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Europe

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I. Republic of Cyprus—Transfer of Registered Office Within and Outside the Territory

Consistent with the efforts to render Cyprus an International Business Center, and following the Tax Law Amendments of 2003¹ to reform the Cyprus Tax System in order to comply with the Organisation for Economic Co-operation and Development (OECD) recommendations,² and the European Union (EU) Code of Conduct,³ and State Aid Rules,⁴ an amendment to Cyprus law has been made introducing the concept of “corpo-

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1. Nomos (2002:118(1)) Income Tax Law [EKED] 2003 (Greece).

2. In 1998, the Committee on Fiscal Affairs of the Organisation for Economic Co-operation and Development (OECD) undertook an examination on business taxation, which resulted in proposals for guidelines on harmful taxation regimes. OECD, HARMFUL TAX COMPETITION, AN EMERGING GLOBAL ISSUE (1998), <http://www.oecd.org/dataoecd/33/0/1904176.pdf>. A progress report was issued in June 2000. OECD, TOWARDS GLOBAL TAX COOPERATION: REPORT TO THE 2000 MINISTERIAL COUNCIL MEETING AND RECOMMENDATIONS BY THE COMMITTEE ON FISCAL AFFAIRES, PROGRESS IN IDENTIFYING AND ELIMINATING HARMFUL TAX PRACTICES (2000), <http://www.oecd.org/dataoecd/9/1/2090192.pdf>.

3. On December 1, 1997, the Council of the European Union Finance Ministers and the Representatives of the Governments of the Member States, adopted a Resolution on a Code of Conduct on taxation policy. See Conclusions of the ECOFIN Meeting on 1 December 1997 concerning taxation policy 98/C2/01, 1998 O.J. (C 002) 1 (EC), available at [http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0106\(01\):EN:HTML](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0106(01):EN:HTML). Two years later, in a report of November 1999, the group established by ECOFIN to analyze this problem more closely—the so-called Primarolo Group—identified sixty-six tax measures with harmful features (forty in EU Member States, three in Gibraltar and twenty-three in dependent or associated territories). European Commission, *Report of the Code of Conduct Group on Business Taxation* (Nov. 29, 1999), available at http://ec.europa.eu/taxation_customs/resources/documents/primarolo_en.pdf.

4. As part of the commitment in the Code of Conduct on business taxation (paragraph J of the Code), the European Commission committed itself to publishing guidelines on the application of the State Aid rules to

rate redomiciliation," a process by which a company moves its domicile from its initial jurisdiction to another by changing the country under whose laws it is originally registered.

The concept of redomiciliation was introduced into Cyprus law on July 28, 2006, by amendments to Article 354 of the Cyprus Companies Law.⁵ Under the amended article, it is now possible for a foreign company to redomicile and be registered as a legal entity under the laws of the Republic of Cyprus, while maintaining its registration in the country of first incorporation.

There are many reasons why a company may wish to redomicile, however the principal reasons usually will be to take advantage of more favorable tax laws or less strict regulatory provisions. Countries with less advantageous and competitive financial regimes aim to gain access to specialist capital markets through redomiciliation, or even align their place of registration with that of their shareholders. Under the amendments to Article 354, foreign companies wishing to register in Cyprus need not engage in the cumbersome process of winding up their companies prior to re-incorporating them. Instead they can move their domicile to Cyprus while maintaining their former existence, a process that will unquestionably save them valuable time and ultimately money.⁶

A company is eligible for registration under the legal regime of another country/jurisdiction provided that such a provision is included in its constitutional documents. Under Article 354, a company wishing to redomicile in Cyprus must file a petition with the Registrar of Companies and submit it together with a number of other constitutional and legal documents.⁷ Once all required documents are filed with the Registrar, the latter certifies that the company is temporarily incorporated in the Republic of Cyprus was and as of that is considered to be a legal entity, subject to all obligations and rights under the laws of Cyprus.⁸ But a legal requirement imposes a time limit of six months on the company to provide the Registrar with documentation proving that it is no longer registered in the country of initial registration.⁹ In the absence of such documentation (unless good reason is given for the delay) the Registrar is authorized to remove the company from the Register.¹⁰ Alternatively, if the company provides the Registrar with such documentation, the company will be registered as redomiciled in the Republic of Cyprus.¹¹

The Registrar holds the right to reject a petition when the company is in the process of winding-up, dissolving, or going into liquidation; similarly the Registrar might also reject

measures relating to direct business taxation. These were adopted by the Commission on November 11, 1998. See Commission Notice 98/C 384/03, 1998 O.J. (C 384) 3 (EC), available at [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y1210\(01\):en:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y1210(01):en:HTML). The latest Commission report on the action taken by it in the field of tax aid was adopted by the Commission on February 9, 2004. *Commission Report on the Implementation on the Commission Notice on the Application of the State Aid Rules to Measures Relating to Direct Business Taxation*, 1998 O.J. (C384), available at http://ec.europa.eu/comm/competition/state_aid/others/business/rapportaidesfiscales_en.pdf.

5. Cyprus Companies Law 2006, cap. 113, art. 354.

6. *Id.*

7. A detailed list of all required documents that should follow a petition, may be found in the Cyprus Companies Law, cap. 113, art. 354C(1), (2).

8. Cyprus Companies Law, cap. 113, art. 354(e)(1).

9. *Id.* at art. 354(g).

10. *Id.* at art. 354(g)(1).

11. *Id.*

a petition when legal measures or criminal and civil proceedings are brought against the company in its jurisdiction of initial registration.¹²

The amended Cyprus Companies Law permits not only a company to be redomiciled in Cyprus, but also for a Cyprus company to redomicile in another jurisdiction provided that its constitutional documents allow such an action, that it has obtained the prior consent of the Registrar, and that it duly submits a petition to the Companies' Register of the country/jurisdiction it wishes to redomicile.¹³

Cyprus has come a long way and its reputation as an international business centre has grown immensely not only due to the advantageous features of its new tax system and its network of double tax treaties, but also due to the tremendous efforts undertaken to streamline its tax and legal systems with EU requirements. The new amendment to the Cyprus Companies Law permitting corporate redomiciliation is likely to make Cyprus even more competitive in attracting companies from all over the world.

II. France

A. COPYRIGHT LAW

In August 2006, France enacted amendments to existing legislation on copyright and other related rights of the information society.¹⁴ These changes are far removed from the pragmatism of U.S. copyright law, and modify a number of aspects of the existing regime. In addition to reforming the rights of government employees¹⁵ and resale rights,¹⁶ and introducing the concept of exhaustion of rights,¹⁷ the law on exceptions to a monopoly was substantially overhauled.¹⁸ Now, if an exception is to be used, it must not disrupt the normal exploitation of the work or infringe the author's legitimate interests. The new exceptions introduced also include the temporary reproduction exception, which is obligatory on EU Member States under the sole exception rendered mandatory by the Directive of May 22, 2001.¹⁹

But the main debate regarding the changes centered on infringement in the digital environment and the development of peer-to-peer file exchange. The law continues to consider the unlawful exchange of files via the Internet as a criminal offense²⁰ despite the fact

12. *Id.* at art. 354(i).

13. *Id.* at art. 354(j).

14. Law No. 2006-961 of August 1, 2006, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 3, 2006, p. 11529, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=770004&indice=1&table=JORF&ligneDeb=1>.

15. Law No. 131-3-1, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

16. Law No. 122-8, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

17. Law No. 122-3-1, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

18. Law No. 122-5, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

19. Council Directive 2001/29/EC, art. 5(1), 2001 O.J. (L 167/10), available at http://eur-lex.europa.eu/comm/competition/state_aid/others/business/rapportaidesfiscales_en.pdf.

20. Law No. 335-2-1, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

that this practice is now widespread. Therefore, not only will infringers be open to criminal sanctions, but so will persons providing the means with which to make such exchanges (edition or provision of software). The Internet service provider also has a duty to make sure that its network is not being used for infringement purposes.²¹ Finally, the concept of quasi-infringement aims to sanction attempts to interfere with or disable technical protection measures.²²

B. ARBITRATION

On December 6, 2005, the French Court of Cassation held that arbitrators have a strict obligation to ensure that the time limit to make an award extends beyond the duration of the proceedings and includes a duty to request a judge to extend it in case of lack of agreement or failure of the parties to apply for it. Because the arbitrators in this case had let the time limit expire, the Court held that they could be subject to personal liability.²³

C. BUSINESS LAW

1. *Foreign Investment in France*

The Decree of December 30, 2005²⁴ amended the regulations on foreign investments in France in sectors regarded as sensitive, such as gambling, arms sales, dual technologies, or interception of communications. "The Decree is the first regulation to be issued in implementation of a Parliamentary Act dated December 9, 2004, which substantially reformed French foreign investment regulations."²⁵

The regulations consist of three different and independent regimes, covering the statistical declarations that must be made to the Bank of France, the declarations that must be made to the Treasury Ministry, and the prior authorizations for investment required by the Finance Ministry. The latter regime was the only one to have been amended. The Decree requires that prior to making an investment in specified sectors; foreign investors must notify the Finance Ministry of the proposed investment and receive authorization. The Decree imposes more stringent requirements on non EU-based investors than on EU-based investors.²⁶

21. Law No. 335-12, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

22. Law No. 335-3-1 & 335-3-2, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

23. Cour de Cassation [Cass. 1e Civ.][Court of Causation], Dec. 6, 2005.

24. Decree No. 2005-1739 of Dec.30, 2005, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 31, 2005, p. 20779, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=749809&indice=1&table=JORF&ligneDeb=1> (regulating foreign financial relationships and implementing Article L. 151-3 of the French Monetary and Financial Code).

25. Law No. 2004-1343 of Dec. 9, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 10, 2005, p. 20857, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=714278&indice=1&table=JORF&ligneDeb=1> (concerning simplification of the law, JO No. 287, December 10, 2004, at 20857). For a sense of the debate on these measures in France, see Bernard Carayon, Information Report No. 1664, French National Assembly, June 9, 2004.

26. *Id.* The definition of an EU-based investor is covered in Articles R. 153-2, 153-3, and R. 153-4.

The Decree extends the list of sectors affected and provides that conditions can be attached to the authorization given by the Finance Ministry, such as the sale of a sensitive activity to a “company [which is] independent from the foreign investor.”²⁷

2. Takeovers

In March 2006, the European Takeover Directive²⁸ came into effect in France after being enacted by the law of March 31, 2006.²⁹ It has adopted, perhaps a bit patriotically, the defensive mechanisms against takeovers required by the Directive; adding rules concerning stock warrants intended to block bids. But the reform goes beyond the framework of these defensive mechanisms and also makes it mandatory for there to be a public bid in the event of exceeding the threshold of one-third of the capital.³⁰ It also deals with squeeze-out procedures³¹ and concerted actions.³²

3. Business Secrecy

The protection of business secrecy before the Competition Authorities has recently been improved.³³ Under the new rules, once a business secret has been identified, a request may be made to include it in a confidential schedule. Once included, access to it is then limited, although such secrecy may be challenged under the principle of discovery. This development has gone some way towards modernizing of French competition law.

D. LABOR LAW

Known for being particularly exacting on companies, French labor law has undergone an unexpected change in 2006, due to the French Court of Cassation.³⁴ In January 2006, the Court ruled that restructuring (including dismissals) can be carried out with the aim of preventing future financial difficulties and maintaining the company’s competitiveness. This standard was qualified, however several months later, when, in a different case, the Court added that a threat to the company or group’s competitiveness must be proved.³⁵

27. *Id.*

28. Council Directive 2004/25/EC, 2004 O.J. (L 142/12) (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0025:EN:HTML>.

29. Law No. 2006-387 of March 31, 2006, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Apr. 1, 2006, p. 4882, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=758463&indice=1&table=JORF&ligneDeb=1>.

30. Law No. 433-3, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

31. Law No. 433-4, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

32. Law No 233-10-1, Journal Officiel de la République Française [J.O.] [Official Gazette of France], available at <http://www.celeog.fr/cpi/>.

33. Decree No. 2005-1668 of Dec. 27, 2005, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 29, 2005, p. 20216, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=749425&indice=1&table=JORF&ligneDeb=1>.

34. Supreme Court, Employment Chamber, January 11, 2006.

35. Supreme Court, Employment Chamber, May 31, 2006.

E. CREDIT LAW

The long awaited reform of sureties law in France was implemented in March 2006, creating a new Chapter IV of the Civil Code entitled "Sureties."³⁶ In addition to provisions addressing home equity loans (which can be assigned to provide collateral for debts other than those set out in the deed), and a real property annuity system ("*viager*") inspired by the U.S. system, the legislation updates, simplifies, and makes sureties law more efficient both for use domestically and internationally.

F. TAX LAW AND LBOs

With a view towards preventing undercapitalization, the Finance Law for 2006 considerably amended the regime for deducting intra-group interest within the framework of LBOs, strictly limiting it in relation to a reference interest rate and undercapitalizing threshold.³⁷ These rules will necessarily have an influence on the financing structure of LBOs.

III. Greece

Significant legal developments in Greece³⁸ include new statutes, laws, and administrative orders in the following areas: international law; antitrust law; banking and finance; energy and transportation; company and tax law; data protection; and culture. Relevant EU legislation has been incorporated into the Greek legal system.

A. LAW OF NATIONS/INTERNATIONAL LAW

During the calendar year of 2006, Greece approved bilateral agreements previously concluded with several countries regarding cooperation in the following areas:

- On July 19, 2006, the Greek Parliament approved the Greece-Jordan Agreement on Investments.³⁹ On the same day, it approved the Greece-Egypt Memorandum of Cooperation in the fields of Natural Gas and Oil.⁴⁰
- On June 16, 2006, amendments to the Greece-Netherlands Agreement on avoidance of double taxation was approved.⁴¹
- On June 21, 2006, the Greece-Bosnia-Herzegovina Agreement on international road transportation of goods and passengers was approved.⁴² On the same day, the

36. Decree No. 2004-346 of Apr. 21, 2004, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], Apr. 22, 2004, p. 7352, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=693216&indice=1&table=JORF&ligneDeb=1>.

37. Law No. 2005-1719 of Dec. 30, 2005, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], Dec. 31, 2005, p. 20597, available at <http://www.legifrance.gouv.fr/WAspad/Visu?cid=749765&indice=1&table=JORF&ligneDeb=1>.

38. Greece has a civil law codified legal system based on German (constitutional, civil), French (administrative, commercial), and Italian (criminal) legal systems. Greece is a Full Member State of the EU since 1981, and the EU law is part of the Greek legal system since then.

39. Law 3477/19.07.2006, 54 *Kodikas Nomikou Vematos* [KNB] 2006, 1153.

40. Law 3478/19.07.2006, 54 *Kodikas Nomikou Vematos* [KNB] 2006, 1153.

41. Law 3464/16.06.2006, 54 *Kodikas Nomikou Vematos* [KNB] 2006, 993.

42. Law 3466/21.06.2006, 54 *Kodikas Nomikou Vematos* [KNB] 2006, 993.

Agreement for GALILEO and GPS navigation systems was incorporated into national law, establishing measures for the full development of the systems in the Greek territory.⁴³

- On February 27, 2006, the Greece-Bulgaria Military Cooperation Agreement was transposed into national law.⁴⁴ On July 7, 2006, the Greece-United States Agreement on Defense Cooperation was extended for one more year.⁴⁵
- On January 11, 2006, the Greek Ministry of Foreign Affairs officially announced the details for the operation of cultural institutions in Greece and in Russia based on the Greece-Russian Federation Agreement on Cultural Cooperation.⁴⁶

B. ANTITRUST LAW

The Greek Competition Commission has been reorganized so that Section A of the Commission now deals with administrative and economic cases, mergers, and interim measures, and Section B deals with notifications, distribution contracts, and franchising contracts.⁴⁷ If a case is of major significance, the section issues a preliminary decision for the full member session of the Commission to try the case. In addition, the Commission will proceed with public consultation through the internet and publishes its decisions both on its own web site and that of the Ministry of Economic Development (transparency issues).⁴⁸ On May 30, 2006, Greece implemented⁴⁹ the EU Directive on takeover bids.⁵⁰

C. BANKING AND FINANCE

On May 8, 2006, Directive 2001/24/EC on the reorganization and winding up of credit institutions⁵¹ was incorporated into Greek law.⁵² Further, Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings, and investment firms⁵³ was incorporated on April 18, 2006.⁵⁴

43. Law 3465/16.06.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 993.

44. Law 3442/27.02.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 277. According to Article 28 of the Greek Constitution, all international treaties, conventions, agreements, and so forth, which are incorporated into Greek law, are typically superior to the domestic laws, which may be contrary to the provisions of such international treaties.

45. Announcement of the Ministry of Foreign Affairs 0544/AS 515/M. 5880/26.06/07.07.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 1123.

46. Announcement of the Ministry of Foreign Affairs 0544/AS 967/M. 5330/30.12.2005/11.01.2006, regarding Law 3411/2005 (in force since 14.12.2005), 54 Kodikas Nomikou Vematos [KNB] 2006, 7.

47. Decision 307/V/2006/25.05/04.07.2006 (OL), 54 Kodikas Nomikou Vematos [KNB] 2006, 1199.

48. Ministerial Decision of Minister of Development YA 3716/26.06/17.07.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 1261.

49. Law 3461/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 681.

50. Council Directive 2004/25/EC, 2004 O.J. (L 142/12) (EC), *available at* [http://www.cysec.gov.cy/Downloads/Events/EuropeanIssues/Directive%202004-25-EC\(En\).pdf](http://www.cysec.gov.cy/Downloads/Events/EuropeanIssues/Directive%202004-25-EC(En).pdf).

51. Council Directive 2001/24/EC, 2001 O.J. (L 125) (EC), *available at* http://www.iiiglobal.org/country/european_union/060922Wessels_2.PDF.

52. Law 3458/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 627.

53. Council Directive 2002/87/EC, 2003 O.J. (L 035) (EC), *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_035/l_03520030211en00010027.pdf.

54. Law 3455/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 541.

D. TRANSPORTATION AND ENERGY

On July 6, 2006, Greece implemented⁵⁵ Council Regulation (EEC) 3577/1992⁵⁶ and Council Directive 98/18⁵⁷ regarding the application of the principle of freedom to provide services to maritime transport within Member States.⁵⁸ Additionally, on June 16, 2006, Greece implemented⁵⁹ Directive 2003/42/EC on occurrence reporting in civil aviation.⁶⁰ In the area of electric energy and renewable energy sources, Greece incorporated Directive 2001/77/EC⁶¹ on June 27, 2006.⁶²

E. COMPANY AND TAX LAW

On May 21, 2006, Council Directive 2001/86/EC on the involvement of employees⁶³ in the European Company was adopted into the Greek legal system.⁶⁴ Council Directive 2003/123/EC on the common system of taxation⁶⁵ applicable in the case of parent companies and subsidiaries, was transposed⁶⁶ on April 7, 2006.

F. DATA PROTECTION

On June 28, 2006, Greece implemented Directive 2002/58/EC⁶⁷ on the processing of personal data and the protection of privacy in the electronic communications sector.⁶⁸

55. Presidential Decree (Order) 124/04/06.07.2006 amending article 164 of the Code of Public Maritime Law, 54 Kodikas Nomikou Vematos [KNB] 2006, 1123.

56. Council Regulation 3577/1992/EC, 1992 O.J. (L 364) (EC), *available at* <http://eur-lexeuropa.eu/LexUriServ.do?uri=CELEX:31992R3577:EN:HTML>.

57. Council Directive 98/18/ED, 1998 O.J. (EC), *available at* http://eur-lexeuropa.eu/LexUriServ/site/en/com/2002/com2002_0720en01.pdf.

58. For the road transportation, see above (international law).

59. Presidential Decree (Order) 120/30.05/16.06.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 980.

60. Council Directive 2003/42/EC, 2003 O.J. (L 167) (EC), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l-167/l_16720030704en00230036.pdf.

61. Council Directive 2001/77/EC, 2001 O.J. (L 283) (EC), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_283/l_28320011027en00330040.pdf.

62. Law 3468/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 1016.

63. Council Directive 2001/86/EC, 2001 O.J. (L 294) 22 (EC), *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_29420011110en00220032.pdf (supplementing the Statute for a European company with regard to the involvement of employees).

64. Presidential Decree (Order) 91/27.04/21.05.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 613.

65. Council Directive 2003/123/EC, 2003 O.J. (L 7/41) 41 (EC), *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_007/l_00720040113en00410044.pdf (amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States).

66. Law 3453/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 498.

67. Council Directive 2002/58/EC, 2002 O.J. (L 201) 37 (EC), *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_201/l_20120020731en00370047.pdf (concerning the processing of personal data and the protection of privacy in the electronic communications sector Directive on privacy and electronic communications).

68. Law 3471/2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 1071.

G. CULTURE

On July 12, 2006, the Institute of Youth was appointed to administer all EU programs for the young people of the European Union.⁶⁹

IV. Spain

A. GENERAL INFORMATION

Spain is a decentralized state, that is, a state formed by several autonomous regions that are constitutionally empowered to develop legislative and executive powers within their territory. Although not a federal state, the level of decentralization and autonomy of Spain's seventeen autonomous regions is comparable to that of federal states; local entities may also develop legislative and executive powers within their territory. Therefore, when considering legislative developments in Spain, attention must be paid not only to national legislative and executive measures, but also to regional or local regulations.

In addition, of course, Spain is a Member State of the EU and is therefore obliged to comply with European regulations, some of which are directly applicable in Spain.

B. ADMINISTRATIVE LAW

1. *Environmental Regulations*

Growing concern for environmental matters in Spain, in view of climate change symptoms and environmental catastrophes, lead to the enactment of several acts and decrees concerning the protection of the environment during 2006. Perhaps the most outstanding has been Royal Decree 1370/2006, adopting the National Plan to Allocate Rights of Emission of Greenhouse Effects (2008-2012).⁷⁰ However, Spain has also ratified several international protocols to prevent and combat pollution.⁷¹

2. *Alimentary Regulations*

In this area, the most notable development is Council Regulation 510/2006⁷² on the protection of the geographic indication and origin denominations of agricultural and alimentary products.

69. Presidential Decree (Order) 129/04/12.07.2006, 54 Kodikas Nomikou Vematos [KNB] 2006, 1123.

70. National Plan to Allocate Rights of Emission of Greenhouse Effects (B.O.E. 2006, 20530), available at <http://www.060.es/canales/legislacion/servicios/disposiciones/common/36128.pdf>. See also Regulating the Access to Information, Public Participation, and Access to Jurisdiction Rights in Environmental Matters (B.O.E. 2006, 13010), available at http://www.mma.es/portal/secciones/info_estadistica_ambiental/info_amb_ica/acceso_info/legislacion/pdf/ley27_2006accesoinformacion.pdf.

71. See the adhesion instrument to the protocol on cooperation, preparation and fight against the pollution by means of harmful and potentially hazardous substances, made in London, on March 15, 2000, and the ratification instrument to the protocol regarding the 1992 Treaty to prevent sea pollution caused by spills, made in London, on November 7, 1996.

72. Council Directive 510/2006, 2006 O.J. (L 93) 12 (EC), available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_2006/20060722en00060006.pdf (on the protection of geographical indications and designations of origin for agricultural products and foodstuffs).

3. *Competition Law*

a. Telecommunications and Audiovisual Regulations

In this area the highlight of 2006 was Royal Decree 920/2006,⁷³ which approved the general regulation of the radio and cable television broadcasting service. In addition, the Resolutions of the Telecommunications Market Commission, imposing specific obligations on the main operators in the telecommunications markets (especially, telephone operators) in order to guarantee market competition, have been especially decisive in the commercial development of new information technologies.⁷⁴

b. Energy

The energy market in Spain, particularly the electricity and oil sectors, has gone through several reforms by virtue of Royal Decree-Law 7/2006, implementing urgent measures in the energy sector.⁷⁵

C. LABOR LAW

Royal Decree 1331/2006,⁷⁶ which regulates the special labor relations of lawyers in firms, and the First Project of Law,⁷⁷ regulating the regime for independent contractors, are the most outstanding regulations in Spanish labor law in 2006.

D. CIVIL LAW

Regarding real property, there were two national regulations of significance in 2006. Firstly, Royal Decree 314/2006,⁷⁸ approved the Building Technical Code, the basic aim of

73. For the Approval of the General Regulation of the Radio and Television Broadcasting Service (B.O.E. 2006, 15301), available at <http://www.boe.es/boe/dias/2006/09/02/pdfs/A31532-31538.pdf>.

74. Resolution of the Industry, Tourism and Commerce Ministry (B.O.E. 2006, 2211) (which approves the definition and analysis of the market on the access and derivation of calls in public networks of mobile phones, the designation of operators with a significant market power and the imposition of specific obligations); Resolution of the Industry, Tourism and Commerce Ministry (B.O.E. 2006, 2756) (which approves the definition and analysis of the market on television signals transmission, the designation of operators with a significant market power, and the imposition of specific obligations); Resolution of the Industry, Tourism and Commerce Ministry (B.O.E. 2006, 4171) (which approves the definition and analysis of the market on termination of vocal calls in individual mobile networks, the designation of operators with a significant power of market and the imposition of specific obligations; and its notification to the European Commission is resolved); Resolution of the Industry, Tourism and Commerce Ministry (B.O.E. 2006, 4966) (on the definition and analysis of the market on termination of calls in individual public networks of each fixed line operator, the designation of operators with a significant market power and the imposition of specific obligations; and its notification to the European Commission is resolved); Resolution of the Industry, Tourism and Commerce Ministry (B.O.E. 2006, 3641) (on the definition and analysis of the market on local and national telephonic services available to the public rendered from a fixed site to resident clients, international telephonic services available to the public rendered from a fixed site to nonresident clients and international telephonic services available to the public rendered from a fixed site to non-resident clients, the designation of operators with a significant market power and the imposition of specific obligations; and its notification to the European Commission is resolved).

75. To Implement Urgent Measures in the Energy Sector (B.O.E. 2006, 11285).

76. For the Regulation of Lawyers (B.O.E. 2006, 20113).

77. First Project of Law, Regulating the Regime for Independent Contractors (B.O.E. 2006, 17021).

78. Approval of the Building Technical Code (B.O.E. 2006, 5515).

which is to set forth the minimum quality standards for buildings to guarantee safety, environmental protection, and energy savings, among other things. Secondly, Law 32/2006 was enacted in October 2006 to regulate the assignment of contracts in the construction sector.⁷⁹

E. INTELLECTUAL AND INDUSTRIAL PROPERTY AND DATA PROTECTION

In this area, there has been abundant legislative activity throughout 2006. Firstly, Law 23/2006⁸⁰ amended the Intellectual Property Law and introduced some innovative provisions. Secondly, resolutions of the Spanish Data Protection Agency, on July 12, 2006,⁸¹ and September 1, 2006,⁸² brought about the creation of an e-Registry, the approval of e-forms to submit petitions for registration in the General Registry of Data Protection, and changes to the nature of the information included in the catalogue of registered files. In addition, Law 19/2006⁸³ enlarged the defensive tools to protect intellectual and industrial property.

F. BUSINESS LAW

1. *Contracts*

Royal Decree 419/2006⁸⁴ amended Royal Decree 2485/1998,⁸⁵ regulating the regime governing franchising and the Franchisers Registry.

2. *Banking and Finance*

Foreign investment regulation in Spain during 2006 has been deeply influenced by the determination to foster foreign investment together with a commitment to fight against money laundering. In this context, there were two significant developments in 2006. Firstly, on May 3, 2006, the Economy and Finance Ministry issued an order⁸⁶ which increases the threshold for the obligation to declare to the Spanish authorities movements of cash or cash equivalents. The second principal development was the order from the Economy and Finance Ministry of July 28, 2006,⁸⁷ which reinforces the controls to be implemented by banks, investment funds, and other credit entities, on currency exchange and international transfers of funds, so as to detect, prevent, and hinder transactions related to money laundering.

79. Regulation of the Assignment of Contracts in the Construction Sector (B.O.E. 2006, 18205).

80. Amendment to the Intellectual Property Law (B.O.E. 2006, 12308).

81. Resolution of the Spanish Data Protection Agency (B.O.E. 2006, 13849) (by which the e-registry of the Spanish Data Protection Agency is created and which approves the e-forms, by means of which the petitions for registration of files with the General Registry of Data Protection shall be made, together with the formats and requirements to be met by notifications sent through electronic support).

82. Resolution of the Spanish Data Protection Agency (B.O.E. 2006, 16580) (which determines the information included in the catalogue of registered files with the General Registry of Data Protection).

83. To Enlarge the Defensive Tools to Protect Intellectual and Industrial Property (B.O.E. 2006, 9960).

84. Regulating the Regime Governing Franchising and the Franchisers Registry (B.O.E. 2006, 7458).

85. Regulating the Regime Governing Franchising and the Franchisers Registry (B.O.E. 2006, 27168).

86. Order Regulating the Declaration of movements of Cash or Cash Equivalents (B.O.E. 2006, 8467).

87. Order from the Economy and Finance Ministry (B.O.E. 2006, 14513).

3. *Company Law/Mergers and Acquisitions*

Of note regarding Spanish company law is the Royal Decree issued by the government on November 17, 2006, to allow the incorporation of Spanish Limited Liability Companies (*Sociedades de Responsabilidad Limitada*) through the Internet.⁸⁸ The basic aim of this Decree is to reduce time and costs in the incorporation procedures of such companies.

Also important, Law 13/2006⁸⁹ removed the system of controls applicable to transactions concerning the sale of strategic assets or capital stock of former state-owned companies to third parties (the so-called golden share provision).

V. Switzerland

A. GENERAL INFORMATION

Switzerland is a federal country so that legislation from the federal, cantonal (a canton is equivalent to a state), and municipal level has to be observed. All federal, and most cantonal laws, are available on the Internet.⁹⁰ The Federal Supreme Court publishes its recent decisions on its own website in the respective language (alternatively German, French, or Italian).⁹¹

B. INTERNATIONAL, CONSTITUTIONAL, AND ADMINISTRATIVE LAW

1. *International Law*

On June 28, 2006, the federal government issued its comprehensive report on its view of the relationship between Switzerland and the European Union. It contains the Swiss goals for European policy as well as a study on the effects of either cooperating with or becoming a member of the European Union.⁹²

2. *Constitutional and Administrative Law*

On January 1, 2006, a change to the Statute on Swiss Citizenship⁹³ became effective. It mainly facilitates the naturalization of foreigners as Swiss citizens. Children may become Swiss citizens after they have spent five years in Switzerland, provided their parents fulfill certain requirements.

88. Royal Decree to Allow the Incorporation of Spanish Limited Liability Companies through the Internet (B.O.E. 2006).

89. To Remove Controls Applicable to Transactions Concerning Former State-owned Companies to Third-parties (B.O.E. 2006, 9291).

90. The federal laws are provided in German, French, and Italian on the federal government's website: <http://www.admin.ch/ch/d/sr/sr.html> (choose French or Italian in the upper right-hand corner), where you can insert the number of the act or regulation (its "official number"), which is indicated in this text; cantonal laws may be found on www.admin.ch/ch/d/schweiz/kantone/index.html in the respective language of the canton. The government's website is very useful and also provides some information in English: <http://www.admin.ch>.

91. See <http://www.bger.ch>, with additional information. All cited decisions may be found under *Rechtsprechung* and there under *Urteile* ab 2000 by entering the indicated number.

92. Official Federal Publication, 6815.

93. [Federal Statute on the acquisition and the Loss of Swiss Citizenship] Sept. 29, 1952, 141.0.

C. CRIMINAL LAW

Because Switzerland is a federal state, there are twenty-six different cantonal statutes on criminal procedure. On December 21, 2005, the government issued its accompanying message to the draft law on the unification of the criminal procedure law.⁹⁴ It will take some time until this project is finalized in the form of a federal statute on criminal procedure.

Already, however, on December 13, 2002, the government enacted a comprehensive revision of the general rules of the Swiss Penal Code, which will become effective on January 1, 2007.⁹⁵ It introduces a new regime of penalties and correctional measures and reclassifies some crimes.

D. CIVIL LAW

January 1, 2007, is also the effective date for the new Statute on Same Sex Partnerships.⁹⁶ It provides rules for the formation, effects, and dissolution of such partnerships, which differ from those governing a marriage. But, in terms of mutual assistance, social security, law of succession etc., the rules are quite similar.

E. BUSINESS LAW

1. *Contracts*

In November and December 2005, the federal government decided to abandon all attempts to enact specific consumer-friendly laws on electronic commerce. The draft federal statute on e-Commerce, which incorporated some of the regulations adopted in the European Union, was withdrawn.⁹⁷ The revision of the Statute on Consumer Information, which would have reinforced consumers' rights, especially merchants' information duties, was also scrapped.⁹⁸

On January 1, 2006, a revision of the Statute on Private Insurance Contracts became effective.⁹⁹ Among a large number of other changes, it specifies the information to be disclosed by insurance companies and stipulates that an insurance contract terminates automatically upon the occurrence of certain events, unless the contract falls under certain specified exceptions. In transactions involving real estate or costly goods, it is now strongly advisable to ask for insurance coverage starting on the day of the transfer of title, which is the date of entry in the land registry in case of real property in Switzerland.¹⁰⁰

94. See Official Federal Publication 2006, 1085.

95. Official Federal Collection (of laws) 2006, 3459.

96. *Loi Fédérale sur le Partenariat Enregistré entre Personnes du Même Sexe* [Federal Law on Same Sex Partnerships] June 18, 2004, 211.231 (Switz.).

97. See the Federal Council's arguments for the withdrawal under Official Federal Publication 2006, 685, and the Federal Council's report on motions in Official Federal Publication 2006, 3123.

98. Federal Council's report on motions in Official Federal Publication 2006, 3123.

99. [Federal Statute on Insurance Agreements] April 2, 1908, 221.229.1. Text of the revision is at Official Federal Collection 2005, 5245.

100. Official Federal Collection 2005, 5245.

2. *Banking and Finance*

In December 2005, the government issued its accompanying message to the proposal for ratification of the Hague Convention on Trusts.¹⁰¹ Such ratification has not yet taken place, but the discussion surrounding the proposal indicates that most interested groups are in favor.

A change to the Statute on the Stock Exchange and Securities Trading provides that the Swiss supervising authorities may request information from foreign authorities.¹⁰² The Swiss authorities may themselves only disclose information to foreign supervising authorities if they use the information for their supervising function and if the receiving authorities are bound by professional confidentiality rules.¹⁰³

On December 9, 2005, the Federal Council decided to ratify the Hague Convention on the Law Applicable to Certain Rights in respect of Securities Held with an Intermediary—the so called “Hague Securities Convention”¹⁰⁴—which was then signed by Switzerland and the United States simultaneously. On November 15, 2006, the government issued its accompanying message to the respective law.¹⁰⁵

With respect to collective investment schemes, it is planned that the new Statute on Collective Investments Schemes will become effective on January 1, 2007. It brings a comprehensive modernization of the Swiss fund law, taking EU law into consideration.

Regarding contracts with asset managers, in 2006 the Federal Supreme Court ruled that kickbacks paid to asset managers by banks are owed to the customer.¹⁰⁶ Further, the asset manager is obliged to inform the customer about all kickbacks received.¹⁰⁷ In another case, the court ruled that such agreements might be qualified as consumer contracts, meaning that disputes could only be brought before the courts at the place of domicile of the customer.¹⁰⁸

3. *Company Law/Mergers and Acquisitions*

As previously reported, the full-scale revision of the limited liability company law has been completed and will become effective in the second half of 2007. It provided for the modernization of this type of company, and is accompanied by the revision of various provisions regarding limited liability corporations—the so-called little revision of company law—in order to harmonize the applicable rules.

Late in 2005, before the little revision of the company law became effective, a new and comprehensive revision of the law was initiated. The present draft proposes, among other topics: (1) the strengthening of corporate governance aspects and shareholder rights; (2) changes in the capital structure, such as the introduction of a capital range instead of a

101. Official Federal Publication 2006, 551.

102. [Federal Statute on the Stock Exchange and Securities Trading] Mar. 24, 1994, 954.1 art. 38. Text of the revision is at Official Federal Collection 2006, 197, 5607.

103. *Id.*

104. The Convention is available at http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=72.

105. Currently, there is only a draft available on the respective government website, http://www.ejpd.admin.ch/ejpd/de/home/themen/wirtschaft/ref_gesetzgebung/ref_wertpapier.html.

106. Decision of the Federal Supreme Court (DFSC) 132 III 460.

107. *Id.*

108. DFSC 132 III 268.

fixed corporate capital and the abolition of bearer shares; (3) new rules for the proceedings of the general assembly; e.g., the possibility to hold it simultaneously in different places and to use electronic devices; and, last but not least, (4) new accounting and auditing provisions.¹⁰⁹

On January 1, 2007, the new law on the transparency of managers' salaries regarding listed corporations will become effective. The law requires the disclosure of additional information concerning listed companies' managers' salaries and share holdings.¹¹⁰

Finally, the new statute on collective investment schemes introduces a new form of investment company, similar to that of the SICAV in Luxembourg.¹¹¹

With respect to mergers and acquisitions activity in Switzerland, please refer to the section on International Mergers and Acquisitions in this volume.

F. LITIGATION/ARBITRATION

Similar to its proposal with respect to criminal procedure, the government proposed to unify all cantonal civil procedure laws and issued its accompanying message on June 28, 2006.¹¹² Once enacted, this law will replace the twenty-six cantonal statutes.

On January 1, 2007, a new Statute on the Federal Court will become effective. Essentially, the statute provides for completely new rules regarding appeals before the Federal Supreme Court and the unification of procedural remedies.¹¹³

VI. Proposed Directive on Exercise of Shareholder Voting Rights

On January 5, 2006, the European Commission published a proposal for a Directive on the exercise of voting rights by shareholders (Proposal).¹¹⁴ The Proposal aims to remove a number of obstacles that frustrate or complicate the (cross-border) exercise of voting rights. The Proposal is a part of the Commission's ongoing legislative and other efforts to broaden and further deepen a true pan-European capital market. The Proposal was scheduled for a first reading by the European Parliament on November 20, 2006.

The Proposal follows two public consultations which led the Commission to conclude that effective and efficient (cross-border) exercise of voting and other shareholder rights currently encounters three categories of obstacles:

109. See for the text in German http://www.admin.ch/ch/d/qq/pc/documents/1275/Vorlage_d.pdf. The proposed changes affect a large number of articles of the corporation law in art. 620 until 763 of the Federal Statute dated Mar. 30, 1911, on the Supplement to the Swiss Civil Code (Part Five: Code of Obligations), Official No. 220.

110. Change of the Commercial Code, Official No. 220.

111. [Federal Statute on Collective Investments] June 23, 2006, 951.31.

112. Official Federal Publication 2006, 7221.

113. See Official Nos. 101, 173.72.

114. Proposal for a Directive of the European Parliament and of the Council on the Exercise of Voting Rights by Shareholders of Companies Having Their Registered Office in a Member State and Whose Shares are Admitted to Trading on a Regulated Market and Amending Directive 2004/109/EC, COM (2005) 685 final (Jan. 5, 2006), available at http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm.

- First, the share blocking system.¹¹⁵ In a number of jurisdictions, shareholders are still required to block their shares during a specific period; e.g., as of three days before the shareholders' meeting and until one day following that meeting, if they wish to exercise the corresponding voting rights at such shareholders' meeting. Such a self-imposed restriction on transfer carries an obvious financial risk for shareholders (i.e., being unable to sell for a limited period of time), with the result that some shareholders forgo the right to vote their shares.
- Second, the lack of effective communication between the issuer and its shareholders.¹¹⁶ Information with respect to shareholders' meetings often appears difficult to obtain, especially in a cross-border context due to the chain of intermediaries. As a result shareholders are often unaware or informed too late of a meeting being convened.
- Third, the lack of an effective and efficient (cross-border) proxy voting system.¹¹⁷ In a number of jurisdictions, it is still impossible or too burdensome, from a practical or cost perspective, to exercise voting rights if the shareholder is not willing to attend the meeting in person and/or holds its shares through intermediaries.

The Proposal aims to eliminate or alleviate these obstacles through the following measures:

- First, the replacement of the share blocking system by a record date system. Article 7 of the Proposal prohibits all forms of share blocking and allows—but does not obligate—Member States to introduce a record date system. Under such a system, a person who owns shares on, say, April 10th (the record date), would be permitted to attend and to vote his or her shares at a shareholders' meeting of, say, April 25th, irrespective of whether that person would still be the owner of the shares after the April 10th record date.
- Second, the introduction of rules ensuring that all shareholders meetings are convened with sufficient notice, and that all documentation announcing and concerning the meeting is easily and timely available. Article 5 of the Proposal requires Member States to provide for at least thirty calendar days notice; currently, under EU law the minimum period is fifteen calendar days. Under the Proposal, the notice must contain, *inter alia*, a description or indication of where and when the meeting will be held, how one can register for participation in the meeting, how one can participate and vote in the meeting (or where one can obtain information concerning such procedures), and where one can obtain copies of any draft resolutions. In addition, the notice must be published on the issuer's website at least thirty calendar days before the meeting.
- Third, the introduction of rules facilitating the exercise of voting rights by proxy or in absentia. Articles 10-13 of the Proposal introduce the right to vote by proxy,

115. Annex to the Proposal for a Directive of the European Parliament and of the Council on the Exercise of Voting Rights by Shareholders of Companies Having Their Registered Office in a Member State and Whose Shares are Admitted to Trading on a Regulated Market and Amending Directive 2004/109/EC, EUR. PARL. DOC. (CoOM 2005) 685, available at http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2006_0181_en.pdf.

116. *Id.* at 15.

117. *Id.* at 10.

procedures for appointment of a proxy holder, the right to vote in absentia (i.e., by mail or electronic means), and procedures concerning the voting of shares that are held by intermediaries in individual or omnibus (i.e., group) accounts.

In addition, the Proposal introduces the right of shareholders to place items on the agenda, to table resolutions, and to ask questions during the meeting.¹¹⁸

The Proposal should clearly improve the current situation and would further enhance shareholders' rights. It does, however, have an important shortcoming. The Proposal does not require intermediaries (often the owners of record) to accept, forward, and execute voting instructions of the ultimate beneficial owners of the shares. This is an important omission since a beneficial owner may still be unable to exercise the Proposal's proxy voting and other shareholder rights. One may hope that this omission will be addressed in the course of the legislative process, but that is as yet unclear.

118. Proposal, *supra* note 114, at art. 6.

