through avoidable errors. Common mistakes include:

- publicly disclosing inventions before filing patent applications;
- choosing descriptive or difficult-to-protect trade marks;
- ignoring trade mark searches;
- failing to secure intellectual property assignments;
- assuming patents guarantee freedom to operate;
- neglecting international protection; and
- waiting until product launch to consider IP issues.

Awareness of these risks allows founders to allocate resources more effectively and avoid expensive corrective actions later.

Conclusion

For entrepreneurs introducing novel consumer products, patents, trade marks and trade secrets are essential tools for protecting innovation and building enterprise value. Patents help secure exclusive rights to technological advances and product designs, while trade marks establish and preserve brand identity in the marketplace. Trade secrets protect proprietary methods, formulas or other information not readily available to the public. Together, they create a comprehensive intellectual property framework that supports growth, differentiation, investment attraction and competitive advantage.

Successful start-up founders approach intellectual property strategically from the earliest stages of development. By conducting searches, filing timely applications, selecting strong trade marks, maintaining ownership documentation and continuously monitoring the marketplace, entrepreneurs can transform creative ideas into protected business assets. In an increasingly competitive global economy, thoughtful management of patents, trade marks and trade secrets is not merely a legal requirement but a critical component of long-term commercial success.

ZIMBABWE



Law and Practice

Contributed by:
Rumbidzai Matambo, Milanda Manjengwah, Chido Marian Hove, Obert Kondongwe, Tendero Makanga and Romeo Chatereza
Dube Manikai & Hwacha Legal Practitioners

Contents

1. Business Entities P.740
1.1 Business Organisations p.740
1.2 Incorporation and Ongoing Compliance p.740
1.3 Share Issuances p.740
1.4 Distributions and Return of Capital p.740
1.5 Control Person Reporting p.741

2. Corporate Governance P.742
2.1 Legal Framework p.742
2.2 Directors' Duties and Liabilities p.742
2.3 Board Composition and Independence p.742
2.4 ESG and Disclosure Obligations p.743
2.5 Conflicts of Interest and Related-Party Transactions p.744

3. Shareholder Rights and Agreements P.744
3.1 Shareholder Rights p.744
3.2 Shareholder Agreements p.745

4. Mergers and Acquisitions P.745
4.1 Legal Framework p.745

5. Capital Markets P.746
5.1 Securities Regulation and Public Offerings p.746
5.2 Continuous Disclosure p.747
5.3 Insider Trading p.747
5.4 Shareholder Disclosure p.747
5.5 Internal Controls and Whistle-Blower Regimes p.747

6. Secured Transactions P.748
6.1 Transaction Financing and Security Interests p.748

7. Commercial Contracts P.748
7.1 Contract Formation and Enforceability p.748
7.2 Termination and Remedies p.749
7.3 Intellectual Property in Commercial Transactions p.750
7.4 Consumer Protection p.750

8. Foreign Investment P.751
8.1 Competition and Merger Control p.751
8.2 Foreign Investment Restrictions and Sector-Specific Rules p.752

9. Regulatory Compliance P.753
9.1 Privacy and Data Protection p.753
9.2 Anti-Money Laundering, Sanctions and Corruption p.754
9.3 Environmental, Health and Safety, and Industry-Specific Regulation p.754
9.4 Artificial Intelligence p.755
9.5 Other Regulatory Compliance Requirements p.755

10. Employment and Labour P.756
10.1 Employment Standards and Workplace Regulation p.756
10.2 Executive Compensation and Restrictive Covenants p.756

11. Real Property and Commercial Leasing P.757
11.1 Requirements for Land Ownership p.757
11.2 Commercial Real Estate Transactions p.758

Dube Manikai & Hwacha Legal Practitioners (DMH) is a leading Zimbabwean commercial law firm established in 1998, with a team comprising nine partners, five associates, eight candidate attorneys and 29 support staff. Based in Harare, Zimbabwe, DMH is a full-service firm providing end-to-end legal services to corporates, financial institutions, investors and public sector entities. The firm has particular expertise in commercial and financial services, trade and investment, corporate and transactional matters, tax, ICT, data protection, intellectual property, employment, litigation, conveyancing and securitisation, enabling an integrated approach to complex mandates. Recent work includes advising FBC Holdings Limited, Innscor Group, the Reserve Bank of Zimbabwe and Afreximbank on commercial, financial, regulatory and transactional matters. DMH's multidisciplinary structure enables it to draw on specialist expertise across practice areas to deliver practical, commercially focused legal solutions to its clients.

Authors



Rumbidzai Matambo is the managing partner and head of the conveyancing and securitisation group at DMH, with over 22 years' experience. She specialises in conveyancing, property law, securitisation, secured lending and notarial practice, advising financial institutions, multilateral lenders, insurers and corporates on complex transactions. Her experience includes structuring and perfecting security packages, real estate financing, land acquisitions, registrations and commercial restructurings. She advises the African Export-Import Bank (Afreximbank) and other major financial institutions on Zimbabwean law matters. As the immediate past president of the Law Society of Zimbabwe, Rumbidzai brings significant regulatory expertise.



Milanda Manjengwah is a partner in DMH's commercial and financial services group, with over 21 years' experience. She advises local, regional and international clients on complex corporate and commercial transactions, specialising in mergers and acquisitions, banking and finance, capital markets, corporate restructurings, joint ventures and regulatory compliance. Milanda has advised on significant transactions involving FBC Holdings, Padenga Holdings, Old Mutual, Star Africa and Lobels Holdings. Her experience includes structured finance, cross-border lending, capital raising, infrastructure and energy projects. She brings expertise in transaction structuring, due diligence, regulatory approvals, negotiations and complex transaction documentation.



Chido Marian Hove is a partner in DMH's commercial and financial services group, with over 16 years' post-admission experience. She advises local, regional and international clients, specialising in energy and infrastructure projects, project finance, mergers and acquisitions, mining, banking and finance, competition law and intellectual property. Chido has advised on significant transactions including the Batoka Gorge Hydroelectric Scheme, Hwange Thermal Power Station rehabilitation and major road infrastructure projects. Her experience includes advising investors, lenders, developers, multilateral institutions and public sector entities on project structuring, regulatory compliance, financing, joint ventures, risk allocation and complex commercial documentation.



Obert Kondongwe is a partner in DMH's employment law and litigation group, with over 11 years' experience. He advises public and private sector clients on employment law, dispute resolution, corporate advisory and regulatory compliance. His practice includes retrenchments, organisational restructuring, employment contracts, workplace policies, disciplinary processes and labour litigation. Obert has advised organisations including the National Social Security Authority (NSSA) and DHL on large-scale restructuring exercises, and assisted clients including Nestlé Zimbabwe and SIRDC with employment codes of conduct. He represents clients before the Labour

Court, Magistrates' Court, High Court, Supreme Court and administrative tribunals.



Tendero Makanga is a partner in DMH's commercial and financial services and tax group, with ten years' experience. She specialises in tax advisory, tax litigation and commercial litigation. Tendero advises corporate and commercial clients on tax planning, the interpretation and application of tax legislation, and tax implications arising from commercial transactions. She represents clients in tax and commercial disputes, including in objections against assessments issued by the Zimbabwe Revenue Authority, mediation and litigation. Her experience includes advising Innscor Africa Group companies, Padenga Holdings, Fastjet Zimbabwe, Tsebo Zimbabwe and FBC Bank on tax matters.



Romeo Chatereza is a partner in DMH's civil and commercial litigation group, with eight years' experience. He advises local and international clients on commercial disputes, regulatory matters, litigation, arbitration and competition law. Romeo has successfully represented clients before the High Court, Supreme Court and Constitutional Court of Zimbabwe in complex disputes involving contractual claims, corporate matters and high-value litigation. His competition law practice includes merger control, restrictive business practices and regulatory compliance. He has also advised on commercial transactions, legal due diligence and risk management, and has acted for insurance companies in multi-million-dollar litigation disputes.

Dube, Manikai and Hwacha Legal Practitioners

4 Fleetwood Road
Alexandra Park
Harare
Zimbabwe

Tel: +263 04 250909/12
Fax: +263 780350
Email: admin@dmh.co.zw
Web: www.dubemanikaihwacha.com



Contributed by: Rumbidzai Matambo, Milanda Manjengwah, Chido Marian Hove, Obert Kondongwe, Tendero Makanga and Romeo Chatereza, **Dube Manikai & Hwacha Legal Practitioners**

1. Business Entities

1.1 Business Organisations

Principal business entities include private and public companies, private business corporations, a syndicate, a partnership or any other association of persons, whether corporate or unincorporated.

Public limited companies, private limited companies, companies limited by guarantee, co-operative companies, foreign companies and private business corporations must be registered. Partnerships, syndicates, joint ventures and certain associations of persons register voluntarily.

The choice of structure is influenced by, amongst other factors, the purpose for which the business organisation has been established, restrictions in relation to size of membership, transfer of shares and invitation of the public to subscribe for shares or debentures in the company, limitation of liability and separate legal identity and taxation.

1.2 Incorporation and Ongoing Compliance

Registration of a company is governed by the Companies and Other Business Entities Act (Chapter 24:31) (COBE) and is done in two stages, namely:

- name search (application for approval of the name by which the company will be registered); and
- registration stage (submission of the incorporation details after which the Registrar issues the certificate of incorporation and the summary document).

Both the name search and the registration details are submitted online.

The requirements for registration of a private company are as follows:

- a list of the proposed names by which the company will be registered (provide at least three names (in order of preference) so as to enhance the chances of getting one approved;
- the main business of the company; and
- details for the shareholder/s, ultimate beneficial owners, directors and secretary.

The registration process takes, on average, two weeks upon submission of the full suite of documents and payment of a prescribed fee.

Ongoing compliance includes filing annual returns on every anniversary of incorporation; maintaining registers of shareholders, directors and secretaries; filing beneficial ownership declarations where applicable; and holding an AGM every 12 months and submitting a declaration of holding of AGM on form CR17, usually submitted with the annual return.

1.3 Share Issuances

Authorisation for shares must be provided for in the company's memorandum of association, which must set out classes of shares, and the number of shares of each class that the company is authorised to issue, together with the distinguishing designation, the preferences, rights, limitations and other terms associated with each class.

The board of directors may issue shares of the company at any time, but only within the classes and to the extent that the shares have been authorised by or in terms of the company's memorandum of association and must determine the consideration and terms of issuing the shares.

Shares issued by a company are movable property, and since 2019, a share does not have a nominal or par value, although shares existing before then retain their nominal or par value when issued.

Increasing the authorised share capital or reducing it will require prior shareholders' approval, and in the case of a reduction, confirmation by the court.

A company can issue shares with such rights or restrictions as may be determined by it. Key considerations include prior authorisation and the characterisation of the shares to be issued in terms of voting rights, capacity to redeem the shares or convert them into ordinary shares.

1.4 Distributions and Return of Capital

Distributions are governed by applicable law and the constitutive document of a business entity. A company can make a distribution either (i) pursuant to an

existing legal obligation of the company or a court order (ii) if the board of the company, by resolution, has authorised the distribution; or (iii) if it reasonably appears that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution.

Repurchase and Redemption

The law permits the purchasing of a company's own shares, including redeemable shares, subject to the applicable requirements. The repurchase can be made only out of profits of the company which would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the repurchase. The repurchase must be permitted by the company's articles of association and authorised in advance by the company in a general meeting and notified to the registrar of companies in the prescribed form.

Upon repurchase, the shares will have the same status as treasury shares, that is, shares that have been authorised but not issued.

Cancellation of Repurchased Shares

The shares repurchased by the company should be treated as cancelled, and the amount of the company's share capital shall be diminished by the nominal value of those shares. However, this does not reduce the company's authorised share capital. The amount by which the company's issued share capital is diminished on cancellation of the shares concerned should be transferred to a reserve, to be called "the capital redemption reserve" (this sum is treated as capital and cannot be distributed).

For companies listed on a stock exchange, additional requirements include approval of the repurchase by the Zimbabwe Stock Exchange, and that the repurchase should not exceed 40% of the issued share capital of the class of shares being repurchased by the company concerned in any one financial year.

Redeemable Shares: if authorised by its articles of association, a company can issue redeemable shares. Redemption of such shares can only be out of profits of the company available for dividend or out of the proceeds of a fresh issue of shares made for the redemption.

Cancellation for Deemed Shares

Shares redeemed as set out above will be treated as cancelled on redemption, and the amount of the company's share capital will be diminished by the nominal value of those shares.

Solvency Tests

The solvency and liquidity test should be satisfied ahead of (i) a company offering a cash payment instead of awarding a capitalisation share, (ii) financial assistance, and (iii) making a distribution.

A solvency test is satisfied if, considering all reasonably foreseeable financial circumstances of the company at that time:

- the assets of the company (group company), fairly valued, equal or exceed the liabilities of the company (group company) as fairly valued; and
- it appears that the company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 months after the date on which the test is applied/12 months following the distribution.

Financial Assistance Rules

Financial assistance is generally prohibited except if such assistance is given in accordance with a special resolution of the company and immediately after such assistance is given, on a fair valuation the company's assets, excluding any asset resulting from the giving of the assistance, those assets exceed its liabilities and the company can pay its debts as they become due in the ordinary course of its business.

1.5 Control Person Reporting

Every company is required to maintain an accurate and up-to-date register of the beneficial owner or owners. Where a nominee shareholder for a beneficial owner holds more than 20% shares of that company, the nominee shareholder must, within 30 days of becoming the nominee shareholder, disclose the particulars of such beneficial ownership to the company secretary, who then transmits such particulars to the Registrar of Companies in form CR16 ("Declaration of beneficial ownership") together with the prescribed fee. Any changes to the information set out in form

CR16 must be notified to the Registrar within seven days of such change.

2. Corporate Governance

2.1 Legal Framework

The corporate governance framework in Zimbabwe is primarily shaped by:

- the Constitution of Zimbabwe Amendment (No 20) Act. 2013, which establishes the foundational principles of accountability, transparency, good administration and public sector governance;
- the Companies and Other Business Entities Act [Chapter 24:31] (the "COBE Act"), which is the primary source of corporate governance obligations for all companies in the private and public sector;
- the Public Entities Corporate Governance Act [Chapter 10:31], which is the main governance statute for SOEs, parastatals and other public entities;
- the Zimbabwe Stock Exchange (ZSE) and Victoria Falls Stock Exchange (VFEX) Listings Requirements, which impose additional governance obligations on companies listed on the ZSE and VFEX; and
- the Zimbabwe National Code on Corporate Governance (ZIMCODE), which provides a framework for corporate governance for both public and private sector entities.

2.2 Directors' Duties and Liabilities

The principal fiduciary duties of directors recognised in Zimbabwe include the duty to act in good faith and in the best interests of the company; exercise powers for a proper purpose; avoid conflicts of interest; exercise care, skill and diligence; not to fetter discretion; and act within the powers conferred by the company's constitution.

Courts have largely applied these duties with reference to the common law and leading South African and English authorities, including *Howard v Herrigel*, *Robinson v Randfontein Estates Gold Mining Co Ltd*, *Fisheries Development Corporation of SA Ltd v Jorgensen* and *Howard Smith Ltd v Ampol Petroleum Ltd*.

Standard of Care of Directors

The standard of care for directors is primarily governed by Section 54 of the COBE Act as read with the common law principles.

In this regard, directors are required to:

- act in good faith and the best interests of the company;
- exercise their powers for a proper purpose;
- exercise the degree of care, skill, diligence and attention that may reasonably be expected of a person carrying out the same functions; and
- avoid conflicts of interest and disclose any personal interests in company transactions.

When Can Directors be Held Personally Liable?

Under Section 197, a company may recover loss, damages or costs from a director for, among other things, breach of fiduciary duties, acting without authority, reckless or fraudulent conduct, fraudulent acts affecting creditors, employees or shareholders, materially false financial statements, unauthorised shares, unlawful financial assistance, improper distributions and other statutory breaches. The business judgement rule protects a director where the director had no personal interest, was sufficiently informed and honestly believed the decision was in the company's best interests.

Section 54 of the COBE has codified the business judgement rule, which protects a director from liability for unsound business decisions where they acted in good faith.

2.3 Board Composition and Independence

Board Composition, Residence, Independence Standards and Diversity

In Zimbabwe, board composition requirements are governed by the COBE Act as supplemented by corporate governance best practices, namely the ZIMCODE. The COBE Act prescribes certain minimum requirements, whilst ZIMCODE provides guidance on independence, diversity and board effectiveness.

Section 195 of the COBE Act prescribes minimum board sizes for private and public companies as follows:

- private companies with more than one but fewer than ten shareholders must have at least two directors;
- private companies with ten or more shareholders must have at least three directors; and
- public companies must have between seven and 15 directors.

A company secretary and at least one director must be ordinarily resident in Zimbabwe.

Board Independence Standards

The COBE Act has limited provisions relating to board independence for private companies, however Sections 219 and 220 prescribe certain governance standards for public companies including written corporate governance standards and audit committee of independent directors.

Private v Public Listed Companies

With respect to private companies, the COBE Act provides for minimum governance requirements (board composition, fiduciary duties and disclosure requirements), however there are generally no mandatory requirements for independent directors, audit committees, or prescribed diversity quotas. The COBE Act imposes additional governance obligations on public companies, including the requirement to establish written corporate governance guidelines and audit committee composed of independent directors.

2.4 ESG and Disclosure Obligations

ESG and Sustainability Obligations for Corporations in Zimbabwe

With effect from 1 January 2024, all companies listed on the ZSE and the VFEX are required to prepare and submit sustainability reports covering environmental, social and governance (ESG) matters, pursuant to Sections 399–404 of the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) 2019 (Statutory Instrument 134 of 2019) as read with ZSE Practice Note 16 and VFEX Practice Note 2.

The environmental component of ESG is governed mainly under the Environmental Management Act [Chapter 20:27], which established the Environmental Management Agency (EMA). EMA is the agency responsible for:

- environmental protection and pollution prevention;
- sustainable use of natural resources;
- environmental impact assessments (EIAs); and
- monitoring compliance with environmental regulations.

Companies undertaking projects that may significantly affect the environment (such as mining and manufacturing) are required to obtain environmental approvals and conduct EIAs before commencing operations. Failure to comply can result in penalties, suspension of activities, or remediation obligations.

Practice Note 16 specifies the minimum disclosure metrics for listed companies covering ESG matters. These include energy and water consumption, waste and greenhouse gas emissions; employee and occupational health and safety information; training and gender diversity; community contributions; board composition and committees; governance qualifications and experience; ownership and operations; and compliance statements.

Under Zimbabwean law, directors' duties are primarily company-focused, requiring directors to act in good faith and in the best interests of the company. There is currently no explicit statutory duty requiring directors to consider environmental, social or stakeholder interests independently of the company's interests. However, environmental, social and stakeholder considerations are becoming increasingly relevant due to mandatory sustainability reporting for listed companies.

Best Practices for Board Oversight of ESG Risks and Opportunities

Zimbabwe has adopted the IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (ISSB), however implementation of IFRS S1 (General Sustainability Disclosures) and IFRS S2 (Climate-related Disclosures) is not yet mandatory across the board. As such, ESG and climate-related disclosures are currently only mandated for listed companies in accordance with Practice Note 16.

2.5 Conflicts of Interest and Related-Party Transactions

In Zimbabwe, conflicts of interest and related-party transactions are governed primarily by the COBE Act, as supplemented by the ZSE Listing Requirements (for listed companies), and other corporate governance standards such as the ZIMCODE.

The COBE Act codifies directors' and officers' fiduciary duties and imposes a duty of loyalty to the company. Directors, officers and controlling members must act in the best interests of the company, refrain from abusing their position, avoid using company property or confidential information for personal benefit, and disclose situations where their personal interests may conflict with those of the company.

Sections 56, 57 and 58 of the COBE Act address personal financial interests and disclosure.

Where a director has a personal financial interest in a board matter, the director must disclose the nature and extent of the interest, must not participate in deliberations or voting except as permitted, and must not execute related documents unless requested or directed by the board.

Related-Party Transactions

For companies listed on the ZSE, related-party transactions may trigger additional approval requirements under the ZSE Listing Requirements including press announcements, providing ZSE with a copy of the agreement, shareholder approval and independent expert's confirmation that the terms of the proposed transaction with the related party are fair and reasonable.

Companies that prepare IFRS-compliant financial statements must also disclose material related-party relationships and transactions, including:

- transactions with directors and key management personnel;
- balances outstanding with related parties;
- loans, guarantees and similar arrangements; and
- compensation of key management personnel.

3. Shareholder Rights and Agreements

3.1 Shareholder Rights

Each issued share of a company, regardless of its class, has associated with it one general voting right, except to the extent the right to vote is limited by any applicable law or the company's memorandum of association.

Shareholders' right to information includes:

- right to inspect the company's constitutive documents;
- notice of meetings;
- inspection of the minutes of proceedings of any general meeting of a company;
- financial statements; and
- on payment of a fee, copies of and inspection of the register and index of members, except where the register of members is closed under the applicable law.

Shareholders' approval is required in some instances, including:

- alteration of the memorandum and articles of association;
- disposal of the undertaking of the company or of the whole or the greater part of the assets of the company;
- purchase of own shares;
- financial assistance by the company for purchase of its own or its holding company's shares;
- reduction of share capital;
- adoption of a plan and contract for merger;
- approval of a major transaction;
- dissolution of the company; or
- reserved matters.

Statutory remedies available to shareholders include:

- Investigation of the affairs of a company – on the request of a shareholder or shareholders holding at least 5% of the ordinary shares of the company, the Registrar of Companies may assign one or more inspectors to investigate the affairs of the registered business entity and to report thereon as the Registrar may direct.

- Tag-along rights – a minority shareholder may demand, by notice in writing, that an offeror acquiring the majority share, should acquire all of that person's target shares.
- Court remedy for oppressive and unfairly prejudicial conduct – a shareholder may apply to the court for an order that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members.

3.2 Shareholder Agreements

Shareholders' agreements form part of a company's internal rules. They are tailor-made to address issues not necessarily dealt with in the constitutive documents of the company. They usually provide for pre-emptive rights, thereby restricting the sale, disposal or transfer of shares to third parties. They may also provide for matters which are reserved for the shareholders.

Shareholders' agreements cannot contradict statutory provisions and will be treated as void to the extent they do so. Further, they should align with the constitutive documents of the company, which take precedence in the event of a conflict or inconsistency.

Shareholder disputes are usually resolved through negotiation and mediation or arbitration pursuant to the arbitration agreement. Shareholders can also approach the courts to resolve their disputes.

- Direct action by members – a shareholder can sue for damages against any manager, officer or director of a company, to enforce or recover damages caused to them by violation of a duty incumbent upon any such manager, officer or director under the COBE Act or any other law including laws against fraud or misappropriation.
- Derivative actions by members on an entity's behalf – shareholder/s, holding interests or shares representing at least 10% of the company's ordinary shares, can bring an action in court on the company's behalf against any manager, officer or director of the company, to enforce, or to recover from that manager, officer or director damages caused to the company by violation of duties owed by that manager, officer or director to the company.
- Unfair prejudice – a shareholder can apply to the court for remedy on the ground that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members.
- Winding-up petitions – a shareholder can apply to the court for an order to wind up the company on the grounds specified in the COBE Act.

4. Mergers and Acquisitions

4.1 Legal Framework

The laws governing public and private mergers, acquisitions and tender offers in Zimbabwe are spread across company law, competition law, exchange control, securities regulation and in some instances additional sector-specific legislation if the transaction is in a regulated sector such as banking and finance, telecoms or health.

Companies and Other Business Act [Chapter 24:31]

Sections 226-233 govern the statutory merger framework. The Act provides for consolidations, amalgamations, major asset transaction and the relevant corporate approvals necessary to consummate the various transactions.

Competition Act [Chapter 14:28]

The Competition Act and various regulations made under it govern mergers and acquisitions in so far as their approval is concerned. The Competition and Tariff Commission (CTC) is mandated with the assessment and approval of mergers within Zimbabwe. Further details may be found in **8.1 Competition and Merger Control**.

Listing Requirements

A merger involving a listed entity either on the ZSE or the VFSE also has to comply with the relevant listing requirements. The Listing Rules impose disclosure and announcement requirements on takeovers, mergers and business combinations.

Exchange Control

If the merger involves a foreign entity as an acquirer, then such a transaction also requires the Reserve

Bank of Zimbabwe's exchange control approval in terms of the Exchange Control Act [Chapter 22:05].

Key Structuring Considerations

There are no prescribed structuring mechanisms and this is largely left to the parties to decide the most efficient form of structuring for their M&A transaction, taking into account their intended goals and commercial rationale. Various forms of structuring mergers and acquisitions are prevalent in the Zimbabwean market. The most common are share purchases, asset sales, schemes of arrangement, takeovers, share swaps and joint ventures.

Recent Legislative or Regulatory Changes

The principal statutory framework remains the Competition Act [Chapter 14:28], read with the Competition (Notification of Mergers) Regulations, 2020 (S.I. 126 of 2020), as amended by the Competition (Notification of Mergers) (Amendment) Regulations, 2022 (S.I. 55 of 2022).

The 2022 amendments moved the merger notification threshold and fees into a more stable US-dollar framework. The threshold is currently USD1.2 million, measured by reference to the combined annual turnover in or from Zimbabwe or the relevant combined Zimbabwean assets. The notification fee is subject to a USD10,000 minimum and USD40,000 maximum, payable in Zimbabwe dollars at the prevailing prescribed rate. Another recent corporate-law development relevant to M&A due diligence is the Companies and Other Business Entities (Re-Registration) Regulations, 2025 (S.I. 108 of 2025). The regulations implement the re-registration requirements for companies and private business corporations registered before implementation of the electronic company registry.

Courts Shaping the Development of M&A Law

The current leading judgment in M&A is the Constitutional Court judgment in *Ashram Investments* (*Pvt*) *Ltd* & *Ors v Competition and Tariff Commission*, CCZ 20/25. The judgment is significant for Zimbabwean merger-control law, particularly regarding procedural fairness, natural justice and the limits of appellate intervention.

5. Capital Markets

5.1 Securities Regulation and Public Offerings

The Securities and Exchange Commission of Zimbabwe, established under the Securities and Exchange Commission Act, Chapter 24:25, is the primary regulator of Zimbabwe's capital markets. The Victoria Falls International Financial Services Centre, established under the Banking (International Financial Services Centre) Regulations, 2025, Statutory Instrument 29 of 2025, regulates capital markets activity in the Centre.

Participants are governed in terms of the Securities and Exchange Act, Zimbabwe Stock Exchange Listings Requirements Rules, 2019 (SI 134 of 2019) if participating on the Zimbabwe Stock Exchange, and the Banking (Victoria Falls International Financial Services Centre) (Securities, Capital Markets and Collective Investment Funds) Regulations, 2026, Statutory Instrument 63 of 2026 for capital market activities in the International Financial Services Centre.

A duly constituted applicant must have the prescribed subscribed capital equity shares in issue, a satisfactory profit history for the preceding five financial years, if applicable, and at least 30% of each class of equity shares held by public shareholders, unless otherwise agreed with the relevant stock exchange. It will be necessary to prepare and publish a pre-listing statement in terms of the relevant rules of the stock exchange on which the listing will be done.

Stock exchange listing requirements are statutory in nature and have the force of law.

Generally, a stock exchange may, in extraordinary circumstances, exercise its discretion to grant a listing to an applicant which does not comply with the requirements set out in the listings rules, on the ground that the listing is in the interests of the investing public.

Pre-listing statements are not required for issues of securities by an applicant whose securities are already listed and fall into the specified categories, including but not limited to: securities resulting from the conversion of convertible securities, exercise of rights under options, securities issued in place of securities already listed and securities allotted to employees.

5.2 Continuous Disclosure

Continuing obligations are imposed by the rules of the relevant stock exchange and must be observed once securities have been admitted to listing. These require, amongst other things, announcement of the existence of price-sensitive information, dividends or interest payments on listed securities, publication of half-year interim reports in the press or in electronic form, publication of audited annual financial statements, notification relating to capital, ensuring that all holders of its securities receive fair and equal treatment, ensuring that securities in each class for which listing is applied rank pari-passu in respect of all rights, ensuring that a minimum percentage of each class of securities is held by the public as prescribed and ensuring that all the necessary facilities and information are available to enable holders of securities to exercise their rights.

A listed company is required to make full, equal and timeous public disclosure to all holders of securities and the general public regarding corporate actions and material information of the company.

Public disclosure of information that may reasonably be expected to have a material effect on market activity in and prices of its securities must be made within 24 hours of the event.

5.3 Insider Trading

Section 88 of the Securities and Exchange Act [Chapter 24:25] prohibits the misuse of inside information, including dealing in affected securities while in possession of such information, inducing or discouraging another person to trade, and disclosing inside information to another person. The Act further prohibits false trading and market manipulation under Section 96 and fraudulently inducing persons to trade or deal in securities under Section 97.

These provisions are supplemented by criminal and civil remedies, including provisions for class actions under Sections 90–99.

5.4 Shareholder Disclosure

Section 72 of the COBE Act places a duty on companies to maintain an accurate and up-to-date register of beneficial owners. Section 73 of the COBE Act prohibits any company from concealing beneficial ownership by allotting or issuing to, registering any of its shares in the name of, or issue a certificate of members to any person other than the intended beneficial owner.

Failure to comply with the provisions of Section 72 and 73 of the COBE Act attracts a fine or imprisonment or both a fine and imprisonment.

5.5 Internal Controls and Whistle-Blower Regimes

The law mandates the establishment of a board of directors responsible for decisions on all matters except those reserved to the shareholders by the COBE Act or by the company's constitutive documents.

The COBE Act further mandates all public companies to establish or adopt written corporate governance guidelines consistent with the then-current National Code on Corporate Governance (the "National Code").

One of the principles of the National Code is that the board should ensure that principal risks are timeously identified and managed and may appoint a risk management committee to assist it in the discharge of its duties and responsibilities in respect of risk management. At each annual shareholders' meeting, the board must report to the meeting on the company's compliance with its guidelines and their conformity to the principles outlined in the National Code on Corporate Governance.

The proposed legislation governing whistle-blowing is at Bill stage and has not yet become law. If passed into law, it will provide a framework within which public interest disclosure of conduct adverse to public interest in the public and private sectors shall be dealt with. Currently, the National Code makes the establishment of a whistle-blowing function discretionary, depending on the demands of the company's business.

6. Secured Transactions

6.1 Transaction Financing and Security Interests

The principal legislation governing secured transactions in Zimbabwe is the Movable Property Security Interests Act [Chapter 14:35] (the "MPSI Act"), which established the Collateral Registry within the Reserve Bank of Zimbabwe. The MPSI Act facilitates the use of movable property as collateral for credit and applies broadly to tangible and intangible movable assets.

The Act adopts a broad definition and recognises security interests created through chattel mortgages, notarial bonds, hypothecs, charges, cessions and assignments, pledges, trust receipts, financial leases and other transactions securing an obligation.

Security over immovable property remains governed separately under the Deeds Registries Act [Chapter 20:05] and the applicable deeds registration framework.

It is not mandatory for the effectiveness or enforceability or validity of any Security Document, or for the perfection of security interests created pursuant to any Security Document, that such Security Document be filed, recorded, registered with any authority in Zimbabwe. The security holder's rights remain valid, notwithstanding the non-registration.

It is, however, necessary to register the security interests created by the Security Document (including security created over shares) with the Collateral Registry established in terms of the Act, in order to secure their priority among competing security interests and notice to the world at large.

In addition, registration of security constitutes proof of security and guarantees recovery upon default, creates a real right over the secured property enforceable against all other third parties.

A registered notice of a security interest is deemed to be a liquid document enforceable by way of provisional sentence proceedings. There is no need for it to go through ordinary lengthy litigation proceedings.

Registration of security rights in movable safeguards lenders in that as soon as the notice is registered, it becomes a preferential creditor in connection with that specific security interest. Furthermore, in the event that the security interest is already registered in favour of another creditor, the potential lender would easily be able to ascertain this as the Collateral Registry permits searches by members of the public.

7. Commercial Contracts

7.1 Contract Formation and Enforceability

The key principles for formation of a commercial contract in Zimbabwe include consensus, intention to create legal obligations, capacity to contract, lawfulness, certainty and compliance with any prescribed formalities. Zimbabwean law generally does not require every commercial contract to be in writing. However, specific types of contracts are subject to statutory or common-law formalities.

The Grounds for Invalidity

A commercial contract may be held to be invalid if the following grounds exist:

- for lack of consensus;
- if the contract was induced by misrepresentation, mistake, duress or undue influence;
- illegality; and
- for failure to comply with prescribed formalities.

Limitation of Liability

Zimbabwean law generally permits commercial parties to agree upon limitation-of-liability, indemnity, exclusion, warranty and risk-allocation clauses; subject to: their proper interpretation; statutory restrictions; public policy; illegality; the particular nature of the liability being excluded; and consumer-protection legislation where applicable.

Good Faith Obligations

Zimbabwean contract law recognises good faith, reasonableness and public policy, but good faith does not operate as a general licence for a court to disregard an otherwise valid contractual bargain. In commercial contracts, the stronger proposition remains freedom of contract and pacta sunt servanda. Thus, the

fact that performance subsequently appears harsh, expensive or disadvantageous does not automatically justify judicial intervention.

Unconscionability

For ordinary commercial contracts, unconscionability is not equivalent to a general statutory power allowing courts to rewrite bargains between sophisticated commercial parties.

In interpreting contracts, Zimbabwean courts rely heavily on the principle of freedom and sanctity of a contract.

Enforceability

The enforceability of contracts is also rooted in the principle of pacta sunt servanda – agreements freely and validly concluded must generally be honoured and enforced.

7.2 Termination and Remedies

The principal remedies for breach of contract available to an innocent party are specific performance, cancellation or rescission, damages, and, where appropriate, an interdict or declaratory relief.

When May a Party Terminate

Zimbabwean law distinguishes between termination in accordance with the contract, cancellation for breach, and termination arising from repudiation or supervening impossibility.

Cancellation for Breach

At common law, not every breach automatically gives the innocent party a right to cancel. Generally, cancellation is available where the contract expressly confers a cancellation right, or where the breach is material to justify cancellation under the common law.

Repudiation

A party may also repudiate a contract by conduct or words demonstrating an unequivocal intention not to be bound by the contract or not to perform its material obligations.

Consequences of Wrongful Termination/ Cancellation

A party that purports to cancel a contract without a valid contractual or common-law basis may be regarded as having repudiated the contract. The innocent party may then have the usual remedies, including:

- rejecting the purported cancellation and insisting upon performance;
- claiming specific performance;
- accepting the repudiation and cancelling the contract; and
- claiming damages resulting from the wrongful repudiation.

Zimbabwe does not have a comprehensive general statutory force majeure regime applicable to all commercial contracts.

Force majeure is principally dealt with through:

- the express force majeure clause in the contract; and
- the common law doctrine of supervening impossibility of performance (vis major/casus fortuitus).

A force majeure clause will ordinarily specify the events constituting force majeure and the consequences thereof.

Frustration of Purpose

Zimbabwean law does not appear to treat “frustration of purpose” as a broad, freestanding doctrine equivalent to some common law jurisdictions. Instead, cases tend to analyse these situations through the doctrine of supervening impossibility. Thu, the mere fact that the commercial purpose of a contract has become less profitable, unattractive or difficult to achieve will ordinarily not discharge the parties from their obligations.

Hardship

There is no general statutory doctrine of contractual hardship in Zimbabwe which automatically permits a court to renegotiate or adjust a commercial contract merely because performance has become substantially more expensive or onerous.

7.3 Intellectual Property in Commercial Transactions

In Zimbabwe, intellectual property (IP) rights are commercial assets that can be sold, transferred, licensed or pledged as part of broader commercial transactions, including mergers and acquisitions, franchising, technology transfers, joint ventures, and distribution arrangements. The key considerations include ownership rights, assignment, licensing, registration requirements, enforcement rights and confidentiality protection. Zimbabwe's IP system is administered through the Zimbabwe Intellectual Property Office (ZIPO).

Courts in Zimbabwe approach the issue of ownership of IP created within the context of a commercial relationship depending on the relevant statute governing the category of IP involved, the terms of the parties' agreement, and whether the work was created in the course of employment, commission or collaboration.

Employee-Created IP

As a general rule, copyright vests in the author of the work or co-authors in the event of joint authorship (Section 14 of the Copyright Act).

Ownership of patents is governed under the Patents Act [Chapter 26:03] (the "Patents Act"). A patent is an exclusive right granted for an invention, granting the owner thereof the legal right to exclude others from making, using or selling an invention for a specified period in exchange for publishing and enabling disclosure of the invention. Section 43 of the Patents Act specifically governs disputes between an employer and employee with respect to an invention made by the employee, either alone or jointly with other employees.

Student-Created Works and Innovation Projects

The Court in *Kanyenga v Harare Institute of Technology & Others* HH 115-21 confirmed that Zimbabwean courts distinguish between authorship and ownership and will determine ownership by reference to ownership principles under the Copyright Act rather than broad assertions of contribution or supervision. The court emphasised that copyright law only protects original works fixed in a tangible medium. It does not extend protection to raw data, facts, ideas, discoveries or technical methods and no case of infringement arises when an institution reproduces or adapts basic methodologies developed within its academic framework.

Commissioned Works and AI-Generated Content

Under Section 14 (4) of the Copyright Act, a commissioner who pays or agrees to pay for specified commissioned works, including photographs, portraits, audiovisual works and sound recordings, becomes the owner of copyright, provided the work was created pursuant to the commission. The Copyright Act predates generative AI and does not expressly address AI-generated works, machine authorship or ownership of AI outputs. There is currently no Zimbabwean case law directly addressing AI-generated content or inventions; disputes are therefore likely to be considered by reference to the statutory requirement that an author is an "individual" and ordinary ownership principles.

7.4 Consumer Protection

The principal legislation governing consumer protection in Zimbabwe is the Consumer Protection Act which establishes a framework of mandatory consumer rights that businesses must respect and cannot contract out of.

Key rights include the right to fair and honest dealing, which prohibits misleading representations, deceptive advertising and unfair business practices. Consumers are entitled to full and accurate disclosure of material information before entering into a contract, including price, quality, terms of service and any associated risks.

The Act further provides for the right to cancel certain agreements, particularly those involving direct marketing or distance selling, within a prescribed "cooling off" period. Consumers also have the right to seek redress and compensation through the Consumer Protection Commission or the courts in cases of unfair treatment or defective products.

The Consumer Protection (General) Regulations, 2023 provide for conciliation and arbitration of consumer disputes.

The Consumer Protection Commission, being the primary statutory regulator of consumer protection rights in Zimbabwe, may issue compliance notices, monitor the market, receive and investigate complaints, conduct conciliation and arbitration, refer matters to relevant authorities and approach courts where permitted or required. Consumers may seek internal resolution, lodge complaints, use recognised dispute resolution mechanisms or approach the courts for cancellation or variation of unfair contracts and damages.

Courts may grant relief including cancellation or variation of a consumer contract, enforcement of part of a contract, restitution or compensation, reduction of amounts payable and regulation of contractual powers. In assessing unfairness, the court considers the interests of both parties and relevant prices, charges, costs and expenses. The framework also addresses misleading advertising and electronic transactions, including security of payment systems and unsolicited commercial communications.

In electronic transactions, the court has powers to award damages to a consumer resulting from a supplier's failure to utilise a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned. The court can also impose criminal sanctions against suppliers for sending unsolicited goods, services or communications in circumstances where there is no option to cancel subscription to the mailing list of that person and communication has been made that the unsolicited electronic commercial communication is unwelcome.

8. Foreign Investment

8.1 Competition and Merger Control

For Zimbabwe, merger control and competition law are principally governed by the Competition Act and administered by the CTC as described in **4.1 Legal Framework**. The principal merger control regulations are the Competition (Notification of Mergers) Regulations, 2020 (SI 126 of 2020), as amended by the Competition (Notification of Mergers) (Amendment) Regulations, 2022 (No 1). The COBE Act also contains procedural requirements for statutory mergers.

A merger is defined as the direct or indirect acquisition or establishment of a controlling interest in the whole or part of the business of a competitor, supplier, customer or other person through:

- acquisition of shares;
- acquisition of assets;
- lease;
- amalgamation or combination; or
- other means of obtaining control.

Accordingly, the analysis is concerned with control, rather than simply the percentage of shares acquired.

A merger is generally notifiable where either:

- the combined annual turnover in or from Zimbabwe of the merging parties is USD1.2 million or more; or
- the combined assets in Zimbabwe of the merging parties are USD1.2 million or more.

Section 34A requires a party to a notifiable merger to notify the CTC within 30 days of either:

- conclusion of the merger agreement; or
- acquisition by one of the parties of a controlling interest in another.

The substantive test is whether the merger is contrary to the public interest because it:

- has lessened substantially, or is likely to lessen substantially, the degree of competition in Zimbabwe or a substantial part of Zimbabwe; or
- has resulted, or is likely to result, in a monopoly situation contrary to the public interest.

The Act also requires consideration of broader public-interest factors, including consumer interests, prices, quality and variety, efficiency, technological development and facilitating entry by a new competitor.

Following investigation, the CTC can, depending on the circumstances:

- approve the merger;
- approve it subject to conditions;
- prohibit the merger; or

- impose orders designed to prevent or remedy the anti-competitive effects.

Failure to notify a notifiable merger, or implementing the merger without the required approval, attracts a penalty of up to 10% of the annual turnover in Zimbabwe of either or both of the merging parties.

Anti-Competitive Conduct

The Competition Act regulates restrictive practices, monopoly situations and unfair business practices.

Examples include conduct which:

- restricts production or distribution;
- maintains or increases prices;
- restricts market entry;
- prevents or delays technological development;
- restricts expansion of markets; or
- involves tied or conditional selling.

The consequences of anti-competitive conduct can include both regulatory/civil remedies and criminal sanctions, depending on the nature of the conduct. In addition, the CTC may prohibit or require termination of restrictive conduct, regulate prices where appropriate and impose other remedial measures.

8.2 Foreign Investment Restrictions and Sector-Specific Rules

Summary of Investment Laws in Zimbabwe

In general, an investment is either considered as greenfield (an investment into a new project which requires the incorporation of a new company by the foreign investor in Zimbabwe for purposes of carrying out specified objectives), or brownfield (an investment into an existing project (listed or unlisted)).

Brownfield Investment

This will require prior exchange control approval. Section 12 of the Exchange Control Regulations, 1996 (S.I 109/96) provides that subject to Section 17, unless otherwise authorised by an exchange control authority, no person shall issue to a foreign resident or nominee of a foreign resident any security which is registered in Zimbabwe. Section 17 provides that, subject to such terms and conditions as may be prescribed (discussed further below), a listed security may be issued or transferred to a foreign resident or his nominee.

Greenfield Investment

This will require compliance with the following in terms of the laws of Zimbabwe:

- incorporation of a limited liability company in accordance with the COBE Act; and
- an Investment License from the Zimbabwe Investment and Development Agency (ZIDA).

The ZIDA application process requires, among other things, corporate documents, shareholder and director information, a business plan, proof of funding and any sector-specific licences or permits. ZIDA also facilitates the co-ordination of approvals through its One Stop Investment Services Centre.

Foreign Ownership Restrictions

Zimbabwe generally permits foreign investment and does not have any sector-wide foreign ownership restrictions. However, certain regulated sectors are subject to ownership, licensing, citizenship or control requirements, and certain activities are reserved primarily for Zimbabwean participation. The most significant restrictions currently arise in:

- broadcasting and media;
- telecommunications; and
- certain business sectors reserved for local participation under the Indigenization and Economic Empowerment Act [Chapter 14:33] (the "Indigenization Act").

No National Security Review

Zimbabwe does not currently have a national security foreign investment review process, and there is no general requirement that foreign acquisitions be reviewed solely on national security grounds.

Foreign Investment Incentives

Zimbabwe offers a range of incentives to foreign investors, particularly through the ZIDA, the Special Economic Zone (SEZ) regime and National Project Status. The most common incentives for foreign investors are the following.

- SEZ – incentives include reduced income tax rates, exemptions on withholding tax on dividends, royalties, certain service fees paid to non-residents and customs duty concessions on capital equipment and certain imported inputs.
- National Project Status (NPS) – incentives include tax incentives, customs duty exemptions and exemptions from certain customs and excise charges.
- ZIDA Investment Protection Incentives – under the ZIDA Act, foreign investors enjoy the following incentives:
  (a) no restriction on the amount of foreign currency brought into the country;
  (b) equity investment in cash or capital equipment;
  (c) 100% repatriation of disinvestment proceeds;
  (d) 100% remittance of dividends;
  (e) operation of Foreign Currency Accounts (FCAs);
  (f) foreign investors are allowed to borrow locally and offshore; and
  (g) guarantee against expropriation of the investor's property or projects.

Recent Developments Affecting Foreign Investment in Zimbabwe

A recent development affecting foreign investment in Zimbabwe is the expansion of sectors reserved for Zimbabwean participation under Statutory Instrument 215 of 2025, which expanded the list of sectors reserved primarily for Zimbabwean participation. Foreign investors operating in affected sectors may be required to reduce foreign ownership to a maximum of 25%, subject to exemptions and special permits in some cases.

In 2026, telecommunications ownership requirements were temporarily tightened through Statutory Instrument 101 of 2026, which introduced a 75% local ownership requirement, but these provisions were subsequently repealed by Statutory Instrument 111 of 2026.

9. Regulatory Compliance

9.1 Privacy and Data Protection

Zimbabwe's principal privacy and data protection legislation is the Data Protection Act [Chapter 12:07] and the regulations made thereunder which establishes a comprehensive framework governing the collection, processing, storage, disclosure and transfer of personal information, while also addressing cybersecurity matters. The Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) is the designated Data Protection Authority (DPA) for Zimbabwe and is responsible for regulatory oversight, guidance, registration, licensing, investigations and enforcement.

Zimbabwe does not currently have any sector-specific privacy requirements, however, certain specified sectors will attract heightened regulatory scrutiny due to the large volumes of sensitive personal data processed by these sectors – eg, banking and financial services.

Key Obligations Regarding Personal Information

The Data Protection Act stipulates that personal information must be processed lawfully and for a legitimate purpose. Data controllers must have the necessary authority to process personal information and must ensure transparency regarding the processing activity.

Collection Disclosure Obligations

Controllers must provide appropriate information to data subjects concerning the identity of the controller, the purpose of processing, intended uses, recipients and applicable rights. Enhanced protections apply to sensitive personal information, including health, biometric and genetic information.

Controllers and processors must implement appropriate technical and organisational security measures to protect personal information against loss, unauthorised access, misuse, destruction, alteration and disclosure.

Controllers must notify the DPA of a qualifying security breach within 24 hours and, where appropriate, notify affected individuals within 72 hours.

Personal information may only be disclosed to third parties where the disclosure is lawful and consistent with the original purpose of collection or otherwise permitted under the Act. Particular care is required when dealing with sensitive, health and biometric information and international transfers.

Cross-Border Data Transfers

Under Sections 28 and 29 of the Data Protection Act, personal information generally may not be transferred outside Zimbabwe unless an adequate level of protection is ensured in the destination country or by the recipient. When assessing adequacy, relevant considerations include:

- the nature of the data;
- the purpose of processing;
- the duration of processing;
- the recipient;
- applicable foreign privacy laws; and
- security safeguards protecting the transferred information.

Current POTRAZ guidance provides that controllers intending to transfer personal information outside Zimbabwe must first notify the DPA. The guidance further requires controllers to:

- conduct a Data Protection Impact Assessment (DPIA) before the transfer; and
- submit relevant information to POTRAZ when notifying the transfer.

Data Localisation Considerations

Zimbabwe does not currently impose mandatory data-localisation obligation requiring all personal data to remain physically stored in Zimbabwe. However, the cross-border transfer rules create practical constraints on offshore hosting and cloud services.

For businesses operating in Zimbabwe using regional or global cloud infrastructure, key compliance considerations include:

- assessing whether the foreign recipient provides adequate protection;
- notifying POTRAZ where required;
- conducting a DPIA;
- obtaining appropriate consent where necessary;
- maintaining security safeguards; and
- documenting transfer arrangements.

9.2 Anti-Money Laundering, Sanctions and Corruption

The principal legislation is the Money Laundering and Proceeds of Crime Act [Chapter 9:24], supplemented by the Suppression of Foreign and International Terrorism Act [Chapter 11:21]. These obligations principally apply to financial institutions and designated non-financial businesses and professions, including banks, amongst others, insurers, securities businesses, money-transfer businesses, legal practitioners, accountants, estate agents, casinos and dealers in precious metals and stones. Obligations include customer and beneficial ownership identification, enhanced due diligence for higher-risk relationships, transaction monitoring, record-keeping, suspicious transaction reporting, employee training and compliance officer appointment.

Zimbabwe's sanctions framework principally implements United Nations Security Council sanctions. Businesses should implement risk-based anti-bribery programmes covering third-party due diligence, procurement, conflicts of interest, whistle-blowing, training and accurate record keeping. Enforcement may involve the FIU, RBZ, ZACC, ZIMRA, police and NPA, with penalties including fines, licence sanctions, asset freezing and criminal prosecution.

9.3 Environmental, Health and Safety, and Industry-Specific Regulation

Key Environmental Regulatory Requirements Affecting Commercial and Corporate Transactions

Zimbabwe's environmental framework is anchored in the Environmental Management Act [Chapter 20:27] (the "EM Act"), administered by the Environmental Management Agency, and reinforced by Section 73 of the Constitution, which guarantees a right to a healthy environment and obliges the state to promote sustainable development.

EIAs are mandatory for prescribed projects (mining, energy, infrastructure, manufacturing, waste management) under Section 97 of the EM Act. No such project may proceed without an EIA, an environmental impact assessment certificate and compliance with its conditions. Licensing authorities generally require environmental approval before issuing operating licences. Therefore, for commercial and corporate transactions

involving regulated activities, due diligence should confirm the certificate's validity, compliance history, and whether the transaction triggers a fresh regulatory review.

Climate-Related Litigation and Corporate Environmental Liability

Zimbabwe has not yet seen substantial climate-specific litigation; environmental cases to date have concerned pollution, mining, EIAs, wetlands and regulatory enforcement. Section 73 of the Constitution, however, provides a real foundation for future claims.

There is currently no explicit statutory duty requiring directors to consider environmental, social or stakeholder interests independently of the company's interests.

Health and Safety Obligations for Employers

Key statutes include the Labour Act [Chapter 28:01], the Factories and Works Act [Chapter 14:08], the Pneumoconiosis Act [Chapter 15:08] and the National Social Security Authority Act [Chapter 17:04]. Section 6 of the Labour Act bars employers from requiring work below legally or conventionally safe conditions. The Factories and Works Act adds detailed rules on registration, machinery safety and accident prevention for regulated premises. Employers must provide a safe environment (protective equipment, training, hazard controls) and report workplace injuries or deaths to NSSA and the Ministry of Labour.

The NSSA Accident Prevention and Workers' Compensation Scheme compensates workers (or dependants) for occupational injury, disease or death, covering medical costs, income replacement and survivor benefits.

Licensing, Permitting and Industry-Specific Regulation

There is no single general business licence in Zimbabwe. The licensing requirements depend on sector, activity and location. Baseline requirements typically include company registration (Companies and Other Business Entities Act), tax registration (ZIMRA), NSSA registration and local-authority, planning and environmental approvals.

9.4 Artificial Intelligence

As of 2026, Zimbabwe does not yet have legislation specifically governing AI use. Instead, AI governance is currently derived from existing digital, data protection and cybersecurity laws. The Government of Zimbabwe has adopted a National Artificial Intelligence (AI) Strategy (2026–2030) that sets out proposed governance, ethics and regulatory structures for AI. The AI Strategy was approved by Cabinet in October 2025 and officially launched on 13 March 2026. At this stage, the Strategy establishes a roadmap for AI development and governance rather than creating immediately binding legal obligations.

9.5 Other Regulatory Compliance Requirements

Exchange Control

Zimbabwe operates as a multicurrency jurisdiction, with exchange control regulations governing the inflow, outflow and use of foreign currency in the country. The regulatory framework for currency control is outlined in the Exchange Control Act [Chapter 22:05] (the "Exchange Control Act"), its regulations and circulars from the RBZ.

Section 13 of the Exchange Control Regulations generally prohibit the transfer of shares registered in Zimbabwe to a foreign resident entity or individual unless prior exchange control approval has been sought and granted. Section 17, however, permits foreign residents to acquire shares in a local company, up to a prescribed threshold, without first seeking prior exchange control approval. However, Exchange control approval will be required for the repatriation of funds/dividends outside Zimbabwe.

Inward investment will also require exchange control approval so that on disinvestment, the investor will be able to repatriate funds.

Tax

Businesses operating in Zimbabwe must comply with the tax framework and be registered with the Zimbabwe Revenue Authority for tax purposes. The primary relevant regulatory provisions include the Value Added Tax Act [Chapter 23:12], the Income Tax Act [Chapter 23:06] and the Capital Gains Tax Act [Chapter 23:01].

10. Employment and Labour

10.1 Employment Standards and Workplace Regulation

Principal Employment and Labour Laws

The Labour Act [Chapter 28:01] is the core statute, covering employee rights, employment conditions, unfair labour practices, trade unions and collective bargaining, and dispute resolution. The Labour Amendment Act, 2023 (effective from 14 July 2023) strengthened protections against discrimination, forced labour and workplace violence and harassment, and reformed termination, retrenchment, employment codes, dispute resolution, maternity leave and hourly contracts.

Collective relations

Section 101 of the Labour Act allows registration of employment codes governing misconduct, procedure and sanctions; where none applies, the statutory model code governs. The Act provides for workers' committees, works councils, unions and employment councils.

Social security and safety

NSSA administers social security contributions and occupational injury/disease compensation; the Factories and Works Act adds further OHS obligations.

Termination of Employment: Notice, Wrongful and Constructive Dismissal

Termination is governed by Sections 12, 12B and 12C of the Labour Act, applicable codes/CBAs, and the Labour (Retrenchment) Regulations, 2024 (S.I. 191 of 2024).

Termination on notice

The common law position through the Labour Amendment Act, 2015 was reversed. Termination on notice is now lawful only where: it follows an applicable employment code; both parties agree in writing; the contract was for a fixed term or specific task; or it follows a lawful Section 12C retrenchment.

Misconduct dismissals

Section 12B requires compliance with the applicable code to determine these dismissals, including fair notice of allegations, a hearing and a reasoned, proportionate sanction.

Wrongful and unfair dismissal

Claims commonly arise from: no lawful basis to terminate; non-compliance with Section 12 (4a) or an applicable code; a discriminatory or prohibited reason; breach of contract; improper termination of a fixed-term contract; or non-compliant retrenchment. Section 13 requires payment of all outstanding wages and benefits on termination.

Fixed-term contracts

These normally end on their expiry date, but Section 12B(3)(b) deems dismissal unfair if the employee had a legitimate expectation of re-engagement and someone else was engaged instead.

Retrenchment

Section 12C and S.I. 191 of 2024 require prescribed consultation and notification with the relevant works council, employment council or Retrenchment Board, plus compensation.

Constructive dismissal

Constructive dismissal is recognised under Section 12B(3)(a). Deemed unfair dismissal occurs where the employee resigns (with or without notice) because the employer deliberately made continued employment intolerable. Courts assess whether the employee actually resigned; the employer's conduct caused that resignation; the conduct made continued employment objectively intolerable; and the employee had no reasonable alternative. Mere dissatisfaction with conditions or management decisions will not meet this threshold.

10.2 Executive Compensation and Restrictive Covenants

Key Considerations in Executive Compensation Structuring

Contract form

Executive directors should have a written employment contract separate from their directorship appointment, since removal as a director (governed by company law/Articles) is procedurally different from termination of employment (governed by the Labour Act and contract).

Equity incentive plans

No specific statutory ESOP regime exists; share option/purchase schemes are structured through the company's articles of association, a shareholder-approved scheme rules document, and individual grant agreements. For listed companies, ZSE listing requirements and corporate governance codes (the ZIMCODE) call for disclosure and remuneration committee oversight of executive pay.

Change of control

Golden parachute/accelerated vesting clauses are contractually created. Drafting should address whether termination following a change of control is treated as retrenchment (triggering statutory retrenchment packages under the Labour Act) versus a contractual severance.

Currency

Given Zimbabwe's muti-currency environment, compensation and equity valuations should specify currency and exchange-rate mechanics explicitly, as this is a frequent source of dispute.

Tax implications are as follows.

- All cash and non-cash benefits (including share-based benefits) fall within the broad definition of "remuneration"/gross income under the Income Tax Act and are subject to PAYE, taxed progressively.
- Bonuses have a limited annual tax-exempt threshold (periodically adjusted by the Finance Act, currently around USD700 or local-currency equivalent); amounts above this are fully taxable.
- Non-cash benefits (share awards, vehicles, loans, etc) are valued and taxed as "advantages/benefits" in the employee's hands.
- Employer and employee both contribute to NSSA; pension/retirement annuity contributions attract limited tax deductibility.
- There is no specific concessionary regime for share options/RSUs, the gain is generally taxed as ordinary income when the benefit is realised/vests, so timing and valuation mechanics should be built into the plan rules with local tax advice.

Enforceability of Restrictive Covenants

A restraint is prima facie valid and enforceable. The onus is on the employee seeking to escape it to prove it is unreasonable and contrary to public policy.

Courts assess reasonableness by reference to time, geographic scope and the nature of the protectable interest (trade secrets, confidential information, customer connections/goodwill). In *Greendale Hardware & Electrical (Pvt) Ltd v Goodfellow Bangaba* SC 15/07, the Supreme Court held that a restraint aimed only at preventing an ex-employee from using generally acquired skill/knowledge (rather than protecting a genuine proprietary interest) is unreasonable and unenforceable.

11. Real Property and Commercial Leasing

11.1 Requirements for Land Ownership

Under Zimbabwean common law, rights in land may broadly be classified into the following categories.

- Freehold tenure – land held under a registered title deed. The holder generally enjoys rights of use, occupation, protection against eviction, vindication, transfer, sale and other dealings with the property.
- Leasehold tenure – land occupied and used pursuant to a lease agreement. The rights are generally personal and subject to the terms of the lease, although a lease exceeding ten years and registered with the Registrar of Deeds may create real rights.
- Statutory tenure – rights created and regulated by statute, including customary rights over communal land and rights arising from state-issued permits.
- Limited real rights – rights allowing a person to exercise specific rights over another's land, such as servitudes and usufructs, without being the owner.

These rights are subject to the state's power of eminent domain, under which private property may be compulsorily acquired or expropriated for a public purpose, subject to the applicable constitutional

and statutory requirements, including compensation where provided for by law.

Requirements and Restrictions on Foreign Individuals

In terms of Section 71 of the Constitution of Zimbabwe, foreign individuals and corporations generally have the right to acquire, hold, occupy, use, transfer, lease, mortgage and dispose of real property in Zimbabwe. There is no general residency or licensing requirement applicable solely by reason of being a foreign purchaser.

However, the acquisition of agricultural land by foreign persons is restricted, subject to the constitutional and statutory framework governing agricultural land. Foreign purchasers are also subject to the same conveyancing, registration and applicable tax requirements as other purchasers, including payment of transfer fees and any applicable taxes or levies.

11.2 Commercial Real Estate Transactions

The principal considerations in commercial real property acquisitions and dispositions are ensuring clear title and ownership through due diligence, identifying any encumbrances or restrictions affecting the property, obtaining title insurance to protect against title defects, and assessing environmental risks. Encumbrances such as easements, restrictive covenants or burdensome leases may reduce the property's value and marketability, potentially affecting future sale or financing opportunities.

The registration of deeds and real rights in immovable property is regulated by the Deeds Registries Act [Chapter 20:05]. An electronic registry has been introduced to transform the current paper-based model.

Security over immovable property is typically created through a mortgage bond, registered at the deeds registry by the owner (mortgagor) in favour of the creditor (mortgagee) to secure existing or future indebtedness. Priority is generally determined by the order of registration, with earlier-ranking bonds taking precedence over later bonds, subject to any applicable agreements or statutory provisions.

In the event of default, the mortgagee may enforce the mortgage bond through the applicable legal process, including seeking judicial sale of the property, which applies proceeds applied towards the secured debt in accordance with the applicable ranking.

Commercial leases in Zimbabwe are primarily governed by common law, the terms of the lease agreement and applicable legislation. The lease should clearly address rent, duration, permitted use, renewal, maintenance, assignment and subletting, and termination.

Renewal rights depend principally on the terms of the lease and any applicable statutory protections. Assignment or subletting generally requires the landlord's consent, subject to the terms of the lease and applicable law.

A lease for a period exceeding ten years should be registered in the Deeds Registry in terms of the Deeds Registries Act [Chapter 20:05] where it is intended to create a real right in the property.

In the event of default, including non-payment of rent or breach of other material obligations, the landlord may, subject to the lease and applicable law, cancel the lease and seek ejectment and recovery of arrear rentals or damages. The tenant may similarly have remedies for breach by the landlord, including enforcement of the landlord's obligations, cancellation and damages where appropriate.

The government is implementing two significant land tenure initiatives aimed at strengthening security of tenure and formalising land rights, namely the agricultural land tenure reform programme and the presidential title deeds programme. The latter focuses on urban, peri-urban, informal and other residential settlements undergoing regularisation.

The Deeds Registries Act [Chapter 20:05] was also amended to introduce Part VIII, providing for an Electronic Registry and the validation and verification of existing title deeds as mentioned above.

Trends and Developments

Contributed by:
Tendero Makanga and Kudzai Ruth Mukunga
Dube Manikai & Hwacha Legal Practitioners

Dube Manikai & Hwacha Legal Practitioners (DMH) is a leading Zimbabwean commercial law firm established in 1998, with a team comprising nine partners, five associates, eight candidate attorneys and 29 support staff. Based in Harare, Zimbabwe, DMH is a full-service firm providing end-to-end legal services to corporates, financial institutions, investors and public sector entities. The firm has particular expertise in commercial and financial services, trade and investment, corporate and transactional matters, tax, ICT, data protection, intellectual property, employment, litigation, conveyancing and securitisation, enabling an integrated approach to complex mandates. Recent work includes advising FBC Holdings Limited, Innscor Group, the Reserve Bank of Zimbabwe and Afreximbank on commercial, financial, regulatory and transactional matters. DMH's multidisciplinary structure enables it to draw on specialist expertise across practice areas to deliver practical, commercially focused legal solutions to its clients.

Authors



Tendero Makanga is a partner in DMH's commercial and financial services and tax group, with ten years' experience. She specialises in tax advisory, tax litigation and commercial litigation. Tendero advises corporate and commercial clients on tax planning, the interpretation and application of tax legislation, and tax implications arising from commercial transactions. She represents clients in tax and commercial disputes, including in objections against assessments issued by the Zimbabwe Revenue Authority, mediation and litigation. Her experience includes advising Innscor Africa Group companies, Padenga Holdings, Fastjet Zimbabwe, Tsebo Zimbabwe and FBC Bank on tax matters.



Kudzai Ruth Mukunga is a candidate attorney in DMH's commercial and financial services and tax group and litigation team. She assists on commercial and corporate transactions, legal research, due diligence, regulatory advisory, and drafting and reviewing commercial contracts. Kudzai also supports civil and commercial litigation matters. Her experience includes serving as a Legal Research Clerk at the Constitutional Court of South Africa, where she conducted local and comparative legal research and prepared memoranda on complex constitutional and commercial issues. She has further developed practical commercial and litigation experience through roles at the University of Cape Town Law Clinic and leading Zimbabwean law firms.

Dube, Manikai and Hwacha Legal Practitioners

4 Fleetwood Road
Alexandra Park
Harare
Zimbabwe

Tel: +263 04 250909/12
Fax: +263 780350
Email: admin@dmh.co.zw
Web: www.dubemanikaihwacha.com

DMH
FULL SERVICE LAW FIRM

Tax Matters

Introduction

Zimbabwe's tax landscape has continued to evolve in response to economic developments, changes in commercial activities, complications arising from the wording of tax legislation and the need to strengthen revenue collection. During 2026, several significant changes have occurred affecting both individual taxpayers and businesses operating in the jurisdiction. These changes include the introduction of a Digital Services Withholding Tax (DSWT) on certain electronic and digital services supplied by non-resident entities; the repeal of provisions restricting the deduction of certain interest expenses incurred by financial institutions; the introduction of a Presumptive Rental Income Tax, and the introduction of a Special Capital Gains Tax on transactions involving the transfer of shares or interest in a landholding entity. Finally, the Zimbabwe Revenue Authority (ZIMRA) has instituted measures to tighten tax collection and administration in respect of trusts, and to clarify the statutory obligations of taxpayers.

The above developments have implications for both domestic and foreign taxpayers, and evidence a broader shift towards strengthening tax compliance and expanding the tax base. They further reveal practical challenges that may arise from the interpretation and application of tax laws, particularly where new provisions intersect with established commercial practices. This article considers the three key tax developments identified above and highlights their practical implications for taxpayers, financial institutions, and other affected stakeholders.

Digital Services Withholding Tax

Effective 1 January 2026, Section 13A of the Value Added Tax Act (the "VAT Act") was introduced to provide for the levying of a DSWT on supply of electronic and digital services by foreign, non-resident suppliers.

The provision provides that, whenever payment is made for goods and services in Zimbabwe that are supplied from outside Zimbabwe by a company or other entity domiciled outside Zimbabwe, or of electronic services by an electronic commerce operator domiciled outside Zimbabwe to a person resident in Zimbabwe, such supply shall be deemed to be a supply made in Zimbabwe to which there shall be charged, levied and collected, a digital services withholding tax at the standard rate of 15.5%. The foreign supplier will be liable to register for VAT where they meet the VAT threshold and account for such VAT. The compulsory VAT registration threshold is USD25,000 of the total value of taxable supplies made by a supplier in the course of carrying on business or its equivalent in ZWL per period of 12 months.

An "electronic commerce operator" is defined as an operator selling, providing or delivering services from outside Zimbabwe by the use of a telecommunications network or electronic means (and whether mediated by computers, mobile telephones or other devices) to customers or users in Zimbabwe.

DSWT therefore applies where services are supplied electronically; the supplier is non-resident; and the services are consumed or utilised in Zimbabwe. The tax does not apply to imported physical goods; services rendered physically or services consumed outside Zimbabwe.

To enhance collection, the DSWT is withheld by any intermediary from any amount to be remitted outside Zimbabwe in respect of the supply and the intermediary will pay the amount withheld to the Commissioner of the Zimbabwe Revenue Authority (ZIMRA) within 30 days of the date of payment or within such further time as the Commissioner may for good cause allow. An "intermediary" is defined as any person who is a "financial institution" as defined in the Act.

VAT-registered operators in Zimbabwe may claim input tax using valid tax invoices issued by non-resident suppliers, subject to provisions of the VAT Act.

Examples of electronic services to which DSWT applies include streaming, cloud computing and hosting services; online advertising and digital marketplace commissions; downloadable digital content (apps, e-books, films); subscription-based electronic media (news, magazines, journals); software programmes, drivers, firewalls and filters; electronic data management, cloud storage and file-sharing; search engine and automated helpdesk services; and tickets

supplied electronically for live events amongst other things.

Practically, the DSWT applies to streaming and media services on platforms such as Netflix, Spotify, Apple TV and other digital subscriptions, connectivity through satellite internet services such as Starlink which has seen increased uptake in Zimbabwe, and payments made for other digital applications and services from foreign e-hailing applications.

Deduction of interest expense in the determination of taxable income

Sometime in 2025, a dispute arose between the Zimbabwe Revenue Authority and banks over the interpretation of Section 16 (1)(o) of the Income Tax Act [Chapter 23:06] (ITA), which regulates expenses that may not be deducted when computing taxable income.

Section 16 (1)(o) of the ITA provides that any expenditure incurred in the production of income consisting of interest payable by any bank, discount house or finance house registered or required to be registered in terms of the Banking Act [Chapter 24:20]; or any building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02]; in respect of any loan to or deposit with that bank, discount house, finance house or building society, may not be deducted when computing taxable income.

On the basis of this provision, ZIMRA took the view that banks were deducting interest expense in the determination of taxable income when, in terms of Section 16 (1)(o) of the ITA, interest expense is a prohibited expenditure. In other words, ZIMRA contended that the provision disallows any interest expenditure "payable by a bank", thereby capturing the entirety of the banks' interest expense.

The banks, on the other hand, took the view that Section 16 (1)(o) of the ITA only disallows interest earned by banks from other financial institutions and does not disallow interest paid to depositors at large, which interest is allowable under Section 15 (2)(a) of the ITA on allowable deductions as it is a cost incurred by banks in the production of income.

Moreover, the banks contended that Section 16 (1)(o) does not prohibit banks, finance houses and discount houses from deducting their interest expenditure. Rather, it disallows expenditure incurred by depositors who have earned interest income payable by banks, finance houses and discount houses, whose interest income is withheld at source in terms of the resident tax on interest provision in Section 34 of the ITA as read with the 21st Schedule.

The dispute resulted in ZIMRA issuing assessments against several banks, whose assessments were challenged through the prescribed legal channels.

However, through lobbying by the banks and the relevant stakeholders on this issue, given the dire impact ZIMRA's interpretation of the section had on banking practice, Section 16 (1)(o) of the ITA was repealed by the Finance Act No 7 of 2025, effective 1 January 2026.

Lobbying by banks and relevant stakeholders turned on the role and significance of interest expense for banks in several respects. For commercial banks, interest expense constitutes the cost and funds acquired from various sources to finance their lending and other investment activities. This would include interest paid on customer deposits, borrowings from other financial institutions and any debt instruments issued by banks. Secondly, interest expense is crucial for banks as they primarily generate revenue by lending money at a higher interest rate than that which is paid to acquire it, thus contributing to the profit margins earned by the bank. Thirdly, interest expense is also incurred in managing a bank's liquidity, capital structure and growth. The management of interest expense is thus vital to profitability and sustained commercial growth. The repeal of Section 16 (1)(o) of the ITA now allows banks to access commercial value in the course of their banking activities in the manners identified above.

Unfortunately, the repeal of the section does not apply in retrospect – ie, to the period prior to its repeal, which allows ZIMRA to pursue its interpretation of the Act for the period prior to the repeal. The dispute between ZIMRA and the banks therefore continues for the period prior to the repeal.

Presumptive rental income tax

Rental income has always been subject to taxation under Section 8 (1)(l) of the Income Tax Act, which defines gross income to include any amount paid in the form of rent, premium or consideration, for the right of use or occupation of a property.

However, the government identified that rental income was a major undertaxed stream with widespread non-compliance, particularly by unregistered property owners who converted their personal assets into income-generating commercial ventures without formalising their tax status.

Effective 1 January 2026, and in a bid to enhance tax collection from rental income, Section 36R of the ITA on presumptive rental income tax was introduced through the Finance Act No 7 of 2025, and provides for the charging, levying and collection of a presumptive taxpayer rental tax at the rate of 15%.

The tax is payable by the proprietor, the landlord, owner, lessee or sub-lessee (collectively "registrable proprietors") of land or premises who receives rental directly or indirectly from a tenant liable for presumptive tax. A tenant liable for presumptive tax is a tenant who pays rent to the "registrable proprietor" in order to conduct business, trade or an occupation on such land or premises. Where rent is paid by a tenant liable for presumptive tax, the tenant is required to withhold and remit the tax directly to ZIMRA if the landlord or agent fails to comply.

With this tax, ZIMRA estimates rental income where records are absent – ie, where a registrable proprietor is not registered with ZIMRA, effectively bringing informal operators into compliance. The measures are targeted specifically at commercial and service-use properties, with residential landlords excluded.

The tax is treated as a final tax; no deductions or allowances are permitted, and it cannot be credited or set off against any other income tax.

Special capital gains tax

Section 30C was inserted into the Capital Gain Tax Act by Section 51 of the Finance Act (No 7) of 2025, with effect from the year of assessment beginning on 1 January 2026. It imposes a special capital gains tax, at the rate of 20% of the value of the transaction, on any transaction concluded within or outside Zimbabwe whereby shares or interests in a landholding entity are transferred on or after 1 January 2026.

Section 30C(4)(b) imposes primary liability for the special capital gains tax upon the person or entity to whom the shares are transferred, the transferor being liable only in default of the transferee.

A "landholding entity" is defined as any one of the following entities, which, at the date of transfer, holds "any title" to any piece of land in Zimbabwe or to immovable property in Zimbabwe:

- a company or other business entity, unless it is incorporated under the Companies and Other Business Entities Act [Chapter 24:31] (ie, a non-Zimbabwe registered entity);
- a company incorporated or domiciled outside Zimbabwe;
- a locally incorporated subsidiary company of a holding company incorporated or domiciled outside Zimbabwe;
- any other entity whatsoever domiciled outside Zimbabwe which is capable, by the law of the country of its domicile, of holding title to land or other real right, including a trust, syndicate or joint venture; or
- an entity of any of the foregoing descriptions which is the nominee of a beneficial owner of any piece of land in Zimbabwe.

Two requirements arise that must both be satisfied. An entity will be classified as a landholding entity only if it both falls within one of the categories listed above, and secondly holds title to land or immovable property in Zimbabwe at the date of the transfer.

Since promulgation of Section 30C, there has been debate about whether the provision also applies in instances where shares or interests in an entity that does not hold land directly but through its subsidiaries, are transferred.

Other commentators take the view that Section 30C contains no provision for "looking through" an entity to the assets of its subsidiaries and had this been

the case, the provision could have been instructive such that it specifically applies to entities holding land directly as well as indirectly through its subsidiaries. This is further confirmed by the fact that the legislature addressed indirect holdings expressly, and did so narrowly, by including companies that hold land in Zimbabwe as nominees for a beneficial owner. Hence, the specific provision made for nominee arrangements tells against the implication of a general look-through and no look-through can be implied.

An alternative viewpoint argues that Section 30C contains a look-through provision and is also applicable where the entity does not hold land directly but through its subsidiaries, because had it been the intention of the legislature to exclude such land held indirectly through subsidiaries, it could have specifically stated so. Additionally, not applying the provision to such entities would lead to entities structuring their organisations and transactions in such a way that undermines the payment of such tax on transfer of shares and interest in the entities.

These diverging view points are yet to be determined by ZIMRA and tested by the courts.

Tax compliance obligations for trusts

ZIMRA, through Public Notice 19 of 2026 ("the notice"), issued on 30 March 2026, confirmed that all trusts in Zimbabwe, whether family or business, fall within the scope of the tax regime and must comply with registration, reporting and record-keeping obligations under the Income Tax Act and related tax legislation like the Capital Gains Tax Act, and the Value Added Tax Act.

In line with Section 6 of the Income Tax Act (Levy of Income Tax), income tax is triggered by the earning or accrual of income. In other words, income tax becomes payable when income is generated or accrues to the trust, regardless of whether it is immediately distributed or retained within the trust structure. The obligation to account for tax, therefore, arises at the point of income generation within the relevant tax year.

The notice reinforces that all trusts, whether active or dormant, fall within ZIMRA's compliance framework and must meet registration, reporting and record-keeping obligations.

In terms of the notice, a non-income generating family trust which is typically established for the preservation and administration of family wealth, such as immovable property, investments or inheritance planning, is required to be registered with ZIMRA and obtain a Tax Identification Number (TIN), as it is recognised as a "person" for tax purposes. If the trust has no income, no tax is payable for that year of assessment. However, trustees are still required to submit nil returns where applicable and maintain proper accounting records. The trust remains compliant in status even when inactive, as ZIMRA requires visibility of all registered trusts.

Further, an income-generating business trust which is typically created to conduct profit-making activities such as trading, property development, leasing or investments, is liable to pay tax on the income it generates and taxable income includes business profits, rental income, investment returns and capital gains. The trust must fully disclose all income and file accurate returns, and the tax liability depends on the structure of the trust income – ie:

- income vested in a beneficiary is taxed in the hands of the beneficiary;
- income not vested or discretionary income is taxed in the hands of the trust; and
- where the settlor retains control or benefit, ZIMRA may deem income taxable in the settlor's hands.

In summary, the compliance emphasis under Public Notice 19 of 2026 is that trusts are required to:

- register with ZIMRA and obtain a TIN;
- submit all outstanding returns;
- correct any past errors or omissions;
- maintain proper books of account; and
- disclose all income sources fully.

Accordingly, a family trust with no income has no tax liability, but must remain registered and compliant, and a business trust is taxed on income as it is generated or accrues, subject to whether such income is vested in beneficiaries or retained by the trust.

Conclusion

For taxpayers, the developments highlighted in this article underscore the importance of understanding the scope and application of tax obligations in order to ensure that appropriate compliance measures are adopted. Disputes in the interpretation of tax legislation illustrate the importance of clarity in legislation and the sometimes positive outcomes that arise through scrutinisation of the manner in which tax laws are applied and consequential reforms and legislative development. The publication of public notices by ZIMRA, as has been discussed in the case of tax obligations of family and business trusts is one such instance where clarity in the scope and application of tax law is advanced to assist taxpayers in understanding their tax liabilities and ancillary obligations.

Chambers | Practice Guides

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Luke.Wilson@Chambers.com