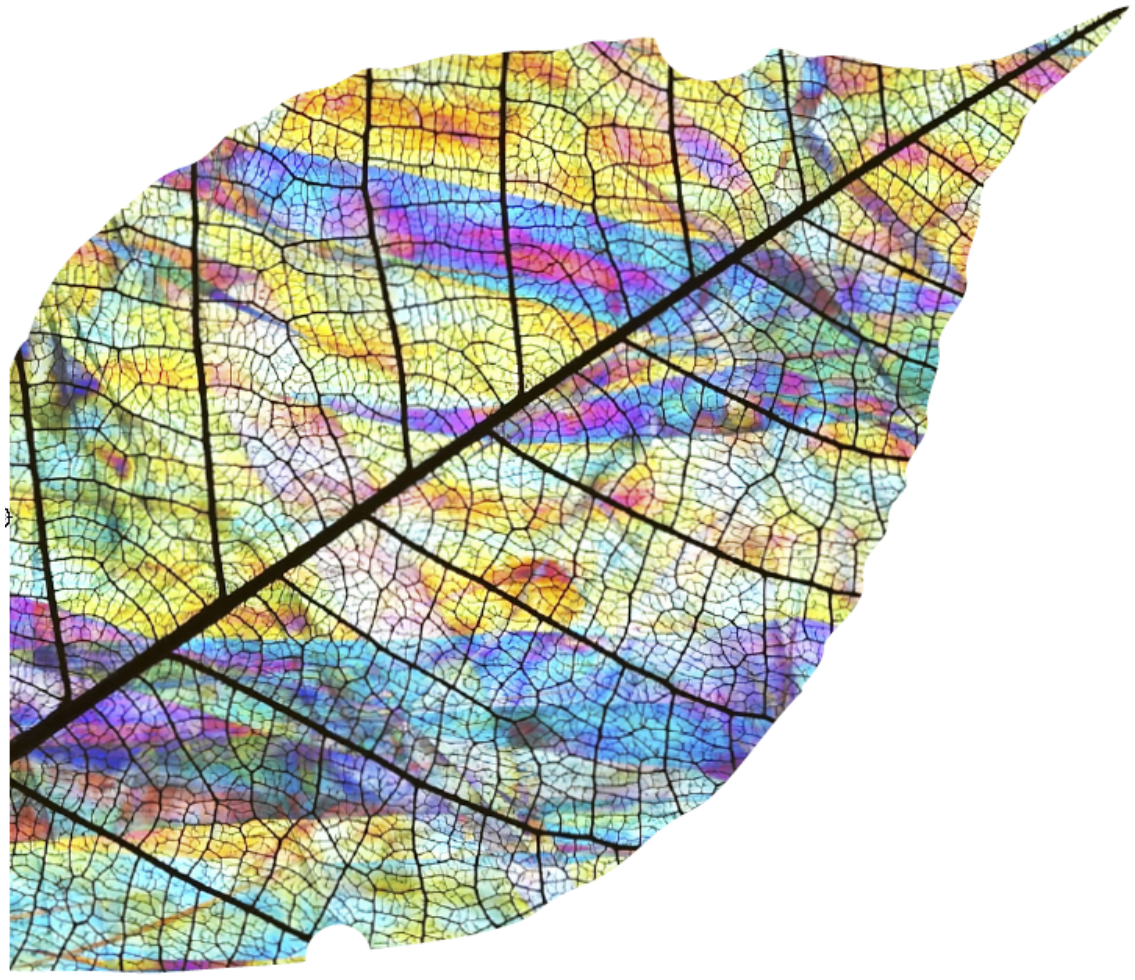
World Universities Comparative Law Project
Legal rating of Estonia
carried out by students at the University of Tartu

A production of the Allen & Overy Global Law Intelligence Unit



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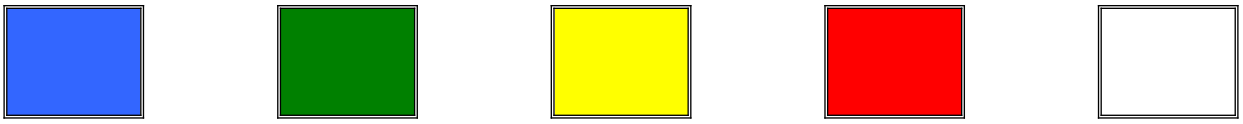

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Estonia was carried out by students at the University of Tartu.

The members of the Faculty of Law at the University of Tartu who assisted the students were Associate Professor in European Law, Dr. Carri Ginter and Lecturer Anna Markina.

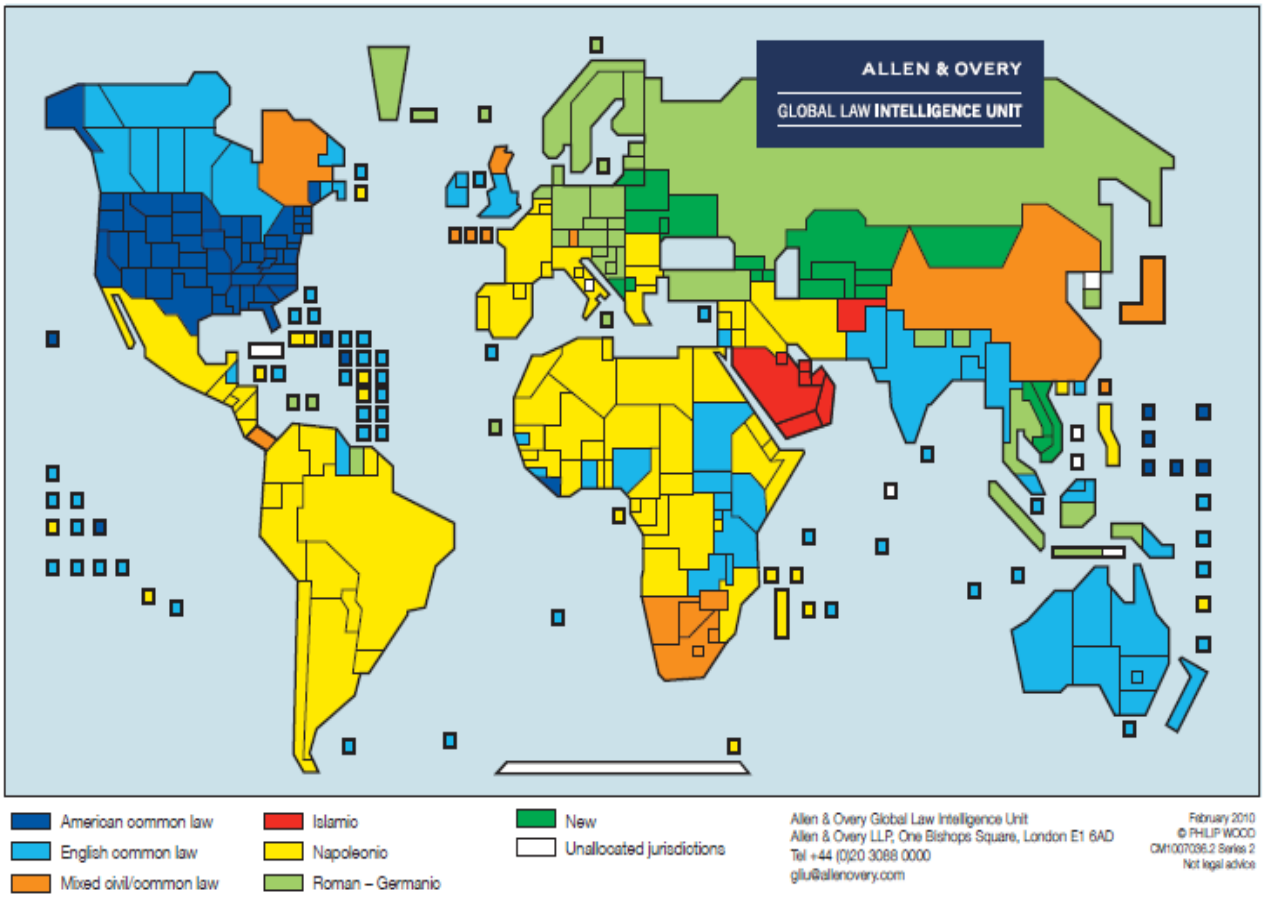
The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

- Tiina Sepa (-AS Swedbank)
- Nele Parrest (-The Office of the Chancellor of Justice)
- Marja-Liisa Soone (-AS Tallinna Vesi)
- Kristjan Endrikson (-Tele2 Eesti AS)
- Ervin Nurmela (-Pro Kapital Grupp AS)
- Ivar Kurvits (-Eesti Energia AS)
- Carri Ginter (- Law Firm SORAINEN)
- Reimo Hammerberg (- Law Firm SORAINEN)
- Maria Pihlak (-Law Firm SORAINEN)
- Triin Toom (-Law Firm SORAINEN)

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

We are delighted to present the legal risk rating of Estonia, which is part of the World Universities Comparative Law Project. We sincerely hope that our research will give an impression on Financial and Corporate Law of Estonia.

The results are presented by using color-coded methodology and all statements are provided with comments. The commentary section of the project gives a broader overview of the key points on the subject matter and also provides the reader with the most critical points, where possible problems might arise.

The Estonian legal system in general, is highly inspired by both Roman and Germanic laws and belongs to the continental European legal tradition. Today, as Estonia is part of the European Union, Estonian law has to be in accordance with EU law. In addition, various and generally recognized principles of international law and binding international treaties form an important part of Estonian law. Last but not least, an important source of law in Estonia is the case law of the Supreme Court, which is decisive with regard to issues of interpretation of law and in case there are gaps in legislation that need to be bridged. Overall, the Estonian legal system is founded upon the principle of the priority of legislative acts as a source of law and their precedence over any other sources, such as judicial practice, doctrine or custom. In general, the Estonian legal system follows the classic division into private, public and criminal law.

The legal risk rating project of Estonia was carried out by the students of University of Tartu. The Faculty of Law at the University of Tartu, being one of the four oldest faculties since the alma mater was founded in 1632, has the best legal research potential in Estonia and aims to be completely up to date with respect to important legal aspects. According to QS World University Rankings 2014/15, University of Tartu ranks 379, making the university one of the top 3% of the world's best universities. The Faculty of Law is constantly improving and upgrading the educational curriculum to meet the current and future expectations of the society.

The World Universities Comparative Law Project is coordinated by Law Firm SORAINEN. The aim of the project is perfectly representing the visions and values of SORAINEN. Teamwork and know-how sharing, two of the main corporate values of Law Firm SORAINEN, are all that this project is about. It is an honour for the Law Firm SORAINEN to have been selected as a contributor to this project. We are grateful to the four students at University of Tartu for participating in this project and expanding their international and practical experiences. Law Firm SORAINEN expresses their full support for this project.

Dr Carri Ginter,

partner at Law Firm SORAINEN, associate professor in EU law at the University of Tartu

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Estonia with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

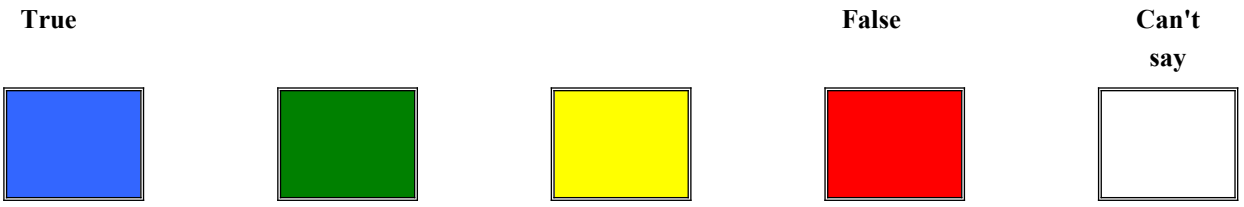
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at University of Tartu. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of University of Tartu, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Estonia. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a meatter of policy as to who the law should protect.

Q1 In Estonia, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
X				

Comment:

In Estonia, set off is permissible through Article 197 of the Law of Obligations Act which provides that if two persons (parties to a set-off) are required to pay each other a sum of money or perform another obligation of the same type, either party (the party requesting set-off) may set off the claim thereof against the claim of the other party if the party requesting set-off has the right to perform the obligation thereof and to require performance from the other party.

Set-off of mutual debts is also possible on the insolvency of a debtor. The creditor has the right to set off mutual debts on the insolvency of a debtor if the following prerequisites have been met:

- The claim has been defended (that means that at the general meeting of creditors no objections to the claim were filed).

- The general prerequisites for set-off have been met (regulated in Article 197 of the Law of Obligations Act)
- The last distributing proposal has not been submitted to the court.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Estonia, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
	X			

Comment:

In Estonia, it is possible to create universal security to secure present and future claims according to the Law of Property Act § 279. However, according to court practice, contracts including universal security can be declared void if the future claims are not defined sufficiently- sufficient defining means that it has to be possible to define the debtor, the content and nature of the debt and the basis for the claim. So, according to the law, it is possible to secure all future and present claims, but court practice defends the debtor by requirements that the claims should be sufficiently defined.

The sale of secured assets happens through the court and public auction. Upon declaration on bankruptcy, the debtor's right to manage and dispose of the bankruptcy estate transfers to the bankruptcy trustee. The remuneration of a trustee shall be calculated on the basis of the money which has been received and included in the bankruptcy estate as a result of the sale and recovery of the bankruptcy estate.

There is a certain period of time between the commencement of the bankruptcy proceeding and the issuing of a bankruptcy order. This period of time is necessary for ascertaining the economic situation of the debtor and ensuring the preservation of assets of the debtor to the highest possible extent. The court can appoint an interim trustee for the performance of these two tasks.

Companies can submit an application to the court for the judicial reorganization of the company. The court suspends enforcement proceedings conducted regarding the assets of the undertaking until the reorganization plan is approved or reorganization proceedings are terminated.

According to the Estonian bankruptcy law, the secured creditors' claims are satisfied first to the extent of the money received from the sale of the pledged object in bankruptcy proceedings. Before satisfying the secured creditor's claim, the sales revenue can be reduced by up to 15%, covering all bankruptcy costs and administration fees. Currently this 15% cap is established by law and confirmed by the Supreme Court.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Estonia has a universal trust for all assets.

True			False	Can't say
			X	

Comment:

Estonian Law does not include the concept of trust and trusts cannot be set up under Estonian law. Estonia has not signed the Convention on the Law Applicable to Trusts and on their Recognition (1 July 1985, The Hague).

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market

abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Estonia, the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
		X		

Comment:

In Estonia, according to the Commercial Code article 180 section 5^1 and article 306 section 3^1 the members of the management board are obligated to submit the bankruptcy petition of the private limited company or public limited company to a court in case a company is insolvent and the insolvency, due to the company's economic situation, is not temporary. The management board is obligated to file for insolvency promptly but not later than within twenty days after the date on which the insolvency became evident.

In Estonia, it is required that the members of the board shall perform duties with due diligence. A director will be held personally liable only if it appears that he or she has led the company to insolvency or deepened insolvency by making a grave error in management or made it intentionally. According to the Bankruptcy Act article 28 section 2 a grave error in management is an intentional violation of the obligations of a debtor who is a natural person or of a member of a management body of a debtor who is a legal person or violation of such obligations through gross negligence. In case directors cause or deepen insolvency, it will be most likely interpreted as grave error, because the prerequisite of grave error is large damage to the company, which bankruptcy most certainly is. If the director proves that he or she performed all obligations with due diligence and bankruptcy happened despite that, he or she will be released from liability.

Causing insolvency is also a criminal act according to Penal Code article 384 section 1. If the director knowingly and intentionally performs actions that lead to or cause a company's insolvency, he or she might be held criminally liable and punished by a pecuniary punishment or up to three years' imprisonment.

In reality, there is little practice of Supreme Court cases concerning civil liability and criminal liability in case of causing or deepening insolvency and not enough to say that disputes have one resolute outcome.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Estonia permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
			X	

Comment:

In Estonia, the Commercial Code clearly prohibits a company from granting any loans to a person who wants to acquire this company's shares.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Estonia is open and has few restrictions.

True			False	Can't say
		X		

Comment:

Estonian public takeover regime is based on the European Takeover Bids Directive and therefore it is rather strict. In Estonia, the main rules considering public takeover are stated in the Securities Market Act and The Rules for Takeover.

The amendment to the Securities Market Act stipulates that a person obtaining a controlling interest in a listed company has an obligation to make a takeover bid to all remaining shareholders.

In the case of a friendly takeover offer there are assumedly no problems, but the problems may rather come forth in the hostile takeover situation. Namely the board neutrality rule excludes the management's possible courses of action in the context of frustrating the bid. Safeguards are allowed if the management obtains the prior approval of the shareholders in general meeting. The main problem here is that if it is a hostile takeover, the management may not have enough time to give necessary advice to the shareholders, and the implementation of the defensive measures could be late. As a result, the control of the company may go to the offeror before the shareholders could receive any prior information from the board. This may result in a lower stock price and could harm the company as a whole.

Due to the board neutrality rule the companies of the states, which have not made the board neutrality rule mandatory, have certain advantages over the companies of the states where the board neutrality rule has been made mandatory.

The bidder must treat all shareholders holding the same type of shares equally in all aspects. This also means that the purchase price of a share, which serves as the object of a mandatory takeover bid and is stated in the mandatory takeover bid, has to be fair.

A fair price is the highest price, taking into account all the circumstances relating to the securities market and trade of the share and the criteria provided by the law.

In Estonia, a squeeze-out is possible as one of the main means of obtaining control of a public company. If the bidder has acquired more than 90% of the target's share capital representing voting rights through a takeover bid, at the bidder's request, the general meeting of the target's shareholders may decide on the takeover of the remaining shares belonging to target minority shareholders for fair compensation.

There is a fixed timetable to public offers. For example, the term for acceptance of an offer made by a takeover bid is 28 - 42 days based on which the offeror shall determine the term of the takeover bid.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Estonia, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
	X			

Comment:

In Estonia, heads of terms might be understood as pre-contractual negotiations, which is regulated in the Law of Obligations Act enactment 14. Generally, the pre-contractual negotiations and therefore the “heads of terms” are not legally binding, but they are legally binding to the extent that there is breach of pre-contractual obligations which are stated in the law.

There are obligations concerning exchange of information - the parties are obligated to consider and follow each other’s interests, they have to inform the other party of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest. The information shared has to be truthful and parties must not hide important facts from the other party. There is no obligation to inform the other party of such circumstances of which the other party could not reasonably expect to be informed. In addition, the principle of good faith has to be followed when entering into pre-contractual negotiations, meaning the party may not engage in negotiations in bad faith, in particular if the party has no real intention of entering into a contract, nor break off negotiations in bad faith. The above mentioned events will result in a possibility to demand compensation for damage, if the damage was due to breach of pre-contractual obligations. Also for example, the party can rely on the pre-contractual obligations in case the party would not have entered into contract, if false information forwarded by the other party was the reason entering into contract.

It must be noted, that even though the above mentioned principles are the only legally binding laws in case of “heads of terms”, there are still some principles that have to be taken into account. In case of dispute, according to Law of Obligations article 29 sections 1, 4 and 5 clause 1 a contract shall be interpreted according to the actual common intention of the parties and the circumstances in which the contract was entered into, including the pre-contractual negotiations. If the actual common intention of the parties cannot be determined, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances. This is also applied, when interpreting the willingness of parties to apply heads of terms to future contract. If the parties express in the contract, that “heads of terms” are also subject to contract, the court will take the information stated in the “heads of terms” into consideration. Therefore it is wise not to put any controversial information into “heads of terms” and the actual contract.

The parties can exclude all previous agreements, conduct and also “heads of terms” by using the merger clause, stating in the contract that parties have agreed in a written contract that the contract prescribes all of the terms of the contract, then it can be made sure no obligations shall rise from “heads of terms”.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Estonia, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True		False	Can't say
	X		

Comment:

In Estonia, the Law of Obligations Act states freedom of contract and the parties have the right to state events which can result in the termination of contract. Estonian law does not give permission to terminate contracts immediately without fundamental breach of contract, meaning the reason for termination cannot be relatively trivial. Parties themselves can agree upon what will be interpreted as a fundamental breach of contract which may result in termination. The Estonian Supreme Court has ruled in case 3-2-1-100-07, that the relevant articles (116 and 196) in the Law of Obligations Act do not define what can be interpreted as fundamental breach of contract and do not give an ultimate record of fundamental breach of contract situations. It supports the fact that parties themselves can agree upon what is interpreted as fundamental breach.

Despite the fact that the definition of fundamental breach is incomplete, parties are not entirely free to interpret fundamental breach themselves. There are certain written principles that have to be followed in order to be able to use the termination clause. According to the General Part of the Civil Code Act article 86 sections 1 and 2 the contract is void if it is contrary to good morals or public order, e.g. the transaction has been entered into under conditions which are extremely unfavourable for the other party or the value of mutual obligations arising for the parties is out of proportion contrary to good morals. In addition, the General Part of the Civil Code Act article 138 and the Law of Obligations Act article 6 state that the parties have to follow the principle of good faith, which means that rights shall be exercised and obligations must be performed in good faith and must not be exercised in an unlawful manner or with the objective to cause damage to another person. The termination clause shall not be applied to an obligation if it is contrary to the principle of good faith. Generally the parties should be able to agree upon what will be interpreted as fundamental breach, but the above mentioned principles must be applied, otherwise the termination clause shall not be applied by the court and the law does intervene.

The question remains, whether a “relatively trivial” breach might be agreed to be fundamental breach. This possibility should be denied, because the courts will interpret whether under all the circumstances the breach of contract is fundamental and if a “relatively trivial” breach might cause the injured party to lose interest in

continuing the contract. As courts take the position of an objective and reasonable person, they will most likely not apply the termination clause, because a relatively trivial breach cannot be a reason for a reasonable person to terminate the whole contract.

Even in case the court has found the breach of contract to be fundamental there are certain laws stating that use of termination clauses cannot be immediate. In some cases an additional term for performance must be offered, e.g. if one party has failed to deliver the goods on time. Also, the Law of Obligations Act article 116 section 3 states that in case the contractual obligations are to be performed in parts and fundamental breach of contract is committed only with regard to one obligation or some obligations or one part or some parts thereof, the injured party may withdraw from the contract only with regard to such obligation or part of an obligation. In such case, the injured party may withdraw from the entire contract only if the party is justifiably not interested in partial performance or if the non-performance is fundamental with regard to the contract as a whole. According to the Law of Obligations Act article 196 section 1, either party to a long-term contract may cancel the contract with good reason without giving advance notice, in particular if the party cancelling the contract cannot reasonably be expected to continue performing the contract until the due date agreed upon or until expiry of the term for advance notice taking into account all the circumstances and the mutual interests of the parties (extraordinary cancellation). According to article 196 section 2, if non-performance of a contractual obligation by the other party provides good reason for cancelling the contract, the contract may only be cancelled if the other party fails to render a conforming performance within the term granted therefor.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Estonia, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
	X			

Comment:

If the exclusions of liability between sophisticated companies are clear in commercial contracts, most of them will be upheld in Estonia. Exceptions are enacted in the Law of Obligations Act.

The exception for a sale of goods contract is stated in article 221 (2): the seller shall not rely on an agreement which precludes or restricts the rights of the purchaser in connection with the lack of conformity of a thing if the seller is aware or ought to be aware that the thing does not conform to the contract and fails to notify the purchaser thereof.

General clauses are stated in articles 42 and 106. Article 42 (1) of the Law of Obligations Act enacts that a standard term is void if, taking into account the nature, contents and manner of entry into the contract, the interests of the parties and other material circumstances, the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations arising from the contract to the detriment of the other party. Unfair harm is presumed if a standard term derogates from a fundamental principle of law or restricts the rights and obligations arising for the other party from the nature of the contract such that it becomes questionable as to whether the purpose of the contract can be achieved. Invalidity of standard terms and the circumstances relating thereto shall be assessed as at the date of entry into the contract.

Article 106 (2) states that agreements under which liability is precluded or restricted in the case of intentional non-performance or which allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee or which unreasonably exclude or restrict liability in some other manner are void.

The parties may, for instance, agree on the application of fault-based liability (Article 104); in such a case, objective standards are applied to the establishment of a person's culpability: to identify carelessness or gross negligence, the behaviour of the person is compared to the care necessary.

In conclusion, exclusions of liability in commercial contracts are generally enforced, however the contractual freedom is not unlimited.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Estonian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Estonian public policy and mandatory statutes.

True			False	Can't say
X				

Comment:

In Estonia, the application of foreign law is regulated by conventions, international treaties, Rome I regulation ((EC) No 593/2008) and the Estonian Private International Law Act. In case of conflict between Estonian law and an international agreement, the latter is superior to Estonian law.

As Estonia is a member state of the European Union, Rome I regulation on the law applicable to contractual obligations is applicable to disputes between parties from different EU member states. The heart of the regulation is that the contract shall be governed by the law chosen by the parties. Any law specified by the regulation shall be applied whether or not it is the law of Member State. The choice of the parties shall not prejudice the application of provisions of the law (mandatory rules) of the country which is in fact most closely connected to the dispute. The regulation applies to all contracts that are concluded after 17.12.2009. Contracts that are concluded between 1.10.2006 and 17.12.2009 are subject to the 1980 (EC) Convention (80/934) on the Law Applicable to Contractual Obligations (the Rome Convention), which was the basis for Rome I regulation and foresees similar grounds for voluntary choice of law by the parties as Rome I regulation.

Estonia has legal assistance treaties with Ukraine and Russia. The treaty with Russia (article 38 section 3) gives parties freedom to agree on the law applicable to the contract. The treaty with Ukraine also includes a clause (article 31 section 3) whereby parties can agree on the law applicable to the contract. Estonia has additional legal assistance treaties with Poland, Lithuania and Latvia, but the Rome I regulation takes precedence over these treaties in determining the applicable law.

The Estonian Private International Law Act (PILA) is applicable only when Rome I, Rome Convention and other conventions and treaties are not applicable. According to PILA, contract shall be governed by the law of the state agreed upon by the parties. However, foreign law shall not be applied if the result of such application would be in obvious conflict with the essential principles of Estonian law (public order). In addition, there are mandatory rules of Estonian law, which cannot be derogated by contract. Upon conflict, Estonian law applies.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Estonian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
X				

Comment:

As Brussels I regulation (recast) regulates agreements that a court of a Member State is to have jurisdiction, the Hague Convention of 30 June 2005 on Choice of Court Agreements (in force on 10 October 2015) will regulate agreements that a court of a State, that is not a Member State, is to have jurisdiction. The interplay between the instruments is complex.

Brussels I regulation (recast) article 25 (1) states that if the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State.

Furthermore, Estonia has an agreement on legal assistance and legal co-operation in Civil, Family and Criminal matters with Ukraine (Agreement of the Republic of Estonia and Ukraine on Legal Assistance and Legal Co-operation in Civil and Criminal Matters) and Russia (Agreement of the Republic of Estonia and the Russian Federation on Legal Assistance and Legal Co-operation in Civil, Family and Criminal Matters). For example, the Russian legal assistance agreement states, according to article 21 section 1, that the courts of the contracting parties shall settle disputes, if there is written agreement of the contracting parties. In case such an agreement exists, the court shall end the proceedings under defendant's statement, if the statement is made before objections about the merit of the claim.

Estonia has additional legal assistance treaties with Poland, Lithuania and Latvia, but the Brussels I regulation takes precedence over these treaties.

In conclusion, Estonian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Estonia, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Estonian courts.

True			False	Can't say
X				

Comment:

Estonia has signed and ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Therefore contract parties are allowed to submit disputes to a foreign arbitral tribunal by arbitration agreements. As stated in article 754 (1) of Code of Civil Procedure, the decisions of arbitral tribunals of foreign states are recognized and accepted for enforcement in Estonia only pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and other international agreements.

Nonetheless, according to section 718 of the Code of Civil Procedure, the object of an arbitral agreement may be a proprietary claim. An arbitral agreement concerning a non-proprietary claim is valid only if the parties are able to reach a compromise concerning the object of the dispute.

Under the Code of Civil Procedure an arbitral agreement may be entered into as an independent agreement, or as a distinguishable term, which is a part of a contract. Article 719 (1) requires that an arbitral agreement must be entered in a format, which can be reproduced in writing. Failure to comply with the format requirement does not affect the validity of an agreement if the parties agree to the resolution of the dispute by an arbitral tribunal.

In accordance with article 718 (2) of Code of Civil Procedure an arbitral agreement shall be null and void if its object is:

1) a dispute concerning the validity or cancellation of a residential lease contract, and vacating a dwelling located in Estonia;

2) a dispute concerning the termination of an employment contract.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Estonia, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
X				

Comment:

Under Estonian law, traditional class actions as such are not regulated and therefore opt-out class actions are not possible. Opt-out class actions would violate some rights provided by the Constitution of Estonia, mainly the person's right to attend court hearings held in their case.

Although opt-out class actions are not permitted in Estonia, the Code of Civil Procedure provides procedures that are similar to the opt-in class action procedures. For example, it is possible to join different actions related to the same subject matter into one proceeding (Article 374) and to file a joint action (Article 207). However, these kind of actions should be considered as a multitude of individual lawsuits and different from traditional opt-in class actions as each party participates in the proceeding independently with regard to the opposite party. In addition to that, joining claims or filing a joint action does not mean that all of the claims are transformed into one.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Estonia, nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
	X			

Comment:

Estonian nationals and local corporations can mostly own land absolutely.

However, there are some restrictions for corporations on acquisition of agricultural and forest land. According to Article 4 of the Restrictions and Acquisition of Immovables Act, if a local legal person wants to acquire an immovable which contains ten hectares or more of forest or agricultural land, they are required to have been engaged for three years immediately preceding the year of making the transaction of acquisition of the immovable, in production of agricultural products or in forest management.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Estonia is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
X				

Comment:

According to the Article 51 of the Law of Property Act a land register shall be maintained concerning immovables and related real rights. In Estonia one of the requirements for acquiring an immovable is an entry made in the land register. Therefore most of the land is registered in a land register.

Still, Article 8 of the Land Register Act provides that immovables belonging to the state or a local government shall be entered in a land register only when they are encumbered with a real right or if the owner requests it. Also some of the land that has not been privatized yet (about 4% of Estonian territory) is not registered in the land register.

In addition to ownership, the Estonian land register includes information about different real rights encumbering the immovable, such as servitudes, encumbrances, rights of superficies, rights of pre-emption and mortgages. Notations about longer-term leases may be entered in a land register, but this is not common in Estonia.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Estonia, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
	X			

Comment:

Obtaining the permits for the change of use of land in Estonia is rather easy. According to the Land Cadastre Act upon change of the purpose of the use of a construction work or a part of it, the local government gives out the permit for the change of use of land on the basis of the purposes mentioned in the permit of use of the construction work. If change of the use of land results in a building for which the preparation of a detailed plan is not mandatory, the local government issues a permit on the basis of the building permit.

Therefore, if the change does not require a detailed plan, obtaining a permit is not hard. In case the preparation of a detailed plan is mandatory, the process is longer and consists of different stages that are established in the Planning Act. These are for example the public display of plans, project preparation and applying for building permits.

If a property is used for commercial purposes, then the use of land should be changed to commercial land use.

According to the Building Act Article 23, building permits are issued by local authorities. The application for a building permit should be filed by the owner of the land or of the construction work. In some cases it can be filed by a co-owner of the construction work, pursuant to a decision of the majority of the co-owners. To obtain a building permit an application for the permit and building design documentation must be submitted. Also the energy performance certificate must be presented, if needed. Finally, the state fee must be paid. If some of the mentioned requirements are not fulfilled, local authorities have the right to refuse to issue a building permit.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Estonia, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
		X		

Comment:

The most important statutes and rules regulating the activities in the labour market are the Employment Contracts Act and several enactments of the Government and Ministries of Estonia.

The relationship between employers and employees in Estonia is mainly set through the employment contract. The Employment Contracts Act enacts mandatory terms that an employment contract is required to include, in the absence of which the contract is void. The employment contract must be in writing if the term of employment exceeds 14 days although failure to adhere to the format requirements will not invalidate the employment contract. The parties are free to agree the terms of employment subject to those complying with mandatory terms set out in law. Probationary periods (maximum 4 months) are common in Estonia.

The Estonian government approves the minimum wage every year with its decree. Since January 1st 2015, the minimum wage for full-time employees is 390 euros a month.

The standard working time for a full-time employee in Estonia is eight hours a day, five days per week. Overtime is allowed by mutual agreement. The working schedule together with overtime shall not exceed on average 48 hours per a period of seven days over a calculation period of up to four months, unless law has provided a different calculation period. Employer and employee may agree on a longer working schedule than 48 hours if the working schedule does not exceed on average 52 hours per a period of seven days over a calculation period of four months and the agreement is not unfair to the employee. An employee may cancel the agreement at any time, giving two weeks' advance notice thereof.

Employees are entitled to a minimum of 28 vacation days per calendar year. National holidays and public holidays are not included in the vacation duration calculations and if there is a state or public holiday during the employee's holiday period, the holiday is extended by the equivalent number of days.

Female employees are entitled to take up to 140 calendar days of pregnancy and maternity leave. Such leave must start between 30 and 70 days prior to the expected birth. During such leave, the Health Insurance Fund pays a benefit equal to the woman's average daily income.

Employees are protected against discrimination on the grounds of sex, racial origin, age, ethnic origin, etc. Taking Article 3 of The Employment Contracts Act as an example, an employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act.

An employee dismissed by reason of redundancy will be entitled to a severance payment on termination. The level of the payment is one month's average salary. The Unemployment Insurance Fund may pay additional compensation depending on the employee's length of service. The payments are calculated using the last six months' average earnings.

Environmental restrictions

Q18 In Estonia, the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment:

The General Part of the Environmental Code Act provides fundamental protection for the environment. Estonia has developed many special laws on environmental protection including the Sustainable Development Act, Nature Conservation Act, Water Act, Ambient Air Protection Act, Industrial Emissions Act, Fertilisers Act, Forest Act, Chemicals Act, Environmental Liability Act, and Environmental Charges Act etc.

The Estonian legal system is subject to international law as well as European Union law. Consequently, general principles and norms of international law and directly applicable rules of European Union law form an integral part of the national legal system. The European Union's legal enforcement itself holds over 200 legal acts and these legislative measures cover all environmental sectors, including water, air, nature, waste, noise, and chemicals, and others which deal with cross-cutting issues such as environmental impact assessment, access to environmental information, public participation in environmental decision-making and liability for environmental damage.

Estonian environmental law holds many environmental principles. Article 1 of the Environmental Liability Act for instance regulates that the prevention and remedying of damage caused to the environment is based on the polluter pays principle.

Estonia has strict requirements and high standards of environmental protection.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Estonia, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment:

The acquisition and functioning of companies in Estonia is regulated in the Commercial Code. The Commercial Code does not set any restrictions on foreigners acquiring local companies. The Commercial Code states that the controlling bodies of companies are the management board, general meeting and supervisory board. According to Estonian law, there are not any different restrictions for foreigners on becoming a member of these bodies. Therefore, they may freely own and control local companies just as Estonian citizens. The acquisition and control of protected industries is regulated in different acts, such as the Credit Institution Act (banks), the Creditors and Credit Intermediaries Act, the Estonian Defence League Act (defence).

Exchange controls

Q20 In Estonia, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
X				

Comment:

There are no exchange controls in Estonia. Businesses may hold foreign currency in their accounts, have foreign bank deposit accounts and borrow in foreign currency. Foreign currencies can be sold and bought freely.

Alien ownership of land

Q21 In Estonia, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True		False	Can't say
	X		

Comment:

As for ownership of land in Estonia**,** the restrictions are regulated in the Restrictions on Acquisition of Immovables Act. The Acquisition of Immovables Act provides the restrictions on the acquisition of immovables used as profit yielding land (agricultural land) arising from public interest and the restrictions on the acquisition of immovables arising from national security reasons.

The restrictions are different for a legal person of a country that is a contracting party to the EEA Agreement or a member state of the Organisation for Economic Cooperation and Development (OECD) (Contracting party) and for a legal person of third countries. Contracting parties have the same rights as nationals to own or lease land without a permit.

Article 4 of the Restrictions on Acquisition of Immovables Act regulates that all legal persons of Estonia or Contracting states have the right to acquire an immovable which contains less than 10 ha of agricultural or/and forest land without restrictions. If the legal person would like to acquire an immovable containing more than 10 ha of agricultural or forest land, then the legal person has to have been engaged in production of agricultural products (if acquiring agricultural land) or in forest management (if acquiring forest land) for three years preceding the transaction; or receive an authorisation of the county governor of the location of the immovable.

A legal person of a third country has the right to acquire an immovable which contains agricultural or forest land only with the prior authorisation of the county governor.

As for national security reasons article 10 of the Restrictions on Acquisition of Immovables Act regulates that any legal person whose seat is not in a contracting party to the EEA Agreement is prohibited from acquiring immovables in the following areas:

1) the sea islands, except Saaremaa, Hiiumaa, Muhu and Vormsi;
2) in the county of Ida-Virumaa: the cities of Narva, Narva-Jõesuu and Sillamäe and the rural municipalities of Alajõe, Iisaku, Illuka, Toila and Vaivara;
3) in the county of Tartumaa: the rural municipalities of Meeksi and Piirissaare;
4) in the county of Põlvamaa: the rural municipalities of Mikitamäe, Orava, Räpina and Värska;
5) in the county of Võrumaa: the rural municipalities of Meremäe, Misso and Vastseliina.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Estonia, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment:

In Estonia, big businesses are treated as fairly as individuals, as the higher court is obligated to follow the principle of equal treatment, every party has to be treated fairly despite the origin of the company and its status. The courts are obligated to apply the law objectively and it does not matter whether the law in a particular situation represents the interests of a foreign company, Estonian company or an individual. Still, in case there is dispute between consumer and company, there are many laws concerning consumer rights and protection as the consumer is considered to be a weaker party. It is not in the courts' discretion to decide whether consumer rights should be protected, protection comes from the law and companies are able to prepare themselves for disputes with consumers.

Estonian Judges' Code of Ethics regulates mandatory conduct of judges. The judges are obligated to remain objective, setting aside their own subjective opinion and should only be guided by the law. The GRECO Evaluation Report of Estonia (Fourth Evaluation Round), published in 2013, gives an overview of the Estonian judicial system and its' shortages. The Report does not mention problems concerning treatment of foreigners or big businesses. Also, according to Transparency International's Corruption Perceptions Index of 2014, Estonia ranks 26 out of 175 countries, when it comes to the corruption index.

As there is no data presenting information about unfair treatment or favouring local interests over foreigners, it can be said that Estonian higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Estonia are not considered materially greater than in other comparable countries.

True			False	Can't say
X				

Comment:

With respect to cost, according to article 138 of the Code of Civil Procedure the procedural expenses are the legal costs and extra-judicial cost incurred by a participant in a proceeding. Legal costs in higher courts are security on cassation and the costs essential to the proceeding. For an appeal in cassation and petition for review, a security of one percentage of the value of the civil matter, which shall not be lower than 100 euros and not higher than 3000 euros, is paid, taking account of the extent of the appeal. A security of 50 euros is paid for matters on petition, non-proprietary claims and appeals against rulings.

In Estonia, the party against whom the court decides covers the costs of an action. The exact amount the losing party is obligated to cover is in the court's discretion. Usually courts minimise costs that the losing party has to cover. Among others, the losing party is required to compensate the other party for any necessary extra-judicial costs, which arose as a result of the court proceeding. In the cases where ordering payment of the opposing party's costs from the party against whom the court decides would be extremely unfair or unreasonable, the court may decide that the costs be covered, in part or in full, by the party who incurred the costs.

As to the time taken by case trial, the time limit for the Supreme Court has not been regulated. On average, it takes approximately six months up to 1 year for the Supreme Court to make a judgment. Overall, the duration of a case trial depends on the specific case. Since the delays are individual form case-to-case depending on its process and complexity, it is difficult to compare the different jurisdictions.

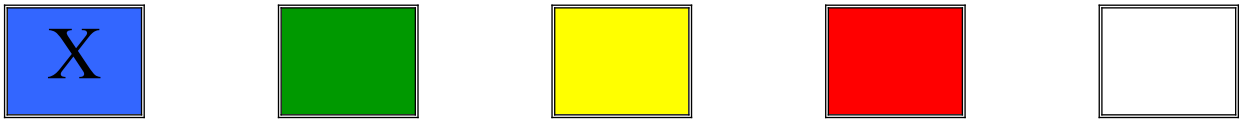
The general statistics of the European Court of Human Rights show that in Estonia considerably fewer breaches of the requirement of a reasonable time of proceedings have been identified than in other EU member states. Therefore it can be established that the delays are not materially greater than in other comparable countries.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**



Commentary and suggestions for change

In general, the Estonian legal system is well developed. As Estonia is a rather young country, our legal system still requires some development.

The most important amendments in company law in Estonia are made through changing the Commercial Code. The amendments are in force from 1 July 2015. The amendments should make the Estonian business environment significantly more attractive for foreign investors. The changes affect all companies, but primarily starting companies and potential investors. Among others, the amendments give start-ups broadened opportunities for the involvement of capital in Estonia.

Nonetheless, in our opinion, there are three issues that are open for changes.

Firstly, according to Estonian law the processes of getting building permits and the change of use of land should be rather simple. However, in practice these processes can be quite long and expensive, as for example the change of use of land requires cooperation from different units of the local authorities, it might turn out to be a longer process than expected. Also, when preparation of detailed spatial plans is required the public display can be time-consuming.

Secondly, section 153-(2) of the Bankruptcy Act provides that up to 15% of the money received from the sale of the pledged object may be expended to cover costs related to the bankruptcy proceedings.
Even though the Supreme Court has noted that Section 153(2) of the act is an imperative norm and the pledgee must receive at least 85% of the money received from the sale of the pledged object, in practice, it is possible that the rule is not followed and the pledgees will not receive the protection guaranteed for them by law. In order to avoid a situation where the pledgee receives less than 85 % of the money received from the sale of the pledged object, the pledgee must be attentive and use their right to appeal the court ruling approving either the distribution proposal or the final report of the bankruptcy proceedings. The content of the creditor's appeal to the distribution proposal may primarily be an objection to the proportion of the ratio in relation to other creditors (ie, the ratio between creditors).
In our opinion, the Bankruptcy Act should include special provisions for situations where it is possible that the costs of the bankruptcy proceedings exceed 15% of the money received from the sale of the pledged object.

Thirdly, as Estonia is part of the European Union, it is important to know that EU treaties and regulations are directly applicable. The EU directives might also have a direct effect if certain preconditions are fulfilled. However, sometimes the directives are not transposed to the national law in time or the national provisions are not in conformity with the EU law. This creates a situation where a person with no legal knowledge does not know his or her obligations and rights. The same applies when it comes to international treaties. For example, the Estonian Private International Law Act does not contain systematical references to European Union treaties or other legal assistance treaties, which take precedence over Estonian laws (e.g. questions concerning application of law). It is not absolutely necessary, but still recommended that the Estonian Private International Law Act should refer to applicable international regulations and the law should be explicative concerning when the Estonian law is applied and in which situations international treaties are applied.

Profiles

The survey was carried out by the following students:

Gea Raissar

Gea Raissar is a first year graduate student at University of Tartu, pursuing the degree of Master of Law. Her areas of interest are Tax Law and Corporate and Commercial Law. In fall 2015, Gea will be participating in a student exchange program at Tilburg University. Gea can be reached at graissar@gmail.com

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Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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