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International M&A and Joint Ventures

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

International M&A and Joint Ventures

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This article summarizes important developments during 2017 in international mergers and acquisitions and joint ventures in Brazil, Belgium, Canada, China, France, India, Italy, Kuwait, Netherlands, Romania, Russia, Spain, Ukraine, and the United States of America.

I. Brazil

A. Individual Limited Liability Companyies (EIRELI)

Last March, the Company Registration and Integration Department (DREI) approved and published the new EIRELI Registry Manual.[1] The most relevant subject addressed by the new Manual is the express provision regarding the legal capacity of entities, whether Brazilian or foreign, to be holders of an EIRELI.[2] The change in DREI's understanding is quite

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1. *See* Departamento de Registro Empresarial e Integração, Presidência da República, Brasília – DF / 2017, Manual de Registro, Empresa Individual de Responsabilidade Limitatda – EIRELI (2017) (Braz.), *available at* https://www.jucemg.mg.gov.br/arquivos/in10-2017-anexo-v.pdf.
2. *Id.* cls. 1.2.3 – 9.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

significant, because DREI previously and mistakenly understood that legal entities were not able to own an EIRELI.

Based on the new understanding, limited liability companies with foreign capital, at their discretion and convenience, may eliminate the second partner, which in most cases only holds quotas due to the mandatory need of at least two partners, converting into an EIRELI, and thus, reducing bureaucracy and costs.[3]

B. New Immigration Legislation

Law 13445/2017,[4] Brazil's new immigration law, came into force on November 21, 2017 and was regulated by Decree 9199/2017.[5] The law deals with all immigration aspects, but this section focuses on Directors and Officers (D&O) and investment visas, which are largely required by companies with Foreign Direct Investment (FDI). Among the innovations of the new legislation are: (1) D&O and Investors visas are now considered as temporary visas; (2) those foreign nationals applying for D&O and Investors visas will need to also apply for residency authorization before the Ministry of Labor prior to the visa concession; and (3) application for residency may be done while in Brazil regardless of immigration status at that time.[6]

The National Immigration Council must issue Resolutions to determine specific requirements, conditions, deadlines, and procedures for all visa applications.[7] All visas issued under the old legislation will maintain their validity and conditions until their respective expiration dates. All applications filed during the validity of the old legislation will be processed accordingly.[8]

C. New Brazilian Central Bank (BACEN) Rules on FDI

Resolution 4.533/2016[9] and Circular 3.814/2016,[10] both issued by BACEN and that came into force on January 30, 2017, brought relevant

3. *See id.*
4. *See* Lei No. 13.445, de 24 de Maio de 2017, Diáro Oficial da União [D.O.U.] de 25.05.2017 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13445.htm.
5. *See* Decreto No. 9.199, de 20 de Novembro de 2017, Diáro Oficial da União [D.O.U.] de 25 21.11.2017 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/D9199.htm.
6. *See id.* art. 43.
7. *See* Decreto No. 9.199, *supra* note 5.
8. *See id.* arts. 124 – 25.
9. *See* Banco Central do Brasil, Resolução No. 4.533, de 23 de Novembro de 2016 (Braz.), *available at* https://www.bcb.gov.br/pre/normativos/busca/downloadNormativo.asp?arquivo=/lists/Normativos/Attachments/50287/Res_4533_v1_O.pdf.
10. *See* Banco Central do Brasil, Circular No. 3.814, de 7 de Dezembro de 2016 (Braz.), *available at* https://www.bcb.gov.br/pre/normativos/busca/downloadNormativo.asp?arquivo=/lists/Normativos/Attachments/50299/Circ_3814_v1_O.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

amendments to registration of FDI. According to the new regulations, companies receiving FDI must make a declaration of its economic-financial activities on BACEN's system, RDE–IED (Electronic Declaratory Registry - Foreign Direct Investment).[11]

Those companies with assets or net equity equal to or higher than BRL 250 million must submit annually four declarations of their economic-financial activities (March 31, June 30, September 30, and December 31). All other companies that are recipients of FDI must render a sole declaration per year prior to March 31.[12]

Moreover, Circular 3857/2017, also issued by BACEN,[13] deals with the penalties to be applied to those companies that (1) register FDI or present mandatory declaration in an untimely manner; (2) present incomplete or incorrect information; (3) refrain from registering FDI, from presenting declarations, or from providing the documentation that support information provided to BACEN, or (4) present false information when registering FDI or presenting a declaration.[14] The amount of the penalties varies depending on the non-compliance, being limited to R$ 250.000,00 in each nonconformity, but subject to a fifty percent increase in case BACEN notifies the company for effecting, correcting, or complementing the registration or declaration.[15]

D. Labor Reform

The Brazilian Congress passed legislation on labor reform[16] that was much needed for the modernization of the Brazilian labor system. The reform is not as comprehensive as some would expect, but it is a step towards eliminating part of the so-called "Brazil cost" and may be an incentive to foreign investment in the country.

II. BELGIUM

2017 was a big year for Belgium in terms of legislative development. New acts coming into effect included the new Money-Laundering Act, effective October 16, 2017, and the Collateral Act, taking effect as of January 2018. Legislators have also been busy with the new Company Code, slated to be ready late 2017.

11. *See id.* arts. 26-27.
12. *See id.* art. 34.
13. *See* Lei No. 13.506, de 13 de Novembro de 2017, Diáro Oficial da União [D.O.U.] de 14.11.2017 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13506.htm.
14. *See id.* art. 3.
15. *See id.* art. 7.
16. *See* Lei No. 13.467, de 13 de Julho de 2017, Diáro Oficial da União [D.O.U.] de 14.07.2017 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13467.htm.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

A. Recent Major Transactions

Many major financial transactions occurred in 2017. First, De Persgroep took over Medialaan for €600 million by buying out partner Roularta's fifty percent share. In return, Roularta acquired De Persgroep's shares (50 percent) in Mediafin.[17] Second, Belgian privately-owned drug discovery company Ogeda was acquired by Astellas for €800 million.[18] Finally, BASF acquired Belgian chemistry company Solvay's polyamide division for €1.6 billion.[19]

Belgian companies were also active during 2017. The Belgian investment company Cobepa acquired the majority share in the French logistics group Staci, for an estimated €200 million.[20] KBC, a Belgian bank and insurance company, acquired United Bulgarian Bank and Interlease for €610 million.[21] Bpost acquired American e-commerce company Radial for €700 million,[22] Proximus acquired Telesign for $230 million,[23] and Cinemagroup Kinepolis acquired Canadian Landmark Cinemas for €84 million.[24]

B. The New Belgian Collateral Act

The new Belgian act of 2013 regarding security interests on movable assets (Belgian Collateral Act) went into effect in January 2018.[25] This Act significantly changes the Belgian landscape when it comes to trade finance and asset-based lending. Important innovations include the creation of a

17. Michael Sephiha, *Roularta stapt uit Medialaan (VTM) en in Mediafin (De Tijd/L'Echo)*, De Tijd (Oct. 2, 2017), https://www.tijd.be/ondernemen/media-marketing/Roularta-stapt-uit-Medialaan-VTM-en-in-Mediafin-De-Tijd-L-Echo/9938201.

18. *Astellas to acquire Ogeda SA*, Ogeda, (Apr. 3 2017), https://www.ogeda.com/news/astellas-to-acquire-ogeda-sa.

19. Tim Dirven, *Jean-Pierre Clamadieu, de CEO die stationschef wilde worden*, DE TIJD, (Sept. 23, 2017), https://www.tijd.be/ondernemen/chemie/Jean-Pierre-Clamadieu-de-CEO-die-stationschef-wilde-worden/9935678.

20. Michael Sepiha, *Cobepa wordt eigenaar Franse logistieke groep Staci*, De Tijd, (Jun. 22, 2017), https://www.tijd.be/nieuws/archief/Cobepa-wordt-eigenaar-Franse-logistieke-groep-Staci/9906794.

21. Stef Leunens, *KBC Completes Acquisition of United Bulgarian Bank and Interlease*, KBC (Jun. 14, 2017), https://newsroom.kbc.com/kbc-completes-acquisition-of-united-bulgarian-bank-and-interlease.

22. Koen Lambrecht and Sebastien Roussea, *Bpost koopt Amerikaans Radial voor 700 miljoen euro*, De Tijd, (Okt. 9, 2017), https://www.tijd.be/ondernemen/logistiek/Bpost-koopt-Amerikaans-Radial-voor-700-miljoen-euro/9940556.

23. *Proximus wordt leverancier van Facebook en Google*, De tijd, Apr. 26, 2017, https://www.tijd.be/markten-live/nieuws-aandelen/Proximus-wordt-leverancier-van-Facebook-en-Google/9887150.

24. Sebastien Rousseau & Ben Serrure, *Kinepolis steekt de oceaan over*, De Tijd (Sept. 19, 2017), https://www.tijd.be/nieuws/archief/Kinepolis-steekt-de-oceaan-over/9933777.

25. *See* Loi modifiant le Code Civil en ce qui concerne les suşreteş réelles mobilie'res et abrogeant diverses dispositions en cette matie're [Law modifying the Civil Code as regard to security interests on movable assets] of July 11, 2013, Moniteur Belge [M.B.] [Official Gazette of Belgium], Sep. 27, 2013, 2d ed., 48463.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

National Pledge Register. The new National Pledge Register now fully determines the rank of a pledge, making non-possessory pledges possible and removing the need for a separate Business Pledge Act, which is abolished.[26] The Act also strengthens the position of unpaid sellers and their (extended) reservation of title clauses and retention rights.[27]

C. The New Money-Laundering Act

The new Belgian Anti-Money Laundering Act implements EU Directive 2015/849.[28] Changes include the broadening of the scope of obliged entities,[29] a new term of ten years during which data collected according to this act must be retained,[30] and a clarification of existing definitions, including that of the Ultimate Beneficial Owner.[31] One of the most important changes is the new Ultimate Beneficial Owners Register, adding an obligation for directors of companies and legal entities to provide this register with information on their Ultimate Beneficial Owners within one month of acquisition.[32] Another important change affects the obligation to take due diligence measures, and whether these should be simplified or enhanced. They now must be justified by an individual risk-based assessment, based on lists of factors indicating high and low risk.[33]

D. The New Company Code

A new Company Code is slated to be published by the end of 2017, fully replacing the Company Code of 1999. Innovations include simplification and clarification of corporate law, including modifications in the forms of incorporation, relaxation of current restrictions, and adaptation to developments in European law.[34]

26. *See id.* art. 32.
27. *See id.* art. 67.
28. *See* Loi relative a‘ la prevention du blanchiment de capitaux et du financement du terrorisme et a‘ la limitation de l'utilisation des espe‘ces [Law on the prevention of money laundering and terrorist financing and to restrict the use of cash] of Sep. 18, 2017, MONITEUR BELGE [M.B.] [Official Gazette of Belgium], Oct. 06, 2017, 90898.
29. *See id.* art. 5.
30. *See id.* art. 60.
31. *See id.* art. 4.
32. *See id.* bk. IV, tit. 1, § 2.
33. *See id.* bk. II.
34. *See Réforme du droit des sociétés 2017*, LEXALERT, *available at* http://www.lexalert.be/fr/article/r-forme-du-droit-des-soci-t-s-2017. (last visited Mar. 17, 2018); *Réforme du droit des sociétés et des associations (avis complémentaire)*, CONSEIL CENTRAL DE L'ECONOMIE (May 12, 2017), *available at* http://www.ccecrb.fgov.be/txt/fr/doc17-2666.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

III. CANADA

A. Opportunities Abound: The New Canada-European Union (EU) Free Trade Agreement

1. *CETA*

On September 21, 2017, Bill C-30[35] implemented the Canada-EU Comprehensive Economic and Trade Agreement (CETA).[36] CETA is intended to significantly boost trade and investment ties between Canada and the EU. The EU is Canada's second largest trading partner (after the United States) and the world's second largest importing market for goods.[37] Bill C-30 also raised the Investment Canada Act review threshold for non-state-owned enterprise investors from EU member states (as well as the United States, Mexico, Chile, Peru, Colombia, Panama, Honduras, and South Korea) to C$1.5 billion in enterprise value.[38]

2. *How CETA Creates New Market Opportunities*

Zero tariffs on most goods traded between Canada and the EU is the most significant and immediate impact CETA has on Canadian companies.[39] It is estimated that eliminating duties under CETA will add approximately $1.4 billion to Canada's exports to the EU by 2022.[40] Canadian producers, manufacturers, and exporters of goods in traditionally high-tariff sectors will immediately realize material cost savings and have significant advantage over competing exporters. CETA reduces historical regulatory hurdles, decreases border processing times, and facilitates the movement of services providers, which will allow Canadian companies to sell to Europe more easily.[41]

35. *See* Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act, S.C. 2017, c 30 (Can.), *available at* https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8549249 [hereinafter S.C. 2017, c 30 (Can.)].

36. For CETA, *see CETA: A progressive trade agreement for a strong middle class*, Gov't of Can., http://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/index.aspx?lang=eng (last modified Mar. 18, 2018).

37. *Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping*, Statistics Can., *available at* http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/gblec02a-eng.htm (last visited Mar. 17, 2018).

38. *See* S.C. 2017, c 30 (Can.), at 67, para. 14.11(1).

39. *See*, S.C. 2017, c 30 (Can.), at 80; *Elimination of Tariffs Under CETA to Add $1.4 Billion to Canadian Goods Exports to Europe by 2022*, The Conf. Board of Can. (Jul. 7, 2015), *available at* http://www.conferenceboard.ca/press/newsrelease/15-07-07/Elimination_of_Tariffs_Under_CETA_to_Add_1_4_Billion_to_Canadian_Goods_Exports_to_Europe_by?AspxAutoDetectCookieSupport=1.

40. *See id.*

41. *Agreement Overview*, Gov. of Can., http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/overview-apercu.aspx?lang=eng (last modified Oct. 25, 2017).

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

3. *How CETA will increase M&A Activity*

CETA will likely engender increased cross-border investment activity for both Canadian and EU companies. Through acquisitions, EU companies have an accelerated growth opportunity in Canada and may access the U.S. market on a duty-free basis under NAFTA. American companies may also wish to invest in Canada to acquire greater access to EU markets. Non-EU businesses may purchase Canadian manufacturing firms to create Canadian-origin products entitled to duty-free entry into the EU, as well as to access both the EU and U.S. markets – two of the world's largest markets.

The elimination of tariffs in industries where tariffs have traditionally been high may spark market leaders to gain access through acquisition. The services sector may see heightened M&A activity given the increased ease of labor mobility under CETA as Canadian and EU companies can bid on more public infrastructure contracts, acquisitions of infrastructure, construction, and consulting firms may also increase.

Overall, CETA positions Canada effectively as a "gateway" for EU and U.S. companies and ripe for increased M&A activity.

IV. CHINA

A. Implementation of the "Catalogue of Priority Industries for Foreign Investment in the Central and Western Region"

On February 17, 2017, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOC) of the People's Republic of China have jointly revised and issued the newest "Catalogue of Priority Industries for Foreign Investment in the Central and Western Region" (CW Catalogue) and implemented it on March 20, 2017.[42]

1. *Background*

The Catalogue for the Guidance of Foreign Investment Industries (Guidance) and the CW Catalogue provide a basis and guidance to approve foreign investment projects and foreign invested enterprises in China.[43] Foreign investment projects that do not belong to the encouraged category of the Guidance but do explore the potential in the central and western regions of China will be included in the CW catalogue and enjoy

42. Catalogue of Priority Industries for Foreign Investment in Central and Western China (2017 Revision) (promulgated by the Nat'l Dev. and Reform Commission & the Ministry of Com., Feb. 17, 2017, effective Mar. 20, 2017), CLI.4.290291(EN) (Lawinfochina).

43. *See* Press Release, Ministry of Com., Nat'l Dev. and Reform Commission & the Ministry of Com. Issued the Catalogue of Priority Industries for Foreign Investment in the Central and Western Regions (Feb. 17, 2017), http://www.mofcom.gov.cn/article/ae/ai/201702/20170202517934.shtml; Catalogue of Industries for Guiding Foreign Investment (2017 Revision) (promulgated by the Nat'l Dev. and Reform Commission & the Ministry of Com., Jun. 28, 2017, effective July 28, 2017), CLI.4.297212(EN) (Lawinfochina).

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preferential treatment.[44] Different from the Guidance, which is applicable nationwide, the CW Catalogue only applies to twenty-two provinces, including autonomous regions and municipalities in the Central and Western region.

For the active use of foreign capital, the State Council issued on January 12, 2017, the Circular on Several Measures concerning the Expansion of Opening-up and the Active Use of Foreign Capital (CSM). The CSM put forward twenty measures in three different categories: (1) further open-up to foreign investors, (2) further improvement of the fair competition environment, and (3) further attraction of foreign investment.[45] These measures include the support of the central, western, and northeast regions to accept the transfer of foreign investment industries, the revision of the CW Catalogue, and the expansion of the encouraged foreign investment industries scope for central, western, and northeast regions.[46] To better implement the above measures, the latest version of the CW Catalogue was issued.

2. Legal Review

The latest CW catalogue consists of 639 provisions in total; among them, 173 were newly added, thirty-four were deleted, and eighty-four were revised.[47] Compared to the former CW Catalogue revised in 2013, the latest CW Catalogue mainly contains the following features:[48]

a) "Supporting the development of high applicable technology industries." For example, research and manufacture related to intelligent robots were added to the catalogues of one autonomous region, six provinces, and one municipality.

b) "Encouraging the fast development of the service industry." For instance, the creation and production of comics, animations, and related products were added to the catalogues of the two autonomous regions, five provinces, and one municipality.

c) "Improving infrastructure and industry supports." For example, gas station and charging facility construction and operation were added to the catalogues of three provinces and two autonomous regions.

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44. *See* Catalogue of Priority Industries for Foreign Investment in Central and Western China (2017 Revision), *supra* note 42; *Nat'l Dev. and Reform Commission & the Ministry of Com. Issued the Catalogue of Priority Industries for Foreign Investment in the Central and Western Regions*, *supra* note 43.

45. *See* Circular on Several Measures concerning the Expansion of Opening-up and the Active Use of Foreign Capital (promulgated by the St. Council, Jan. 12, 2017, effective Jan. 12, 2017), CLI.2.288956(EN) (Lawinfochina).

46. *Id.*

47. *See National Development and Reform Commission answer questions re CW Catalogue*, Cent. Gov't of China (Feb. 17, 2017), http://www.gov.cn/zhengce/2017-02/17/content_5168815.htm.

48. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

3. *Next Steps*

To support the central, western, and northeast regions in accepting the transfer of foreign investment industries, the State Council issued the CSM to adopt a preferential enterprise tax policy for qualified foreign invested enterprises of encouraged categories in the western region. Foreign invested enterprises, which transfer to the central, western, and northeast regions, will enjoy preferential policies on capital and land and the State's support on industry transfer and processing trade. After the implementation of the latest CW catalogue, the relevant ministries and departments of the State Council will draw up and issue relevant detailed rules and regulations as required by the State Council to attract foreign invested enterprises to transfer to the central, western, and northeast regions.

V. FRANCE

A. Pro-Business Political Climate and Reforms

With the election of Emmanuel Macron as President, quickly followed by a legislative victory resulting in a majority for his party, 2017 has been a transformative year for France, creating considerable excitement regarding a more business friendly political climate.[49] The Macron Government has made clear its intention to improve the French economy and has already implemented significant reforms, increasing the attractiveness of France as an M&A destination.

1. *Labor Law Reforms*

The most significant reform implemented by the Macron Government is a substantial overhaul of French labor law, long regarded as an impediment to French competitiveness. In September, the Macron Government made significant changes to the labor code,[50] which went into effect in January

49. *Corporate Europe is Giddy with Optimism*, The Economist (Jun. 15, 2017), *available at* https://www.economist.com/news/business/21723432-emmanuel-macrons-arrival-scene-has-transformed-mood-corporate-europe-giddy.

50. *See* Ordonnance No. 2017-1385 du 22 septembre 2017 relative au renforcement de la négociation collective [Ordinance No. 2017-1385 of Sep. 22, 2017 on Strengthening Collective Bargaining] Journal Officiel de la République Française [J.O.] [Official Gazette of France], Sep. 23, 2017, text no. 90; Ordonnance No. 2017-1386 du 22 septembre 2017 relative a' la nouvelle organisation du dialogue social et économique dans l'entreprise et favorisant l'exercice et la valorisation des responsabilités syndicales [Ordinance No. 2017-1386 of Sep. 22, 2017 on the new organization of the social and economic dialogue in the enterprise and promoting the exercise and promotion of trade union responsibilities] Journal Officiel de la République Française [J.O.] [Official Gazette of France], Sep. 23, 2017, text no. 31; Ordonnance No. 2017-1387 du 22 septembre 2017 relative à la prévisibilité et la sécurisation des relations de travail [Ordinance No. 2017-1387 of Sep. 22, 2017 on the predictability and security of labor relations] Journal Officiel de la République Française [J.O.] [Official Gazette of France], Sep. 23, 2017, text no. 33; Ordonnance No. 2017-1388 du 22 septembre 2017 portant diverses mesures relatives au cadre de la négociation collective [Ordinance No.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018.[51] Notable amendments include increasing the flexibility for international groups to lay off employees, streamlining information and consultation bodies into one representative body, and the establishment of simplified and contractual termination by mutual consent at a collective level. In addition, the anticipation of an adaptation to market trends will be enabled through simplified majority agreements on working hours, pay, and mobility.

2. *Tax Reforms*

The Macron Government has also introduced tax reforms, including most notably the contemplated reduction of corporate income tax from thirty-three and one-third percent to twenty-five percent by 2022.[52]

3. *Privatizations*

The Macron Government intends to transform the French State's traditional role as a shareholder, beginning with the disposal of €10 billion worth of State owned assets to finance an innovation fund.[53]

B. Foreign Investment

The pro-business landscape in France should be considered against the backdrop of growing protectionist sentiment worldwide. The French foreign investment regime favors freedom of investment; but foreign acquirers should tread carefully in sensitive areas of the economy, particularly following recent concerns that non-EU investors are not playing by the same rules.[54]

2017-1388 of Sep. 22, 2017 on various measures relating to the framework of collective bargaining] Journal Officiel de la République Française [J.O.] [Official Gazette of France], Sep. 23, 2017, text no. 35; Ordonnance No. 2017-1389 du 22 septembre 2017 relative a' la prévention et a' la prise en compte des effets de l'exposition a' certains facteurs de risques professionnels et au compte professionnel de prévention [Ordinance No. 2017-1389 on the prevention and taking into account of the effects of exposure to certain occupational risk factors and the professional prevention account] Journal Officiel de la République Française [J.O.] [Official Gazette of France], Sep. 23, 2017, text no. 37.

51. *Réforme du Code du travail 2017 (réforme Macron)*, Droit-finances, http://droit-finances.commentcamarche.net/faq/61943-reforme-du-code-du-travail-2017-reforme-macron (last visited Mar. 27, 2018).

52. *See* Michael Rose, *France's Macron plans no early tax blitz but big bang of structural reforms*, Reuters (Mar. 29, 2017), https://www.reuters.com/article/us-france-election-macron-economy/frances-macron-plans-no-early-tax-blitz-but-big-bang-of-structural-reforms-id USKBN170200.

53. *Bruno Le Maire annonce 10 milliards d'euros pour financer l'innovation*, Le Monde (July 5, 2017), http://www.lemonde.fr/economie/article/2017/07/05/bruno-le-maire-annonce-10-milliards-d-euros-pour-financer-l-innovation-dans-les-prochains-mois_5156370_3234.html.

54. *See, e.g.*, European Commission, *Proposal for a Regulation of the European Parliament & of the Council establishing a framework for screening of foreign direct investments into the European Union* (Sept. 13, 2017).

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

VI. INDIA

A. Easing of FDI Regime

2017 has been a busy year with many developments in Indian regulations impacting M&As. The Government of India (GoI) has eased foreign investment norms further by increasing foreign investment limits and removing or easing restrictions across various sectors, including defense, banking, pharmaceuticals, construction, single brand retail, broadcasting, and civil aviation.[55] This is aimed at boosting the investment environment and bringing more foreign investments into the country.[56] The Foreign Investment Promotion Board (FIPB) has been abolished and powers granted to sectoral ministries and departments to further simplify FDI through the government route.[57] The FDI application process has been made entirely electronic via a new Foreign Investment Facilitation Portal.[58]

B. Amendments to Tax Treaties

Investments into India were often routed through intermediate tax-friendly jurisdictions such as Mauritius, Singapore, and Cyprus. The double taxation avoidance agreements with these countries have been revised to, amongst other matters, provide for taxation of capital gains from sale of securities.[59]

C. Cross-Border Mergers

The GoI notified[60] section 234 of the [Indian] Companies Act 2013, enabling outbound cross-border mergers with effect from April 13, 2017, along with amending the relevant rules[61] to operationalize these provisions. In view of these notifications, an outbound merger (i.e., a merger of an Indian company into a foreign company situated in certain permitted jurisdictions with such foreign entity as the surviving entity) is now possible. This is of course subject also to the host jurisdiction of such a foreign company permitting such schemes with an Indian company. Such merger will be subject to approval of the Reserve Bank of India (RBI) and

55. Dep't Of Indus. Pol'y and Promotion, Ministry of Com. and Indus., Gov't of India, D/o IPP F. No. 5(1)/2017-FC-1, Consolidated FDI Policy (Aug. 28, 2017).
56. *See id.* at 4.
57. *See id.*
58. *See id.* at 21; *Foreign Investment Facilitation Portal*, Ministry of Com. and Indus., http://www.fifp.gov.in/Default.aspx (last visited Mar. 18, 2018).
59. Press Release, Cent. Board of Direct Taxes, India and Singapore Sign a Third Protocol for Amending the Double Taxation Avoidance Agreement (DTAA) (Dec. 30, 2016), https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/578/India-Singapore-Sign-Third-Protocol-Amending-DTAA-30-12-2016.pdf (India).
60. Ministry of Corporate Affairs Notification, S.O. 1182(E), 2017, Gazette of India, pt. II, sec. 3, subsec. (ii) (Apr. 13, 2017).
61. Ministry of Corporate Affairs Notification, G.S.R. 368(E), 2017, Gazette of India, pt. II, sec. 3, subsec. (i) (Apr. 13, 2017).

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

compliance with the provisions of the Companies Act.[62] The RBI has also released draft rules about what is permitted in this regard.

D. Antitrust

In one of the most significant amendments to the merger control regime in India, the GoI, by way of a notification,[63] has enhanced the scope of the de minimis or the small target exemption to include transactions structured as mergers or amalgamations. Further, in transactions involving the acquisition/merger of only a business, division, or portion of an enterprise, the notification stipulates that only the asset and turnover value of such business/division will need to be considered.

E. Control

The Securities and Exchange Board of India (SEBI) has recently given different indications on the definition of "control." From a recent order where SEBI held that "negative control," or protective covenants, cannot be construed as "control" under the takeover code to deciding not to establish a bright-line test for control; and the regulator has not been concerted in its efforts.[64]

VII. Italy

A. Recent Decisions of Italian Courts on Put Options and One-Sided Agreements

Put option agreements play an essential role in private equity transactions. In Italy, it is a widespread practice to invest in companies and agree upon put options at a fixed price, as a safe "way out" in case the company suffers losses during the period of the investment. Those who have signed put options are entitled to sell their shares and to be paid back the entire investment in the target company.

In a recent case, the Milan Court of Appeal declared these agreements void due to violation of the so-called "Patto Leonino" doctrine, regulated by Article 2265 of the Italian Civil Code.[65]

The prohibition on entering into a "Patto Leonino" responds to the purpose of rendering null agreements that function to exclude totally one of the shareholders from dividends or losses. The fundamental rationale of such a doctrine is to ensure that the assumption of business risks relates to the assumption of managerial power. Indeed, the shareholder-manager

62. *Id.*
63. Ministry of Corporate Affairs Notification, S.O. 988(E), 2017, Gazette of India, pt. II, sec. 3, subsec. (ii) (Mar. 27, 2017).
64. Kamat Hotels (India) Limited, WTM/GM/EFD/DRAIII/20/MAR/2017 (Sec & Exch. Bd. Of India Mar. 31, 2017).
65. R.D. 16 marzo 1942, n. 262, in C.c. art. 2265 (It.).

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SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

might jeopardize company equity by undertaking high-risk investments, because he would not suffer any losses.

With decision no. 636/2016,[66] the Milan Appeal Court asserted that shareholders' agreements regulating put options violated Article 2265 and could be declared void if the exclusion from losses was "absolute" and "constant." In this case, the agreement between the shareholders provided for the right of the investor partner to exercise the put option at any time, at a simple request, at a price equal to its initial investment plus interest, as well as any other payment to shareholders' equity made by the investor itself. According to the judges, such agreement "can only be considered as an attempt to circumvent the prohibition of the 'Patto Leonino'" and must therefore be void, as one of the shareholders has been "completely deprived of the business risk which represents the typical connotation of the shareholder's status."[67]

But there have been criticisms of the above-mentioned pronouncements by those who believe that the judges' thinking is not aligned with current market dynamics, as the purpose of put options at a fixed price is to have the company benefit from new economic and financial resources through the entry of new shareholders. Despite the gradual openness to fixed-price put option clauses, some issues still need a clear definition by the Supreme Court.

VIII. KUWAIT

A. New Special Trade Regime in Kuwait

As a general background, pursuant to Kuwaiti laws, the sale of listed shares should be conducted through Boursa Kuwait (Boursa), i.e., on the exchange and over the screen, except in the case of large block trades (i.e., more than five percent of the issued shares of a listed company), which would proceed over a special board of the Boursa.[68]

The Kuwait Capital Markets Authority (CMA) recently issued the Special Trade Rules (the Rules)[69] regulating special trade transactions (STT) involving the sale of less than 5 percent of the share capital of a listed company. The Rules have been adopted and implemented by the Boursa. As the Rules only apply to listed securities, any such transaction would also

66. App., 3 febbraio 2016, Sentenza n. 636/2016, R.G. n. 2338/2012 (It.), *available at* http://www.replegal.it/it/tutte-le-notizie/item/download/220_11b42f56ee4fc6e318ca244341d4b2f4.

67. *See id.* paras. 9, 14.

68. *See* Boursa Kuwait, Trading Rulebook IPTMI art. 3.9.1, *available at* https://cis.boursakuwait.com.kw/Portal/BoursaReports/TRADINGRULEBOOKIPTM1En.pdf (last visited Mar. 27, 2018).

69. Capital Markets Authority, Resol. No. (67) of 2016 Regarding Controls and Procedures for Permitting the Execution of Special Nature Transactions in the Securities Exchange (Jul. 3, 2016) (Kuwait).

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

have to comply with the Capital Markets Law[70] and its executive regulations, as well as the Boursa regulations.[71]

The Boursa should issue and adopt further specific regulations in this regard in the context of the Rules. But regarding such specific regulations on executing the special trade, the governing rules and regulations are, as set out in the Boursa form, required to process the transaction (the Sale Form), which incorporates certain declarations by the buyer, the seller, and their brokers.[72]

More specifically, the Rules stipulate that STTs may only be concluded between one buyer and one seller, provided the targeted shares are less than five percent of the share capital of the target company. In the event a transaction contemplates a transfer of shares above the abovementioned threshold, such transfer may be split in a series of transactions.[73]

One of the main benefits of the STT regime is that the relevant sales will proceed directly between the buyer and the seller without the need for a screen trade or a block trade auction that normally would be applicable. STTs should be conducted for cash consideration at a price regulated by the Rules. More specifically, the rules provide that the price should not fall below or exceed the preceding day's price by more than twenty percent, and the total value of the transaction should not be under KD 150,000.[74]

Pursuant to the Rules, STTs would only be allowed in the following circumstances: (1) the size of the transaction should exceed the share's average trading volume for a period of one month prior to executing the trade; (2) the transaction is implemented for accounting purposes, and in such case, supporting documents should be provided by an external auditor; (3) the transaction is implemented in order to fulfill international investment policies or strategies; and (4) the transaction's purpose is to repay a bank loan or a commitment.[75]

Pursuant to the Rules, the buyer and seller are each required to pay an initial fee of KD fifty to the CMA. In addition, a fee of KD twenty-five per transaction on each of the buyer and seller is to be paid to the Kuwait Clearing Company (KCC).[76] Further, each of the buyer and the seller are required to pay a processing fee (i.e., a commission) of twenty basis points of the value of the transaction (i.e., KD two per 1,000). This commission shall

70. CAPITAL MARKETS AUTHORITY, LAW NO. 7 OF 2010 REGARDING THE ESTABLISHMENT OF THE CAPITAL MARKETS AUTHORITY AND REGULATING SECURITIES ACTIVITIES AND ITS AMENDMENT, *available at* https://www.cma.gov.kw/documents/20622/347647/Law+No.+7+of+2010+--ew+logo/8468eb04-a890-4caa-81b1-0826adf37df8 (last visited Mar. 27, 2018) (Kuwait).

71. *See* TRADING RULEBOOK IPTMI, *supra* note 68.

72. *See Transfer Ownership Form*, BOURSA KUWAIT, *available at* http://boursakuwait.com.kw/Portal/Transfer%20of%20Ownership%20-%20Eng.pdf (last visited Mar. 18, 2018).

73. *See* TRADING RULEBOOK IPTMI, *supra* note 68, arts. 3.9.1–.2.

74. *See id.* art. 3.9.2.1.

75. *See id.* art. 3.9.2.2.

76. *See* TRADING RULEBOOK IPTMI, *supra* note 68.

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

be allocated to the relevant broker (50 percent), the Boursa (49 percent) and the KCC (1 percent).[77] There is also a coupon fee of KD 0.500 per transaction for the buyer and seller, payable to the KCC.[78]

IX. NETHERLANDS

A series of attempted foreign takeovers in strategic sectors have given rise to discussions on government review, both at a European and a national level. On September 13, 2017, the European Commission (EC) published a proposal for a regulation establishing a framework for screening of foreign direct investments into the European Union.[79] The proposed regulation comprised three pillars:

> (1) a European framework for screening of foreign direct investments by Member States on grounds of security or public order, (2) a cooperation mechanism between Member States and the [EC] and (3) [EC] screening on grounds of security or public order for cases in which foreign direct investment in Member States may affect project or programmes of Union interest.[80]

Member States will not be required to have a screening mechanism for foreign direct investments. But if they have such a mechanism or want to put one in place, it should meet the requirements of the proposed regulation.[81]

Before the EC announced this proposal, a draft legislative proposal was published in the Netherlands aimed at preventing unwanted influences in the Dutch telecom sector.[82] The proposal introduced the possibility for the Dutch Minister of Economic Affairs to prohibit the acquisition or exercise of control over legal entities active in the Dutch telecom sector if such control would lead to relevant influence in the telecom sector and, as a consequence, Dutch national security or public order would be compromised.[83] This draft legislative proposal has not been submitted to the House of Representative

77. *See Trading Fees*, BOURSA KUWAIT, *available at* https://www.boursakuwait.com.kw/BoursaKuwait/Page.aspx?PAGE=32 (last visited Mar. 18, 2018).

78. *See id.*

79. *Proposal for a Regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union*, at 2, COM (2017) 487 final (Sep. 13, 2017).

80. European Commission Press Release IP/17/3183, State of the Union 2017 - Trade Package: European Commission proposes framework for screening of foreign direct investments (Sep. 14, 2017), *available at* http://europa.eu/rapid/press-release_IP-17-3183_en.htm.

81. *Proposal for a Regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union*, *supra* note 79.

82. *Concept wetsvoorstel ongewenste zeggenschap telecommunicatie* [Draft legislative proposal on unwanted control telecommunication], OVERHEID.NL, https://www.internetconsultatie.nl/telecommunicatie/details (last visited Mar. 27, 2018).

83. *See* Minister of Econ. Aff., Wet voorkoming ongewenste zeggenschap telecommunicatie (consultatieversie) [Draft explanatory notes to the draft legislative proposal on unwanted

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(Tweede Kamer). It will have to be assessed whether any amendments are necessary in view of the proposed EU regulation.

X. ROMANIA

The Romanian M&A market recorded strong activity in the first three quarters of 2017, reaching €2 billion with six deals between €100 million and €500 million. Activity is expected to reach €3 billion by the end of 2017.[84] M&A deals are taking place in many sectors, with real estate, financial services, manufacturing and production, retail, and transportation being among the main drivers.

Most M&A deals are domestic and inbound transactions. Many consolidated Romanian businesses have reached a certain level of maturity and profitability that appeals to foreign investors. The acquisition by Digi Communications of the Hungary-based subsidiary of Invitel for €140 million stood out in 2017 as being one of the very few transactions when Romanian companies made an acquisition abroad.[85]

M&A activity is subject to fluctuation generated by economic cycles. Signs are positive. The IMF has recently revised its prediction for Romania's economic growth for 2017 from 4.2 percent to 5.5 percent, one of the highest in the EU.

There is a strong appetite for international investment funds and regional companies to acquire businesses in Romania. Although deals are mostly initiated by buyers, more and more Romanian entrepreneurs are starting to test the waters to find out how much their business is worth and to get a feeling of where they stand in the market.

The level of maturity reached by the M&A market indicates that it is time for Romanian entrepreneurs to start acquiring or bringing in partners such as private equity funds that would help grow the business. This was the case of the Romanian Iulian Dascalu, controlling the Iulius Group (one of the largest domestic owners of office buildings and shopping malls), which brought in Atterbury Romania as an equal partner (50 percent).[86]

In 2018, it is expected that privatizations will come back into the spotlight. There are signals from the Government that it intends to launch the listing on the stock exchange of minority stakes (approximately ten percent) of state-owned companies active in the energy sector, such as Hidroelectrica, a

control telecommunication], OVERHEID.NL, *available at* https://www.internetconsultatie.nl/telecommunicatie/document/2730 (last visited Mar. 18, 2018).

84. *See Deloitte Analysis: In Q3 there were two acquisitions announced every week*, DELOITTE (Oct. 9, 2017), https://www2.deloitte.com/ro/en/pages/about-deloitte/articles/analiza-deloitte-in-trimestrul-al-3-lea-s-au-anuntat-cate-doua-achizitii-pe-saptamana.html.

85. *See* DIGI acquires Invitel's retail business, TELEGEOGRAPHY, July 24, 2017, *available at*: https://www.telegeography.com/products/commsupdate/articles/2017/07/24/digi-acquires-invitels-retail-business/.

86. *See Dutch real estate company buys half of Romanian mall network*, ROMANIA INSIDER (Jun. 16, 2017), https://www.romania-insider.com/dutch-real-estate-company-buys-half-of-romanian-mall-network/.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

key electricity producer from hydro sources and the transportation sector, such as Compania Nationala Aeroporturi Bucuresti, a company operating the largest airport in Romania.[87]

XI. RUSSIA

Among the developments of Russian legislation during 2017 are the adopted amendments pertaining to financial transactions that will enter effect on June 1, 2018.[88] This constitutes a vital step towards creation of full-fledged M&A infrastructure in Russia.

The changes relate to the escrow agency, which is already partially recognized by Russian law, but only in terms of special status of escrow bank accounts. According to the new legislation, escrow-account-related matters will only be part of the escrow agreement.[89] Title to monies in an escrow account shall now transfer from the depositor to the beneficiary on the day when the conditions for the release of monies are satisfied.[90] The monies in an escrow account will also be beyond the reach of creditors of the escrow agent and the parties to the underlying transaction; and the monies will not be subject to any encumbrances, seizures, or forced withdrawal, even in the event of bankruptcy proceedings against the escrow agent, the depositor, or the beneficiary.[91] Another novelty is the public escrow agreement, whereby persons other than banks may officially serve as escrow agents (e.g. notaries, insurance agencies, or service companies) and under which an escrow account is opened by the bank in favor of the escrow agent.[92]

Other significant changes in 2017 relate to legislation on strategic companies, i.e. Russian legal entities engaged in at least one activity of strategic importance for national defense and security, such as military related companies, companies engaged in cryptographic activities, or users of licensed areas of natural resources of federal importance.[93] Additional examples of such activities are provided by the law. Currently the legislation applies to any acquisition of fifty percent or more shares (or twenty-five

87. *See* Nicoleta Banila, *Romania plans to sell minority stakes in energy, transport infrastructure firms*, SEE NEWS (Oct. 4, 2017), https://seenews.com/news/romania-plans-to-sell-minority-stakes-in-energy-transport-infrastructure-firms-542047.

88. *Federal'nyy zakon ot 26 iyulya 2017 g. N 212-FZ "O vnesenii izmeneniy v chasti pervuyu i vtoruyu Grazhdanskogo kodeksa Rossiyskoy Federatsii i otdel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii" [Federal Law dated 26.07.2017 N212-FZ "On amendments to the first and second parts of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation"]*, FED. ISSUE NO. 7333 (167), ROSSIYSKAYA GAZETA [THE RUSS. NEWSPAPER], July 31, 2017, *available at* https://rg.ru/2017/07/31/bank-dok.html.

89. *See id.* art. 860, § 7.

90. *See id.*

91. *See id.* art. 860, § 8.

92. *See id.* art. 860, § 11.

93. *See* Press Release, Fed. Antimonopoly Serv. of the Russ. Fed'n, The law on foreign investments improves continuously (Aug. 9, 2017), https://en.fas.gov.ru/press-center/news/detail.html?id=51356.

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percent or more shares in a case where the investor is a state-owned entity) or otherwise obtaining control over the strategic company is subject to approval of the special Strategic Committee (Committee for Control over Foreign Investments in the Russian Federation) formed by the Government of Russian Federation with the Prime Minister serving as the Chairman of the Strategic Committee (Strategic Clearance).[94]

As part of the program aimed at prevention of offshore scheming, starting from July 2017, not only foreign states and international organizations, but also any offshore companies that are on the list of jurisdictions established by the Ministry of Finance, as well as companies under their control, are not allowed to consummate transactions resulting in establishment of control over strategic companies.[95] Acquisition by the offshore companies of more than twenty-five percent of voting shares in the charter capital of the strategic companies (or more than five percent if the strategic company uses subsoil plots of federal importance) requires preliminary strategic clearance.

Also, the amendments provide that the Chairman of the Strategic Committee is now entitled to make any foreign investments transactions with Russian legal entities subject to strategic filing at its own discretion.[96] From a practical point of view, those may be the transactions that are filed with the Federal Antitrust Service or that are widely covered in the mass media. The requirement of obtaining mandatory preliminary Strategic Clearance is deemed established when a party to the transaction has received an official notification to do so.

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94. *Federal'nyy zakon ot 26 iyulya 2017 g. N 212-FZ "O vnesenii izmeneniy v chasti pervuyu i vtoruyu Grazhdanskogo kodeksa Rossiyskoy Federatsii i otdel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii" [Federal Law dated 26.07.2017 N212-FZ "On amendments to the first and second parts of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation"]*, FED. ISSUE NO. 7333 (167), ROSSIYSKAYA GAZETA [THE RUSS. NEWSPAPER], arts. 2, 4 – 5, July 31, 2017, *available at* https://rg.ru/2017/07/31/bank-dok.html.

95. *Federal'nyy zakon ot 1 iyulya 2017 goda No.155-FZ "O vnesenii izmeneniy v stat'yu 5 Federal'nogo zakona "O privatizatsii gosudarstvennogo i munitsipal'nogo imushchestva" i Federal'nyy zakon "O poryadke osushchestvleniya inostrannykh investitsiy v khozyaystvennyye obshchestva, imeyushchiye strategicheskoye znacheniye dlya obespecheniya oborony strany i bezopasnosti gosudarstva" [Federal Law dated 01.07.2017 N155-FZ "On amendments to the article 5 of the Federal Law 'On privatization of state and municipal property' and the Federal Law 'On procedures for foreign investments in companies having strategic importance for national security and defense"]*, FED. ISSUE NO. 7310 (144), ROSSIYSKAYA GAZETA [THE RUSS. NEWSPAPER], July 4, 2017, *available at* https://rg.ru/2017/07/01/fz155-site-dok.html.

96. *Federal'nyy zakon ot 18 iyulya 2017 goda No. 165-FZ "O vnesenii izmeneniy v stat'yu 6 Federal'nogo zakona "Ob inostrannykh investitsiyakh v Rossiyskoy Federatsii" i Federal'nyy zakon "O poryadke osushchestvleniya inostrannykh investitsiy v khozyaystvennyye obshchestva, imeyushchiye strategicheskoye znacheniye dlya obespecheniya oborony strany i bezopasnosti gosudarstva" [Federal Law dated 18.07.2017 N165-FZ "On amendments to the article 6 of the Federal Law 'On foreign investments in the Russian Federation' and the Federal law 'On procedures for foreign investments in companies having strategic importance for national security and defense'"]*, ROSSIYSKAYA GAZETA [THE RUSS. NEWSPAPER], July 19, 2017, *available at* https://rg.ru/2017/07/19/fz165-site-dok.html.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

XII. SPAIN

On January 1, 2017, Article 348 of the Spanish Companies Act (SCA),[97] which had been suspended almost since its introduction in 2011,[98] took effect, providing an exit right in the event of failure to distribute dividends, altering the balance of powers of majority and minority shareholders of Spanish companies.

Article 348 bis SCA grants shareholders the right to exit a company (excluding listed companies) if, in any corporate year (from the fifth year following the company's registration in the commercial registry), the ordinary general meeting fails to resolve for distribution of at least one-third of the legally distributable income obtained through operating the activities in the company's corporate purpose.[99]

This law allows any shareholders (irrespective of their share capital) to exercise an individual right to exit the company and recover the value of their investment if they had voted in favor of distribution of corporate income. Their stake in the share capital should be repaid at its fair value. The procedure to exercise the right is set out in Articles 349 and 353- 359 SCA.

It is uncertain whether the exit right can be eliminated or limited in the by-laws or by means of a shareholders' agreement, as the SCA is silent in that respect, and there is no applicable case law yet.

XIII. UKRAINE

In a challenging political and economic situation, 2017 nonetheless demonstrated growth in M&A activity. Ukraine has implemented loads of reforms in recent years by bringing transparency into many fields, including state procurement, the judiciary, healthcare, education, and energy sector, thereby improving corporate governance and the level of protection for investors in Ukraine. As a result, Ukraine's position in the Doing Business rating has improved.

97. Approval of the consolidated text of the Spanish Companies Act (B.O.E. 2010, 10544) (Spain); Act 25/2011, of August 1st, on partial reform of the Spanish Companies Act and implementation of Directive 2007/36/EC of the European Parliament and of the Council of July 11, 2007 on the exercise of certain rights of shareholders in listed companies (B.O.E. 2011, 13240) (Spain) (containing the text of the approved Spanish Companies Act).

98. Article 348bis SCA found major opposition because of the financial difficulties it could inflict on companies in an already difficult crisis scenario, and its application was suspended first, until December 31, 2014, by Law 1/2012, of June 22, on simplification of the information and documentation obligations of mergers and spin-off of companies (B.O.E. 2012, 8406) (Spain); and then, until December 31, 2016, by First Final Provision of Royal Legislative Decree 11/2014, of September 5 on urgent measures in bankruptcy (B.O.E. 2014, 9133) (Spain).

99. *See* Act 25/2011, of August 1st, *supra* note 97, at 87468.

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SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

A. Prominent M&A Deals

The areas, which faced activity in 2017, are agriculture, banking and finance, infrastructure, energy, and IT. The most prominent deal is the acquisition of 100 percent of Ukrainian Agricultural Investments by Kernel, a large Ukrainian agricultural group. The price of the deal was $155 million, with the acquisition Kernel became the largest land user in Ukraine.[100]

One of the most significant deals in finance was acquiring 100 percent of UkrSib Capital Management LLC, a subsidiary of UKRSIBBANK BNP Paribas Group. The acquisition price was not disclosed.[101]

The biggest deal in the Ukrainian retail sector was the acquisition of the Karavan Hypermarket chain by Auchan Retail Ukraine.[102] As a result, ". . . the famous French international retail group almost doubled its presence in Ukraine."[103]

EVRAZ sold the entire issued share capital of Kadish Limited, the holding company of EVRAZ Suhka Balka, specializing in iron ore underground mining, to Berklemond Investments Ltd., a company of the DCH Group. The price of the deal was $110 million.

B. Recent Changes in Corporate Legislation

The year 2017 may be described as the year of new trends and opportunities. The crucial changes are the adoption of laws on shareholders' agreements and on squeeze-outs and sell-outs. A draft law on LLCs and a draft law on debt-to-equity swaps are also expected to be adopted soon. The drafts present a totally novel approach towards regulation of company activities by seeking to develop greater comfort and viable rules for companies, and the drafts also aim to increase the level of discretion of shareholders related to issues of corporate governance.

100. *See News*, KERNEL (Jun. 2, 2017), http://www.kernel.ua/media-center/news/267/#kernel-holding-s-a-acquires-a-farming-business-in-ukraine; *News* KERNEL (Jun. 9, 2017), http://www.kernel.ua/media-center/news/267/#kernel-holding-s-a-completes-acquisition-of-the-remaining-7-9-interest-in-a-farming-business-in-ukraine.

101. *See ICU To Acquire UKRSIB Capital Management, a BNP Paribas Group Company*, ICU (Jun. 7, 2017), https://www.icu.ua/en/about-icu/news/icu-to-acquire-ukrsib-capital-management-a-bnp-paribas-group-company.

102. *See Auchan Retail completes the acquisition of Ukrainian retailer Karavan*, AUCHAN Retail, https://www.auchan-retail.com/en/newsroom/articles/auchan-retail-completes-the-acquisition-of-ukrainian-retailer-karavan (last visited Mar. 18, 2018).

103. *See* Karolina Kaminska, Evraz *Subsidiary Sells Kadish For USD110 Million to Berklemond*, MORNINGSTAR (May 26, 2017), http://www.morningstar.co.uk/uk/news/AN_1495816560207125100/evraz-subsidiary-sells-kadish-for-usd110-million-to-berklemond.aspx.

PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

XIV. UNITED STATES

One of the most significant issues in the United States for cross-border M&A transactions in 2017 was the role of The Committee on Foreign Investment in the United States (CFIUS).

Established in 1975, CFIUS, an inter-agency committee that is part of the U.S. Treasury Department, is authorized to review any transaction that could result in foreign control of a U.S. business to determine if there are U.S. national security risks.[104] CFIUS has the authority to "investigate" M&A transactions for national security concerns and can require the parties to take mitigation steps pre-closing, including divesting a part of the target's business.[105] CFIUS can also refer a transaction to the President who then has fifteen days to decide whether to suspend or block the transaction.[106] Because CFIUS has the ability to unwind pending or closed transactions, parties to an M&A transaction often voluntarily submit covered transactions to CFIUS for review and wait to close the transaction until that review is complete.

The number of CFIUS-initiated investigations grew steadily in recent years.[107] Recently, CFIUS most often reviewed investments by Chinese buyers, followed by acquisitions by Canadian and United Kingdom buyers.[108] Reflecting a heightened concern with Chinese buyers in particular, in only the fourth deal ever blocked by a U.S. President, President Donald Trump prohibited a Chinese investor from purchasing Lattice Semiconductor Corporation in September 2017.[109]

Given an evolving understanding of what constitutes U.S. national security risks, parties of in-bound U.S. investments are considering whether to file with CFIUS more regularly. Also, parties are considering deal protections, such as customized closing conditions and reverse break-up fees, to protect themselves in the event of a prolonged or negative CFIUS review.

Legislation introduced to the U.S. Congress in early November 2017, which remains in the preliminary stages of review, would expand jurisdiction of CFIUS. Sustained or increased interest by CFIUS of cross-border

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104. 50 U.S.C. § 4565 (2015); Exec. Order No. 11858, 40 Fed. Reg. 20,263 (May 9, 1975).
105. 50 U.S.C. § 4565(b)(2), (l)(1).
106. *Id.* § 4565(d)(2).
107. Committee on Foreign Investment in the United States, Covered Transactions, Withdrawals, and Presidential Decisions 2014-2016, https://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUS_Stats_2014-2016.pdf (last visited Nov. 15, 2017).
108. Committee on Foreign Investment in the United States, Annual Report to Congress, Report Period CY: 2015, 15-16 (2017), https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Unclassified%20CFIUS%20Annual%20Report%20-%20(report%20period%20CY%202015).pdf (last visited Nov. 15, 2017).
109. Press Release, The White House Office of the Press Secretary, Statement from the Press Secretary on President Donald J. Trump's Decision Regarding Lattice Semiconductor Corporation, (Sept. 13, 2017), https://www.whitehouse.gov/the-press-office/2017/09/13/statement-press-secretary-president-donald-j-trumps-decision-regarding.

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transactions, particularly those involving Chinese buyers, is expected to continue considering the current U.S. administration and regulatory regime.

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